

RFP – 10-7762

REQUEST FOR PROPOSALS

The City of Indianapolis Purchasing Division requests proposals from qualified vendors for

Towing Services for the City of Indianapolis *Department of Code Enforcement*

PROPOSAL

The City of Indianapolis understands that respondents may have questions that cannot be answered by the information contained within this Request For Proposals (“RFP”). All questions shall be submitted in writing by 4:30 p.m. on August 11, 2010 to Sherry Owens, Buyer, Purchasing Division, Suite 1522, 200 E. Washington Street, Indianapolis, IN 46204, or by FAX to (317) 327-4493, or (preferably) by e-mail to Sherry.Owens@indy.gov

PRE-PROPOSAL CONFERENCE

The City of Indianapolis will conduct a Pre-Proposal Conference & Site Tour on August 5, 2010 at 9 A.M. at the City-County Building, Room 107, 200 E Washington St, Indianapolis, IN. Prospective contractors will be given the opportunity to ask questions, receive clarification, or simply obtain a greater understanding of the project prior to proposal submission. Questions submitted orally during the pre-proposal conference must also be submitted in writing to be assured of a proper response.

PROPOSAL SUBMITTAL DEADLINE: Date: August 27 @ 12:00 Noon Local Time

(All proposals must be delivered to Suite 1522 by 12:00 Noon.)

The City of Indianapolis reserves the right to reject any or all proposals.

NO LATE PROPOSALS WILL BE ACCEPTED FOR ANY REASON WHATSOEVER

Submit proposals to:

Sherry Owens, Buyer
Purchasing Division
City-County Building, Suite 1522
200 E. Washington Street
Indianapolis, IN 46204

**ENVELOPE MUST STATE CLEARLY THAT THE ENCLOSED PROPOSAL IS FOR
TOWING SERVICES
(RFP – 10 - 7762)**

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1. Executive Summary

1.1 Overview

The resulting agreement will be between the selected contractor(s) and the City of Indianapolis/Marion County, Department of Code Enforcement, herein referred to as "City". The basis for agreement is this Request for Proposal (RFP).

The City seeks a vendor to provide turnkey towing services, ranging from but not limited to actual towing, contract management, process re-engineering/improvement, lot and auction management, data management and all associated services required for a efficient, easily-accessible and courteous service related to all City-requested tows.

During an initial transition period, the vendor shall manage the City's existing franchise towing contracts, the abandoned vehicle contract/program and city fleet tow-in service contract, in order to perform analysis and identify opportunities for short and long-term efficiency and improved service. Upon expiration of the existing towing contracts, the vendor shall assume responsibility for providing towing services and implementing identified efficiencies.

Opportunities are not limited to, but shall meet specific milestones and be submitted to the City in the form of an implementation plan, which, upon approval, the vendor shall be solely responsible for implementing.

1.2 City History

This section is to provide the vendor with information regarding the history of the goods/services requested herein. Any references made regarding quantities of services to be provided to the City are estimates only based on past history of services required or department survey, and the City may request substantially more or less than the amounts indicated. Current service and business requirements are detailed in existing contracts, however, the City reserves the right to add, update, modify or remove service and business requirements that the vendor shall provide in future years.

The current franchise towing contracts primarily addresses the needs of law enforcement. It consists of and includes the lifting, pushing, pulling or removing of a vehicle or other property as requested by an officer/inspector from a public street, highway, right-of-way, or other public property and towing of the item to a different location or to an authorized storage lot or facility for the district. This service is required 24/7.

Current contracts expire 12/31/2010

Typical tows include vehicles involved in accidents, expired meters and police investigations.

See attachments for additional information including current service level requirements.

The current abandoned vehicle contract/program supports Indiana Code 9-13-2-1 and includes tagging, towing, storage and disposal of abandoned vehicles. Vehicles may be initially tagged as abandoned and brought directly to the abandoned vehicle lot. Vehicles impounded under the franchise towing contracts that remain unclaimed may be considered legally abandoned and towed to the abandoned vehicle lot. The current vendor is also responsible for the management of the city's abandoned vehicle lot located on the Belmont campus and the weekly auction of unclaimed vehicles.

Current contract expires 12/31/2010

Typical tows include vehicles in the city rights-of-way and on private property.

See attachments for additional information including current service level requirements.

The current towing contract for city vehicles provides tow-in (wrecker) service for disabled vehicles and/or equipment owned and operated by the Department of Public Work's Fleet Services division. Tows are made to one of three city Fleet Services locations. Additionally, the vendor also provides services for winching an off the road vehicle back on the road. (Bids must be submitted for all winching.) City-owned equipment/fleet includes approximately 3,000 gas and diesel driven pieces of motorized equipment under 19,500 GVWR as well as approximately 300 gas and diesel driven pieces of motorized equipment over 19,501 GVWR. Examples of motorized equipment include but are not limited to: cars, motorcycles, mowers, off-road equipment, solid waste trucks, stake bed trucks, buses, fire apparatus. Additionally, the vendor shall be required to tow city fleet regardless of location.

Current contract expires: April 2, 2012

Typical tows include city vehicles that have broken down roadside and require a tow back to a service facility.

See attachments for additional information including current service level requirements.

Definitions for some of the terms included in this RFP can be found in Section 19 of this document.

Historical Usage Information:

AGENCY	Approximate number of tows per year
Indianapolis Metropolitan Police Department (Franchise)	24,000
Department of Code Enforcement (Abandoned Vehicles)	7,000
Department of Public Works-Fleet Services (City vehicle/equipment tow-in)	2,000

1.3 Milestone Overview

Opportunities for efficiency and improved service shall be documented and submitted as milestones. All documentation shall be submitted in a format determined by the City. Each milestone shall be presented to the City in conjunction with an implementation plan. The City retains the sole right to:

- Update, modify, add and remove milestones
- Update or modify submittal and/or implementation dates
- Approve vendor submitted milestones and implementation plans
- Declare a successful implementation of a milestones

The vendor shall be responsible for all resources, equipment and expertise required to implement milestones. Any requests for City expertise or resources should be clearly identified. If the City is unable to provide the requested expertise or resource, the City may provide alternative resources at the sole cost of the vendor.

If the vendor believes they may be unable to meet a milestone submittal or implementation date, the vendor shall provide written notice to the city immediately. Written notification should include a proposed revised date. Modification of all submittal and/or implementation dates shall be at the sole discretion of the City.

1.4 Milestones

1. *Implement on-lot redemption and eliminate all redemption done at the City-County Building.*

In order to reduce citizen storage fees, provide improved service by reducing steps in the redemption process and increase efficiency of the overall process, this milestone will shift the redemption process to the lot where an impounded vehicle is stored.

Background:

- The process of reclaiming an impounded vehicle is referred to as “redemption”. Redemption includes vehicle research (to be performed by law enforcement staff), vehicle owner validation, payment of tow and storage fees and updating vehicle status.
- Redemption of all vehicles impounded as a result of a franchise tow must currently be redeemed in-person at the City-County Building Auto Desk. Redemptions may occur 24/7.
- Redemption of abandoned vehicles currently occurs on-site at the abandoned vehicle lot.
- Redemption processes are not applicable to city-fleet tows.

Submittal Date: 11/1/2010

Implementation Date: 1/1/2011

2. *Implement a software/data management system to track and audit all city-initiated and reported private tows with a public interface.*

The current towing programs: franchise, abandoned vehicle and city tow-in services, are provided by different contracts, managed by different departments. Each program tracks information related to towing individually and often manually. This makes responding to citizen requests difficult and time-consuming. However, by consolidating all towing contract management to the Department of Code Enforcement, this milestone seeks to provide a single source of information to increase transparency, efficiency and reduce costs to provide the service.

Please note: The city may have specific guidelines, restrictions or requirements related to technology.

Background:

- Franchise tows are currently reported via fax and maintained in spreadsheets.
- Private tows are currently reported to the Auto Desk via fax and maintained in spreadsheets.
- Abandoned vehicles may be reported to the Mayor’s Action Center (MAC) and tracked in Siebel and detailed towing info may be tracked in Repo Info.
- All non-confidential tow information should also be easily accessible to the public. Options may include a website or call center.

Submittal Date: 11/1/2010

Implementation Date: 1/1/2011

3. *Reallocation of all work not directly related to a law enforcement function to the vendor. (This work is currently performed by Indianapolis Metropolitan Police Department Auto Desk staff and should be shifted to the vendor.)*

Redemption of franchise vehicles is currently performed by the Indianapolis Metropolitan Police Department Auto Desk staff at the City-County Building.

If a vehicle is not redeemed within three days, the City initiates efforts to notify the vehicle owner. This process includes vehicle owner research via state and national databases and mailing of notifications, if possible.

In addition to redemption and attempts to initiate redemption, work performed by City staff includes but is not limited to customer service and input/documentation of private tows. All work related to the abandoned vehicle program is currently performed by the vendor, who should continue to do so.

Per Milestone #1, the redemption process will be performed on-lot. This milestone seeks to reallocate all work not directly related to law enforcement to re-focus City staff strictly to law enforcement functions and thereby create additional efficiencies in the process.

Background:

- 24/7 operations currently provided by Indianapolis Metropolitan Police Department Auto Desk staff.
- Functions performed include but are not limited to: customer service, owner/driver validation, owner notifications and payment processing.

Submittal Date: 11/1/2010

Implementation Date: 1/1/2011

4. *Implement online redemption of vehicles.*

In conjunction with Milestone #1 and #2, this milestone seeks to improve customer service by creating additional redemption methods and providing overall efficiency to the process.

Please note: The city may have specific guidelines, restrictions or requirements related to technology.

Milestone should include but is not limited to:

- Citizen online research portal
- Citizen initiated and driven redemption
- Online credit card processing
- Incorporation of Milestone #2 to provide real-time status information

Submittal Date: 11/1/2010

Implementation Date: 1/1/2011

5. *Develop a 5-year strategy plan, including an analysis of how to increase revenue/decrease expenses.*

To maximize the long term benefits and efficiencies, this milestone will create a strategic roadmap for the future of towing operations in the City of Indianapolis. While the initial plan will be submitted in 2011, the plan should be updated and extended on an annual basis.

Milestone should include but is not limited to:

- Ordinance revisions
- Pricing recommendations
- Technology upgrades/implementations to increase efficiencies or improvement in service
- Additional opportunities for savings to the citizen by reducing the time from tow to redemption
- Opportunities to increase minority-, women-, and veteran-owned business participation

Submittal Date: 10/1/2011

Implementation Date: TBD

6. *Develop and provide Annual Report*

As an opportunity to summarize the successes, challenges and overall state of the program for the previous year, this milestone formalizes the annual communication to create greater transparency into the program.

Report should include but is not limited to:

- Annual statistics and measurements, focusing on trends
- Updates on project implementations
- Opportunities to increase partnership with locally-owned businesses.
- Plan to limit the impact of a transition of services on locally-owned businesses.

Submittal Date: 10/1/2011 and annually thereafter

7. *Develop a disaster response plan.*

The vendor shall be required to develop a disaster response plan that, in conjunction with the city's disaster response plan, ensures all services required for the city to function in a disaster situation are available, including tow-in service for City fleet. The plan should also include services to tow or move vehicles that may limit or block access of City vehicles.

Plan should include but is not limited to:

- Communication plan
- Coordination plan among city departments including, but not limited to: Indianapolis Metropolitan Police Department, Emergency Management, Division of Homeland Security, Department of Public Works, Department of Code Enforcement
- Business continuity plan

Submittal Date: 3/1/2011

Implementation Date: 4/1/2011

8. *Develop enforcement and compliance policy options.*

While not all tows are a result of enforcement or compliance efforts, this milestone seeks the vendors assistance in identifying those opportunities to update or create new enforcement and compliance policies, where appropriate, based on national and best practices research.

Submittal Date: 4/1/2011 and annually thereafter

9. *Develop programmatic and operational reporting ideas, including measurement of all savings associated with efficiencies implemented.*

In conjunction with all other milestones, specifically # 2 and #4, the city believes additional information and measurements will be available and of value to the City and citizens. This information should support contract compliance requirements, transparency, identify and support efforts to improve service. This information may also be submitted in the Annual Report (Milestone #6).

Submittal Date: 3/1/2011 and annually thereafter

10. *Develop & implement an on-going marketing plan.*

In anticipation of the improved service offerings, this milestone seeks to provide a robust marketing plan to education the public of upcoming changes in an effort to decrease citizen issues and complaints. Marketing should touch all parties that may have an interest in towing from towing companies and citizens to businesses.

Plan should include but is not limited to:

- Public education of new processes and procedures
- Marketing of the weekly abandoned vehicle auction to increase revenue
- Citizen website/call center

Submittal Date: 11/1/2010 and annually thereafter

Implementation Date: 12/1/2010 and annually thereafter

11. *In coordination with the City’s implementation of an ERP system, PeopleSoft, (Indy Corps), tie the redemption process into a unified cashiering strategy.*

Details to be released when available.

12. *In coordination with the City’s parking concession vendor, provide integration opportunities that result in efficiencies or improved service.*

Details to be released when available.

1.5 General Vendor Qualifications

Vendors proposing on this project may be any of the following: a) towing vendors themselves; b) vendors directly responsible for managing towing contracts and operations for large scale organizations; or c) vendors that have a long and solid history in the towing industry at the time of proposal submission. In all situations, vendors must be in good standing with all applicable laws and regulations.

2. Proposal Submission

2.1 Notice of Intent to Respond

The City requests all vendors should first submit a Notice of Intent to Respond. The “Notice of Intent to Respond” template has been provided as an attachment to this RFP (Attachment X).

2.2 Proposal Timeline and Submittal Address

2.2.1 The City has established the following tentative timeline for the administration of this RFP. These dates are subject to amendment at the City’s discretion.

Activity	Date & Time
RFP Released to Vendor Community	July 26, 2010
Pre-Proposal Conference	August 5, 2010, 9 AM Local Time
Notice of Intent to Respond Due	August 9, 2010
Final Written Questions Due from Vendors to City	August 11, 2010 – 4:30 PM Local Time
Final Response to Written Questions from the City	August 16, 2010 – Posted as an Addendum
Proposals Due	August 27 – 12:00 Noon Local Time

2.2.2 Response to this RFP shall be addressed and submitted to:

Attn: Sherry Owens, Buyer
Purchasing Division
City of Indianapolis
1522 City-County Building
200 E. Washington St.
Indianapolis, Indiana 46204

2.3 Proposal Copy and Submission Requirements

- 2.3.1 Vendor shall supply a sealed box/envelope containing two (2) signed Originals, one (1) electronic compact disc of the complete proposal, preferably in Microsoft Office Suite Programs or Adobe Acrobat .PDF format and eight (8) hard copies of the complete proposal.
- 2.3.2 The box/envelope shall be clearly labeled with the vendor's name and "RFP 10-7762 – Towing Services Due Date: August 27,2010 at 12:00 noon local time. An authorized representative of the vendor must sign the proposal.
- 2.3.3 Proposals must be received by the Purchasing Division and time stamped by the deadline. The City will not consider any proposals received after the official deadline. (The City will not make exceptions due to failure or delay of the U.S. Postal service or any other delivery service, and vendors are strongly encouraged to take any steps necessary to ensure that the proposal is received on time.)

2.4 Pre-Proposal Conference and Site Tour- Questions and Answers

2.4.1 A *Pre-Proposal Conference & Site Tour* will be held to address vendor questions surrounding the RFP. Interested vendors are strongly encouraged to attend this conference. This event will be held on August 5, 2010 at 9 AM at the following location:

City-County Building, Room 107
200 E Washington St.
Indianapolis, IN 46204

2.4.2 Any specific questions or comments concerning the RFP may:

- 2.4.2.1 Be presented during the *Pre-Proposal Conference*; (Note- Questions submitted orally during the pre-proposal conference must also be submitted in writing to be assured of a proper response.)
- 2.4.2.2 Be presented by fax to the attention of Sherry Owens, Buyer at 317-327-4493 or
- 2.4.2.3 Be e-mailed to Sherry.Owens@indy.gov, Buyer, no later than 4:30 P.M. local time on August 11, 2010. (Questions or comments received after this time will not be entertained.)

2.4.3 **Please be sure to reference the RFP in question by name (Towing Services) and RFP number (#10-7762) when submitting questions.**

2.4.4 Vendors shall note that only the *written* answers provided may be binding on the City. These answers shall represent the City's official position and supersede any previous oral statements

made during the Conference or at any time by City staff. The written answers will be posted on the City Purchasing Division web site (www.indy.gov/purch) as addenda to this RFP.

2.5 Addenda

- 2.5.1 Any related addenda to this RFP, including written answers to questions, will be posted on the Purchasing Division's official website at www.indy.gov/purch under the appropriate project heading. Addenda and updates will **NOT** be sent directly to vendors. It is recommended that any vendor submitting a proposal check the web site daily for addenda and updates after the release date. Vendors should print out, sign and return addenda acknowledgement(s) with their RFP (Reference Section 3.2 of the Response Format) – Item 12 Additional Information.

2.6 Conflicts Errors or Discrepancies

- 2.6.1 If a vendor finds conflicts, errors, discrepancies or ambiguities in the Proposal Documents or any sample form, or if the vendor is in doubt as to the intended meaning of any portion or provision therein, the vendor shall at once give written notice thereof to the City's Representative, at least seven (7) consecutive calendar days prior to the Proposal Due Date. No vendor shall be allowed any extra compensation or time extension by reason of any conflict, error, discrepancy or ambiguity of which the vendor had actual knowledge or reasonably shall have known and which he/she failed to report within the period and in the manner required herein.

3. Submission Format

3.1 General Requirements

- 3.1.1 All original and hard copies:

- 3.1.1.1 Shall be presented in a professional manner such as spiral bound, perfect bound, or professional grade folder/ three ring binder. (Ref 2.2 "Proposal Copy and Submission Requirements")
- 3.1.1.2 Shall be appropriately titled on the front cover with the RFP name, RFP number, vendor name and the due date
- 3.1.1.3 Foldouts that contain charts, spreadsheets, and oversize exhibits are permissible.
- 3.1.1.4 Tabs or other separators shall serve to divide major sections of the proposal.
- 3.1.1.5 Manuals and other reference documentation may be bound separately.

3.1.2 Electronic Copies

- 3.1.2.1 Electronic copies shall have the same content as the original and hard copies on Compact Disk (Ref 2.2 "Proposal Copy and Submission Requirements")

- 3.1.3 All responses, as well as any reference material presented, must be written in the English language. Main text shall be a common typeface (Arial, Times New Roman, etc.) and shall not be smaller than 11 pt.

- 3.1.4 The vendor should sufficiently address each item presented in the RFP and all Appendices in accordance with the directions found herein. Each item is expected to be addressed or the proposal may be judged as "non-responsive." Answers shall be clear, sufficiently detailed and specific to the City.

3.1.5 Proposals shall be based on the material contained in the RFP. In addition to the main document, this includes written responses to questions as well as any other official amendments/addenda published by the City concerning the acquisition. Proposals shall be prepared as simply as possible to provide straightforward, concise descriptions of the vendor's capability to satisfy the requirements of the RFP. Utmost attention shall be given to accuracy, completeness, and clarity of content. All parts, pages, figures, and tables shall be numbered and clearly labeled. The proposal shall be organized into the following major sections with tabs for sections numbered and titled as they appear below. Include a tab or section heading for each subsection.

3.2 Response Format – Section Definitions and Requirement Details

3.2.1 The format for RFP response submission is presented below. Please organize and format your proposal response in the following manner:

Response Section	Description
1.	Transmittal Letter
2.	Company Background and Team Arrangement
3.	Reference Reviews
4.	Vendor History
5.	Scope of Goods and Services
6.	Program Management
7.	Program & Project Manager and Project Team Qualifications
8.	Project Schedule
9.	Program Deliverables and Milestones
10.	MBE/WBE/VBE Participation
11.	Basic Services Agreement Acceptance
12.	Additional Information
13.	Cost Proposal / Budget

(The rest of this page left intentionally blank.)

4. Response Section – Transmittal Letter

- 4.1 The vendor shall first submit a formal transmittal letter on *official company letterhead* that contains the following:
 - 4.1.1 Statement of Interest – This statement shall indicate your firm’s general interest and capability to perform the project. It shall also include a brief summary of any information that you feel might be especially important to the City.
 - 4.1.2 Statement of Proposal Life – The proposal must have a proposal life of at least one hundred eighty (180) calendar days from the RFP due date. This shall represent the minimum time during which the proposal is a firm offer and a contract may be entered into.
 - 4.1.3 Contact Person – Please include the name, title, address, telephone number, fax number and e-mail of the key contact person for any questions regarding your proposal.
 - 4.1.4 Signature of Authorized Representative – An authorized representative of the firm must sign the transmittal letter.

5. Response Section – Company Background and Team Arrangement

- 5.1 This section should give a brief overview of the company and provide the following information:
 - 5.1.1 Company name & local business address (Include any regional offices and/or headquarters.)
 - 5.1.2 Year established (Include former names and year established, if applicable)
 - 5.1.3 Type of ownership and parent company, if applicable;
 - 5.1.4 Brief company overview including core competencies, highlighting any areas of specialization that would provide a benefit to the services requested;
 - 5.1.5 Program manager who will be assigned to the City;
 - 5.1.6 Proof of financial solvency (e.g. company balance sheets for the previous five years); and
 - 5.1.7 List of any current litigation the company is a party to.
- 5.2 If a joint venture or subcontracts are contemplated, provide the same information as above for any subcontractors, and explain their role in the contract. (The Prime Contractor must assume all responsibility for the entire project, including the work of any subcontractors.)
- 5.3 Please include any general pre-printed literature regarding your company in this section.

6. Response Section – Reference Reviews

- 6.1 Please provide a detailed list of references showing your expertise and experience in providing the services requested. A minimum of three (3) and a maximum of six (6) references are required for this RFP. References should include project description, contact names, addresses, phone and e-mail. Preferred project references include similarly sized projects with municipal governments, towing programs that have been re-engineered and/or towing contract management experience.

7. Response Section – Vendor History

- 7.1 The vendor must be a “responsible” vendor that is both ethically, financially and legally in good standing within the industry, as determined solely by the City. If the vendor’s local office has had a contract terminated for default during the past five (5) years, this fact shall be disclosed in the

RFP response along with the vendor's position on the matter(s). If the vendor has experienced no such terminations for default in the past five years, then it should so indicate.

- 7.2 Prime vendors who are not actual towing vendors should discuss their relationship with the towing companies, including the history of the partnership, if applicable, formal training programs, formal certifications or authorizations, and any additional contractual or warranty benefits that will accrue to the City based on the business relationship between the entities. The proposal should include other installations that have been complete and have been managed successfully, if applicable.

8. Response Section – Scope of Goods and Services

Based on the vendor's understanding of the project, the vendor shall respond to each of the following items. Responses shall be kept in the order in which they are presented herein by paragraph number. To provide clarity, the responses may be broken out by year to account for the transition of contract administration of existing contracts (2010) and the implementation of vendor-identified efficiencies and milestones (2011 and beyond), as necessary. This section should clearly outline the following:

- 8.1 General Feature Requirements – Vendor shall provide a brief narrative delineating the general understanding of the project and the approach proposed to complete the required work. A detailed description explaining what methodology will be used on this project, for example: analysis, prototype, build.
- 8.2 Technical Specifications and Configurations – Please describe in detail how each task/phase of work will be completed for this project.
- 8.3 Equipment and Service Specifications – Please provide a detailed description of each of the tools, systems and/or products or services that will be used for this project.
- 8.4 Delivery and Installation – Please include a listing/description of the hardware, equipment and/or software systems that will be used on the project.
- 8.5 Implementation and Acceptance – The vendor shall provide details regarding the implementation of any new system, including testing, quality control, and acceptance plans. These plans should be for full system implementation. Details should include but are not limited to the process requirements gathering, issue resolution, change management, communication plan and test plans.

The quality control and testing plans should also document the vendor's proposed process for remedying problems and implementing solutions. The process for issue identification and resolution for all portions of the system should be clearly outlined in the vendor's proposal, especially if various vendors or products are involved in the system solution.

- 8.6 Training – The Vendor shall be prepared to train City staff on said equipment or software at no additional charge. If the equipment or software is a combination package, all vendors shall be present for their portion of the training.
- 8.7 Warranty, Maintenance and Ongoing Support

- 8.7.1 Maintenance and Support Requirements – The vendor shall provide a description of its technical support capabilities with respect to electronic support capability, maintenance, support, warranty, service level, and documentation details. Vendor shall be solely responsible for all on-going maintenance, support and upgrades.
- 8.7.2 Warranty Requirements – The vendor shall warrant each new piece of equipment and related products to be free from defects in material and workmanship, under normal use and service.
- 8.7.3 Service Level Requirements – The vendor shall provide towing services for the City for a for a period of five (5) years. Current service level requirements are detailed in individual contracts, which are included as an attachment. In addition to the changes in service level requirements based upon milestones and all other efficiencies implemented, the City reserves the right to add, update, modify or remove service level requirements to support changing business requirements that the vendor shall be solely responsible for providing in future years at their expense.

9. Response Section – Program Management

The proposal response must include a Program Management Plan. This section should describe how the towing program will be managed, internally by the vendor and with the City. In this section, detail how the program will be managed, all regular meetings, conference calls, etc. To provide clarity, the responses may be broken out by year to account for the transition of contract administration of existing contracts (2010) and the implementation of vendor-identified efficiencies and milestones (2011 and beyond), as necessary. This section should clearly outline the following information:

- 9.1 Acquisition Plan - Proposal shall include an acquisition plan/approach that will indicate how the vendor will acquire the project resources including the hardware/software, all necessary services and staff for the program.
- 9.2 Risk Management Plan/Approach – A risk management plan/approach that will identify, evaluate, manage and control the technical, cost, and schedule-related risks associated with all aspects of the program.
- 9.3 Configuration Management and Data Management Plan or Approach – A configuration management and data management plan/approach that will indicate how the vendor will perform configuration and data management throughout the term of the contract and how they will be integrated into its engineering, design, test, quality, procurement and subcontractor management of the project.
- 9.4 Communications Plan/Approach – A communications plan/approach for communicating project issues, scope changes, requirements changes, status and review meetings, and other forms of communications. An issue tracking and reporting process that describes how the project manager will track and manage issues that arise during the project should also be included. Describe any status meeting formats and detail the change order process (which should include changes in scope or cost due to additional information or requirements found during the project period). Include a sample of a weekly status report that will be given to the City each week during the project.

9.5 A Performance Monitoring Plan/Approach – A performance monitoring plan/approach for monitoring and recording performance measures set forth for the pilot evaluation and that will be used going forward.

10. Response Section – Program and Project Manager and Team Qualifications

The vendor shall be responsible for providing a program manager to oversee the towing program and the terms of the contract. The program manager shall be the primary point of contact for the City. In addition, the vendor shall be responsible for providing project management services, including project managers, to implement the individual projects associated with milestones and other requirements of the program. Please provide responses for the following:

10.1 Management and Staffing Qualifications - Vendor shall provide on-site project and program management at all times.

- 10.1.1 The primary individual (Program Manager) assigned to oversee the program must have sufficient training and experience in managing program implementations as judged by the City. The Project Manager shall provide the systems and processes required for the planning, organization, control, surveillance and reporting of the overall contract activities to ensure disciplined performance of work and timely application of resources necessary for completion of all work identified in the Scope of Services (“Section 5” of the RFP Response). These systems and processes shall be adequate to assure completion of all project technical schedules, and cost objectives for the City.
- 10.1.2 The primary individual (Project Manager) assigned to oversee the implementation of projects associated with all milestones. The project manager must have sufficient training and experience in managing project implementations as judged by the City. The Project Manager shall provide the systems and processes required for the planning, organization, control, surveillance and reporting of the overall project activities to ensure disciplined performance of work and timely application of resources necessary for completion of all work associated with milestones in Milestones (Section 1.4 of the RFP Response). These systems and processes shall be adequate to assure completion of all project technical schedules, and cost objectives for the City.
- 10.1.3 The vendor must identify the proposed Program Manager by name, provide a telephone number and email address where the program manager can be reached. In addition, the Program Manager must be located locally for the duration of the contract.
- 10.1.4 The vendor must identify the proposed Project Manager by name, provide a telephone number and email address where the project manager can be reached.
- 10.1.5 Please include summary information on all key staff in a table format similar to the one below. In addition, the resumes of the program and project manager and all key individuals slated to complete this project should be included in this section with their roles fully explained. Resumes should include any past projects or programs that would specifically benefit the services requested by the City.

Summary Information Sample Table:

Name	Position	Job Duties	Hours Per Week	Timeframe/Duration

10.2 Organizational Chart – Please provide an organizational chart of the work team. This shall include the program manager, project manager, subordinate workers, etc.

10.3 Staff Plan – Please provide a staffing plan for the duration of the contract including any proposed changes.

11. Response Section – Project Schedule

The proposal response must include a project schedule that includes a presentation on the overall project implementation process for the project to the City Tow Team as well as all other status and review meetings with the City. To provide clarity, the responses may be broken out by year to account for the transition of contract administration of existing contracts (2010) and the implementation of vendor-identified efficiencies and milestones (2011 and beyond), as necessary. This section should clearly outline the following information:

- 11.1 The Work Breakdown Structure (WBS) should define and identify all task elements that will be conducted or used in the project. The WBS tasks will appropriately match the narrative for tasks in the Detailed Project Methodology, the deliverables and milestone list and cost proposal.
- 11.2 The vendor should include tasks that will result in the creation of the various milestones and deliverables required by the City. The vendor may add as many tasks to the schedule as it wishes as long as the schedule is clear and covers the requested milestones, deliverables and requirements of the City. Time duration per each task (in days) and resource allocation should also be noted for each task. Because there are many parts to this project and the tasks can happen simultaneously, the vendor should clearly define major project tasks in the WBS.
- 11.3 When selected, the vendor will be required to provide an electronic copy of the project schedules to the City. The master schedule and each individual task schedule should be included in the proposal.
- 11.4 The schedule shall outline the key implementation steps for completion of the project from contract execution through and including final testing, acceptance and sign-off. (It is understood the schedule may be deemed “preliminary” and may involve some modifications prior to implementation).
- 11.5 Vendor’s proposed schedule shall include any potential contingencies as well as any and all assumptions or expectations placed on the City. The schedule shall include all milestones and deliverables and payment schedule.

12. Response Section – Project Deliverables & Milestones

- 12.1 Provide a detailed outline of deliverables and milestones and dates for delivery. The City understands that depending on the solution provided and the method used for implementation, the number and format of these deliverables may change. Deliverables identified or associated with milestones should be highlighted. The vendor may add any additional deliverables and milestones it believes necessary to meet the City requirements for the system.

13. Response Section – MBE/WBE/VBE Participation

- 13.1 It is the policy of the City that Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and Veteran Business Enterprises (VBEs) shall have the maximum feasible opportunity to participate in the performance of contracts. Consequently, the City, through Article IV, sections 201-401 of the revised municipal code and Executive Order 5, 2008, has

established MBE participation goals of 15%, WBE participation goals of 8%, and VBE participation goals of 3% for its dollars spent on public works, goods, and services.

- 13.2 In order to help accomplish this goal, the City is requiring that you include with your response information regarding your status as an MBE, WBE or VBE. Additionally, please include contact information for any MBE, WBE or VBE owned contractors directly participating in your business operations. The City also requests contact information for any MBE, WBE or VBE sub-contractors that you might use in the course of doing business with the City. Some examples of this kind of service include, but are not limited to, office suppliers, courier services, shipping services, etc. These services can occur at the local, state, or national level. Please include an estimated (%) or (\$) amount that you anticipate using on an annual basis.
- 13.3 Be advised that the information provided on MBE/WBE/VBE participation will be included as part of the scoring criteria for this RFP. Accordingly, it is imperative that you do everything possible to obtain the information above and supply it as part of the RFP response.
- 13.4 If you should need assistance in obtaining information or certification for possible participation in a contract, please contact the Division of Minority & Women Business Development (DMWBD) <http://www.indy.gov/eGov/City/DMWBD/MBE-WBE-VBE/Pages/Certification.aspx> or (317) 327-5262. Respondents can view a list of City DMWBD approved MBE/WBE/VBE contractors by going to this web page: <http://www.indy.gov/eGov/City/DMWBD/MBE-WBE-VBE/Pages/VendorList.aspx> and clicking on the appropriate "vendor list".

14. Response Section – Basic Services Agreement Acceptance

- 14.1 The vendor should view the Sample Professional Services Agreement found in Appendix A of this RFP. Additional provisions as needed or required by the City will be discussed with the vendor during any negotiation process. The vendor does NOT need to sign this agreement but rather review and note any areas that need to be discussed with the City if selected for this project. The final contract with the vendor will include similar language to that shown in the Sample Professional Service Agreement and specific language for this project. Note: Any proposed exceptions to this document should be listed in detail, attached and returned with the proposal detailing the reason for the exception.

15. Response Section – Additional Information

- 15.1 Provide any additional information deemed necessary by the vendor to ensure success of the project. Any exceptions that the vendor would like to have for this project should be provided in detail. This section should also include any addenda published on the Purchasing Division web site prior to the due date for the RFP.

16. Response Section – Cost Proposal / Budget

- 16.1 Please be sure that in hard copy submissions, this section is easily detachable from the rest of the proposal. Digital copies shall have this section as a separate CD or other e-format.
- 16.2 Please provide a detailed financial proposal that protects and guarantees City revenue and reduces City-related expenses. The City requires a minimum of \$1.5 million revenue annually and reserves the right to modify this amount in future years based on market or economic changes. For services provided under this agreement, the vendor may be entitled to receive a portion of the base fees or auction revenue that paid by the owner or operator of a vehicle that has been towed under the franchise or abandoned vehicle program. While the City retains and reserves the right to establish and modify the base fees, the City will accept vendor

recommendations for base fee adjustments in the annual submittal of Milestone #5. The City will entertain financial models that share revenue based upon increased service, such as the sliding scale used with the Abandoned Vehicle program.

16.3 Vendor should include a table for costs not associated with a particular task or deliverable listed.

16.4 Vendor should include in its proposal quantity based pricing for future consideration by the City should it choose to expand towing services. After complete implementation of the system a benchmark study will be conducted where City will evaluate the system. If the results show the system provides value added service to the City, the City may desire to expand the program.

(End of Response Format Sections)

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17. Proposal Evaluation

17.1 Proposals will be evaluated and scored according to the following evaluation criteria. Proposals that significantly deviate from the City's requirements may be found "non-responsive" without further evaluation.

Evaluation Criteria	Percentage (Weight Factor)
Quality of Overall Response This will include responses to sections (5) Company Background, (7) Vendor History, (8) Scope of Goods & Services, (9) Program Management, (10) Program and Project Manager and Team Qualifications, (11) Project Schedule, (12) Project Deliverables and Milestones	45%
Pricing Proposal/Structure	35%
References As provided by the respondent, particularly from similar services provided to local municipalities	10%
MBE/WBE/VBE Participation	10%
TOTAL	100%

18. Additional Provisions

18.1 Revision to the RFP - The City may modify or amend this RFP at any time. If it becomes necessary for the City to revise any part of this RFP, the revision(s) will be posted on the City's web site (www.indygov.org/purch). In such an event, the submission deadline may be extended, at the option of the City, to allow vendors the opportunity to revise their proposals accordingly.

18.2 Use, Disclosure and Confidentiality of Information

18.2.1 This RFP distributed by the City, including any other required terms, will be incorporated by reference and made a part of any resulting contract

18.2.2 The information supplied by a vendor as part of an RFP response will become the property of the City. Proposals will be available to interested parties in accordance with the Indiana Access to Public Records Act (IC 5-14-3). None of the proposal responses will be made available to the public until after negotiation and award of a contract or cancellation of the procurement.

18.2.3 To the extent requested by a vendor and allowed by law, the City will treat *trade secrets* and *confidential financial information* as confidential (if designated as confidential and submitted separately in a sealed envelope). The vendor must request confidential status before the proposals are opened. If the City believes that information designated as confidential should not be treated as such, the vendor will be notified and afforded reasonable time to present objections prior to any release of the information. The City will take into consideration the possibility of harm resulting from any disclosure, but reserves the right to make the final determination in accordance with the law. (Note: Pricing information may not be considered confidential.)

18.3 Errors in Proposals – Vendors will not be allowed to change or alter their proposals after the deadline for proposal submission. The City reserves the right, however, to correct obvious errors such as math errors in extended pricing (not unit pricing). This type of correction may only be allowed for "obvious" errors such as arithmetic, typographical, or transposition errors. Any such

corrections must be approved by the Purchasing Division and countersigned by the vendor. Vendors are advised to make sure that their proposals are true and correct when submitted.

- 18.4 Vendor Expenses – By submitting a response to this RFP or participating in the process, each vendor agrees that all of its related expenses are its sole responsibility, and that the City will not be responsible for any costs whatsoever incurred by the vendor in connection with or resulting from the RFP process, including but not limited to costs for preparation/submission of proposals, travel & per diem, attending interviews, providing presentations or demonstrations, and participating in contract negotiation sessions.
- 18.5 Proposal Life - Vendors must hold their proposals open and pricing firm for one hundred eighty (180) calendar days from the proposal submission deadline. Any proposal accepted by the City for the purpose of contract negotiations shall remain valid until superseded by an executed contract or until rejected by the City.
- 18.6 Post- Proposal Discussions and Presentations – After the Proposal Due Date, the City may conduct discussions with representatives of one or more vendors submitting proposals for the purpose of obtaining clarification of a vendor’s proposal and/or to assure full understanding of the solicitation requirements. As part of this process, the City may require a vendor to provide one or more formal presentations to City officials to further explain or clarify their proposed solution. Any presentation will be at a time and place to be determined by City staff but is tentatively scheduled to occur the week of September 6, 2010, but is subject to change. The vendor will be notified in advance of the specifics if such a presentation is required. The commencement of discussions or the scheduling of presentations does not signify a commitment by the City to execute an agreement or to continue discussions with the vendor.
- 18.7 Contract Renewal – Any resulting contract may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract.
- 18.8 Multiple Awards – The City may award a contract to a single vendor; or, at its option, may award contracts to a team of vendors if deemed to be in the best interest of the City.
- 18.9 Contract Negotiations – The City will use the requirements set forth in the RFP as the basis for proposal evaluations. After identifying one or more responsive and responsible vendors who appear to be most advantageous to the department, the City may enter into contract negotiations with the vendor(s). If at any time the contract negotiations are judged to be ineffective, the City may cease all activities with a vendor and begin/continue contract negotiation and preparation activities with another vendor, and the process may continue until a contract is executed. As a part of this process, the City may obtain “best and final offers” from all vendors judged to be finalists. The City reserves the right to cease all contract negotiation activities at any time and reject all proposals if such action is determined by the City to be in its best interest.
- 18.10 No Obligation to Proceed – The City is under no obligation to proceed with this project or any subsequent project, and may cancel this RFP at any time without the substitution of another, if such cancellation is deemed in the best interest of the City. Furthermore, the City may reject any and all proposals, to waive any irregularities or informalities in a proposal, and to issue a new or modified RFP, if it is found to be in the best interest of the City.

- 18.11 Proposal Withdrawal and Modification – The City may allow a vendor representative bearing proper authorization and identification to sign for, receive, and withdraw the vendor's unopened proposal prior to submission deadline. A vendor wishing to modify its proposal may do so by withdrawing the initial submission and then submitting a modified proposal prior to the deadline.
- 18.12 Bonds –The performance bond shall be issued by a bona fide surety and made payable to the City of Indianapolis/Marion County. The amount of a performance bond will be based on the services included in the vendors proposal. The City reserves the right to amend the performance bond amount. Performance bonds shall be delivered to the Purchasing Division within ten (10) business days after receipt of award letter.
- 18.13 Purchase Orders – The vendor shall furnish no services, equipment and materials or labor unless a properly executed order is received from the City directing the supply of the same.
- 18.14 Subcontractors – The City intends to contract with one or more prime vendors who will be solely responsible for contractual performance. In the event a prime vendor utilizes one or more subcontractors, the prime vendor will assume all responsibility for performance of services by the subcontractor(s). Additionally, the City must be named as a third party beneficiary in all subcontracts. A list of all subcontractors proposed to take part in the performance of the contract (at its outset) shall be provided to the City for approval prior to contract execution. This request may require that sufficient financial or background information be provided. To the degree available, this information shall be included in an Appendix with the proposal response.
- 18.15 Taxes – The City of Indianapolis and Marion County are exempt from Federal, State and Local Taxes and will not be responsible for any such taxes in connection with the award of this contract.
- 18.16 Licenses and Permits – The successful vendor shall furnish the City upon request any and all documentation regarding necessary licenses, permits, certifications and/or registrations required by the laws or rules and regulations of the City of Indianapolis, Marion County, other units of local government, the State of Indiana and the United States. The vendor certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its licenses, permits, certifications and/or registrations in force during the term of the agreement.
- 18.17 Use of the City's Name – Upon entering an agreement, the successful vendor agrees not to use the name of the City of Indianapolis or Marion County in relation to the agreement in commercial advertising, trade literature or press releases to the extent without the prior written approval of the City.

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19. Appendices

19.1 Sample Service Agreement

This Service Agreement (hereinafter referred to as "Agreement"), entered into by and between _____ (hereinafter referred to as "Contractor") and the Consolidated City of Indianapolis/Marion County, by and through the Department of _____, (hereinafter referred to as "City"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.01 The "Agreement", as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include these Terms and Conditions, the Attachments described in Sections II and IV and attached hereto, all addenda issued prior to receipt of RFPs, quotes, or bids, whether or not receipt thereof has been acknowledged by Contractor, all conditions, plans, specifications and standards, instructions and notice to vendors, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.
- 1.05 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

SECTION II. DUTIES OF CONTRACTOR

- 2.01 Contractor shall provide services as specified in Attachment A, _____, attached hereto and incorporated into this Agreement.

SECTION III. TERM

- 3.01 The term of this Agreement shall begin upon execution date of this Agreement by all parties and shall terminate on _____ unless terminated earlier in accordance with this Agreement.
- 3.02 This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both City and Contractor and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein.

SECTION IV. COMPENSATION

- 4.01 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in Attachment A at the rates set forth in Attachment B, attached here to and incorporated herein. However, in no event shall compensation for services under this Agreement exceed _____.
- 4.02 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to City. City will pay Contractor within thirty days after receipt of such properly itemized claim forms.

SECTION V. GENERAL PROVISIONS

- 5.01 Independent Contractor – The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the Consolidated City of Indianapolis and of Marion County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.02 Subcontracting
- 5.02.1 Approval required – The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.02.2 Minority, Women and Veterans Participation – To the extent Contractor uses subcontractors or other agents in the performance of services under this Agreement, Contractor shall either:
- (a) Use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under this Agreement; or
 - (b) Demonstrate a good faith effort to achieve such percentages, in compliance with the policies and to the satisfaction of Indianapolis's Department of Minority & Women Business Development.

Violation of this Subsection shall constitute a breach of this Agreement.

- 5.03 Necessary Documentation – Contractor certifies that it will furnish City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

5.04 Confidentiality

- 5.04.1 The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Contractor understands that the information provided to it or obtained from City during the performance of its services is confidential and may not, without prior written consent of City, be disclosed to a person not in City's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's work product generated during the performance of this Agreement is confidential to City. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide notice to City prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.
- 5.04.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, City that is required to be kept confidential by City pursuant to Indiana law except as contemplated by this 5.04.1(d), above.
- 5.04.3 Contractor acknowledges that City will not treat this Agreement as confidential information and will post the Agreement on the City website as required by Section 141-105 of the Revised Code of the Consolidated City of Indianapolis and Marion County. Use by the public of any document or the information contained therein, shall not be considered an act of City.
- 5.05 Records; Audit – Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by City or any other authorized representative of the City of Indianapolis, Marion County, Indiana. Copies thereof, if requested, shall be furnished at no cost to City.
- 5.06 Ownership
- 5.06.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors, either solely or jointly with the City, in the course of performing the services under this Agreement, including, but not limited to, computer programs, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.
- 5.06.2 All Works shall, to the extent permitted by law, be deemed to be works made for hire under federal copyright laws and are and shall be the exclusive property of the City. In any event, Contractor hereby assigns to the City any and all right, title, and interest in and to any Works, including, without limitation, any and all intellectual property rights. At the City's request, the Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of the City, Contractor shall not use, copy or prepare derivative works of the

Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. The City shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.06.3 Contractor shall retain all rights in and to all works of authorship fixed in a tangible medium of expression which were made, created or acquired by Contractor prior to the effective date of this Agreement ("Pre-Existing Works"), provided that a listing of such Pre-Existing Works is attached to this Agreement.

5.07 Insurance

5.07.1 Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and City from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- 1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
- 2) Claims for damages because of bodily injury and personal injury, including death, and;
- 3) Claims for damages to property

Contractor's insurance shall be not less than the amounts shown below:

A.	Worker's Compensation & Disability	Statutory
B.	Employer's Liability Bodily Injury Accident	\$ 100,000 each accident
	Bodily Injury by Disease	\$ 500,000 policy limit
	Bodily Injury by Disease	\$ 100,000 each employee
C.	Excess Auto Liability	\$1,000,000 (single limit) (owned, hired & non-owned)
	Bodily injury & property damage	\$1,000,000 each accident
D.	Commercial General Liability (Occurrence Basis)	
	Bodily Injury, personal injury, property damage,	
	Contractual liability, product/completed operations	
	General Aggregate Limit	\$2,000,000.00
		(Other than Products Completed Operations)
	Products/Completed Operations	\$1,000,000.00
	Personal and Advertising Injury Limit	\$500,000.00
	Each Occurrence Limit	\$1,000,000.00
	Fire Damage (any one fire)	\$50,000.00
	Medical Expense Limit	\$5,000.00

NOTE: GENERAL AGGREGATE TO APPLY PER PROJECT

E. Umbrella Excess Liability \$5,000,000 each occurrence and aggregate

5.07.2 Certificates of Insurance, naming the City of Indianapolis as an "additional insured," (C. D. and E. only) showing such coverage then in force (but not less than the amount shown above) shall be filed with City prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded will not be canceled until at least thirty (30) days after written notice has been given to City.

5.07.3 With the prior approval of City, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.07.4 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of Contractor to the above enumerated amounts.

5.08 Termination for Cause or Convenience

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.08.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with City prior to termination. If City terminates for convenience, Contractor's compensation shall be equitably adjusted.

5.08.3 Upon receipt of notice of termination for default or for City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all Works and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.08.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been made for the convenience of City. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Paragraph 5.08.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.09 Termination for Failure of Funding – Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Indemnification – Contractor agrees to indemnify, defend, and hold harmless the City of Indianapolis and its officers, agents, officials and employees for any and all third party claims,

actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this Agreement by Contractor or any of its officers, agents, employees or subcontractors regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. City shall not provide such indemnification to Contractor, provided, however, that Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of City.

- 5.11 Notice – Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party) :

To Contractor:

To City:

- 5.12 Disputes – Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.
- 5.13 Non-discrimination – Contractor and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 5.14 Conflict of Interest – Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.
- 5.15 Non-contingent Fees – Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 5.16 Force Majeure – In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party's reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give

notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.17 Applicable Laws; Forum

5.17.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.

5.17.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion

5.18 Waiver – City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies.

5.19 Severability – if any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

5.20 Attorneys' Fees – Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.

5.21 Successors and Assigns – City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.

5.22 Authority to Bind Contractor – Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.

5.23 Debarment and Suspension

5.23.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key

employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

- 5.23.2 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certification was erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
- 5.23.3 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.
- 5.24 Key Persons – The parties agree that the work described in this Agreement to be performed by Contractor is a personal service, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to City. The parties therefore agree that in the event of the death or disability of Contractor, or, if Contractor is a firm, partnership, or corporation, in the event of the death, or disability or termination of employment of anyone understood to be personally responsible for the work described in this Agreement, City may, without penalty and in its discretion, terminate this Agreement, and make its own new Agreement with any other party for completion of the work herein described.

(The Remainder of This Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

DEPARTMENT OF

Director _____

Date _____

APPROVED FOR AVAILABILITY OF FUNDING []
APPROVED FOR EXECUTION []

David P. Reynolds, Controller

Date _____

APPROVED AS TO LEGAL FORM:

XXXXXXXXXXXXXXXXX
Assistant Corporation Counsel

Gregory A. Ballard, Mayor
By Mayor's Designee:

Samantha S. Karn
Corporation Counsel

Date _____

"CONTRACTOR"

Printed Name

Signature

Title

Date

Address

City

State _____ Zip _____

Phone

19.2 Definitions

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

Abandoned vehicle shall mean all those vehicles as defined by Indiana Code § 9-13-2-1.

As it is defined by Indiana Code § 9-13-2-1, "Abandoned Vehicle" means the following:

- (1) A vehicle located on public property illegally.
- (2) A vehicle left on public property without being moved for three (3) days.
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way.
- (4) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours.
- (5) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property.
- (6) A vehicle that has been removed by a towing service or public agency upon request of an officer enforcing a statute or an ordinance other than this chapter if the impounded vehicle is not claimed or redeemed by the owner or the owner's agent within twenty (20) days after the vehicle's removal.
- (7) A vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days.

Accident shall mean a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Appropriate wrecker shall mean the wrecker service nearest the location of the scene under contract with the Department of Code Enforcement other than the VENDOR.

Chief shall mean the chief of the Indianapolis Metropolitan Police Department.

Forfeiture shall mean a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise means the authority within a designated zone to tow vehicles on behalf of law enforcement.

Franchise fee means that certain sum of money paid by the owners, operator, or authorized representative of same, of a towed vehicle by the franchised wrecker for remittance to the CITY, as a portion of the towing fee.

Franchise wrecker means the towing service under contract to provide towing services for law enforcement within its designated zone.

Heavy equipment wrecker shall mean a wrecker that is capable of towing vehicles over 19,501 pounds gross vehicle weight rating (hereinafter "GVWR").

Impoundment shall mean the act of taking temporary custody of a vehicle in an authorized and secured storage area or facility.

Inspector shall mean a Department of Code Enforcement employee authorized to service notices for violations of Chapter 621 but who does not have general police powers.

Nuisance vehicle shall mean those vehicles parked or left standing on any public street, road or highway located within the Indianapolis Metropolitan Police Department service district so as to constitute a public nuisance or traffic hazard, plus abandoned vehicles and those vehicles involved in accidents or which are in violation of any ordinance or statute within such special service district.

Police/law enforcement officer shall mean any sworn or reserve member of the IMPD or any reserve member or special services officer of the Marion County Sheriff's Department. When an officer of IMPD is referred to herein, it shall also refer to any reserve member or special services officer of the Marion County Sheriff's Department.

Sheriff shall mean the Sheriff of Marion County.

Towing services shall mean a business that engages in moving or removing disabled vehicles, and once removed may stores or impounds vehicles.

Vehicle shall mean a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile", "truck", "motorcycle", "tractor", "buggy", and "wagon".

20. Attachments

NOTE: The exact number of tows recorded in the attachments are accurate to the best of the City's knowledge, however the City does not promise, warrant, or guarantee the numbers are exact . The documents are to be used to give the vendor an idea of the scope of the project from which to base their proposal.

20.1 Notice of Intent to Proceed Template

20.2 Current Towing Contracts

Last Chance Wrecker & Sales (Franchise, Abandoned Vehicle & Fleet Tow-In Service Contracts)

URS Midwest, Inc/Interstate/Delaware & South Towing, Inc. (Franchise Contract)

Cook's Towing Service, Inc. (Franchise Contract)

Wheeler's Towing Services, Inc. (Franchise Contract)

Indy Towing Services, Inc (Franchise Contract)

20.3 Indianapolis Metropolitan Police Department Beat Map/Franchise District

20.4 Franchise Tow Historical Information

20.5 Abandoned Vehicle Historical Information

Notice of Intent to Respond
(Please submit one original copy)

Please return this form no later than 1:00 PM (local time) on 8/9/2010 via fax to Sherry Owens at (317) 327-4493 or via email at SLONGER1@indygov.org. You should return this form whether or not you intend to participate in this process.

RFP # RFP-10-7762 _____

RFP Name Towing Services for the Department of Code Enforcemnt

PROPOSER Name _____

Contact Name _____

Address _____

City/State/Zip _____

Phone _____

Fax _____

Email _____

Please indicate one of the following:

- _____ We do plan to respond to this RFP with a Proposal
- _____ We do not plan to respond to this RFP

Reason if not responding: _____

Statement of Proposal Life: The proposal must have a proposal life of at least one hundred eighty (180) calendar days from the RFP due date. This shall represent the minimum time during which the proposal is a firm offer and a contract may be entered into.

- _____ We agree to Statement of Proposal Life
- _____ We do not agree to Statement of Proposal Life

FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY
AND INDY TOWING SERVICE, INC.

This Franchise Wrecker Contract (hereinafter "Agreement"), entered into on the dates indicated below by and between the Indianapolis Department of Public Safety (hereinafter "City") for and on behalf of the Indianapolis Metropolitan Police Department (hereinafter "IMPD") and INDY Towing Service, Inc., 3350 Sutherland Ave., Indianapolis, Indiana 46218 (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, the City, pursuant to Chapter 611, Article II, of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana (hereinafter "Revised Code") issued an "Invitation to Bid for Franchise Wrecker Services" (hereinafter "Invitation to Bid," incorporated herein by reference) for the provision of towing services for IMPD and certain other law enforcement agencies within the City of Indianapolis and Marion County, Indiana; and

WHEREAS, the City received a bid from Franchise Wrecker, and has determined that Franchise Wrecker is capable of providing the required towing services within certain IMPD Districts;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.01 As used in this Agreement, the following words and terms shall have the meaning as set forth below.

Abandoned vehicle means all those vehicles as defined by Indiana Code § 9-13-2-1, as the same may be amended from time to time.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Chief means the chief of the IMPD, or his or her designee.

Forfeiture means a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise fee means that certain sum of money, a portion of the base towing fees, that Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid.

Heavy equipment means and includes vehicles over Nine Thousand (9,000) pounds gross vehicle weight rating.

Impound, impoundment, and impounded refer to the act of taking temporary custody of a vehicle and retaining such vehicle in an authorized and secured storage area or facility.

Mile Square means the geographic area bounded by North Street, South Street, East Street, and West Streets in the IMPD Downtown District.

Police officer means any sworn or reserve member of IMPD or the Marion County Sheriff's Department.

Towing services means the lifting, pushing, pulling or removing of vehicles or other personal property by a franchise wrecker from a public street, highway, right-of-way, or other public property when summoned to do so by an IMPD dispatcher or a police officer.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile," "truck," "motorcycle," "tractor," "buggy," and "wagon."

ARTICLE II. TERM AND RENEWAL

- 2.01 This Agreement establishes a term contract in compliance with Sections 611-201 to 611-214, inclusive, of the Revised Code of the Consolidated City and County.
- 2.02 The term of the initial Agreement shall commence on execution or 12:01 a.m. on July 1, 2009, whichever last occurs, and shall terminate at 12:01 a.m. on July 1, 2010, unless earlier terminated under the terms and conditions of this Agreement.
- 2.03 This Agreement may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein and may be amended only by written instrument signed by both the City and Franchise Wrecker and attached hereto as an amendment.

ARTICLE III. TOWING SERVICES

- 3.01 During the term of this Agreement, Franchise Wrecker shall provide the following services for IMPD and the Marion County Sheriff's Department: Towing services (other than heavy equipment) within the geographic areas of the IMPD North District and IMPD East District (collectively, hereinafter "Franchise Districts"). Property or vehicles will be removed to a predetermined location or to an authorized storage lot or facility for the appropriate Franchise District.
- 3.02 When summoned by the IMPD dispatcher or a police officer to the scene of a possible tow, Franchise Wrecker shall arrive at such scene within twenty-five (25) minutes from the time it was notified by the dispatcher or officer.
- 3.03 When summoned by the IMPD dispatcher or a police officer to the scene of an accident, Franchise Wrecker shall tow the vehicle to any destination selected by the owner or operator thereof, unless such person is unable to state a location due to injury or arrest, or the owner or operator does not care to state the location to which the vehicle is to be removed. If such disability does exist or the owner or operator of the vehicle does not state a desired destination, Franchise Wrecker shall tow and remove such vehicle to Franchise Wrecker's authorized storage lot or facility or to any other authorized storage facility for the appropriate Franchise District.

Franchise Wrecker knows and understands that when an accident occurs, and in the opinion of the investigating police officer on the scene a traffic hazard exists, then the owner or operator of a

vehicle may select a wrecker of his or her choice to remove the vehicle if that wrecker can arrive on the scene within twenty-five (25) minutes after being summoned. If the investigating police officer determines that no traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice without the response time requirement.

- 3.04 Franchise Wrecker shall not proceed to, or arrive at the scene of an accident within the Franchise Districts for the purposes of attempting to secure a tow without being first summoned to that location by the IMPD dispatcher or a police officer.
- 3.05 When summoned to the scene of an accident, Franchise Wrecker shall clean, sweep up and collect all debris from the street and surrounding public premises caused by the accident. If the tow is not subject to impoundment, Franchise Wrecker may charge an additional fee for this service, per tow, as an accident tow surcharge.
- 3.06 Franchise Wrecker shall use dollies if the vehicle is mechanically disabled to the extent it cannot be towed, if it is the standard method for towing per manufacturer recommendation, or if the investigating police officer on the scene requests the use of dollies at any accident scene.
- 3.07 After a tow is made, Franchise Wrecker shall, within two (2) hours of the time the vehicle is removed from the scene of the occurrence, notify the IMPD Auto Desk of the correct year, make, model, and vehicle identification number of any towed vehicle. Vehicle tows from within the Mile Square shall be called in immediately, or at the earliest possible time and towed to a storage lot centrally located within the downtown area.
- 3.08 Any impounded vehicle shall be held and protected at Franchise Wrecker's authorized storage lot for the appropriate Franchise District or at an IMPD-authorized central storage lot if applicable, until it is either claimed by the owner or otherwise disposed of.
- 3.09 Franchise Wrecker shall be open for operation and provide the services provided in this Agreement on a twenty-four (24) hours per day, seven (7) days per week, basis.
- 3.10 No guaranteed minimum or maximum purchase quantities are either stated or implied. Any listed estimated quantities are based on historical information.

ARTICLE IV. TOWING, RECOVERY AND STORAGE FEES

- 4.01 The base fees to be paid by the owner or operator of a vehicle that has been towed pursuant to this Agreement are hereby established as follows:

towing services (vehicles other than heavy equipment, and other personal property):

- (1) Base towing fees (vehicle): Eighty-five Dollars (\$85.00) per tow;
- (2) Base towing fees (Flat Bed and Roll-Off Towing): Ninety-five Dollars (\$95.00) per tow; and
- (3) Base towing fees (heavy items of personal property other than vehicles): Eighty-five Dollars (\$85.00) per tow (property only).

heavy equipment towing services:

- (1) Base towing fees for heavy equipment: Two Hundred and Seventy-five Dollars (\$275.00) per tow for the first hour, and an additional One Hundred Dollars (\$100.00) per

tow for each additional hour.

- 4.02 For towing services, Franchise Wrecker shall be entitled to receive a portion of the base fees listed in Section 4.01 of this Agreement. Such portion shall be equal to the amount of the base fee(s) less the franchise fee Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid, attached hereto and incorporated herein by reference as "Exhibit A." The franchise fee shall be retained by the City for deposit into the IMPD General Fund.
- 4.03 When towing to a destination selected by the owner or operator, Franchise Wrecker may charge the owner or operator a private towing fee.
- 4.04 Franchise Wrecker shall not charge additional fees other than those listed and/or authorized in this Agreement.
- 4.05 No towing fee whatsoever may be charged for a "dry run." A dry run is defined as a situation where Franchise Wrecker is summoned to a scene for a possible tow but is not allowed to tow the involved vehicle because: the lawful owner or operator thereof appeared at the scene before the vehicle was removed; it is discovered that the vehicle is drivable after Franchise Wrecker is summoned; or, for any other valid reason at the discretion of the investigating police officer.

Franchise Wrecker shall release a vehicle cited to be towed for a parking or other municipal or state violation if the owner or operator thereof arrives at the scene prior to the vehicle being actually removed even though it has been attached to, hoisted by, or picked up by Franchise Wrecker's tow truck, except when:

- (1) The vehicle is being towed by order of the Ordinance Violations Bureau because it has been involved in four (4) or more traffic ordinance violations the fines for which have not been paid, presented for compromise payment or slated into court, pursuant to Section 611-203 of the Revised Code of Indianapolis, Indiana;
 - (2) There is a valid reason to impound the vehicle (at the discretion of the investigating police officer); or
 - (3) The towing of the vehicle requires that its front bumper be removed and its air brake system charged, and its owner or operator arrives after this work has been completed.
- 4.06 For vehicles towed and impounded to Franchise Wrecker's storage lot or to any other duly-authorized storage facility for the appropriate Franchise District for which there is a police hold, all towing fees shall be paid at the IMPD Auto Desk. All other towing fees for vehicles towed and/or taken to Franchise Wrecker's storage lot that are not subject to impoundment pursuant to a police hold shall be paid at the office of Franchise Wrecker.
- 4.07 Franchise Wrecker agrees to waive or decrease any towing and/or storage fee in the event the Chief requests such a waiver and supplies a reasonable explanation.
- 4.08 The Franchise Wrecker's storage fee for a vehicle towed pursuant to this Agreement (other than heavy equipment) shall be ten dollars (\$10.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot; however, the storage fee for towed heavy equipment shall be twenty five dollars (\$25.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot.

Once a towed and impounded vehicle has been released by IMPD and the proper towing and storage fees have been paid at the IMPD Auto Desk, the owner of such vehicle shall claim and

retrieve the vehicle from Franchise Wrecker's storage lot within six (6) hours from the time it is released by IMPD to avoid paying additional storage charges to Franchise Wrecker at the above rate. Such additional storage charge shall be paid at the office of Franchise Wrecker at the time the owner claims the vehicle.

Vehicles towed and held for forfeiture or towed and held on a police hold shall only accumulate fees set for a maximum of One Hundred and Twenty-five Dollars (\$125.00), accumulating at the daily rate to the maximum amount regardless of the length of storage.

- 4.09 All towing fees less the franchise fee, and all storage fees, paid to and collected by the IMPD Auto Desk for tows performed by Franchise Wrecker in the assigned geographic area shall be forwarded to Franchise Wrecker twice monthly by the City controller barring any unforeseen circumstances upon submission of the proper forms to the Ordinance Violations Bureau.

All fees and monies associated with the providing of towing services by Franchise Wrecker for the assigned IMPD districts are to be fully receipted to the owner of the vehicle and reported with copies of such receipts to the Ordinance Violations Bureau.

Franchise Wrecker shall itemize all fees charged, indicating the towing fee plus any storage fee, any heavy equipment charges, and any per mile fees, as applicable.

V. TOWING EQUIPMENT; STORAGE LOTS; PERSONNEL

- 5.01 Franchise Wrecker shall have an adequate number of tow trucks and other towing equipment available at all times to service the districts within the specified response time.

The tow trucks and other equipment shall be equipped with the following: a power-operated winch; ground-and-tow sling that is capable of hoisting; a pulling vehicle; a fire extinguisher plus sufficient equipment (broom, shovel and container) to remove debris from an accident scene; and, each tow truck shall have the capability to dolly vehicles. Franchise Wrecker shall also have two-way radio communication in its towing equipment.

No tow truck, wrecker or other towing equipment shall have a police frequency monitor radio or scanner in it without proper written permission pursuant to Indiana Code § 35-44-3-12 from the Chief.

Franchise Wrecker shall install, monitor and maintain, at its expense, a fax machine and have access to an e-mail address. The fax machine and e-mail address shall be utilized by IMPD and Franchise Wrecker to expedite the delivery and exchange of correspondence necessary to efficiently serve the needs of IMPD and the public.

Franchise Wrecker will have Internet capability and connectivity on a twenty-four (24) hours per day, seven (7) days per week basis and will install and utilize any software necessary to communicate with the IMPD's Auto Desk at Franchise Wrecker's expense.

No towing equipment used by Franchise Wrecker shall use emergency warning lights of any color at any time while in transit, but may use illuminated amber lights when stopped at the scene of an accident or when towing a vehicle at the direction of a police officer.

The name and address of Franchise Wrecker shall be clearly displayed on both sides of all of its tow trucks and other towing equipment.

- 5.02 Franchise Wrecker agrees to make all its trucks, other towing equipment and lot facilities

available for inspection at any time upon request and notification by the Chief.

- 5.03 Franchise Wrecker shall have access to and shall maintain an adequate storage lot or facility for the storage and safekeeping of all vehicles towed at the request of the IMPD dispatcher or a police officer. Such lot shall be large enough in area to store the vehicles towed and impounded by Franchise Wrecker within its confines at all times. The lot shall be in compliance with applicable zoning requirements.

The storage lot shall: be adequately enclosed with a secure fence or wall in compliance with all zoning requirements; be adequately drained and level, in compliance with all appropriate zoning laws, classifications and regulations; have a surface of either gravel, black top, concrete, or cinders; and, be free from excessive mud and standing water regardless of weather conditions.

Franchise Wrecker agrees to ensure that its storage lots and offices that are accessible to the public are in compliance with Title III of the Americans with Disabilities Act of 1990. Failure to comply with the Americans with Disabilities Act will be a cause for termination of this Agreement.

The lot shall be open and in operation twenty-four (24) hours each day without exception and shall be staffed with reliable, qualified and bonded personnel authorized to tow vehicles and release them to their rightful owners. An authorized contact person shall be designated for each shift. Contact information for these persons shall be made available to the Ordinance Violations Bureau and IMPD. The Ordinance Violations Bureau and IMPD shall be notified within twelve (12) hours of any changes in the designated contact persons identified or their contact information.

Franchise Wrecker shall provide a safe place on its lot premises for securing items of personal property that are found inside an impounded vehicle towed to its storage lot and shall maintain a procedure for properly identifying such property as belonging to any certain vehicle being stored.

Franchise Wrecker shall make a good faith effort to locate all vehicles towed under this Agreement in the same general location within the lot.

- 5.04 When the IMPD dispatcher or a police officer requests towing services for a vehicle within the Mile Square, the vehicle shall be stored in a storage lot or facility centrally located and within walking distance to the City-County Building, and Franchise Wrecker shall tow such vehicles to that lot or facility for storage. These tows are usually limited to tows initiated in the downtown area.

- 5.05 All Franchise Wrecker personnel (including employees and all employed or contracted wrecker drivers) shall be adequately bonded by Franchise Wrecker.

Franchise Wrecker shall have sufficient number of wrecker drivers, dispatchers and other needed lot personnel and towing equipment either on duty or on immediate call at all times to sufficiently respond to any request from the IMPD dispatcher or a police officer for towing services within the required response time and to release a vehicle to the proper owner or authorized person.

If necessary, Franchise Wrecker shall be required to obtain additional towing capacity necessary to adequately service the IMPD District by subcontracting with any licensed towing service. Franchise Wrecker shall assume liability for compliance by the subcontractor with all of the terms of this agreement.

Franchise Wrecker's personnel shall exercise all diligence and due care in preparing a vehicle for

tow and towing such vehicle to prevent property damage thereto.

Franchise Wrecker's personnel shall abide by and obey all traffic laws, ordinances and orders of any law enforcement officer while going to, while at and upon leaving the scene of a summoned tow.

No Franchise Wrecker's personnel, while on duty or towing a vehicle authorized by the IMPD dispatcher or a police officer, shall be under the influence of alcoholic beverage, drug, narcotic, controlled substance or prescribed medicine.

No Franchise Wrecker's personnel shall take money for a tow that should have been paid at the IMPD Auto Desk, nor offer any money to any person or a police officer as an incentive to obtain more tows for Franchise Wrecker.

All Franchise Wreckers' personnel shall make reasonable efforts to be courteous to and cooperative with members of the public who arrive at the lot for the purpose of obtaining a release of their impounded vehicles. Upon the vehicle's owner's request, such personnel shall assist the owner in removing his or her vehicle by changing flat tires or charging dead batteries. Owners may be charged a reasonable fee for these or other services (the amount of which must be receipted to both the owner and the City in the same manner as towing and storage fees are to be receipted).

All Franchise Wrecker personnel shall fully cooperate with the Chief, the City controller or his or her designee, the Ordinance Violations Bureau personnel and the IMPD Auto Desk personnel.

VI. DISPOSAL OF UNCLAIMED VEHICLES

6.01 All vehicles towed and impounded by Franchise Wrecker pursuant to this Agreement and that become abandoned as a result of not being claimed in a timely manner by the owners thereof, shall be disposed of pursuant to applicable state law, city ordinances, provisions stated herein, and procedures established to implement such laws.

6.01.1 The applicable state law provisions for purposes of this agreement are Indiana Code, Art. 9-22, and Chap. 9-29-7.

6.01.2 An impounded vehicle pursuant to this agreement is considered abandoned if it is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal.

6.02 All heavy equipment vehicles towed and impounded pursuant to this Agreement that have not yet been released to their owners and that become abandoned as a result of not being claimed by the owners thereof within the twenty (20) day time period authorized by and pursuant to Indiana Code (not including vehicles held under forfeiture action), shall be disposed of pursuant to applicable laws.

An impounded vehicle shall be held by Franchise Wrecker for at least ten (10) days.

After the impounded vehicle (not including vehicles held for forfeiture, held for police hold or released to their owner) has been held for ten (10) days, Franchise Wrecker shall transport such vehicle and all property taken from such vehicles to the abandoned vehicle lot for secure storage and turned over to the abandoned vehicle section of the Indianapolis Department of Public Works (hereinafter "DPW") for public auction. Franchise Wrecker will receive a fee of One Hundred and Twenty-five Dollars (\$125.00) per vehicles for its services. Franchise Wrecker will not be

entitled to any other fees; this includes the original towing fee, ten (10) days storage fee, and fee for transporting the abandoned vehicle to the abandoned vehicle storage lot.

Note: if the 10th day falls on a Sunday, Franchise Wrecker shall transport such vehicles on the following Monday prior to 10:00 am. Franchise Wrecker will not charge for the 11th day.

- 6.03 A vehicle held for forfeiture action or under a police hold in accordance with Indiana Code will not accumulate fees in excess of One Hundred and Twenty-five Dollars (\$125.00). Should a vehicle in the custody of Franchise Wrecker be released from the forfeiture action or police hold to the legal owner, the vehicle will be released to such owner after the payment of the appropriate storage fees. Should a vehicle that was released from forfeiture action be deemed an abandoned vehicle, Franchise Wrecker will be paid a fee of not more than One Hundred and Twenty-five Dollars (\$125.00) by DPW as provided in part 6.02 of this Agreement. Franchise Wrecker agrees that this charge may be changed or waived by a court of competent jurisdiction.

VII. INSURANCE; LIABILITY; PROPERTY PROTECTION

- 7.01 Prior to the execution of this Agreement, Franchise Wrecker shall file with the City Certificates of Insurance naming the City as an additional insured on all policies of insurance for the following coverage and minimum limits:

<i>Item</i>	<i>Coverage</i>
Worker's Compensation & Disability	Statutory
Employer's Liability	Statutory
Bodily Injury by Accident	\$500,000 (each accident)
Bodily Injury by Disease	\$500,000 (policy limit)
Bodily Injury by Disease	\$100,000 (each employee)
Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000
Comprehensive Auto Liability (Owned, hired & non-owned)	\$500,000 (each employee, each accident)
Bodily injury & property damage (single limit)	
Umbrella Excess Liability	\$3,000,000 (occurrence & aggregate)

These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the

City. Notwithstanding any other provision of this agreement, Franchise Wrecker shall provide all insurance coverage required by the documents provided by City.

- 7.02 Franchise Wrecker shall hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns and shall indemnify the above listed entities and individuals for any and all losses or damages recovered by judgment or compromise resulting to any person or property in any situation from any and all accidents and collisions due to negligence or willfulness in the use or operation of any of the trucks and wreckers used by Franchise Wrecker, as well as to vehicles that are in the care, custody or control of Franchise Wrecker or its authorized agents.
- 7.03 The City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns shall not be liable for any loss or damage that may occur to any vehicle that is removed, towed and/or stored by Franchise Wrecker pursuant to a police department request or order. Franchise Wrecker shall indemnify and hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns from any loss, claim, judgment, settlement or damages arising out of the removal, towing and/or storage of vehicles.
- 7.04 Franchise Wrecker shall have sole responsibility for any articles of personal property that may be contained in any vehicle at the time of its removal and during storage thereof that were not removed by a police officer and taken to the police department property room. Such articles of personal property shall not be held by Franchise Wrecker for any reason but shall be returned to the owner thereof upon showing sufficient identification and proof of ownership.
- 7.04.1 The police officer ordering the removal of a vehicle shall inventory any personal property in plain view, remove all such property and safeguard such property in accordance with IMPD policy.
- 7.04.2 Such items of personal property that are not or cannot be stored by IMPD shall be stored by Franchise Wrecker, and the police officer on the scene or in charge shall furnish a copy of the list of such items to the Franchise Wrecker employee on the scene who shall sign it on behalf of Franchise Wrecker verifying the existence of the items so listed.
- 7.04.3 Owners or operators of impounded vehicles may retrieve items of personal property therefrom prior to obtaining release of the vehicles upon showing proper identification and proof of ownership thereof.

VIII. DRUG TESTING

- 8.01 The City reserves the right to request drug testing/screening at no additional cost to the City for all Franchise Wrecker employees by a certified laboratory of drug testing for each employee. The report shall identify the drugs/metabolites tested for, whether positive or negative. The report shall also indicate the date and time of specimen collection, the date received by the laboratory and the date and time reported.
- 8.02 The City reserves the right to request additional drug screening for Franchise Wrecker employees for reasonable cause. Any Franchise Wrecker employee that test positive on any drug screen(s) shall be immediately dismissed.

- 8.03 If at any time a change in personnel is made, Franchise Wrecker must provide the designated IMPD representative the information on the new employee(s) before they may begin work.

ARTICLE IX. EMERGENCY CONDITIONS

- 9.01 During any emergency condition or situation as declared by the Mayor and/or the Chief, whereby Franchise Wrecker is unable to expeditiously remove or tow vehicles as a result of such emergency causing serious traffic hazards or jeopardizing public health and safety, the Chief in his or her discretion may authorize any auxiliary wrecker or other towing service to remove such vehicles for a limited time and until the emergency has been declared ended, all without City or Franchise Wrecker violating the provisions or intent of this Agreement; however, IMPD shall first utilize Franchise Wrecker when its wreckers and towing equipment are available for service.
- 9.02 During such emergency situations, special towing arrangements may be made by IMPD, including the alteration in towing fees and contracting for the use of additional wreckers or towing services.

ARTICLE X. TERMINATION OF AGREEMENT

- 10.01 The City may terminate this Agreement without penalty at any time for any violation by Franchise Wrecker of any laws or ordinances pertaining to the provision of towing services under this Agreement, the Invitation to Bid, any other provision of this Agreement, or the commission of any deceitful, fraudulent, criminal, or otherwise unlawful act committed by any owner, officer, representative, employee, agent, or wrecker driver of Franchise Wrecker.
- 10.02 In addition, the City may terminate this Agreement without penalty at any time and for any of the following acts or omissions committed by Franchise Wrecker, its owners, officers, representatives, employees, agents or wrecker drivers:
- (1) Failing in excess of ten (10) times in any period of thirty (30) consecutive days to arrive on the scene within twenty (25) minutes after being summoned;
 - (2) Purposely and intentionally overcharging an owner or operator for towing or storage fees resulting from any police-authorized tow;
 - (3) Purposely and intentionally causing damage to any vehicle towed or impounded pursuant to this Agreement;
 - (4) Offering anything of value, including money, to any police officer for the purpose of improperly procuring a request for tow therefrom;
 - (5) Permitting any unauthorized taking of vehicle parts or attachments, or personal property, other than for security reasons, from a vehicle towed or impounded pursuant to this Agreement;
 - (6) Arriving on the scene of an accident when not authorized to do so;
 - (7) Failing to place any towed vehicles inside its storage lot or facility for impoundment or storage purposes under non-emergency conditions;
 - (8) Failing to be courteous to members of the public, the Chief, or any police officer;

- (9) Failing to allow vehicles to be taken from storage lot following a property release;
 - (10) Failing to maintain storage lot pursuant the requirements of this Agreement;
 - (11) Failing to maintain an inventory system of property removed from vehicles for safe keeping;
 - (12) Failing to return property removed from a vehicle voluntarily when the vehicle is released; or
 - (13) Any other act or omission that is otherwise mentioned herein as being prohibited.
- 10.03 At any time during the term of this Agreement, Franchise Wrecker may terminate this Agreement by giving written notice thereof to the City at least ninety (90) days prior to the effective date of termination.
- 10.04 At any time during the term of this Agreement, the City may terminate this Agreement by giving written notice thereof to Franchise Wrecker at least ninety (90) days prior to the effective date of termination.

ARTICLE XI. LIQUIDATED DAMAGES

- 11.01 A cash performance bond in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Franchise Wrecker to the City upon execution of this Agreement and maintained by the City for the duration of this Agreement. Franchise Wrecker agrees to forfeit Fifty Dollars (\$50.00) to the City for each instance of noncompliance with this Agreement. Noncompliance will be the sole decision of the Chief. IMPD and a police officer have the additional right to call another towing service company immediately upon any incident of noncompliance by Franchise Wrecker, and any expenses incurred as a result of IMPD or a police officer calling another towing service company shall be borne by Franchise Wrecker.
- 11.02 The parties agree that time is of the essence in this Agreement, and further agree further that Franchise Wrecker's failure to perform its duties under this Agreement in a timely manner damages the City.
- 11.03 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages, and the Parties agree the amounts below are fair compensation for damages and are not to be considered as penalty:
- (1) For failure of Franchise Wrecker or its agent to arrive at the scene of any occurrence within twenty (25) minutes after being summoned, liquidated damages shall be Twenty-five Dollars (\$25.00) per instance for violations of more than ten (10) instances of failing to arrive within twenty (25) minutes of the request in a thirty (30) day period;
 - (2) For failure of Franchise Wrecker to provide accurate vehicle identifying information to the IMPD Auto Desk within two (2) hours of the time the vehicle is removed from the scene of the occurrence, liquidated damages shall be Forty Dollars (\$40.00) (note: vehicle tows from Monument Circle in the IMPD Downtown District shall be called in immediately, or at the earliest possible time);
 - (3) For failure of Franchise Wrecker to allow the owner of an impounded vehicle to take possession of the vehicle within one (1) hour after such owner has presented documentation that the vehicle has been released by IMPD and all storage charges have

been paid, liquidated damages shall be Fifty Dollars (\$50.00);

- (4) For failure of Franchise Wrecker to clean accident scene, liquidated damages shall be Fifty Dollars (\$50.00);
- (5) For failure of Franchise Wrecker to maintain the operating state of a refrigerator unit while in storage (if initially found operating), liquidated damages shall be the value of the cargo; and
- (6) For failure of proper advertising and conducting auctions for disposal of equipment, liquidated damages shall be the statutory limit.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.01 Franchise Wrecker, its officers, directors, agents, representatives and employees, in the performance of this Agreement, agree not to discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this provision constitutes a material breach of this Agreement.
- 12.02 Franchise Wrecker certifies and warrants that it has the capacity to perform the towing services as required by this Agreement with high standards of performance, safety and reasonable care.
- 12.03 Franchise Wrecker certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees who will participate in any way in the performance of Franchise Wrecker's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City or any of its departments, divisions, agencies, officers, directors, or agents.
- 12.04 Franchise Wrecker agrees that it will not in any way assign, sublet or transfer any interest in or obligation of this Agreement without the prior written consent of the Director of the City Department of Public Safety.
- 12.05 Nothing stated herein shall be construed as creating any personal liability on the part of any officer, director, agent or employee of any public body that may be a party hereto.
- 12.06 This Agreement shall be construed in accordance with the ordinances of Indianapolis, the laws of the State of Indiana, and the laws of the United States.
- 12.07 All notices required and sent pursuant to this Agreement shall be sent in written form to:

For City:
Department of Public Safety
200 E. Washington St., Ste. E224
Indianapolis, Indiana 46204

For Franchise Wrecker:
INDY Towing Service, Inc.
3350 Sutherland Ave.
Indianapolis, Indiana 46218

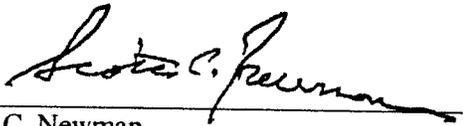
- 12.08 This Agreement constitutes the entire understanding and agreement between and among the parties hereto, and supersedes all prior agreements, written or verbal, between City and Franchise Wrecker. It may not be changed, altered, amended, modified or terminated orally. Any such change, alteration, amendment or modification of this Agreement must be in writing executed by the parties hereto, refer to this Agreement, and be executed on a form entitled "Supplemental

Franchise Wrecker Contract" approved by all parties hereto.

12.09 Notwithstanding anything in this Agreement to the contrary, the signatory for Franchise Wrecker represents that he or she has been duly authorized to execute agreements on behalf of Franchise Wrecker and has obtained all necessary or applicable approval from Franchise Wrecker to make this Agreement fully binding upon Franchise Wrecker when his or her signature is affixed and accepted by the City.

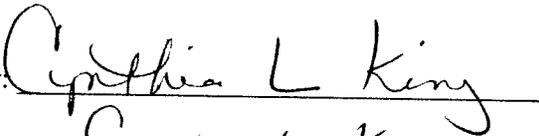
IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

**CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY,
FOR AND ON BEHALF OF THE INDIANAPOLIS METROPOLITAN POLICE
DEPARTMENT ("City")**

By: 
Scott C. Newman
Director

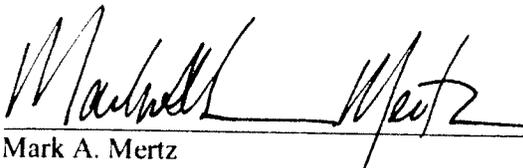
Date: 6/18/09

INDY TOWING SERVICE, INC. ("Franchise Wrecker")

By: 
Cynthia L. King
Printed
Sec
Title

Date: 6/22/09

APPROVED AS TO FORM AND LEGALITY:

By: 
Mark A. Mertz
Assistant Corporation Counsel

Date: June 9, 2009

("EXHIBIT A" to follow.)

FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY
AND INTERSTATE/DELAWARE & SOUTH TOWING, INC.

This Franchise Wrecker Contract (hereinafter "Agreement"), entered into on the dates indicated below by and between the Indianapolis Department of Public Safety (hereinafter "City") for and on behalf of the Indianapolis Metropolitan Police Department (hereinafter "IMPD") and Interstate/Delaware & South Towing, Inc., 301 S. Kitley Ave., Indianapolis, Indiana 46219 (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, the City, pursuant to Chapter 611, Article II, of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana (hereinafter "Revised Code") issued an "Invitation to Bid for Franchise Wrecker Services" (hereinafter "Invitation to Bid," incorporated herein by reference) for the provision of towing services for IMPD and certain other law enforcement agencies within the City of Indianapolis and Marion County, Indiana; and

WHEREAS, the City received a bid from Franchise Wrecker, and has determined that Franchise Wrecker is capable of providing the required towing services within certain IMPD Districts;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.01 As used in this Agreement, the following words and terms shall have the meaning as set forth below.

Abandoned vehicle means all those vehicles as defined by Indiana Code § 9-13-2-1, as the same may be amended from time to time.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Chief means the chief of the IMPD, or his or her designee.

Forfeiture means a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise fee means that certain sum of money, a portion of the base towing fees, that Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid.

Heavy equipment means and includes vehicles over Nine Thousand (9,000) pounds gross vehicle weight rating.

Impound, impoundment, and impounded refer to the act of taking temporary custody of a vehicle and retaining such vehicle in an authorized and secured storage area or facility.

Mile Square means the geographic area bounded by North Street, South Street, East Street, and West Streets in the IMPD Downtown District.

Police officer means any sworn or reserve member of IMPD or the Marion County Sheriff's Department.

Towing services means the lifting, pushing, pulling or removing of vehicles or other personal property by a franchise wrecker from a public street, highway, right-of-way, or other public property when summoned to do so by an IMPD dispatcher or a police officer.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile," "truck," "motorcycle," "tractor," "buggy," and "wagon."

ARTICLE II. TERM AND RENEWAL

- 2.01 This Agreement establishes a term contract in compliance with Sections 611-201 to 611-214, inclusive, of the Revised Code of the Consolidated City and County.
- 2.02 The term of the initial Agreement shall commence on execution or 12:01 a.m. on July 1, 2009, whichever last occurs, and shall terminate at 12:01 a.m. on July 1, 2010, unless earlier terminated under the terms and conditions of this Agreement.
- 2.03 This Agreement may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein and may be amended only by written instrument signed by both the City and Franchise Wrecker and attached hereto as an amendment.

ARTICLE III. TOWING SERVICES

- 3.01 During the term of this Agreement, Franchise Wrecker shall provide the following services for IMPD and the Marion County Sheriff's Department: heavy equipment towing services within the geographic areas of the IMPD Southwest District and IMPD Southeast District (collectively, hereinafter "Franchise Districts"). Property or vehicles will be removed to a predetermined location or to an authorized storage lot or facility for the appropriate Franchise District.
- 3.02 When summoned by the IMPD dispatcher or a police officer to the scene of a possible tow, Franchise Wrecker shall arrive at such scene within twenty-five (25) minutes from the time it was notified by the dispatcher or officer.
- 3.03 When summoned by the IMPD dispatcher or a police officer to the scene of an accident, Franchise Wrecker shall tow the vehicle to any destination selected by the owner or operator thereof, unless such person is unable to state a location due to injury or arrest, or the owner or operator does not care to state the location to which the vehicle is to be removed. If such disability does exist or the owner or operator of the vehicle does not state a desired destination, Franchise Wrecker shall tow and remove such vehicle to Franchise Wrecker's authorized storage lot or facility or to any other authorized storage facility for the Franchise District.

Franchise Wrecker knows and understands that when an accident occurs, and in the opinion of the investigating police officer on the scene a traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice to remove the vehicle if that wrecker can arrive

on the scene within twenty-five (25) minutes after being summoned. If the investigating police officer determines that no traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice without the response time requirement.

- 3.04 Franchise Wrecker shall not proceed to, or arrive at the scene of an accident within the Franchise Districts for the purposes of attempting to secure a tow without being first summoned to that location by the IMPD dispatcher or a police officer.
- 3.05 When summoned to the scene of an accident, Franchise Wrecker shall clean, sweep up and collect all debris from the street and surrounding public premises caused by the accident. If the tow is not subject to impoundment, Franchise Wrecker may charge an additional fee for this service, per tow, as an accident tow surcharge.
- 3.06 Franchise Wrecker shall use dollies if the vehicle is mechanically disabled to the extent it cannot be towed, if it is the standard method for towing per manufacturer recommendation, or if the investigating police officer on the scene requests the use of dollies at any accident scene.
- 3.07 After a tow is made, Franchise Wrecker shall, within two (2) hours of the time the vehicle is removed from the scene of the occurrence, notify the IMPD Auto Desk of the correct year, make, model, and vehicle identification number of any towed vehicle. Vehicle tows from within the Mile Square shall be called in immediately, or at the earliest possible time and towed to a storage lot centrally located within the downtown area.
- 3.08 Any impounded vehicle shall be held and protected at Franchise Wrecker's authorized storage lot for the appropriate Franchise District or at an IMPD-authorized central storage lot if applicable, until it is either claimed by the owner or otherwise disposed of.
- 3.09 Franchise Wrecker shall be open for operation and provide the services provided in this Agreement on a twenty-four (24) hours per day, seven (7) days per week, basis.
- 3.10 No guaranteed minimum or maximum purchase quantities are either stated or implied. Any listed estimated quantities are based on historical information.

ARTICLE IV. TOWING, RECOVERY AND STORAGE FEES

- 4.01 The base fees to be paid by the owner or operator of a vehicle that has been towed pursuant to this Agreement are hereby established as follows:

towing services (vehicles other than heavy equipment, and other personal property):

- (1) Base towing fees (vehicle): Eighty-five Dollars (\$85.00) per tow;
- (2) Base towing fees (Flat Bed and Roll-Off Towing): Ninety-five Dollars (\$95.00) per tow; and
- (3) Base towing fees (heavy items of personal property other than vehicles): Eighty-five Dollars (\$85.00) per tow (property only).

heavy equipment towing services:

- (1) Base towing fees for heavy equipment: Two Hundred and Seventy-five Dollars (\$275.00) per tow for the first hour, and an additional One Hundred Dollars (\$100.00) per tow for each additional hour.

- 4.02 For towing services, Franchise Wrecker shall be entitled to receive a portion of the base fees listed in Section 4.01 of this Agreement. Such portion shall be equal to the amount of the base fee(s) less the franchise fee Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid, attached hereto and incorporated herein by reference as "Exhibit A." The franchise fee shall be retained by the City for deposit into the IMPD General Fund.
- 4.03 When towing to a destination selected by the owner or operator, Franchise Wrecker may charge the owner or operator a private towing fee.
- 4.04 Franchise Wrecker shall not charge additional fees other than those listed and/or authorized in this Agreement.
- 4.05 No towing fee whatsoever may be charged for a "dry run." A dry run is defined as a situation where Franchise Wrecker is summoned to a scene for a possible tow but is not allowed to tow the involved vehicle because: the lawful owner or operator thereof appeared at the scene before the vehicle was removed; it is discovered that the vehicle is drivable after Franchise Wrecker is summoned; or, for any other valid reason at the discretion of the investigating police officer.

Franchise Wrecker shall release a vehicle cited to be towed for a parking or other municipal or state violation if the owner or operator thereof arrives at the scene prior to the vehicle being actually removed even though it has been attached to, hoisted by, or picked up by Franchise Wrecker's tow truck, except when:

- (1) The vehicle is being towed by order of the Ordinance Violations Bureau because it has been involved in four (4) or more traffic ordinance violations the fines for which have not been paid, presented for compromise payment or slated into court, pursuant to Section 611-203 of the Revised Code of Indianapolis, Indiana;
 - (2) There is a valid reason to impound the vehicle (at the discretion of the investigating police officer); or
 - (3) The towing of the vehicle requires that its front bumper be removed and its air brake system charged, and its owner or operator arrives after this work has been completed.
- 4.06 For vehicles towed and impounded to Franchise Wrecker's storage lot or to any other duly-authorized storage facility for the Franchise District for which there is a police hold, all towing fees shall be paid at the IMPD Auto Desk. All other towing fees for vehicles towed and/or taken to Franchise Wrecker's storage lot that are not subject to impoundment pursuant to a police hold shall be paid at the office of Franchise Wrecker.
- 4.07 Franchise Wrecker agrees to waive or decrease any towing and/or storage fee in the event the Chief requests such a waiver and supplies a reasonable explanation.
- 4.08 The Franchise Wrecker's storage fee for a vehicle towed pursuant to this Agreement (other than heavy equipment) shall be ten dollars (\$10.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot; however, the storage fee for towed heavy equipment shall be twenty five dollars (\$25.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot.

Once a towed and impounded vehicle has been released by IMPD and the proper towing and storage fees have been paid at the IMPD Auto Desk, the owner of such vehicle shall claim and retrieve the vehicle from Franchise Wrecker's storage lot within six (6) hours from the time it is released by IMPD to avoid paying additional storage charges to Franchise Wrecker at the above

rate. Such additional storage charge shall be paid at the office of Franchise Wrecker at the time the owner claims the vehicle.

Vehicles towed and held for forfeiture or towed and held on a police hold shall only accumulate fees set for a maximum of One Hundred and Twenty-five Dollars (\$125.00), accumulating at the daily rate to the maximum amount regardless of the length of storage.

- 4.09 All towing fees less the franchise fee, and all storage fees, paid to and collected by the IMPD Auto Desk for tows performed by Franchise Wrecker in the assigned geographic area shall be forwarded to Franchise Wrecker twice monthly by the City controller barring any unforeseen circumstances upon submission of the proper forms to the Ordinance Violations Bureau.

All fees and monies associated with the providing of towing services by Franchise Wrecker for the assigned IMPD districts are to be fully receipted to the owner of the vehicle and reported with copies of such receipts to the Ordinance Violations Bureau.

Franchise Wrecker shall itemize all fees charged, indicating the towing fee plus any storage fee, any heavy equipment charges, and any per mile fees, as applicable.

V. TOWING EQUIPMENT; STORAGE LOTS; PERSONNEL

- 5.01 Franchise Wrecker shall have an adequate number of tow trucks and other towing equipment available at all times to service the districts within the specified response time.

The tow trucks and other equipment shall be equipped with the following: a power-operated winch; ground-and-tow sling that is capable of hoisting; a pulling vehicle; a fire extinguisher plus sufficient equipment (broom, shovel and container) to remove debris from an accident scene; and, each tow truck shall have the capability to dolly vehicles. Franchise Wrecker shall also have two-way radio communication in its towing equipment.

No tow truck, wrecker or other towing equipment shall have a police frequency monitor radio or scanner in it without proper written permission pursuant to Indiana Code § 35-44-3-12 from the Chief.

Franchise Wrecker shall install, monitor and maintain, at its expense, a fax machine and have access to an e-mail address. The fax machine and e-mail address shall be utilized by IMPD and Franchise Wrecker to expedite the delivery and exchange of correspondence necessary to efficiently serve the needs of IMPD and the public.

Franchise Wrecker will have Internet capability and connectivity on a twenty-four (24) hours per day, seven (7) days per week basis and will install and utilize any software necessary to communicate with the IMPD's Auto Desk at Franchise Wrecker's expense.

No towing equipment used by Franchise Wrecker shall use emergency warning lights of any color at any time while in transit, but may use illuminated amber lights when stopped at the scene of an accident or when towing a vehicle at the direction of a police officer.

The name and address of Franchise Wrecker shall be clearly displayed on both sides of all of its tow trucks and other towing equipment.

- 5.02 Franchise Wrecker agrees to make all its trucks, other towing equipment and lot facilities available for inspection at any time upon request and notification by the Chief.

- 5.03 Franchise Wrecker shall have access to and shall maintain an adequate storage lot or facility for the storage and safekeeping of all vehicles towed at the request of the IMPD dispatcher or a police officer. Such lot shall be large enough in area to store the vehicles towed and impounded by Franchise Wrecker within its confines at all times. The lot shall be in compliance with applicable zoning requirements.

The storage lot shall: be adequately enclosed with a secure fence or wall in compliance with all zoning requirements; be adequately drained and level, in compliance with all appropriate zoning laws, classifications and regulations; have a surface of either gravel, black top, concrete, or cinders; and, be free from excessive mud and standing water regardless of weather conditions.

Franchise Wrecker agrees to ensure that its storage lots and offices that are accessible to the public are in compliance with Title III of the Americans with Disabilities Act of 1990. Failure to comply with the Americans with Disabilities Act will be a cause for termination of this Agreement.

The lot shall be open and in operation twenty-four (24) hours each day without exception and shall be staffed with reliable, qualified and bonded personnel authorized to tow vehicles and release them to their rightful owners. An authorized contact person shall be designated for each shift. Contact information for these persons shall be made available to the Ordinance Violations Bureau and IMPD. The Ordinance Violations Bureau and IMPD shall be notified within twelve (12) hours of any changes in the designated contact persons identified or their contact information.

Franchise Wrecker shall provide a safe place on its lot premises for securing items of personal property that are found inside an impounded vehicle towed to its storage lot and shall maintain a procedure for properly identifying such property as belonging to any certain vehicle being stored.

Franchise Wrecker shall make a good faith effort to locate all vehicles towed under this Agreement in the same general location within the lot.

- 5.04 When the IMPD dispatcher or a police officer requests towing services for a vehicle within the Mile Square, the vehicle shall be stored in a storage lot or facility centrally located and within walking distance to the City-County Building, and Franchise Wrecker shall tow such vehicles to that lot or facility for storage. These tows are usually limited to tows initiated in the downtown area.
- 5.05 All Franchise Wrecker personnel (including employees and all employed or contracted wrecker drivers) shall be adequately bonded by Franchise Wrecker.

Franchise Wrecker shall have sufficient number of wrecker drivers, dispatchers and other needed lot personnel and towing equipment either on duty or on immediate call at all times to sufficiently respond to any request from the IMPD dispatcher or a police officer for towing services within the required response time and to release a vehicle to the proper owner or authorized person.

If necessary, Franchise Wrecker shall be required to obtain additional towing capacity necessary to adequately service the IMPD District by subcontracting with any licensed towing service. Franchise Wrecker shall assume liability for compliance by the subcontractor with all of the terms of this agreement.

Franchise Wrecker's personnel shall exercise all diligence and due care in preparing a vehicle for tow and towing such vehicle to prevent property damage thereto.

Franchise Wrecker's personnel shall abide by and obey all traffic laws, ordinances and orders of any law enforcement officer while going to, while at and upon leaving the scene of a summoned tow.

No Franchise Wrecker's personnel, while on duty or towing a vehicle authorized by the IMPD dispatcher or a police officer, shall be under the influence of alcoholic beverage, drug, narcotic, controlled substance or prescribed medicine.

No Franchise Wrecker's personnel shall take money for a tow that should have been paid at the IMPD Auto Desk, nor offer any money to any person or a police officer as an incentive to obtain more tows for Franchise Wrecker.

All Franchise Wreckers' personnel shall make reasonable efforts to be courteous to and cooperative with members of the public who arrive at the lot for the purpose of obtaining a release of their impounded vehicles. Upon the vehicle's owner's request, such personnel shall assist the owner in removing his or her vehicle by changing flat tires or charging dead batteries. Owners may be charged a reasonable fee for these or other services (the amount of which must be receipted to both the owner and the City in the same manner as towing and storage fees are to be receipted).

All Franchise Wrecker personnel shall fully cooperate with the Chief, the City controller or his or her designee, the Ordinance Violations Bureau personnel and the IMPD Auto Desk personnel.

VI. DISPOSAL OF UNCLAIMED VEHICLES

6.01 All vehicles towed and impounded by Franchise Wrecker pursuant to this Agreement and that become abandoned as a result of not being claimed in a timely manner by the owners thereof, shall be disposed of pursuant to applicable state law, city ordinances, provisions stated herein, and procedures established to implement such laws.

6.01.1 The applicable state law provisions for purposes of this agreement are Indiana Code, Art. 9-22, and Chap. 9-29-7.

6.01.2 An impounded vehicle pursuant to this agreement is considered abandoned if it is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal.

6.02 All heavy equipment vehicles towed and impounded pursuant to this Agreement that have not yet been released to their owners and that become abandoned as a result of not being claimed by the owners thereof within the twenty (20) day time period authorized by and pursuant to Indiana Code (not including vehicles held under forfeiture action), shall be disposed of pursuant to applicable laws.

An impounded vehicle shall be held by Franchise Wrecker for at least ten (10) days.

After the impounded vehicle (not including vehicles held for forfeiture, held for police hold or released to their owner) has been held for ten (10) days, Franchise Wrecker shall transport such vehicle and all property taken from such vehicles to the abandoned vehicle lot for secure storage and turned over to the abandoned vehicle section of the Indianapolis Department of Public Works (hereinafter "DPW") for public auction. Franchise Wrecker will receive a fee of One Hundred and Twenty-five Dollars (\$125.00) per vehicles for its services. Franchise Wrecker will not be entitled to any other fees; this includes the original towing fee, ten (10) days storage fee, and fee for transporting the abandoned vehicle to the abandoned vehicle storage lot.

Note: if the 10th day falls on a Sunday, Franchise Wrecker shall transport such vehicles on the following Monday prior to 10:00 am. Franchise Wrecker will not charge for the 11th day.

- 6.03 A vehicle held for forfeiture action or under a police hold in accordance with Indiana Code will not accumulate fees in excess of One Hundred and Twenty-five Dollars (\$125.00). Should a vehicle in the custody of Franchise Wrecker be released from the forfeiture action or police hold to the legal owner, the vehicle will be released to such owner after the payment of the appropriate storage fees. Should a vehicle that was released from forfeiture action be deemed an abandoned vehicle, Franchise Wrecker will be paid a fee of not more than One Hundred and Twenty-five Dollars (\$125.00) by DPW as provided in part 6.02 of this Agreement. Franchise Wrecker agrees that this charge may be changed or waived by a court of competent jurisdiction.

VII. INSURANCE; LIABILITY; PROPERTY PROTECTION

- 7.01 Prior to the execution of this Agreement, Franchise Wrecker shall file with the City Certificates of Insurance naming the City as an additional insured on all policies of insurance for the following coverage and minimum limits:

<i>Item</i>	<i>Coverage</i>
Worker's Compensation & Disability	Statutory
Employer's Liability	Statutory
Bodily Injury by Accident	\$500,000 (each accident)
Bodily Injury by Disease	\$500,000 (policy limit)
Bodily Injury by Disease	\$100,000 (each employee)
Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000
Comprehensive Auto Liability (Owned, hired & non-owned)	\$500,000 (each employee, each accident)
Bodily injury & property damage (single limit)	
Umbrella Excess Liability	\$3,000,000 (occurrence & aggregate)

These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City. Notwithstanding any other provision of this agreement, Franchise Wrecker shall provide all insurance coverage required by the documents provided by City.

- 7.02 Franchise Wrecker shall hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns and shall indemnify the above listed entities and individuals for any and all losses or damages recovered by judgment or compromise resulting to any person or property in any situation from any and all accidents and collisions due to negligence or willfulness in the use or operation of any of the trucks and wreckers used by Franchise Wrecker, as well as to vehicles that are in the care, custody or control of Franchise Wrecker or its authorized agents.
- 7.03 The City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns shall not be liable for any loss or damage that may occur to any vehicle that is removed, towed and/or stored by Franchise Wrecker pursuant to a police department request or order. Franchise Wrecker shall indemnify and hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns from any loss, claim, judgment, settlement or damages arising out of the removal, towing and/or storage of vehicles.
- 7.04 Franchise Wrecker shall have sole responsibility for any articles of personal property that may be contained in any vehicle at the time of its removal and during storage thereof that were not removed by a police officer and taken to the police department property room. Such articles of personal property shall not be held by Franchise Wrecker for any reason but shall be returned to the owner thereof upon showing sufficient identification and proof of ownership.
- 7.04.1 The police officer ordering the removal of a vehicle shall inventory any personal property in plain view, remove all such property and safeguard such property in accordance with IMPD policy.
- 7.04.2 Such items of personal property that are not or cannot be stored by IMPD shall be stored by Franchise Wrecker, and the police officer on the scene or in charge shall furnish a copy of the list of such items to the Franchise Wrecker employee on the scene who shall sign it on behalf of Franchise Wrecker verifying the existence of the items so listed.
- 7.04.3 Owners or operators of impounded vehicles may retrieve items of personal property therefrom prior to obtaining release of the vehicles upon showing proper identification and proof of ownership thereof.

VIII. DRUG TESTING

- 8.01 The City reserves the right to request drug testing/screening at no additional cost to the City for all Franchise Wrecker employees by a certified laboratory of drug testing for each employee. The report shall identify the drugs/metabolites tested for, whether positive or negative. The report shall also indicate the date and time of specimen collection, the date received by the laboratory and the date and time reported.
- 8.02 The City reserves the right to request additional drug screening for Franchise Wrecker employees for reasonable cause. Any Franchise Wrecker employee that test positive on any drug screen(s) shall be immediately dismissed.
- 8.03 If at any time a change in personnel is made, Franchise Wrecker must provide the designated IMPD representative the information on the new employee(s) before they may begin work.

ARTICLE IX. EMERGENCY CONDITIONS

- 9.01 During any emergency condition or situation as declared by the Mayor and/or the Chief, whereby Franchise Wrecker is unable to expeditiously remove or tow vehicles as a result of such emergency causing serious traffic hazards or jeopardizing public health and safety, the Chief in his or her discretion may authorize any auxiliary wrecker or other towing service to remove such vehicles for a limited time and until the emergency has been declared ended, all without City or Franchise Wrecker violating the provisions or intent of this Agreement; however, IMPD shall first utilize Franchise Wrecker when its wreckers and towing equipment are available for service.
- 9.02 During such emergency situations, special towing arrangements may be made by IMPD, including the alteration in towing fees and contracting for the use of additional wreckers or towing services.

ARTICLE X. TERMINATION OF AGREEMENT

- 10.01 The City may terminate this Agreement without penalty at any time for any violation by Franchise Wrecker of any laws or ordinances pertaining to the provision of towing services under this Agreement, the Invitation to Bid, any other provision of this Agreement, or the commission of any deceitful, fraudulent, criminal, or otherwise unlawful act committed by any owner, officer, representative, employee, agent, or wrecker driver of Franchise Wrecker.
- 10.02 In addition, the City may terminate this Agreement without penalty at any time and for any of the following acts or omissions committed by Franchise Wrecker, its owners, officers, representatives, employees, agents or wrecker drivers:
- (1) Failing in excess of ten (10) times in any period of thirty (30) consecutive days to arrive on the scene within twenty (25) minutes after being summoned;
 - (2) Purposely and intentionally overcharging an owner or operator for towing or storage fees resulting from any police-authorized tow;
 - (3) Purposely and intentionally causing damage to any vehicle towed or impounded pursuant to this Agreement;
 - (4) Offering anything of value, including money, to any police officer for the purpose of improperly procuring a request for tow therefrom;
 - (5) Permitting any unauthorized taking of vehicle parts or attachments, or personal property, other than for security reasons, from a vehicle towed or impounded pursuant to this Agreement;
 - (6) Arriving on the scene of an accident when not authorized to do so;
 - (7) Failing to place any towed vehicles inside its storage lot or facility for impoundment or storage purposes under non-emergency conditions;
 - (8) Failing to be courteous to members of the public, the Chief, or any police officer;
 - (9) Failing to allow vehicles to be taken from storage lot following a property release;
 - (10) Failing to maintain storage lot pursuant the requirements of this Agreement;

- (11) Failing to maintain an inventory system of property removed from vehicles for safe keeping;
 - (12) Failing to return property removed from a vehicle voluntarily when the vehicle is released; or
 - (13) Any other act or omission that is otherwise mentioned herein as being prohibited.
- 10.03 At any time during the term of this Agreement, Franchise Wrecker may terminate this Agreement by giving written notice thereof to the City at least ninety (90) days prior to the effective date of termination.
- 10.04 At any time during the term of this Agreement, the City may terminate this Agreement by giving written notice thereof to Franchise Wrecker at least ninety (90) days prior to the effective date of termination.

ARTICLE XI. LIQUIDATED DAMAGES

- 11.01 A cash performance bond in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Franchise Wrecker to the City upon execution of this Agreement and maintained by the City for the duration of this Agreement. Franchise Wrecker agrees to forfeit Fifty Dollars (\$50.00) to the City for each instance of noncompliance with this Agreement. Noncompliance will be the sole decision of the Chief. IMPD and a police officer have the additional right to call another towing service company immediately upon any incident of noncompliance by Franchise Wrecker, and any expenses incurred as a result of IMPD or a police officer calling another towing service company shall be borne by Franchise Wrecker.
- 11.02 The parties agree that time is of the essence in this Agreement, and further agree further that Franchise Wrecker's failure to perform its duties under this Agreement in a timely manner damages the City.
- 11.03 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages, and the Parties agree the amounts below are fair compensation for damages and are not to be considered as penalty:
- (1) For failure of Franchise Wrecker or its agent to arrive at the scene of any occurrence within twenty (25) minutes after being summoned, liquidated damages shall be Twenty-five Dollars (\$25.00) per instance for violations of more than ten (10) instances of failing to arrive within twenty (25) minutes of the request in a thirty (30) day period;
 - (2) For failure of Franchise Wrecker to provide accurate vehicle identifying information to the IMPD Auto Desk within two (2) hours of the time the vehicle is removed from the scene of the occurrence, liquidated damages shall be Forty Dollars (\$40.00) (note: vehicle tows from Monument Circle in the IMPD Downtown District shall be called in immediately, or at the earliest possible time);
 - (3) For failure of Franchise Wrecker to allow the owner of an impounded vehicle to take possession of the vehicle within one (1) hour after such owner has presented documentation that the vehicle has been released by IMPD and all storage charges have been paid, liquidated damages shall be Fifty Dollars (\$50.00);
 - (4) For failure of Franchise Wrecker to clean accident scene, liquidated damages shall be Fifty Dollars (\$50.00);

- (5) For failure of Franchise Wrecker to maintain the operating state of a refrigerator unit while in storage (if initially found operating), liquidated damages shall be the value of the cargo; and
- (6) For failure of proper advertising and conducting auctions for disposal of equipment, liquidated damages shall be the statutory limit.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.01 Franchise Wrecker, its officers, directors, agents, representatives and employees, in the performance of this Agreement, agree not to discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this provision constitutes a material breach of this Agreement.
- 12.02 Franchise Wrecker certifies and warrants that it has the capacity to perform the towing services as required by this Agreement with high standards of performance, safety and reasonable care.
- 12.03 Franchise Wrecker certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees who will participate in any way in the performance of Franchise Wrecker's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City or any of its departments, divisions, agencies, officers, directors, or agents.
- 12.04 Franchise Wrecker agrees that it will not in any way assign, sublet or transfer any interest in or obligation of this Agreement without the prior written consent of the Director of the City Department of Public Safety.
- 12.05 Nothing stated herein shall be construed as creating any personal liability on the part of any officer, director, agent or employee of any public body that may be a party hereto.
- 12.06 This Agreement shall be construed in accordance with the ordinances of Indianapolis, the laws of the State of Indiana, and the laws of the United States.
- 12.07 All notices required and sent pursuant to this Agreement shall be sent in written form to:

For City:

Department of Public Safety
 200 E. Washington St., Ste. E224
 Indianapolis, Indiana 46204

For Franchise Wrecker:

Interstate/Delaware & South Towing, Inc.
 301 S. Kitley Ave.
 Indianapolis, Indiana 46219

- 12.08 This Agreement constitutes the entire understanding and agreement between and among the parties hereto, and supersedes all prior agreements, written or verbal, between City and Franchise Wrecker. It may not be changed, altered, amended, modified or terminated orally. Any such change, alteration, amendment or modification of this Agreement must be in writing executed by the parties hereto, refer to this Agreement, and be executed on a form entitled "Supplemental Franchise Wrecker Contract" approved by all parties hereto.
- 12.09 Notwithstanding anything in this Agreement to the contrary, the signatory for Franchise Wrecker represents that he or she has been duly authorized to execute agreements on behalf of Franchise Wrecker and has obtained all necessary or applicable approval from Franchise Wrecker to make

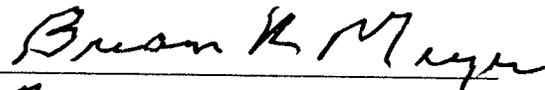
this Agreement fully binding upon Franchise Wrecker when his or her signature is affixed and accepted by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

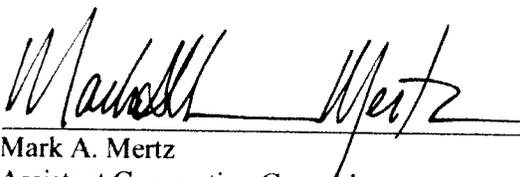
**CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY,
FOR AND ON BEHALF OF THE INDIANAPOLIS METROPOLITAN POLICE
DEPARTMENT ("City")**

By:  Date: 6/18/09
Scott C. Newman
Director

INTERSTATE/DELAWARE & SOUTH TOWING, INC. ("Franchise Wrecker")

By:  Date: 6 22 09
BRIAN R MEYER
Printed
General Manager
Title

APPROVED AS TO FORM AND LEGALITY:

By:  Date: June 9, 2009
Mark A. Mertz
Assistant Corporation Counsel

("EXHIBIT A" to follow.)

FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY
AND LAST CHANCE WRECKER & SALES, INC.

This Franchise Wrecker Contract (hereinafter "Agreement"), entered into on the dates indicated below by and between the Indianapolis Department of Public Safety (hereinafter "City") for and on behalf of the Indianapolis Metropolitan Police Department (hereinafter "IMPD") and Last Chance Wrecker & Sales, Inc., P. O. Box 31144, Indianapolis, Indiana 46221 (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, the City, pursuant to Chapter 611, Article II, of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana (hereinafter "Revised Code") issued an "Invitation to Bid for Franchise Wrecker Services" (hereinafter "Invitation to Bid," incorporated herein by reference) for the provision of towing services for IMPD and certain other law enforcement agencies within the City of Indianapolis and Marion County, Indiana; and

WHEREAS, the City received a bid from Franchise Wrecker, and has determined that Franchise Wrecker is capable of providing the required towing services within certain IMPD Districts;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.01 As used in this Agreement, the following words and terms shall have the meaning as set forth below.

Abandoned vehicle means all those vehicles as defined by Indiana Code § 9-13-2-1, as the same may be amended from time to time.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Chief means the chief of the IMPD, or his or her designee.

Forfeiture means a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise fee means that certain sum of money, a portion of the base towing fees, that Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid.

Heavy equipment means and includes vehicles over Nine Thousand (9,000) pounds gross vehicle weight rating.

Impound, impoundment, and impounded refer to the act of taking temporary custody of a vehicle and retaining such vehicle in an authorized and secured storage area or facility.

Mile Square means the geographic area bounded by North Street, South Street, East Street, and West Streets in the IMPD Downtown District.

Police officer means any sworn or reserve member of IMPD or the Marion County Sheriff's Department.

Towing services means the lifting, pushing, pulling or removing of vehicles or other personal property by a franchise wrecker from a public street, highway, right-of-way, or other public property when summoned to do so by an IMPD dispatcher or a police officer.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile," "truck," "motorcycle," "tractor," "buggy," and "wagon."

ARTICLE II. TERM AND RENEWAL

- 2.01 This Agreement establishes a term contract in compliance with Sections 611-201 to 611-214, inclusive, of the Revised Code of the Consolidated City and County.
- 2.02 The term of the initial Agreement shall commence on execution or 12:01 a.m. on July 1, 2009, whichever last occurs, and shall terminate at 12:01 a.m. on July 1, 2010, unless earlier terminated under the terms and conditions of this Agreement.
- 2.03 This Agreement may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein and may be amended only by written instrument signed by both the City and Franchise Wrecker and attached hereto as an amendment.

ARTICLE III. TOWING SERVICES

- 3.01 During the term of this Agreement, Franchise Wrecker shall provide the following services for IMPD and the Marion County Sheriff's Department:
- (1) Towing services (other than heavy equipment) within the geographic area of the IMPD Downtown District; and
 - (2) Heavy equipment towing services within the geographic areas of the IMPD North, East, and Downtown Districts;
- (collectively, hereinafter "Franchise Districts"). Property or vehicles will be removed to a predetermined location or to an authorized storage lot or facility for the appropriate Franchise District.
- 3.02 When summoned by the IMPD dispatcher or a police officer to the scene of a possible tow, Franchise Wrecker shall arrive at such scene within twenty-five (25) minutes from the time it was notified by the dispatcher or officer.
- 3.03 When summoned by the IMPD dispatcher or a police officer to the scene of an accident, Franchise Wrecker shall tow the vehicle to any destination selected by the owner or operator thereof, unless such person is unable to state a location due to injury or arrest, or the owner or operator does not care to state the location to which the vehicle is to be removed. If such

disability does exist or the owner or operator of the vehicle does not state a desired destination, Franchise Wrecker shall tow and remove such vehicle to Franchise Wrecker's authorized storage lot or facility or to any other authorized storage facility for the Franchise District.

Franchise Wrecker knows and understands that when an accident occurs, and in the opinion of the investigating police officer on the scene a traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice to remove the vehicle if that wrecker can arrive on the scene within twenty-five (25) minutes after being summoned. If the investigating police officer determines that no traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice without the response time requirement.

- 3.04 Franchise Wrecker shall not proceed to, or arrive at the scene of an accident within the Franchise Districts for the purposes of attempting to secure a tow without being first summoned to that location by the IMPD dispatcher or a police officer.
- 3.05 When summoned to the scene of an accident, Franchise Wrecker shall clean, sweep up and collect all debris from the street and surrounding public premises caused by the accident. If the tow is not subject to impoundment, Franchise Wrecker may charge an additional fee for this service, per tow, as an accident tow surcharge.
- 3.06 Franchise Wrecker shall use dollies if the vehicle is mechanically disabled to the extent it cannot be towed, if it is the standard method for towing per manufacturer recommendation, or if the investigating police officer on the scene requests the use of dollies at any accident scene.
- 3.07 After a tow is made, Franchise Wrecker shall, within two (2) hours of the time the vehicle is removed from the scene of the occurrence, notify the IMPD Auto Desk of the correct year, make, model, and vehicle identification number of any towed vehicle. Vehicle tows from within the Mile Square shall be called in immediately, or at the earliest possible time and towed to a storage lot centrally located within the downtown area.
- 3.08 Any impounded vehicle shall be held and protected at Franchise Wrecker's authorized storage lot for the appropriate Franchise District or at an IMPD-authorized central storage lot if applicable, until it is either claimed by the owner or otherwise disposed of.
- 3.09 Franchise Wrecker shall be open for operation and provide the services provided in this Agreement on a twenty-four (24) hours per day, seven (7) days per week, basis.
- 3.10 No guaranteed minimum or maximum purchase quantities are either stated or implied. Any listed estimated quantities are based on historical information.

ARTICLE IV. TOWING, RECOVERY AND STORAGE FEES

- 4.01 The base fees to be paid by the owner or operator of a vehicle that has been towed pursuant to this Agreement are hereby established as follows:

towing services (vehicles other than heavy equipment, and other personal property):

- (1) Base towing fees (vehicle): Eighty-five Dollars (\$85.00) per tow;
- (2) Base towing fees (Flat Bed and Roll-Off Towing): Ninety-five Dollars (\$95.00) per tow;
and
- (3) Base towing fees (heavy items of personal property other than vehicles): Eighty-five

Dollars (\$85.00) per tow (property only).

heavy equipment towing services:

- (1) Base towing fees for heavy equipment: Two Hundred and Seventy-five Dollars (\$275.00) per tow for the first hour, and an additional One Hundred Dollars (\$100.00) per tow for each additional hour.

- 4.02 For towing services, Franchise Wrecker shall be entitled to receive a portion of the base fees listed in Section 4.01 of this Agreement. Such portion shall be equal to the amount of the base fee(s) less the franchise fee Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid, attached hereto and incorporated herein by reference as "Exhibit A." The franchise fee shall be retained by the City for deposit into the IMPD General Fund.
- 4.03 When towing to a destination selected by the owner or operator, Franchise Wrecker may charge the owner or operator a private towing fee.
- 4.04 Franchise Wrecker shall not charge additional fees other than those listed and/or authorized in this Agreement.
- 4.05 No towing fee whatsoever may be charged for a "dry run." A dry run is defined as a situation where Franchise Wrecker is summoned to a scene for a possible tow but is not allowed to tow the involved vehicle because: the lawful owner or operator thereof appeared at the scene before the vehicle was removed; it is discovered that the vehicle is drivable after Franchise Wrecker is summoned; or, for any other valid reason at the discretion of the investigating police officer.

Franchise Wrecker shall release a vehicle cited to be towed for a parking or other municipal or state violation if the owner or operator thereof arrives at the scene prior to the vehicle being actually removed even though it has been attached to, hoisted by, or picked up by Franchise Wrecker's tow truck, except when:

- (1) The vehicle is being towed by order of the Ordinance Violations Bureau because it has been involved in four (4) or more traffic ordinance violations the fines for which have not been paid, presented for compromise payment or slated into court, pursuant to Section 611-203 of the Revised Code of Indianapolis, Indiana;
 - (2) There is a valid reason to impound the vehicle (at the discretion of the investigating police officer); or
 - (3) The towing of the vehicle requires that its front bumper be removed and its air brake system charged, and its owner or operator arrives after this work has been completed.
- 4.06 For vehicles towed and impounded to Franchise Wrecker's storage lot or to any other duly-authorized storage facility for the Franchise District for which there is a police hold, all towing fees shall be paid at the IMPD Auto Desk. All other towing fees for vehicles towed and/or taken to Franchise Wrecker's storage lot that are not subject to impoundment pursuant to a police hold shall be paid at the office of Franchise Wrecker.
 - 4.07 Franchise Wrecker agrees to waive or decrease any towing and/or storage fee in the event the Chief requests such a waiver and supplies a reasonable explanation.
 - 4.08 The Franchise Wrecker's storage fee for a vehicle towed pursuant to this Agreement (other than heavy equipment) shall be ten dollars (\$10.00) per calendar day to accrue starting the moment the

towed vehicle arrives at Franchise Wrecker's storage lot; however, the storage fee for towed heavy equipment shall be twenty five dollars (\$25.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot.

Once a towed and impounded vehicle has been released by IMPD and the proper towing and storage fees have been paid at the IMPD Auto Desk, the owner of such vehicle shall claim and retrieve the vehicle from Franchise Wrecker's storage lot within six (6) hours from the time it is released by IMPD to avoid paying additional storage charges to Franchise Wrecker at the above rate. Such additional storage charge shall be paid at the office of Franchise Wrecker at the time the owner claims the vehicle.

Vehicles towed and held for forfeiture or towed and held on a police hold shall only accumulate fees set for a maximum of One Hundred and Twenty-five Dollars (\$125.00), accumulating at the daily rate to the maximum amount regardless of the length of storage.

- 4.09 All towing fees less the franchise fee, and all storage fees, paid to and collected by the IMPD Auto Desk for tows performed by Franchise Wrecker in the assigned geographic area shall be forwarded to Franchise Wrecker twice monthly by the City controller barring any unforeseen circumstances upon submission of the proper forms to the Ordinance Violations Bureau.

All fees and monies associated with the providing of towing services by Franchise Wrecker for the assigned IMPD districts are to be fully receipted to the owner of the vehicle and reported with copies of such receipts to the Ordinance Violations Bureau.

Franchise Wrecker shall itemize all fees charged, indicating the towing fee plus any storage fee, any heavy equipment charges, and any per mile fees, as applicable.

V. TOWING EQUIPMENT; STORAGE LOTS; PERSONNEL

- 5.01 Franchise Wrecker shall have an adequate number of tow trucks and other towing equipment available at all times to service the districts within the specified response time.

The tow trucks and other equipment shall be equipped with the following: a power-operated winch; ground-and-tow sling that is capable of hoisting; a pulling vehicle; a fire extinguisher plus sufficient equipment (broom, shovel and container) to remove debris from an accident scene; and, each tow truck shall have the capability to dolly vehicles. Franchise Wrecker shall also have two-way radio communication in its towing equipment.

No tow truck, wrecker or other towing equipment shall have a police frequency monitor radio or scanner in it without proper written permission pursuant to Indiana Code § 35-44-3-12 from the Chief.

Franchise Wrecker shall install, monitor and maintain, at its expense, a fax machine and have access to an e-mail address. The fax machine and e-mail address shall be utilized by IMPD and Franchise Wrecker to expedite the delivery and exchange of correspondence necessary to efficiently serve the needs of IMPD and the public.

Franchise Wrecker will have Internet capability and connectivity on a twenty-four (24) hours per day, seven (7) days per week basis and will install and utilize any software necessary to communicate with the IMPD's Auto Desk at Franchise Wrecker's expense.

No towing equipment used by Franchise Wrecker shall use emergency warning lights of any color at any time while in transit, but may use illuminated amber lights when stopped at the scene

of an accident or when towing a vehicle at the direction of a police officer.

The name and address of Franchise Wrecker shall be clearly displayed on both sides of all of its tow trucks and other towing equipment.

5.02 Franchise Wrecker agrees to make all its trucks, other towing equipment and lot facilities available for inspection at any time upon request and notification by the Chief.

5.03 Franchise Wrecker shall have access to and shall maintain an adequate storage lot or facility for the storage and safekeeping of all vehicles towed at the request of the IMPD dispatcher or a police officer. Such lot shall be large enough in area to store the vehicles towed and impounded by Franchise Wrecker within its confines at all times. The lot shall be in compliance with applicable zoning requirements.

The storage lot shall: be adequately enclosed with a secure fence or wall in compliance with all zoning requirements; be adequately drained and level, in compliance with all appropriate zoning laws, classifications and regulations; have a surface of either gravel, black top, concrete, or cinders; and, be free from excessive mud and standing water regardless of weather conditions.

Franchise Wrecker agrees to ensure that its storage lots and offices that are accessible to the public are in compliance with Title III of the Americans with Disabilities Act of 1990. Failure to comply with the Americans with Disabilities Act will be a cause for termination of this Agreement.

The lot shall be open and in operation twenty-four (24) hours each day without exception and shall be staffed with reliable, qualified and bonded personnel authorized to tow vehicles and release them to their rightful owners. An authorized contact person shall be designated for each shift. Contact information for these persons shall be made available to the Ordinance Violations Bureau and IMPD. The Ordinance Violations Bureau and IMPD shall be notified within twelve (12) hours of any changes in the designated contact persons identified or their contact information.

Franchise Wrecker shall provide a safe place on its lot premises for securing items of personal property that are found inside an impounded vehicle towed to its storage lot and shall maintain a procedure for properly identifying such property as belonging to any certain vehicle being stored.

Franchise Wrecker shall make a good faith effort to locate all vehicles towed under this Agreement in the same general location within the lot.

5.04 When the IMPD dispatcher or a police officer requests towing services for a vehicle within the Mile Square, the vehicle shall be stored in a storage lot or facility centrally located and within walking distance to the City-County Building, and Franchise Wrecker shall tow such vehicles to that lot or facility for storage. These tows are usually limited to tows initiated in the downtown area.

5.05 All Franchise Wrecker personnel (including employees and all employed or contracted wrecker drivers) shall be adequately bonded by Franchise Wrecker.

Franchise Wrecker shall have sufficient number of wrecker drivers, dispatchers and other needed lot personnel and towing equipment either on duty or on immediate call at all times to sufficiently respond to any request from the IMPD dispatcher or a police officer for towing services within the required response time and to release a vehicle to the proper owner or authorized person.

If necessary, Franchise Wrecker shall be required to obtain additional towing capacity necessary to adequately service the IMPD District by subcontracting with any licensed towing service. Franchise Wrecker shall assume liability for compliance by the subcontractor with all of the terms of this agreement.

Franchise Wrecker's personnel shall exercise all diligence and due care in preparing a vehicle for tow and towing such vehicle to prevent property damage thereto.

Franchise Wrecker's personnel shall abide by and obey all traffic laws, ordinances and orders of any law enforcement officer while going to, while at and upon leaving the scene of a summoned tow.

No Franchise Wrecker's personnel, while on duty or towing a vehicle authorized by the IMPD dispatcher or a police officer, shall be under the influence of alcoholic beverage, drug, narcotic, controlled substance or prescribed medicine.

No Franchise Wrecker's personnel shall take money for a tow that should have been paid at the IMPD Auto Desk, nor offer any money to any person or a police officer as an incentive to obtain more tows for Franchise Wrecker.

All Franchise Wreckers' personnel shall make reasonable efforts to be courteous to and cooperative with members of the public who arrive at the lot for the purpose of obtaining a release of their impounded vehicles. Upon the vehicle's owner's request, such personnel shall assist the owner in removing his or her vehicle by changing flat tires or charging dead batteries. Owners may be charged a reasonable fee for these or other services (the amount of which must be receipted to both the owner and the City in the same manner as towing and storage fees are to be receipted).

All Franchise Wrecker personnel shall fully cooperate with the Chief, the City controller or his or her designee, the Ordinance Violations Bureau personnel and the IMPD Auto Desk personnel.

VI. DISPOSAL OF UNCLAIMED VEHICLES

6.01 All vehicles towed and impounded by Franchise Wrecker pursuant to this Agreement and that become abandoned as a result of not being claimed in a timely manner by the owners thereof, shall be disposed of pursuant to applicable state law, city ordinances, provisions stated herein, and procedures established to implement such laws.

6.01.1 The applicable state law provisions for purposes of this agreement are Indiana Code, Art. 9-22, and Chap. 9-29-7.

6.01.2 An impounded vehicle pursuant to this agreement is considered abandoned if it is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal.

6.02 All heavy equipment vehicles towed and impounded pursuant to this Agreement that have not yet been released to their owners and that become abandoned as a result of not being claimed by the owners thereof within the twenty (20) day time period authorized by and pursuant to Indiana Code (not including vehicles held under forfeiture action), shall be disposed of pursuant to applicable laws.

An impounded vehicle shall be held by Franchise Wrecker for at least ten (10) days.

After the impounded vehicle (not including vehicles held for forfeiture, held for police hold or released to their owner) has been held for ten (10) days, Franchise Wrecker shall transport such vehicle and all property taken from such vehicles to the abandoned vehicle lot for secure storage and turned over to the abandoned vehicle section of the Indianapolis Department of Public Works (hereinafter "DPW") for public auction. Franchise Wrecker will receive a fee of One Hundred and Twenty-five Dollars (\$125.00) per vehicles for its services. Franchise Wrecker will not be entitled to any other fees; this includes the original towing fee, ten (10) days storage fee, and fee for transporting the abandoned vehicle to the abandoned vehicle storage lot.

Note: if the 10th day falls on a Sunday, Franchise Wrecker shall transport such vehicles on the following Monday prior to 10:00 am. Franchise Wrecker will not charge for the 11th day.

- 6.03 A vehicle held for forfeiture action or under a police hold in accordance with Indiana Code will not accumulate fees in excess of One Hundred and Twenty-five Dollars (\$125.00). Should a vehicle in the custody of Franchise Wrecker be released from the forfeiture action or police hold to the legal owner, the vehicle will be released to such owner after the payment of the appropriate storage fees. Should a vehicle that was released from forfeiture action be deemed an abandoned vehicle, Franchise Wrecker will be paid a fee of not more than One Hundred and Twenty-five Dollars (\$125.00) by DPW as provided in part 6.02 of this Agreement. Franchise Wrecker agrees that this charge may be changed or waived by a court of competent jurisdiction.

VII. INSURANCE; LIABILITY; PROPERTY PROTECTION

- 7.01 Prior to the execution of this Agreement, Franchise Wrecker shall file with the City Certificates of Insurance naming the City as an additional insured on all policies of insurance for the following coverage and minimum limits:

<i>Item</i>	<i>Coverage</i>
Worker's Compensation & Disability	Statutory
Employer's Liability	Statutory
Bodily Injury by Accident	\$500,000 (each accident)
Bodily Injury by Disease	\$500,000 (policy limit)
Bodily Injury by Disease	\$100,000 (each employee)
Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000
Comprehensive Auto Liability (Owned, hired & non-owned)	\$500,000 (each employee, each accident)

Bodily injury & property damage (single limit)

Umbrella Excess Liability

\$3,000,000

(occurrence & aggregate)

These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City. Notwithstanding any other provision of this agreement, Franchise Wrecker shall provide all insurance coverage required by the documents provided by City.

- 7.02 Franchise Wrecker shall hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns and shall indemnify the above listed entities and individuals for any and all losses or damages recovered by judgment or compromise resulting to any person or property in any situation from any and all accidents and collisions due to negligence or willfulness in the use or operation of any of the trucks and wreckers used by Franchise Wrecker, as well as to vehicles that are in the care, custody or control of Franchise Wrecker or its authorized agents.
- 7.03 The City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns shall not be liable for any loss or damage that may occur to any vehicle that is removed, towed and/or stored by Franchise Wrecker pursuant to a police department request or order. Franchise Wrecker shall indemnify and hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns from any loss, claim, judgment, settlement or damages arising out of the removal, towing and/or storage of vehicles.
- 7.04 Franchise Wrecker shall have sole responsibility for any articles of personal property that may be contained in any vehicle at the time of its removal and during storage thereof that were not removed by a police officer and taken to the police department property room. Such articles of personal property shall not be held by Franchise Wrecker for any reason but shall be returned to the owner thereof upon showing sufficient identification and proof of ownership.
- 7.04.1 The police officer ordering the removal of a vehicle shall inventory any personal property in plain view, remove all such property and safeguard such property in accordance with IMPD policy.
- 7.04.2 Such items of personal property that are not or cannot be stored by IMPD shall be stored by Franchise Wrecker, and the police officer on the scene or in charge shall furnish a copy of the list of such items to the Franchise Wrecker employee on the scene who shall sign it on behalf of Franchise Wrecker verifying the existence of the items so listed.
- 7.04.3 Owners or operators of impounded vehicles may retrieve items of personal property therefrom prior to obtaining release of the vehicles upon showing proper identification and proof of ownership thereof.

VIII. DRUG TESTING

- 8.01 The City reserves the right to request drug testing/screening at no additional cost to the City for all Franchise Wrecker employees by a certified laboratory of drug testing for each employee. The

report shall identify the drugs/metabolites tested for, whether positive or negative. The report shall also indicate the date and time of specimen collection, the date received by the laboratory and the date and time reported.

- 8.02 The City reserves the right to request additional drug screening for Franchise Wrecker employees for reasonable cause. Any Franchise Wrecker employee that test positive on any drug screen(s) shall be immediately dismissed.
- 8.03 If at any time a change in personnel is made, Franchise Wrecker must provide the designated IMPD representative the information on the new employee(s) before they may begin work.

ARTICLE IX. EMERGENCY CONDITIONS

- 9.01 During any emergency condition or situation as declared by the Mayor and/or the Chief, whereby Franchise Wrecker is unable to expeditiously remove or tow vehicles as a result of such emergency causing serious traffic hazards or jeopardizing public health and safety, the Chief in his or her discretion may authorize any auxiliary wrecker or other towing service to remove such vehicles for a limited time and until the emergency has been declared ended, all without City or Franchise Wrecker violating the provisions or intent of this Agreement; however, IMPD shall first utilize Franchise Wrecker when its wreckers and towing equipment are available for service.
- 9.02 During such emergency situations, special towing arrangements may be made by IMPD, including the alteration in towing fees and contracting for the use of additional wreckers or towing services.

ARTICLE X. TERMINATION OF AGREEMENT

- 10.01 The City may terminate this Agreement without penalty at any time for any violation by Franchise Wrecker of any laws or ordinances pertaining to the provision of towing services under this Agreement, the Invitation to Bid, any other provision of this Agreement, or the commission of any deceitful, fraudulent, criminal, or otherwise unlawful act committed by any owner, officer, representative, employee, agent, or wrecker driver of Franchise Wrecker.
- 10.02 In addition, the City may terminate this Agreement without penalty at any time and for any of the following acts or omissions committed by Franchise Wrecker, its owners, officers, representatives, employees, agents or wrecker drivers:
- (1) Failing in excess of ten (10) times in any period of thirty (30) consecutive days to arrive on the scene within twenty (25) minutes after being summoned;
 - (2) Purposely and intentionally overcharging an owner or operator for towing or storage fees resulting from any police-authorized tow;
 - (3) Purposely and intentionally causing damage to any vehicle towed or impounded pursuant to this Agreement;
 - (4) Offering anything of value, including money, to any police officer for the purpose of improperly procuring a request for tow therefrom;
 - (5) Permitting any unauthorized taking of vehicle parts or attachments, or personal property, other than for security reasons, from a vehicle towed or impounded pursuant

to this Agreement;

- (6) Arriving on the scene of an accident when not authorized to do so;
 - (7) Failing to place any towed vehicles inside its storage lot or facility for impoundment or storage purposes under non-emergency conditions;
 - (8) Failing to be courteous to members of the public, the Chief, or any police officer;
 - (9) Failing to allow vehicles to be taken from storage lot following a property release;
 - (10) Failing to maintain storage lot pursuant the requirements of this Agreement;
 - (11) Failing to maintain an inventory system of property removed from vehicles for safe keeping;
 - (12) Failing to return property removed from a vehicle voluntarily when the vehicle is released; or
 - (13) Any other act or omission that is otherwise mentioned herein as being prohibited.
- 10.03 At any time during the term of this Agreement, Franchise Wrecker may terminate this Agreement by giving written notice thereof to the City at least ninety (90) days prior to the effective date of termination.
- 10.04 At any time during the term of this Agreement, the City may terminate this Agreement by giving written notice thereof to Franchise Wrecker at least ninety (90) days prior to the effective date of termination.

ARTICLE XI. LIQUIDATED DAMAGES

- 11.01 A cash performance bond in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Franchise Wrecker to the City upon execution of this Agreement and maintained by the City for the duration of this Agreement. Franchise Wrecker agrees to forfeit Fifty Dollars (\$50.00) to the City for each instance of noncompliance with this Agreement. Noncompliance will be the sole decision of the Chief. IMPD and a police officer have the additional right to call another towing service company immediately upon any incident of noncompliance by Franchise Wrecker, and any expenses incurred as a result of IMPD or a police officer calling another towing service company shall be borne by Franchise Wrecker.
- 11.02 The parties agree that time is of the essence in this Agreement, and further agree further that Franchise Wrecker's failure to perform its duties under this Agreement in a timely manner damages the City.
- 11.03 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages, and the Parties agree the amounts below are fair compensation for damages and are not to be considered as penalty:
- (1) For failure of Franchise Wrecker or its agent to arrive at the scene of any occurrence within twenty (25) minutes after being summoned, liquidated damages shall be Twenty-five Dollars (\$25.00) per instance for violations of more than ten (10) instances of failing to arrive within twenty (25) minutes of the request in a thirty (30) day period;

- (2) For failure of Franchise Wrecker to provide accurate vehicle identifying information to the IMPD Auto Desk within two (2) hours of the time the vehicle is removed from the scene of the occurrence, liquidated damages shall be Forty Dollars (\$40.00) (note: vehicle tows from Monument Circle in the IMPD Downtown District shall be called in immediately, or at the earliest possible time);
- (3) For failure of Franchise Wrecker to allow the owner of an impounded vehicle to take possession of the vehicle within one (1) hour after such owner has presented documentation that the vehicle has been released by IMPD and all storage charges have been paid, liquidated damages shall be Fifty Dollars (\$50.00);
- (4) For failure of Franchise Wrecker to clean accident scene, liquidated damages shall be Fifty Dollars (\$50.00);
- (5) For failure of Franchise Wrecker to maintain the operating state of a refrigerator unit while in storage (if initially found operating), liquidated damages shall be the value of the cargo; and
- (6) For failure of proper advertising and conducting auctions for disposal of equipment, liquidated damages shall be the statutory limit.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.01 Franchise Wrecker, its officers, directors, agents, representatives and employees, in the performance of this Agreement, agree not to discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this provision constitutes a material breach of this Agreement.
- 12.02 Franchise Wrecker certifies and warrants that it has the capacity to perform the towing services as required by this Agreement with high standards of performance, safety and reasonable care.
- 12.03 Franchise Wrecker certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees who will participate in any way in the performance of Franchise Wrecker's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City or any of its departments, divisions, agencies, officers, directors, or agents.
- 12.04 Franchise Wrecker agrees that it will not in any way assign, sublet or transfer any interest in or obligation of this Agreement without the prior written consent of the Director of the City Department of Public Safety.
- 12.05 Nothing stated herein shall be construed as creating any personal liability on the part of any officer, director, agent or employee of any public body that may be a party hereto.
- 12.06 This Agreement shall be construed in accordance with the ordinances of Indianapolis, the laws of the State of Indiana, and the laws of the United States.
- 12.07 All notices required and sent pursuant to this Agreement shall be sent in written form to:

For City:

For Franchise Wrecker:

Department of Public Safety
200 E. Washington St., Ste. E224
Indianapolis, Indiana 46204

Last Chance Wrecker & Sales, Inc.
P. O. Box 21144
Indianapolis, Indiana 46221

- 12.08 This Agreement constitutes the entire understanding and agreement between and among the parties hereto, and supersedes all prior agreements, written or verbal, between City and Franchise Wrecker. It may not be changed, altered, amended, modified or terminated orally. Any such change, alteration, amendment or modification of this Agreement must be in writing executed by the parties hereto, refer to this Agreement, and be executed on a form entitled "Supplemental Franchise Wrecker Contract" approved by all parties hereto.
- 12.09 Notwithstanding anything in this Agreement to the contrary, the signatory for Franchise Wrecker represents that he or she has been duly authorized to execute agreements on behalf of Franchise Wrecker and has obtained all necessary or applicable approval from Franchise Wrecker to make this Agreement fully binding upon Franchise Wrecker when his or her signature is affixed and accepted by the City.

(Signature page to follow.)

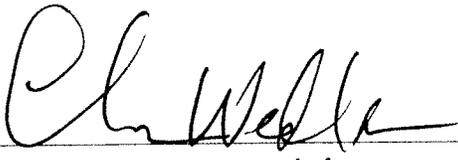
IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

**CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY,
FOR AND ON BEHALF OF THE INDIANAPOLIS METROPOLITAN POLICE
DEPARTMENT ("City")**

By: 
Scott C. Newman
Director

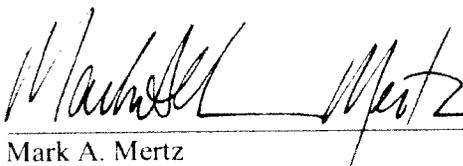
Date: 4/18/09

LAST CHANCE WRECKER & SALES, INC. ("Franchise Wrecker")

By: 
Chris Weddle
Printed
VICE-PRESIDENT
Title

Date: 06-22-09

APPROVED AS TO FORM AND LEGALITY:

By: 
Mark A. Mertz
Assistant Corporation Counsel

Date: June 9, 2009

(*"EXHIBIT A" to follow.*)

**FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY
AND WHEELER'S TOWING SERVICE, INC.**

This Franchise Wrecker Contract (hereinafter "Agreement"), entered into on the dates indicated below by and between the Indianapolis Department of Public Safety (hereinafter "City") for and on behalf of the Indianapolis Metropolitan Police Department (hereinafter "IMPD") and Wheeler's Towing Service, Inc., 2325 West Michigan Street, Indianapolis, Indiana 46222 (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, the City, pursuant to Chapter 611, Article II, of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana (hereinafter "Revised Code") issued an "Invitation to Bid for Franchise Wrecker Services" (hereinafter "Invitation to Bid," incorporated herein by reference) for the provision of towing services for IMPD and certain other law enforcement agencies within the City of Indianapolis and Marion County, Indiana; and

WHEREAS, the City received a bid from Franchise Wrecker, and has determined that Franchise Wrecker is capable of providing the required towing services within certain IMPD Districts;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.01 As used in this Agreement, the following words and terms shall have the meaning as set forth below.

Abandoned vehicle means all those vehicles as defined by Indiana Code § 9-13-2-1, as the same may be amended from time to time.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Chief means the chief of the IMPD, or his or her designee.

Forfeiture means a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise fee means that certain sum of money, a portion of the base towing fees, that Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid.

Heavy equipment means and includes vehicles over Nine Thousand (9,000) pounds gross vehicle weight rating.

Impound, impoundment, and impounded refer to the act of taking temporary custody of a vehicle and retaining such vehicle in an authorized and secured storage area or facility.

Mile Square means the geographic area bounded by North Street, South Street, East Street, and West Streets in the IMPD Downtown District.

Police officer means any sworn or reserve member of IMPD or the Marion County Sheriff's Department.

Towing services means the lifting, pushing, pulling or removing of vehicles or other personal property by a franchise wrecker from a public street, highway, right-of-way, or other public property when summoned to do so by an IMPD dispatcher or a police officer.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile," "truck," "motorcycle," "tractor," "buggy," and "wagon."

ARTICLE II. TERM AND RENEWAL

- 2.01 This Agreement establishes a term contract in compliance with Sections 611-201 to 611-214, inclusive, of the Revised Code of the Consolidated City and County.
- 2.02 The term of the initial Agreement shall commence on execution or 12:01 a.m. on July 1, 2009, whichever last occurs, and shall terminate at 12:01 a.m. on July 1, 2010, unless earlier terminated under the terms and conditions of this Agreement.
- 2.03 This Agreement may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein and may be amended only by written instrument signed by both the City and Franchise Wrecker and attached hereto as an amendment.

ARTICLE III. TOWING SERVICES

- 3.01 During the term of this Agreement, Franchise Wrecker shall provide the following services for IMPD and the Marion County Sheriff's Department:
 - (1) Towing services (other than heavy equipment) within the geographic areas of the IMPD Southwest District and IMPD Northwest District; and
 - (2) Heavy equipment towing services within the geographic area of the IMPD Northwest District;(collectively, hereinafter "Franchise Districts"). Property or vehicles will be removed to a predetermined location or to an authorized storage lot or facility for the appropriate Franchise District.
- 3.02 When summoned by the IMPD dispatcher or a police officer to the scene of a possible tow, Franchise Wrecker shall arrive at such scene within twenty-five (25) minutes from the time it was notified by the dispatcher or officer.
- 3.03 When summoned by the IMPD dispatcher or a police officer to the scene of an accident, Franchise Wrecker shall tow the vehicle to any destination selected by the owner or operator thereof, unless such person is unable to state a location due to injury or arrest, or the owner or operator does not care to state the location to which the vehicle is to be removed. If such

disability does exist or the owner or operator of the vehicle does not state a desired destination, Franchise Wrecker shall tow and remove such vehicle to Franchise Wrecker's authorized storage lot or facility or to any other authorized storage facility for the Franchise District.

Franchise Wrecker knows and understands that when an accident occurs, and in the opinion of the investigating police officer on the scene a traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice to remove the vehicle if that wrecker can arrive on the scene within twenty-five (25) minutes after being summoned. If the investigating police officer determines that no traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice without the response time requirement.

- 3.04 Franchise Wrecker shall not proceed to, or arrive at the scene of an accident within the Franchise Districts for the purposes of attempting to secure a tow without being first summoned to that location by the IMPD dispatcher or a police officer.
- 3.05 When summoned to the scene of an accident, Franchise Wrecker shall clean, sweep up and collect all debris from the street and surrounding public premises caused by the accident. If the tow is not subject to impoundment, Franchise Wrecker may charge an additional fee for this service, per tow, as an accident tow surcharge.
- 3.06 Franchise Wrecker shall use dollies if the vehicle is mechanically disabled to the extent it cannot be towed, if it is the standard method for towing per manufacturer recommendation, or if the investigating police officer on the scene requests the use of dollies at any accident scene.
- 3.07 After a tow is made, Franchise Wrecker shall, within two (2) hours of the time the vehicle is removed from the scene of the occurrence, notify the IMPD Auto Desk of the correct year, make, model, and vehicle identification number of any towed vehicle. Vehicle tows from within the Mile Square shall be called in immediately, or at the earliest possible time and towed to a storage lot centrally located within the downtown area.
- 3.08 Any impounded vehicle shall be held and protected at Franchise Wrecker's authorized storage lot for the appropriate Franchise District or at an IMPD-authorized central storage lot if applicable, until it is either claimed by the owner or otherwise disposed of.
- 3.09 Franchise Wrecker shall be open for operation and provide the services provided in this Agreement on a twenty-four (24) hours per day, seven (7) days per week, basis.
- 3.10 No guaranteed minimum or maximum purchase quantities are either stated or implied. Any listed estimated quantities are based on historical information.

ARTICLE IV. TOWING, RECOVERY AND STORAGE FEES

- 4.01 The base fees to be paid by the owner or operator of a vehicle that has been towed pursuant to this Agreement are hereby established as follows:

towing services (vehicles other than heavy equipment, and other personal property):

- (1) Base towing fees (vehicle): Eighty-five Dollars (\$85.00) per tow;
- (2) Base towing fees (Flat Bed and Roll-Off Towing): Ninety-five Dollars (\$95.00) per tow;
and
- (3) Base towing fees (heavy items of personal property other than vehicles): Eighty-five

Dollars (\$85.00) per tow (property only).

heavy equipment towing services:

- (1) Base towing fees for heavy equipment: Two Hundred and Seventy-five Dollars (\$275.00) per tow for the first hour, and an additional One Hundred Dollars (\$100.00) per tow for each additional hour.
- 4.02 For towing services, Franchise Wrecker shall be entitled to receive a portion of the base fees listed in Section 4.01 of this Agreement. Such portion shall be equal to the amount of the base fee(s) less the franchise fee Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid, attached hereto and incorporated herein by reference as "Exhibit A." The franchise fee shall be retained by the City for deposit into the IMPD General Fund.
- 4.03 When towing to a destination selected by the owner or operator, Franchise Wrecker may charge the owner or operator a private towing fee.
- 4.04 Franchise Wrecker shall not charge additional fees other than those listed and/or authorized in this Agreement.
- 4.05 No towing fee whatsoever may be charged for a "dry run." A dry run is defined as a situation where Franchise Wrecker is summoned to a scene for a possible tow but is not allowed to tow the involved vehicle because: the lawful owner or operator thereof appeared at the scene before the vehicle was removed; it is discovered that the vehicle is drivable after Franchise Wrecker is summoned; or, for any other valid reason at the discretion of the investigating police officer.
- Franchise Wrecker shall release a vehicle cited to be towed for a parking or other municipal or state violation if the owner or operator thereof arrives at the scene prior to the vehicle being actually removed even though it has been attached to, hoisted by, or picked up by Franchise Wrecker's tow truck, except when:
- (1) The vehicle is being towed by order of the Ordinance Violations Bureau because it has been involved in four (4) or more traffic ordinance violations the fines for which have not been paid, presented for compromise payment or slated into court, pursuant to Section 611-203 of the Revised Code of Indianapolis, Indiana;
 - (2) There is a valid reason to impound the vehicle (at the discretion of the investigating police officer); or
 - (3) The towing of the vehicle requires that its front bumper be removed and its air brake system charged, and its owner or operator arrives after this work has been completed.
- 4.06 For vehicles towed and impounded to Franchise Wrecker's storage lot or to any other duly-authorized storage facility for the Franchise District for which there is a police hold, all towing fees shall be paid at the IMPD Auto Desk. All other towing fees for vehicles towed and/or taken to Franchise Wrecker's storage lot that are not subject to impoundment pursuant to a police hold shall be paid at the office of Franchise Wrecker.
- 4.07 Franchise Wrecker agrees to waive or decrease any towing and/or storage fee in the event the Chief requests such a waiver and supplies a reasonable explanation.
- 4.08 The Franchise Wrecker's storage fee for a vehicle towed pursuant to this Agreement (other than heavy equipment) shall be ten dollars (\$10.00) per calendar day to accrue starting the moment the

towed vehicle arrives at Franchise Wrecker's storage lot; however, the storage fee for towed heavy equipment shall be twenty five dollars (\$25.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot.

Once a towed and impounded vehicle has been released by IMPD and the proper towing and storage fees have been paid at the IMPD Auto Desk, the owner of such vehicle shall claim and retrieve the vehicle from Franchise Wrecker's storage lot within six (6) hours from the time it is released by IMPD to avoid paying additional storage charges to Franchise Wrecker at the above rate. Such additional storage charge shall be paid at the office of Franchise Wrecker at the time the owner claims the vehicle.

Vehicles towed and held for forfeiture or towed and held on a police hold shall only accumulate fees set for a maximum of One Hundred and Twenty-five Dollars (\$125.00), accumulating at the daily rate to the maximum amount regardless of the length of storage.

- 4.09 All towing fees less the franchise fee, and all storage fees, paid to and collected by the IMPD Auto Desk for tows performed by Franchise Wrecker in the assigned geographic area shall be forwarded to Franchise Wrecker twice monthly by the City controller barring any unforeseen circumstances upon submission of the proper forms to the Ordinance Violations Bureau.

All fees and monies associated with the providing of towing services by Franchise Wrecker for the assigned IMPD districts are to be fully receipted to the owner of the vehicle and reported with copies of such receipts to the Ordinance Violations Bureau.

Franchise Wrecker shall itemize all fees charged, indicating the towing fee plus any storage fee, any heavy equipment charges, and any per mile fees, as applicable.

V. TOWING EQUIPMENT; STORAGE LOTS; PERSONNEL

- 5.01 Franchise Wrecker shall have an adequate number of tow trucks and other towing equipment available at all times to service the districts within the specified response time.

The tow trucks and other equipment shall be equipped with the following: a power-operated winch; ground-and-tow sling that is capable of hoisting; a pulling vehicle; a fire extinguisher plus sufficient equipment (broom, shovel and container) to remove debris from an accident scene; and, each tow truck shall have the capability to dolly vehicles. Franchise Wrecker shall also have two-way radio communication in its towing equipment.

No tow truck, wrecker or other towing equipment shall have a police frequency monitor radio or scanner in it without proper written permission pursuant to Indiana Code § 35-44-3-12 from the Chief.

Franchise Wrecker shall install, monitor and maintain, at its expense, a fax machine and have access to an e-mail address. The fax machine and e-mail address shall be utilized by IMPD and Franchise Wrecker to expedite the delivery and exchange of correspondence necessary to efficiently serve the needs of IMPD and the public.

Franchise Wrecker will have Internet capability and connectivity on a twenty-four (24) hours per day, seven (7) days per week basis and will install and utilize any software necessary to communicate with the IMPD's Auto Desk at Franchise Wrecker's expense.

No towing equipment used by Franchise Wrecker shall use emergency warning lights of any color at any time while in transit, but may use illuminated amber lights when stopped at the scene

of an accident or when towing a vehicle at the direction of a police officer.

The name and address of Franchise Wrecker shall be clearly displayed on both sides of all of its tow trucks and other towing equipment.

- 5.02 Franchise Wrecker agrees to make all its trucks, other towing equipment and lot facilities available for inspection at any time upon request and notification by the Chief.
- 5.03 Franchise Wrecker shall have access to and shall maintain an adequate storage lot or facility for the storage and safekeeping of all vehicles towed at the request of the IMPD dispatcher or a police officer. Such lot shall be large enough in area to store the vehicles towed and impounded by Franchise Wrecker within its confines at all times. The lot shall be in compliance with applicable zoning requirements.

The storage lot shall: be adequately enclosed with a secure fence or wall in compliance with all zoning requirements; be adequately drained and level, in compliance with all appropriate zoning laws, classifications and regulations; have a surface of either gravel, black top, concrete, or cinders; and, be free from excessive mud and standing water regardless of weather conditions.

Franchise Wrecker agrees to ensure that its storage lots and offices that are accessible to the public are in compliance with Title III of the Americans with Disabilities Act of 1990. Failure to comply with the Americans with Disabilities Act will be a cause for termination of this Agreement.

The lot shall be open and in operation twenty-four (24) hours each day without exception and shall be staffed with reliable, qualified and bonded personnel authorized to tow vehicles and release them to their rightful owners. An authorized contact person shall be designated for each shift. Contact information for these persons shall be made available to the Ordinance Violations Bureau and IMPD. The Ordinance Violations Bureau and IMPD shall be notified within twelve (12) hours of any changes in the designated contact persons identified or their contact information.

Franchise Wrecker shall provide a safe place on its lot premises for securing items of personal property that are found inside an impounded vehicle towed to its storage lot and shall maintain a procedure for properly identifying such property as belonging to any certain vehicle being stored.

Franchise Wrecker shall make a good faith effort to locate all vehicles towed under this Agreement in the same general location within the lot.

- 5.04 When the IMPD dispatcher or a police officer requests towing services for a vehicle within the Mile Square, the vehicle shall be stored in a storage lot or facility centrally located and within walking distance to the City-County Building, and Franchise Wrecker shall tow such vehicles to that lot or facility for storage. These tows are usually limited to tows initiated in the downtown area.
- 5.05 All Franchise Wrecker personnel (including employees and all employed or contracted wrecker drivers) shall be adequately bonded by Franchise Wrecker.

Franchise Wrecker shall have sufficient number of wrecker drivers, dispatchers and other needed lot personnel and towing equipment either on duty or on immediate call at all times to sufficiently respond to any request from the IMPD dispatcher or a police officer for towing services within the required response time and to release a vehicle to the proper owner or authorized person.

If necessary, Franchise Wrecker shall be required to obtain additional towing capacity necessary to adequately service the IMPD District by subcontracting with any licensed towing service. Franchise Wrecker shall assume liability for compliance by the subcontractor with all of the terms of this agreement.

Franchise Wrecker's personnel shall exercise all diligence and due care in preparing a vehicle for tow and towing such vehicle to prevent property damage thereto.

Franchise Wrecker's personnel shall abide by and obey all traffic laws, ordinances and orders of any law enforcement officer while going to, while at and upon leaving the scene of a summoned tow.

No Franchise Wrecker's personnel, while on duty or towing a vehicle authorized by the IMPD dispatcher or a police officer, shall be under the influence of alcoholic beverage, drug, narcotic, controlled substance or prescribed medicine.

No Franchise Wrecker's personnel shall take money for a tow that should have been paid at the IMPD Auto Desk, nor offer any money to any person or a police officer as an incentive to obtain more tows for Franchise Wrecker.

All Franchise Wreckers' personnel shall make reasonable efforts to be courteous to and cooperative with members of the public who arrive at the lot for the purpose of obtaining a release of their impounded vehicles. Upon the vehicle's owner's request, such personnel shall assist the owner in removing his or her vehicle by changing flat tires or charging dead batteries. Owners may be charged a reasonable fee for these or other services (the amount of which must be receipted to both the owner and the City in the same manner as towing and storage fees are to be receipted).

All Franchise Wrecker personnel shall fully cooperate with the Chief, the City controller or his or her designee, the Ordinance Violations Bureau personnel and the IMPD Auto Desk personnel.

VI. DISPOSAL OF UNCLAIMED VEHICLES

6.01 All vehicles towed and impounded by Franchise Wrecker pursuant to this Agreement and that become abandoned as a result of not being claimed in a timely manner by the owners thereof, shall be disposed of pursuant to applicable state law, city ordinances, provisions stated herein, and procedures established to implement such laws.

6.01.1 The applicable state law provisions for purposes of this agreement are Indiana Code, Art. 9-22, and Chap. 9-29-7.

6.01.2 An impounded vehicle pursuant to this agreement is considered abandoned if it is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal.

6.02 All heavy equipment vehicles towed and impounded pursuant to this Agreement that have not yet been released to their owners and that become abandoned as a result of not being claimed by the owners thereof within the twenty (20) day time period authorized by and pursuant to Indiana Code (not including vehicles held under forfeiture action), shall be disposed of pursuant to applicable laws.

An impounded vehicle shall be held by Franchise Wrecker for at least ten (10) days.

After the impounded vehicle (not including vehicles held for forfeiture, held for police hold or released to their owner) has been held for ten (10) days, Franchise Wrecker shall transport such vehicle and all property taken from such vehicles to the abandoned vehicle lot for secure storage and turned over to the abandoned vehicle section of the Indianapolis Department of Public Works (hereinafter "DPW") for public auction. Franchise Wrecker will receive a fee of One Hundred and Twenty-five Dollars (\$125.00) per vehicles for its services. Franchise Wrecker will not be entitled to any other fees; this includes the original towing fee, ten (10) days storage fee, and fee for transporting the abandoned vehicle to the abandoned vehicle storage lot.

Note: if the 10th day falls on a Sunday, Franchise Wrecker shall transport such vehicles on the following Monday prior to 10:00 am. Franchise Wrecker will not charge for the 11th day.

- 6.03 A vehicle held for forfeiture action or under a police hold in accordance with Indiana Code will not accumulate fees in excess of One Hundred and Twenty-five Dollars (\$125.00). Should a vehicle in the custody of Franchise Wrecker be released from the forfeiture action or police hold to the legal owner, the vehicle will be released to such owner after the payment of the appropriate storage fees. Should a vehicle that was released from forfeiture action be deemed an abandoned vehicle, Franchise Wrecker will be paid a fee of not more than One Hundred and Twenty-five Dollars (\$125.00) by DPW as provided in part 6.02 of this Agreement. Franchise Wrecker agrees that this charge may be changed or waived by a court of competent jurisdiction.

VII. INSURANCE; LIABILITY; PROPERTY PROTECTION

- 7.01 Prior to the execution of this Agreement, Franchise Wrecker shall file with the City Certificates of Insurance naming the City as an additional insured on all policies of insurance for the following coverage and minimum limits:

<i>Item</i>	<i>Coverage</i>
Worker's Compensation & Disability	Statutory
Employer's Liability	Statutory
Bodily Injury by Accident	\$500,000 (each accident)
Bodily Injury by Disease	\$500,000 (policy limit)
Bodily Injury by Disease	\$100,000 (each employee)
Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000
Comprehensive Auto Liability (Owned, hired & non-owned)	\$500,000 (each employee, each accident)

Bodily injury & property damage (single limit)

Umbrella Excess Liability

\$3,000,000

(occurrence & aggregate)

These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City. Notwithstanding any other provision of this agreement, Franchise Wrecker shall provide all insurance coverage required by the documents provided by City.

- 7.02 Franchise Wrecker shall hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns and shall indemnify the above listed entities and individuals for any and all losses or damages recovered by judgment or compromise resulting to any person or property in any situation from any and all accidents and collisions due to negligence or willfulness in the use or operation of any of the trucks and wreckers used by Franchise Wrecker, as well as to vehicles that are in the care, custody or control of Franchise Wrecker or its authorized agents.
- 7.03 The City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns shall not be liable for any loss or damage that may occur to any vehicle that is removed, towed and/or stored by Franchise Wrecker pursuant to a police department request or order. Franchise Wrecker shall indemnify and hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns from any loss, claim, judgment, settlement or damages arising out of the removal, towing and/or storage of vehicles.
- 7.04 Franchise Wrecker shall have sole responsibility for any articles of personal property that may be contained in any vehicle at the time of its removal and during storage thereof that were not removed by a police officer and taken to the police department property room. Such articles of personal property shall not be held by Franchise Wrecker for any reason but shall be returned to the owner thereof upon showing sufficient identification and proof of ownership.
- 7.04.1 The police officer ordering the removal of a vehicle shall inventory any personal property in plain view, remove all such property and safeguard such property in accordance with IMPD policy.
- 7.04.2 Such items of personal property that are not or cannot be stored by IMPD shall be stored by Franchise Wrecker, and the police officer on the scene or in charge shall furnish a copy of the list of such items to the Franchise Wrecker employee on the scene who shall sign it on behalf of Franchise Wrecker verifying the existence of the items so listed.
- 7.04.3 Owners or operators of impounded vehicles may retrieve items of personal property therefrom prior to obtaining release of the vehicles upon showing proper identification and proof of ownership thereof.

VIII. DRUG TESTING

- 8.01 The City reserves the right to request drug testing/screening at no additional cost to the City for all Franchise Wrecker employees by a certified laboratory of drug testing for each employee. The

report shall identify the drugs/metabolites tested for, whether positive or negative. The report shall also indicate the date and time of specimen collection, the date received by the laboratory and the date and time reported.

- 8.02 The City reserves the right to request additional drug screening for Franchise Wrecker employees for reasonable cause. Any Franchise Wrecker employee that test positive on any drug screen(s) shall be immediately dismissed.
- 8.03 If at any time a change in personnel is made, Franchise Wrecker must provide the designated IMPD representative the information on the new employee(s) before they may begin work.

ARTICLE IX. EMERGENCY CONDITIONS

- 9.01 During any emergency condition or situation as declared by the Mayor and/or the Chief, whereby Franchise Wrecker is unable to expeditiously remove or tow vehicles as a result of such emergency causing serious traffic hazards or jeopardizing public health and safety, the Chief in his or her discretion may authorize any auxiliary wrecker or other towing service to remove such vehicles for a limited time and until the emergency has been declared ended, all without City or Franchise Wrecker violating the provisions or intent of this Agreement; however, IMPD shall first utilize Franchise Wrecker when its wreckers and towing equipment are available for service.
- 9.02 During such emergency situations, special towing arrangements may be made by IMPD, including the alteration in towing fees and contracting for the use of additional wreckers or towing services.

ARTICLE X. TERMINATION OF AGREEMENT

- 10.01 The City may terminate this Agreement without penalty at any time for any violation by Franchise Wrecker of any laws or ordinances pertaining to the provision of towing services under this Agreement, the Invitation to Bid, any other provision of this Agreement, or the commission of any deceitful, fraudulent, criminal, or otherwise unlawful act committed by any owner, officer, representative, employee, agent, or wrecker driver of Franchise Wrecker.
- 10.02 In addition, the City may terminate this Agreement without penalty at any time and for any of the following acts or omissions committed by Franchise Wrecker, its owners, officers, representatives, employees, agents or wrecker drivers:
- (1) Failing in excess of ten (10) times in any period of thirty (30) consecutive days to arrive on the scene within twenty (25) minutes after being summoned;
 - (2) Purposely and intentionally overcharging an owner or operator for towing or storage fees resulting from any police-authorized tow;
 - (3) Purposely and intentionally causing damage to any vehicle towed or impounded pursuant to this Agreement;
 - (4) Offering anything of value, including money, to any police officer for the purpose of improperly procuring a request for tow therefrom;
 - (5) Permitting any unauthorized taking of vehicle parts or attachments, or personal property, other than for security reasons, from a vehicle towed or impounded pursuant

to this Agreement;

- (6) Arriving on the scene of an accident when not authorized to do so;
- (7) Failing to place any towed vehicles inside its storage lot or facility for impoundment or storage purposes under non-emergency conditions;
- (8) Failing to be courteous to members of the public, the Chief, or any police officer;
- (9) Failing to allow vehicles to be taken from storage lot following a property release;
- (10) Failing to maintain storage lot pursuant the requirements of this Agreement;
- (11) Failing to maintain an inventory system of property removed from vehicles for safe keeping;
- (12) Failing to return property removed from a vehicle voluntarily when the vehicle is released; or
- (13) Any other act or omission that is otherwise mentioned herein as being prohibited.

10.03 At any time during the term of this Agreement, Franchise Wrecker may terminate this Agreement by giving written notice thereof to the City at least ninety (90) days prior to the effective date of termination.

10.04 At any time during the term of this Agreement, the City may terminate this Agreement by giving written notice thereof to Franchise Wrecker at least ninety (90) days prior to the effective date of termination.

ARTICLE XI. LIQUIDATED DAMAGES

11.01 A cash performance bond in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Franchise Wrecker to the City upon execution of this Agreement and maintained by the City for the duration of this Agreement. Franchise Wrecker agrees to forfeit Fifty Dollars (\$50.00) to the City for each instance of noncompliance with this Agreement. Noncompliance will be the sole decision of the Chief. IMPD and a police officer have the additional right to call another towing service company immediately upon any incident of noncompliance by Franchise Wrecker, and any expenses incurred as a result of IMPD or a police officer calling another towing service company shall be borne by Franchise Wrecker.

11.02 The parties agree that time is of the essence in this Agreement, and further agree further that Franchise Wrecker's failure to perform its duties under this Agreement in a timely manner damages the City.

11.03 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages, and the Parties agree the amounts below are fair compensation for damages and are not to be considered as penalty:

- (1) For failure of Franchise Wrecker or its agent to arrive at the scene of any occurrence within twenty (25) minutes after being summoned, liquidated damages shall be Twenty-five Dollars (\$25.00) per instance for violations of more than ten (10) instances of failing to arrive within twenty (25) minutes of the request in a thirty (30) day period;

- (2) For failure of Franchise Wrecker to provide accurate vehicle identifying information to the IMPD Auto Desk within two (2) hours of the time the vehicle is removed from the scene of the occurrence, liquidated damages shall be Forty Dollars (\$40.00) (note: vehicle tows from Monument Circle in the IMPD Downtown District shall be called in immediately, or at the earliest possible time);
- (3) For failure of Franchise Wrecker to allow the owner of an impounded vehicle to take possession of the vehicle within one (1) hour after such owner has presented documentation that the vehicle has been released by IMPD and all storage charges have been paid, liquidated damages shall be Fifty Dollars (\$50.00);
- (4) For failure of Franchise Wrecker to clean accident scene, liquidated damages shall be Fifty Dollars (\$50.00);
- (5) For failure of Franchise Wrecker to maintain the operating state of a refrigerator unit while in storage (if initially found operating), liquidated damages shall be the value of the cargo; and
- (6) For failure of proper advertising and conducting auctions for disposal of equipment, liquidated damages shall be the statutory limit.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.01 Franchise Wrecker, its officers, directors, agents, representatives and employees, in the performance of this Agreement, agree not to discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this provision constitutes a material breach of this Agreement.
- 12.02 Franchise Wrecker certifies and warrants that it has the capacity to perform the towing services as required by this Agreement with high standards of performance, safety and reasonable care.
- 12.03 Franchise Wrecker certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees who will participate in any way in the performance of Franchise Wrecker's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City or any of its departments, divisions, agencies, officers, directors, or agents.
- 12.04 Franchise Wrecker agrees that it will not in any way assign, sublet or transfer any interest in or obligation of this Agreement without the prior written consent of the Director of the City Department of Public Safety.
- 12.05 Nothing stated herein shall be construed as creating any personal liability on the part of any officer, director, agent or employee of any public body that may be a party hereto.
- 12.06 This Agreement shall be construed in accordance with the ordinances of Indianapolis, the laws of the State of Indiana, and the laws of the United States.
- 12.07 All notices required and sent pursuant to this Agreement shall be sent in written form to:

For City:

For Franchise Wrecker:

Department of Public Safety
200 E. Washington St., Ste. E224
Indianapolis, Indiana 46204

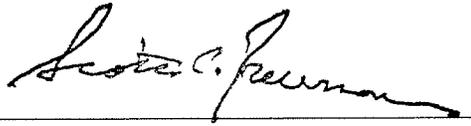
Wheeler's Towing Service, Inc.
2325 W. Michigan St.
Indianapolis, Indiana 46222

- 12.08 This Agreement constitutes the entire understanding and agreement between and among the parties hereto, and supersedes all prior agreements, written or verbal, between City and Franchise Wrecker. It may not be changed, altered, amended, modified or terminated orally. Any such change, alteration, amendment or modification of this Agreement must be in writing executed by the parties hereto, refer to this Agreement, and be executed on a form entitled "Supplemental Franchise Wrecker Contract" approved by all parties hereto.
- 12.09 Notwithstanding anything in this Agreement to the contrary, the signatory for Franchise Wrecker represents that he or she has been duly authorized to execute agreements on behalf of Franchise Wrecker and has obtained all necessary or applicable approval from Franchise Wrecker to make this Agreement fully binding upon Franchise Wrecker when his or her signature is affixed and accepted by the City.

(Signature page to follow.)

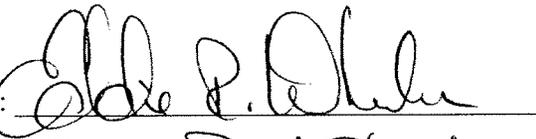
IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

**CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY,
FOR AND ON BEHALF OF THE INDIANAPOLIS METROPOLITAN POLICE
DEPARTMENT ("City")**

By: 
Scott C. Newman
Director

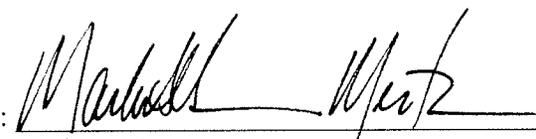
Date: 6/18/09

WHEELER'S TOWING SERVICE, INC. ("Franchise Wrecker")

By: 
Eddie R. Wheeler
Printed
President
Title

Date: 6-22-09

APPROVED AS TO FORM AND LEGALITY:

By: 
Mark A. Mertz
Assistant Corporation Counsel

Date: June 9, 2009

("EXHIBIT A" to follow.)

FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY
AND COOK'S TOWING SERVICE, INC.

This Franchise Wrecker Contract (hereinafter "Agreement"), entered into on the dates indicated below by and between the Indianapolis Department of Public Safety (hereinafter "City") for and on behalf of the Indianapolis Metropolitan Police Department (hereinafter "IMPD") and Cook's Towing Service, Inc., 1439 S. Holt Road, Indianapolis, Indiana 46241 (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, the City, pursuant to Chapter 611, Article II, of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana (hereinafter "Revised Code") issued an "Invitation to Bid for Franchise Wrecker Services" (hereinafter "Invitation to Bid," incorporated herein by reference) for the provision of towing services for IMPD and certain other law enforcement agencies within the City of Indianapolis and Marion County, Indiana; and

WHEREAS, the City received a bid from Franchise Wrecker, and has determined that Franchise Wrecker is capable of providing the required towing services within certain IMPD Districts;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, the parties agree as follows:

ARTICLE I. DEFINITIONS

1.01 As used in this Agreement, the following words and terms shall have the meaning as set forth below.

Abandoned vehicle means all those vehicles as defined by Indiana Code § 9-13-2-1, as the same may be amended from time to time.

Accident means a collision of vehicles or a vehicle and an object on a public street, highway, right-of-way or publicly-owned property.

Chief means the chief of the IMPD, or his or her designee.

Forfeiture means a vehicle held for forfeiture action pursuant to the Indiana Code.

Franchise fee means that certain sum of money, a portion of the base towing fees, that Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid.

Heavy equipment means and includes vehicles over Nine Thousand (9,000) pounds gross vehicle weight rating.

Impound, impoundment, and impounded refer to the act of taking temporary custody of a vehicle and retaining such vehicle in an authorized and secured storage area or facility.

Mile Square means the geographic area bounded by North Street, South Street, East Street, and West Streets in the IMPD Downtown District.

Police officer means any sworn or reserve member of IMPD or the Marion County Sheriff's Department.

Towing services means the lifting, pushing, pulling or removing of vehicles or other personal property by a franchise wrecker from a public street, highway, right-of-way, or other public property when summoned to do so by an IMPD dispatcher or a police officer.

Vehicle means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery including any trailer or other appendage being found or designed to be towed, and shall include, without limitation, "automobile," "truck," "motorcycle," "tractor," "buggy," and "wagon."

ARTICLE II. TERM AND RENEWAL

- 2.01 This Agreement establishes a term contract in compliance with Sections 611-201 to 611-214, inclusive, of the Revised Code of the Consolidated City and County.
- 2.02 The term of the initial Agreement shall commence on execution or 12:01 a.m. on July 1, 2009, whichever last occurs, and shall terminate at 12:01 a.m. on July 1, 2010, unless earlier terminated under the terms and conditions of this Agreement.
- 2.03 This Agreement may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein and may be amended only by written instrument signed by both the City and Franchise Wrecker and attached hereto as an amendment.

ARTICLE III. TOWING SERVICES

- 3.01 During the term of this Agreement, Franchise Wrecker shall provide the following services for IMPD and the Marion County Sheriff's Department: Towing services (other than heavy equipment) within the geographic area of the IMPD Southeast District (hereinafter "Franchise District"). Property or vehicles will be removed to a predetermined location or to an authorized storage lot or facility for the Franchise District.
- 3.02 When summoned by the IMPD dispatcher or a police officer to the scene of a possible tow, Franchise Wrecker shall arrive at such scene within twenty-five (25) minutes from the time it was notified by the dispatcher or officer.
- 3.03 When summoned by the IMPD dispatcher or a police officer to the scene of an accident, Franchise Wrecker shall tow the vehicle to any destination selected by the owner or operator thereof, unless such person is unable to state a location due to injury or arrest, or the owner or operator does not care to state the location to which the vehicle is to be removed. If such disability does exist or the owner or operator of the vehicle does not state a desired destination, Franchise Wrecker shall tow and remove such vehicle to Franchise Wrecker's authorized storage lot or facility or to any other authorized storage facility for the Franchise District.

Franchise Wrecker knows and understands that when an accident occurs, and in the opinion of the investigating police officer on the scene a traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice to remove the vehicle if that wrecker can arrive

- 4.02 For towing services, Franchise Wrecker shall be entitled to receive a portion of the base fees listed in Section 4.01 of this Agreement. Such portion shall be equal to the amount of the base fee(s) less the franchise fee Franchise Wrecker has agreed to pay to City, as provided in Franchise Wrecker's bid, attached hereto and incorporated herein by reference as "Exhibit A." The franchise fee shall be retained by the City for deposit into the IMPD General Fund.
- 4.03 When towing to a destination selected by the owner or operator, Franchise Wrecker may charge the owner or operator a private towing fee.
- 4.04 Franchise Wrecker shall not charge additional fees other than those listed and/or authorized in this Agreement.
- 4.05 No towing fee whatsoever may be charged for a "dry run." A dry run is defined as a situation where Franchise Wrecker is summoned to a scene for a possible tow but is not allowed to tow the involved vehicle because: the lawful owner or operator thereof appeared at the scene before the vehicle was removed; it is discovered that the vehicle is drivable after Franchise Wrecker is summoned; or, for any other valid reason at the discretion of the investigating police officer.

Franchise Wrecker shall release a vehicle cited to be towed for a parking or other municipal or state violation if the owner or operator thereof arrives at the scene prior to the vehicle being actually removed even though it has been attached to, hoisted by, or picked up by Franchise Wrecker's tow truck, except when:

- (1) The vehicle is being towed by order of the Ordinance Violations Bureau because it has been involved in four (4) or more traffic ordinance violations the fines for which have not been paid, presented for compromise payment or slated into court, pursuant to Section 611-203 of the Revised Code of Indianapolis, Indiana;
 - (2) There is a valid reason to impound the vehicle (at the discretion of the investigating police officer); or
 - (3) The towing of the vehicle requires that its front bumper be removed and its air brake system charged, and its owner or operator arrives after this work has been completed.
- 4.06 For vehicles towed and impounded to Franchise Wrecker's storage lot or to any other duly-authorized storage facility for the Franchise District for which there is a police hold, all towing fees shall be paid at the IMPD Auto Desk. All other towing fees for vehicles towed and/or taken to Franchise Wrecker's storage lot that are not subject to impoundment pursuant to a police hold shall be paid at the office of Franchise Wrecker.
- 4.07 Franchise Wrecker agrees to waive or decrease any towing and/or storage fee in the event the Chief requests such a waiver and supplies a reasonable explanation.
- 4.08 The Franchise Wrecker's storage fee for a vehicle towed pursuant to this Agreement (other than heavy equipment) shall be ten dollars (\$10.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot; however, the storage fee for towed heavy equipment shall be twenty five dollars (\$25.00) per calendar day to accrue starting the moment the towed vehicle arrives at Franchise Wrecker's storage lot.

Once a towed and impounded vehicle has been released by IMPD and the proper towing and storage fees have been paid at the IMPD Auto Desk, the owner of such vehicle shall claim and retrieve the vehicle from Franchise Wrecker's storage lot within six (6) hours from the time it is released by IMPD to avoid paying additional storage charges to Franchise Wrecker at the above

on the scene within twenty-five (25) minutes after being summoned. If the investigating police officer determines that no traffic hazard exists, then the owner or operator of a vehicle may select a wrecker of his or her choice without the response time requirement.

- 3.04 Franchise Wrecker shall not proceed to, or arrive at the scene of an accident within the Franchise District for the purposes of attempting to secure a tow without being first summoned to that location by the IMPD dispatcher or a police officer.
- 3.05 When summoned to the scene of an accident, Franchise Wrecker shall clean, sweep up and collect all debris from the street and surrounding public premises caused by the accident. If the tow is not subject to impoundment, Franchise Wrecker may charge an additional fee for this service, per tow, as an accident tow surcharge.
- 3.06 Franchise Wrecker shall use dollies if the vehicle is mechanically disabled to the extent it cannot be towed, if it is the standard method for towing per manufacturer recommendation, or if the investigating police officer on the scene requests the use of dollies at any accident scene.
- 3.07 After a tow is made, Franchise Wrecker shall, within two (2) hours of the time the vehicle is removed from the scene of the occurrence, notify the IMPD Auto Desk of the correct year, make, model, and vehicle identification number of any towed vehicle. Vehicle tows from within the Mile Square shall be called in immediately, or at the earliest possible time and towed to a storage lot centrally located within the downtown area.
- 3.08 Any impounded vehicle shall be held and protected at Franchise Wrecker's authorized storage lot for the appropriate Franchise District or at an IMPD-authorized central storage lot if applicable, until it is either claimed by the owner or otherwise disposed of.
- 3.09 Franchise Wrecker shall be open for operation and provide the services provided in this Agreement on a twenty-four (24) hours per day, seven (7) days per week, basis.
- 3.10 No guaranteed minimum or maximum purchase quantities are either stated or implied. Any listed estimated quantities are based on historical information.

ARTICLE IV. TOWING, RECOVERY AND STORAGE FEES

- 4.01 The base fees to be paid by the owner or operator of a vehicle that has been towed pursuant to this Agreement are hereby established as follows:

towing services (vehicles other than heavy equipment, and other personal property):

- (1) Base towing fees (vehicle): Eighty-five Dollars (\$85.00) per tow;
- (2) Base towing fees (Flat Bed and Roll-Off Towing): Ninety-five Dollars (\$95.00) per tow; and
- (3) Base towing fees (heavy items of personal property other than vehicles): Eighty-five Dollars (\$85.00) per tow (property only).

heavy equipment towing services:

- (1) Base towing fees for heavy equipment: Two Hundred and Seventy-five Dollars (\$275.00) per tow for the first hour, and an additional One Hundred Dollars (\$100.00) per tow for each additional hour.

rate. Such additional storage charge shall be paid at the office of Franchise Wrecker at the time the owner claims the vehicle.

Vehicles towed and held for forfeiture or towed and held on a police hold shall only accumulate fees set for a maximum of One Hundred and Twenty-five Dollars (\$125.00), accumulating at the daily rate to the maximum amount regardless of the length of storage.

- 4.09 All towing fees less the franchise fee, and all storage fees, paid to and collected by the IMPD Auto Desk for tows performed by Franchise Wrecker in the assigned geographic area shall be forwarded to Franchise Wrecker twice monthly by the City controller barring any unforeseen circumstances upon submission of the proper forms to the Ordinance Violations Bureau.

All fees and monies associated with the providing of towing services by Franchise Wrecker for the assigned IMPD districts are to be fully receipted to the owner of the vehicle and reported with copies of such receipts to the Ordinance Violations Bureau.

Franchise Wrecker shall itemize all fees charged, indicating the towing fee plus any storage fee, any heavy equipment charges, and any per mile fees, as applicable.

V. TOWING EQUIPMENT; STORAGE LOTS; PERSONNEL

- 5.01 Franchise Wrecker shall have an adequate number of tow trucks and other towing equipment available at all times to service the districts within the specified response time.

The tow trucks and other equipment shall be equipped with the following: a power-operated winch; ground-and-tow sling that is capable of hoisting; a pulling vehicle; a fire extinguisher plus sufficient equipment (broom, shovel and container) to remove debris from an accident scene; and, each tow truck shall have the capability to dolly vehicles. Franchise Wrecker shall also have two-way radio communication in its towing equipment.

No tow truck, wrecker or other towing equipment shall have a police frequency monitor radio or scanner in it without proper written permission pursuant to Indiana Code § 35-44-3-12 from the Chief.

Franchise Wrecker shall install, monitor and maintain, at its expense, a fax machine and have access to an e-mail address. The fax machine and e-mail address shall be utilized by IMPD and Franchise Wrecker to expedite the delivery and exchange of correspondence necessary to efficiently serve the needs of IMPD and the public.

Franchise Wrecker will have Internet capability and connectivity on a twenty-four (24) hours per day, seven (7) days per week basis and will install and utilize any software necessary to communicate with the IMPD's Auto Desk at Franchise Wrecker's expense.

No towing equipment used by Franchise Wrecker shall use emergency warning lights of any color at any time while in transit, but may use illuminated amber lights when stopped at the scene of an accident or when towing a vehicle at the direction of a police officer.

The name and address of Franchise Wrecker shall be clearly displayed on both sides of all of its tow trucks and other towing equipment.

- 5.02 Franchise Wrecker agrees to make all its trucks, other towing equipment and lot facilities available for inspection at any time upon request and notification by the Chief.

- 5.03 Franchise Wrecker shall have access to and shall maintain an adequate storage lot or facility for the storage and safekeeping of all vehicles towed at the request of the IMPD dispatcher or a police officer. Such lot shall be large enough in area to store the vehicles towed and impounded by Franchise Wrecker within its confines at all times. The lot shall be in compliance with applicable zoning requirements.

The storage lot shall: be adequately enclosed with a secure fence or wall in compliance with all zoning requirements; be adequately drained and level, in compliance with all appropriate zoning laws, classifications and regulations; have a surface of either gravel, black top, concrete, or cinders; and, be free from excessive mud and standing water regardless of weather conditions.

Franchise Wrecker agrees to ensure that its storage lots and offices that are accessible to the public are in compliance with Title III of the Americans with Disabilities Act of 1990. Failure to comply with the Americans with Disabilities Act will be a cause for termination of this Agreement.

The lot shall be open and in operation twenty-four (24) hours each day without exception and shall be staffed with reliable, qualified and bonded personnel authorized to tow vehicles and release them to their rightful owners. An authorized contact person shall be designated for each shift. Contact information for these persons shall be made available to the Ordinance Violations Bureau and IMPD. The Ordinance Violations Bureau and IMPD shall be notified within twelve (12) hours of any changes in the designated contact persons identified or their contact information.

Franchise Wrecker shall provide a safe place on its lot premises for securing items of personal property that are found inside an impounded vehicle towed to its storage lot and shall maintain a procedure for properly identifying such property as belonging to any certain vehicle being stored.

Franchise Wrecker shall make a good faith effort to locate all vehicles towed under this Agreement in the same general location within the lot.

- 5.04 When the IMPD dispatcher or a police officer requests towing services for a vehicle within the Mile Square, the vehicle shall be stored in a storage lot or facility centrally located and within walking distance to the City-County Building, and Franchise Wrecker shall tow such vehicles to that lot or facility for storage. These tows are usually limited to tows initiated in the downtown area.

- 5.05 All Franchise Wrecker personnel (including employees and all employed or contracted wrecker drivers) shall be adequately bonded by Franchise Wrecker.

Franchise Wrecker shall have sufficient number of wrecker drivers, dispatchers and other needed lot personnel and towing equipment either on duty or on immediate call at all times to sufficiently respond to any request from the IMPD dispatcher or a police officer for towing services within the required response time and to release a vehicle to the proper owner or authorized person.

If necessary, Franchise Wrecker shall be required to obtain additional towing capacity necessary to adequately service the IMPD District by subcontracting with any licensed towing service. Franchise Wrecker shall assume liability for compliance by the subcontractor with all of the terms of this agreement.

Franchise Wrecker's personnel shall exercise all diligence and due care in preparing a vehicle for tow and towing such vehicle to prevent property damage thereto.

Franchise Wrecker's personnel shall abide by and obey all traffic laws, ordinances and orders of any law enforcement officer while going to, while at and upon leaving the scene of a summoned tow.

No Franchise Wrecker's personnel, while on duty or towing a vehicle authorized by the IMPD dispatcher or a police officer, shall be under the influence of alcoholic beverage, drug, narcotic, controlled substance or prescribed medicine.

No Franchise Wrecker's personnel shall take money for a tow that should have been paid at the IMPD Auto Desk, nor offer any money to any person or a police officer as an incentive to obtain more tows for Franchise Wrecker.

All Franchise Wreckers' personnel shall make reasonable efforts to be courteous to and cooperative with members of the public who arrive at the lot for the purpose of obtaining a release of their impounded vehicles. Upon the vehicle's owner's request, such personnel shall assist the owner in removing his or her vehicle by changing flat tires or charging dead batteries. Owners may be charged a reasonable fee for these or other services (the amount of which must be receipted to both the owner and the City in the same manner as towing and storage fees are to be receipted).

All Franchise Wrecker personnel shall fully cooperate with the Chief, the City controller or his or her designee, the Ordinance Violations Bureau personnel and the IMPD Auto Desk personnel.

VI. DISPOSAL OF UNCLAIMED VEHICLES

6.01 All vehicles towed and impounded by Franchise Wrecker pursuant to this Agreement and that become abandoned as a result of not being claimed in a timely manner by the owners thereof, shall be disposed of pursuant to applicable state law, city ordinances, provisions stated herein, and procedures established to implement such laws.

6.01.1 The applicable state law provisions for purposes of this agreement are Indiana Code, Art. 9-22, and Chap. 9-29-7.

6.01.2 An impounded vehicle pursuant to this agreement is considered abandoned if it is not claimed or redeemed by the owner or the owner's agent within twenty (20) days of its removal.

6.02 All heavy equipment vehicles towed and impounded pursuant to this Agreement that have not yet been released to their owners and that become abandoned as a result of not being claimed by the owners thereof within the twenty (20) day time period authorized by and pursuant to Indiana Code (not including vehicles held under forfeiture action), shall be disposed of pursuant to applicable laws.

An impounded vehicle shall be held by Franchise Wrecker for at least ten (10) days.

After the impounded vehicle (not including vehicles held for forfeiture, held for police hold or released to their owner) has been held for ten (10) days, Franchise Wrecker shall transport such vehicle and all property taken from such vehicles to the abandoned vehicle lot for secure storage and turned over to the abandoned vehicle section of the Indianapolis Department of Public Works (hereinafter "DPW") for public auction. Franchise Wrecker will receive a fee of One Hundred and Twenty-five Dollars (\$125.00) per vehicles for its services. Franchise Wrecker will not be entitled to any other fees; this includes the original towing fee, ten (10) days storage fee, and fee for transporting the abandoned vehicle to the abandoned vehicle storage lot.

Note: if the 10th day falls on a Sunday, Franchise Wrecker shall transport such vehicles on the following Monday prior to 10:00 am. Franchise Wrecker will not charge for the 11th day.

- 6.03 A vehicle held for forfeiture action or under a police hold in accordance with Indiana Code will not accumulate fees in excess of One Hundred and Twenty-five Dollars (\$125.00). Should a vehicle in the custody of Franchise Wrecker be released from the forfeiture action or police hold to the legal owner, the vehicle will be released to such owner after the payment of the appropriate storage fees. Should a vehicle that was released from forfeiture action be deemed an abandoned vehicle, Franchise Wrecker will be paid a fee of not more than One Hundred and Twenty-five Dollars (\$125.00) by DPW as provided in part 6.02 of this Agreement. Franchise Wrecker agrees that this charge may be changed or waived by a court of competent jurisdiction.

VII. INSURANCE; LIABILITY; PROPERTY PROTECTION

- 7.01 Prior to the execution of this Agreement, Franchise Wrecker shall file with the City Certificates of Insurance naming the City as an additional insured on all policies of insurance for the following coverage and minimum limits:

<i>Item</i>	<i>Coverage</i>
Worker's Compensation & Disability	Statutory
Employer's Liability	Statutory
Bodily Injury by Accident	\$500,000 (each accident)
Bodily Injury by Disease	\$500,000 (policy limit)
Bodily Injury by Disease	\$100,000 (each employee)
Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$5,000
Comprehensive Auto Liability (Owned, hired & non-owned)	\$500,000 (each employee, each accident)
Bodily injury & property damage (single limit)	
Umbrella Excess Liability	\$3,000,000 (occurrence & aggregate)

These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City. Notwithstanding any other provision of this agreement, Franchise Wrecker shall provide all insurance coverage required by the documents provided by City.

- 7.02 Franchise Wrecker shall hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns and shall indemnify the above listed entities and individuals for any and all losses or damages recovered by judgment or compromise resulting to any person or property in any situation from any and all accidents and collisions due to negligence or willfulness in the use or operation of any of the trucks and wreckers used by Franchise Wrecker, as well as to vehicles that are in the care, custody or control of Franchise Wrecker or its authorized agents.
- 7.03 The City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns shall not be liable for any loss or damage that may occur to any vehicle that is removed, towed and/or stored by Franchise Wrecker pursuant to a police department request or order. Franchise Wrecker shall indemnify and hold harmless the City of Indianapolis, IMPD, the Marion County Sheriff, the Marion County Sheriff's Department, and each of their departments, divisions, employees, officers, agents, designees, and assigns from any loss, claim, judgment, settlement or damages arising out of the removal, towing and/or storage of vehicles.
- 7.04 Franchise Wrecker shall have sole responsibility for any articles of personal property that may be contained in any vehicle at the time of its removal and during storage thereof that were not removed by a police officer and taken to the police department property room. Such articles of personal property shall not be held by Franchise Wrecker for any reason but shall be returned to the owner thereof upon showing sufficient identification and proof of ownership.
- 7.04.1 The police officer ordering the removal of a vehicle shall inventory any personal property in plain view, remove all such property and safeguard such property in accordance with IMPD policy.
- 7.04.2 Such items of personal property that are not or cannot be stored by IMPD shall be stored by Franchise Wrecker, and the police officer on the scene or in charge shall furnish a copy of the list of such items to the Franchise Wrecker employee on the scene who shall sign it on behalf of Franchise Wrecker verifying the existence of the items so listed.
- 7.04.3 Owners or operators of impounded vehicles may retrieve items of personal property therefrom prior to obtaining release of the vehicles upon showing proper identification and proof of ownership thereof.

VIII. DRUG TESTING

- 8.01 The City reserves the right to request drug testing/screening at no additional cost to the City for all Franchise Wrecker employees by a certified laboratory of drug testing for each employee. The report shall identify the drugs/metabolites tested for, whether positive or negative. The report shall also indicate the date and time of specimen collection, the date received by the laboratory and the date and time reported.
- 8.02 The City reserves the right to request additional drug screening for Franchise Wrecker employees for reasonable cause. Any Franchise Wrecker employee that test positive on any drug screen(s) shall be immediately dismissed.
- 8.03 If at any time a change in personnel is made, Franchise Wrecker must provide the designated IMPD representative the information on the new employee(s) before they may begin work.

ARTICLE IX. EMERGENCY CONDITIONS

- 9.01 During any emergency condition or situation as declared by the Mayor and/or the Chief, whereby Franchise Wrecker is unable to expeditiously remove or tow vehicles as a result of such emergency causing serious traffic hazards or jeopardizing public health and safety, the Chief in his or her discretion may authorize any auxiliary wrecker or other towing service to remove such vehicles for a limited time and until the emergency has been declared ended, all without City or Franchise Wrecker violating the provisions or intent of this Agreement; however, IMPD shall first utilize Franchise Wrecker when its wreckers and towing equipment are available for service.
- 9.02 During such emergency situations, special towing arrangements may be made by IMPD, including the alteration in towing fees and contracting for the use of additional wreckers or towing services.

ARTICLE X. TERMINATION OF AGREEMENT

- 10.01 The City may terminate this Agreement without penalty at any time for any violation by Franchise Wrecker of any laws or ordinances pertaining to the provision of towing services under this Agreement, the Invitation to Bid, any other provision of this Agreement, or the commission of any deceitful, fraudulent, criminal, or otherwise unlawful act committed by any owner, officer, representative, employee, agent, or wrecker driver of Franchise Wrecker.
- 10.02 In addition, the City may terminate this Agreement without penalty at any time and for any of the following acts or omissions committed by Franchise Wrecker, its owners, officers, representatives, employees, agents or wrecker drivers:
- (1) Failing in excess of ten (10) times in any period of thirty (30) consecutive days to arrive on the scene within twenty (25) minutes after being summoned;
 - (2) Purposely and intentionally overcharging an owner or operator for towing or storage fees resulting from any police-authorized tow;
 - (3) Purposely and intentionally causing damage to any vehicle towed or impounded pursuant to this Agreement;
 - (4) Offering anything of value, including money, to any police officer for the purpose of improperly procuring a request for tow therefrom;
 - (5) Permitting any unauthorized taking of vehicle parts or attachments, or personal property, other than for security reasons, from a vehicle towed or impounded pursuant to this Agreement;
 - (6) Arriving on the scene of an accident when not authorized to do so;
 - (7) Failing to place any towed vehicles inside its storage lot or facility for impoundment or storage purposes under non-emergency conditions;
 - (8) Failing to be courteous to members of the public, the Chief, or any police officer;
 - (9) Failing to allow vehicles to be taken from storage lot following a property release;
 - (10) Failing to maintain storage lot pursuant the requirements of this Agreement;

- (11) Failing to maintain an inventory system of property removed from vehicles for safe keeping;
 - (12) Failing to return property removed from a vehicle voluntarily when the vehicle is released; or
 - (13) Any other act or omission that is otherwise mentioned herein as being prohibited.
- 10.03 At any time during the term of this Agreement, Franchise Wrecker may terminate this Agreement by giving written notice thereof to the City at least ninety (90) days prior to the effective date of termination.
- 10.04 At any time during the term of this Agreement, the City may terminate this Agreement by giving written notice thereof to Franchise Wrecker at least ninety (90) days prior to the effective date of termination.

ARTICLE XI. LIQUIDATED DAMAGES

- 11.01 A cash performance bond in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Franchise Wrecker to the City upon execution of this Agreement and maintained by the City for the duration of this Agreement. Franchise Wrecker agrees to forfeit Fifty Dollars (\$50.00) to the City for each instance of noncompliance with this Agreement. Noncompliance will be the sole decision of the Chief. IMPD and a police officer have the additional right to call another towing service company immediately upon any incident of noncompliance by Franchise Wrecker, and any expenses incurred as a result of IMPD or a police officer calling another towing service company shall be borne by Franchise Wrecker.
- 11.02 The parties agree that time is of the essence in this Agreement, and further agree further that Franchise Wrecker's failure to perform its duties under this Agreement in a timely manner damages the City.
- 11.03 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages, and the Parties agree the amounts below are fair compensation for damages and are not to be considered as penalty:
- (1) For failure of Franchise Wrecker or its agent to arrive at the scene of any occurrence within twenty (25) minutes after being summoned, liquidated damages shall be Twenty-five Dollars (\$25.00) per instance for violations of more than ten (10) instances of failing to arrive within twenty (25) minutes of the request in a thirty (30) day period;
 - (2) For failure of Franchise Wrecker to provide accurate vehicle identifying information to the IMPD Auto Desk within two (2) hours of the time the vehicle is removed from the scene of the occurrence, liquidated damages shall be Forty Dollars (\$40.00) (note: vehicle tows from Monument Circle in the IMPD Downtown District shall be called in immediately, or at the earliest possible time);
 - (3) For failure of Franchise Wrecker to allow the owner of an impounded vehicle to take possession of the vehicle within one (1) hour after such owner has presented documentation that the vehicle has been released by IMPD and all storage charges have been paid, liquidated damages shall be Fifty Dollars (\$50.00);
 - (4) For failure of Franchise Wrecker to clean accident scene, liquidated damages shall be Fifty Dollars (\$50.00);

- (5) For failure of Franchise Wrecker to maintain the operating state of a refrigerator unit while in storage (if initially found operating), liquidated damages shall be the value of the cargo; and
- (6) For failure of proper advertising and conducting auctions for disposal of equipment, liquidated damages shall be the statutory limit.

ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.01 Franchise Wrecker, its officers, directors, agents, representatives and employees, in the performance of this Agreement, agree not to discriminate against any employee or applicant for employment with respect to his or her hire, tenure, terms, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this provision constitutes a material breach of this Agreement.
- 12.02 Franchise Wrecker certifies and warrants that it has the capacity to perform the towing services as required by this Agreement with high standards of performance, safety and reasonable care.
- 12.03 Franchise Wrecker certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees who will participate in any way in the performance of Franchise Wrecker's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City or any of its departments, divisions, agencies, officers, directors, or agents.
- 12.04 Franchise Wrecker agrees that it will not in any way assign, sublet or transfer any interest in or obligation of this Agreement without the prior written consent of the Director of the City Department of Public Safety.
- 12.05 Nothing stated herein shall be construed as creating any personal liability on the part of any officer, director, agent or employee of any public body that may be a party hereto.
- 12.06 This Agreement shall be construed in accordance with the ordinances of Indianapolis, the laws of the State of Indiana, and the laws of the United States.
- 12.07 All notices required and sent pursuant to this Agreement shall be sent in written form to:

For City:

Department of Public Safety
 200 E. Washington St., Ste. E224
 Indianapolis, Indiana 46204

For Franchise Wrecker:

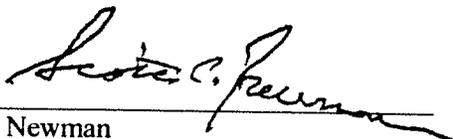
Cook's Towing Service, Inc.
 1439 S. Holt Road
 Indianapolis, Indiana 46241

- 12.08 This Agreement constitutes the entire understanding and agreement between and among the parties hereto, and supersedes all prior agreements, written or verbal, between City and Franchise Wrecker. It may not be changed, altered, amended, modified or terminated orally. Any such change, alteration, amendment or modification of this Agreement must be in writing executed by the parties hereto, refer to this Agreement, and be executed on a form entitled "Supplemental Franchise Wrecker Contract" approved by all parties hereto.
- 12.09 Notwithstanding anything in this Agreement to the contrary, the signatory for Franchise Wrecker represents that he or she has been duly authorized to execute agreements on behalf of Franchise Wrecker and has obtained all necessary or applicable approval from Franchise Wrecker to make

this Agreement fully binding upon Franchise Wrecker when his or her signature is affixed and accepted by the City.

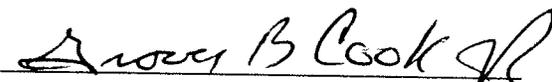
IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

**CITY OF INDIANAPOLIS DEPARTMENT OF PUBLIC SAFETY,
FOR AND ON BEHALF OF THE INDIANAPOLIS METROPOLITAN POLICE
DEPARTMENT ("City")**

By: 
Scott C. Newman
Director

Date: 6/18/09

COOK'S TOWING SERVICE, INC. ("Franchise Wrecker")

By: 
Grover B. Cook Jr.
Printed
President
Title

Date: 6-22-09

APPROVED AS TO FORM AND LEGALITY:

By: 
Mark A. Mertz
Assistant Corporation Counsel

Date: June 9, 2009

("EXHIBIT A" to follow.)

**SUPPLEMENTAL FRANCHISE WRECKER CONTRACT
BETWEEN
INDIANAPOLIS METROPOLITAN POLICE DEPARTMENT
AND INTERSTATE TOWING SERVICE, INC.**

This Supplemental Franchise Wrecker Contract (hereinafter "Second Amendment"), entered into on the dates indicated below by and between the Indianapolis Metropolitan Police Department (hereinafter "IMPD") for and on behalf of the IMPD, the Marion County Sheriff's Department - Special Deputies Unit and all other former units of the Marion County Sheriff's Department (hereinafter "MCSD") and the Indianapolis Police Department (hereinafter "IPD"), and Interstate Towing Service, Inc., 301 South Kitley Avenue, Indianapolis, Indiana (hereinafter "Franchise Wrecker"),

WITNESSETH THAT:

WHEREAS, IMPD and Franchise Wrecker entered into a Contract For Franchise Heavy Wrecker Service dated as of December 8, 2006 ("Agreement"), the term of which has not expired; and

WHEREAS, IMPD now desires to extend the term of such Agreement, and Franchise Wrecker agrees to continue to provide such heavy vehicle towing services beyond the original termination date of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises, representations, and covenants herein contained, and pursuant to the authority granted by Section 10.8 of the Agreement, IMPD and Franchise Wrecker hereby agree as follows:

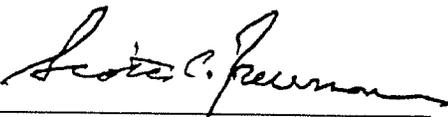
1. SECTION 2.1 of the Agreement shall be and hereby is amended to read as follows:

Section 2.1. The Franchise Wrecker shall, pursuant to this Agreement, provide heavy vehicle towing services for the IMPD North and Downtown Districts commencing on January 1, 2009 for a period of approximately six (6) months from such date to the end of June 30, 2009, or upon the award and commencement of performance of contracts with newly selected tow vendors under a subsequent bid process, whichever occurs first, unless earlier terminated under the terms and conditions of this Agreement.

2. All terms and conditions of the Agreement not amended by this Second Amendment remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Franchise Wrecker Contract on the dates indicated below.

INDIANAPOLIS METROPOLITAN POLICE DEPARTMENT ("IMPD")

By: 

Scott C. Newman, Director
Indianapolis Department of Public Safety

Date: 12-30-08

By:  Date: 12/31/08
Frank J. Anderson, Sheriff

INTERSTATE TOWING SERVICE, INC. ("Franchise Wrecker")

By:  Date: 12 31 . 08
BRIAN R MEYER
Printed
General Manager
Title

APPROVED AS TO FORM AND LEGALITY:

By:  Date: December 30, 2008
Mark A. Mertz
Assistant Corporation Counsel

OPERATING AGREEMENT
BETWEEN
DEPARTMENT OF PUBLIC WORKS
AND
LAST CHANCE TOWING & SALES INC.
FOR THE OPERATION OF THE
ABANDONED VEHICLES PROGRAM

THIS AGREEMENT, executed by and between the City of Indianapolis, Department of Public Works (hereafter CITY) and Last Chance Towing & Sales, Inc. (hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, CITY desires to enter into a public-private agreement under IC 5-23-1-1 et seq. for the operation of the Abandoned Vehicles Program; and

WHEREAS, CITY issued an RFP and received proposals as required by IC 5-23-5-2; and

WHEREAS, CITY has evaluated the proposals, conducted interviews, and has determined that CONTRACTOR is the vendor best qualified to perform such work; and

WHEREAS, CITY conducted a public hearing as required under IC 5-23-5-9 and awarded the public-private operating agreement to CONTRACTOR;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1. DEFINITIONS

1.01 "Abandoned Vehicle", as defined in IC 9-13-2-1, shall mean:

- (1) A Vehicle located on public property illegally;
- (2) A Vehicle left on public property without being moved for three (3) days;
- (3) A Vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way;
- (4) A Vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours;

- (5) A Vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property;
 - (6) A Vehicle that has been removed by a towing service or public agency upon request of an officer enforcing a statute or an ordinance other than the abandoned vehicle law if the impounded Vehicle is not claimed or redeemed by the Owner or the Owner's agent within twenty (20) days after the Vehicle's removal; or
 - (7) A Vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days.
- 1.02 "Business Day" shall be defined as every day that is not a legal holiday as set by ordinance.
 - 1.03 "Director" shall be defined as the Director of the Department of Public Works or a designee.
 - 1.04 "Gross Revenues" shall be defined as all proceeds from the sale, disposal, storage, towing and redemption of Vehicles under this Agreement. Gross revenues shall also include all buyer fees and key fees received.
 - 1.05 "Adjusted Gross Revenues" shall be defined as Gross Revenues following a reduction for Impound Fees and a reduction for the Sale Proceeds of Minimum Value Impound Vehicles.
 - 1.06 "Impound Fees" shall be defined as the funds paid by the City to a Towing Contract Vendor for storage and towing expense. Impound Fees currently total \$135.00 which includes a \$55.00 tow fee and an \$80.00 storage fee. The Impound Fees do not include extra storage days which exceed the required 10 days.
 - 1.07 "Sale Proceeds of Minimum Value Impound Vehicles" shall be defined as the funds received from the sale or disposal of a vehicle which vehicle incurred Impound Fees but which disposal or sale price did not exceed the Impound Fees.
 - 1.08 "City Waived Fees" shall be defined to included any fee waived by the City without specific reason related to fault of CONTRACTOR and fees waived by the City relative to stolen vehicles in which the CONTRACTOR followed appropriate procedures as established by Article 3.

- 1.09 "Facility" shall be defined as building and storage lot used for the Abandoned Vehicles Program including the adjacent lot.
- 1.10 "Force Majeure" shall be defined as an event beyond the reasonable control of CONTRACTOR, including but not limited to acts of God and acts of war.
- 1.11 "Earned Royalties" shall be defined as an amount equal to the Franchise Fee multiplied by the Adjusted Gross Revenues.
- 1.12 "Franchise Fee" shall be defined by the following graduated scale:
- | | |
|--|-------|
| Annual Gross Revenues under 1.3 million, | - 16% |
| Annual Gross Revenues between 1.3 and 1.5 million, | - 17% |
| Annual Gross Revenues over 1.5 million | - 18% |
- 1.13 "Mayor's Action Center (MAC)" shall be defined as the community liaison office for the Department of Public Works.
- 1.14 "Officer" shall be defined as an individual designated by CONTRACTOR to act as an officer as that term is used throughout IC 9-22-1-1 et. seq.
- 1.15 "Owner", as defined in IC 9-13-2-121, means the last known titleholder of a Vehicle according to the records of the Indiana Bureau of Motor Vehicles under IC 9-17.
- 1.16 "Parts", as defined in IC 9-13-2-122, shall mean all components of a Vehicle that as assembled do not constitute a complete Vehicle.
- 1.17 "Vehicle", as defined in IC 9-13-2-196(d), shall mean an automobile, a motorcycle, a truck, a trailer, a semitrailer, a tractor, a bus, a school bus, a recreational vehicle, or a motorized bicycle.

ARTICLE 2. TERM

- 2.01 This Agreement shall be effective from the date of execution by all required signatories. CONTRACTOR shall provide services required under ARTICLE 3 beginning November 23, 1998 for four (4) years.

ARTICLE 3. SERVICES

- 3.01 CONTRACTOR shall manage all phases of CITY'S Abandoned Vehicles Program for the tagging, towing, storage and disposal of Abandoned Vehicles and Parts in accordance with

IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana. To the extent that provisions of this Agreement exceed the minimal procedures set forth in IC 9-22-1-1 et. seq., the provisions of this Agreement shall apply.

- 3.02 CONTRACTOR shall investigate all complaints received by 5:00 p.m. within two (2) Business Days after receipt of notice from MAC to determine whether a Vehicle or Parts reported as abandoned constitutes an Abandoned Vehicle. CONTRACTOR's obligation to investigate begins with the business day following the date the complaint was received. CONTRACTOR shall refer Vehicles that meet the definition specified in Article 1.01(7) to CITY'S zoning section of DCAM Permits for processing
- 3.03 CONTRACTOR shall cooperate with CITY in certain projects to clear defined areas of Abandoned Vehicles (hereinafter "sweeps"). CONTRACTOR shall be allowed an additional Business Day for tagging under Article 3.02 and for towing under Article 3.06 for every thirty (30) Vehicles processed during sweeps.
- 3.04 CONTRACTOR shall make a reasonable effort to ascertain the person who owns the Vehicle or Parts believed to be abandoned before attaching the notice tag to the Vehicle.
- 3.05 CONTRACTOR shall attach in a prominent place to the Vehicle believed to be abandoned a notice tag containing the following information:
- (A) The date, time, Officer's name, public agency, and address and telephone number to contact for information;
 - (B) That the Vehicle is considered abandoned;
 - (C) The specific provision of IC 9-13-12-1 the Officer believes to be applicable;
 - (D) That the Vehicle will be removed after seventy-two (72) hours;
 - (E) That the person who owns the Vehicle will be held responsible for all costs incidental to the removal, storage, and disposal; and
 - (F) That the person who owns the Vehicle may avoid costs by removal of the Vehicle within seventy-two (72) hours.

CONTRACTOR shall submit a form of a notice tag to CITY for CITY'S prior approval in writing. CONTRACTOR shall note the

Vehicle identification number, if possible, for each Vehicle and shall fax such information daily to Indianapolis Police Department (hereinafter "IPD") Auto Desk for a preliminary stolen vehicle check.

- 3.06 CONTRACTOR shall reinspect all tagged Vehicles, no sooner than seventy-two (72) hours of tagging. CONTRACTOR shall tow Abandoned Vehicles as soon as possible after reinspection, but no more than seven (7) Business Days after receipt of notice of complaint from MAC. CONTRACTOR shall prepare each Business Day a list of all Abandoned Vehicles that have been towed to Facility and fax such list to DPW no later than 10:00 a.m. the following Business Day.
- 3.07 CONTRACTOR shall prepare a Report for every tagged Vehicle towed to the Facility. The Report shall include information on the condition of the Abandoned Vehicle, missing parts, and any other facts that may substantiate the estimated market value. CONTRACTOR shall estimate the market value of each Abandoned Vehicle towed to the Facility at either above or below \$100 and note such value on the Report. CONTRACTOR shall use reasonable care to preserve the value of the Vehicles stored at the Facility. CONTRACTOR shall work with the IPD Auto Desk to design a procedure to notify the IPD Auto Desk of vehicles towed on a daily basis.
- 3.08 Within three (3) Business Days after an Abandoned Vehicle is towed to the Facility, CONTRACTOR shall prepare and forward to the Indiana Bureau of Motor Vehicles through IPD an Abandoned Vehicle Report, containing a description of the Vehicle, including the make, model, identification number, and license plate number.
- 3.09 Within three (3) Business Days after an Abandoned Vehicle is towed to the Facility, CONTRACTOR shall contact the Indiana Bureau of Motor Vehicles through IPD to acquire the name and most recent address of the person who owns and/or holds a lien on the Vehicle. CONTRACTOR shall contact a designated representative from IPD to determine whether an Abandoned Vehicle has been reported as stolen. CITY agrees to use its best efforts to secure direct access to the BMV, for no cost or a reduced cost, for the benefit of the CONTRACTOR.
- 3.10 Upon receipt of the information from IPD, CONTRACTOR shall send a written notice, by first class mail to the Owner and to each lienholder, at the addresses provided by the BMV through IPD. Such notice shall state that the Abandoned Vehicle has been impounded at the Facility, that it must be removed within fifteen (15) days of the date notice was mailed by paying all accrued towing and storage costs, and that if it is not removed within fifteen (15) days, then it will be disposed of after that time. CONTRACTOR shall

submit a form of a notice to CITY for CITY'S prior approval in writing.

If CONTRACTOR cannot determine the Owner or lienholder of a Vehicle because the condition of the Vehicle makes the identification impossible, then CONTRACTOR may dispose of the Vehicle without further notice, at any time, according to Article 3.11 or Article 3.12.

CONTRACTOR shall release Abandoned Vehicles to an Owner or lienholder who claims the Vehicle within the notice period and pays all storage and towing fees due under Section 29-391 of the Code of Indianapolis and Marion County, Indiana.

- 3.11 If the Owner or lienholder fails to remove the Abandoned Vehicle from the Facility within fifteen (15) days of the mailing date of notice under Article 3.10, the CONTRACTOR may dispose of Abandoned Vehicles with an estimated market value of less than one hundred dollars (\$100.00) at a properly licensed and zoned automobile scrap yard, as defined in IC 9-13-2-8, or may dispose of the Vehicles according to Article 3.12.
- 3.12 If the Owner or lienholder fails to remove from the Facility an Abandoned Vehicle with an estimated market value of \$100 or more within fifteen (15) days of the mailing date of the notice under Article 3.10, the CONTRACTOR shall sell such Vehicle to the highest bidder at a public sale. CONTRACTOR shall comply with the notice requirements of IC-5-3-1, except that only one (1) newspaper insertion one (1) week before the public sale is required. CONTRACTOR shall submit the format of public notice to CITY for prior approval in writing. CONTRACTOR shall comply with Regulation XI of the Indianapolis Air Pollution Control Board by inspecting the tampering those Vehicles to be sold at retail at the public sale.
- CONTRACTOR shall recheck whether any Abandoned Vehicle scheduled to be sold at a public sale has been reported to be stolen by faxing to IPD a list of all Vehicles scheduled for public sale no less than three (3) Business Days prior to the sale. CITY may demand the removal of any Vehicle from public sale at any time at its sole discretion.
- 3.13 Every Business Day, CONTRACTOR shall receive a list from IPD of Vehicles which have been stored at the franchise towing lots for ten (10) days. CONTRACTOR shall tow such Vehicles from the franchise towing lot to the Facility. CONTRACTOR shall hold such Vehicles for ten (10) additional days. CONTRACTOR may elect to tow on the ninth (9th) day those Vehicles that will have been stored for ten (10) days when the tenth (10th) day will fall on a Sunday. CONTRACTOR

shall hold these Vehicles for eleven (11) additional days. On the twentieth (20th) day after Vehicles were first stored at the franchise towing lots, CONTRACTOR shall follow the procedures specified in Articles 3.07 through 3.12 for processing the Vehicles.

CONTRACTOR shall be responsible for storage fees accrued for the first ten (10) days of storage, with the exception of Vehicles released on the ninth (9th) day, and towing fees due under the franchise towing contract. CONTRACTOR shall be responsible for any additional storage fees accruing after CONTRACTOR receives the list of Vehicles ready to be towed. Such amounts shall be paid by CITY to the franchise towing agency, but shall be deducted from CONTRACTOR'S revenues in accordance with Article 6.02. CONTRACTOR shall not be responsible for excess storage fees on Vehicles not made available by the franchise lots.

CONTRACTOR shall receive "red tags" from IPD, representing Vehicles IPD has determined to be abandoned and which have been tagged by IPD. CONTRACTOR shall follow the procedures specified in Articles 3.06 through 3.12 for processing these Vehicles. In addition, CONTRACTOR shall notify IPD daily of "red tag" Vehicles that were moved before reinspection.

- 3.14 CONTRACTOR and CITY agree that if the Impound Fees increase from the current rate of \$135.00, the CONTRACTOR has the right to reopen contract negotiations.
- 3.15 CONTRACTOR shall obtain and retain adequate documentation to demonstrate compliance with IC 9-13-2-1, IC 9-22-1-1 et. seq. and Revised Code Sections 611-301 through 307. CONTRACTOR shall be responsible for forwarding all reports required by law to any other governmental agency, including the Indiana Bureau of Motor Vehicles. CONTRACTOR shall allow inspection and copying by the public of those records directly related to this Agreement in compliance with IC 5-23-7 and IC 5-14-3.
- 3.16 CONTRACTOR shall provide reasonable accommodations at the Facility for use by CITY for the purpose of administration of this Agreement, including read-only access for CONTRACTOR'S computer system.
- 3.17 CONTRACTOR and CITY shall cooperate in an effort to implement a common computer system, which will track a Vehicle from complaint to disposition. The parties shall cooperate in an effort to interface existing computer systems until a common system is developed.
- 3.18 CONTRACTOR shall prepare daily and deliver to CITY, via facsimile or computer, by 10:00 a.m. the following Business

Day a report detailing Facility activity, including a problem tracking number, date complaint is received by CONTRACTOR, location of the Vehicle, tag number, date tagged, date reinspected, date towed, date reclaimed, Vehicle code, make and model.

CONTRACTOR shall prepare weekly and deliver to CITY on the first Business Day of the following week an inflow report, which shall list the Vehicles received at the Facility, and a disposition report, which shall include a listing of Vehicles sold at public sale, Vehicles reclaimed by Owner, Vehicles held by IPD or Indianapolis Fire Department order, and Vehicles that have appeared on CONTRACTOR'S sale list but were not sold at public sale and the reason why the Vehicle has not been sold.

CONTRACTOR and CITY shall cooperate in refining the reporting requirements of this Article to meet the needs of the CITY in administrating and evaluating the Abandoned Vehicle program.

- 3.19 CONTRACTOR shall operate the Abandoned Vehicle program with bonded employees.
- 3.20 CONTRACTOR shall make its best efforts to deal with the current backlog of complaints registered with the MAC at the time this Operating Agreement becomes effective. CITY agrees that CONTRACTOR shall not be responsible for backlog complaints pre-dating October 1, 1998.
- 3.21 The CITY and CONTRACTOR agree that the operating procedures set forth in the Agreement involve the cooperation of parties other than the CITY and the CONTRACTOR and that as a result, the operating procedures may require adjustment in order to secure the cooperation of other necessary parties. The CITY and the CONTRACTOR agree to use their best efforts to comply with the operating procedures as outlined and to further cooperate in adjusting those procedures when necessary.

ARTICLE 4. CITY RESPONSIBILITIES

- 4.01 CITY grants to CONTRACTOR for the term of this Agreement a revocable right and privilege to use the Facility and Equipment solely for the purpose of performing services for CITY under this Agreement and not in the performance of services for any other person or entity. This right and privilege is revocable only upon CONTRACTOR'S breach of this Agreement. CONTRACTOR agrees to pay an annual license fee of \$1.00 for the use of the Facility and Equipment.

CONTRACTOR shall reimburse CITY for all utility expense related to the Facility which have been paid by CITY. CONTRACTOR shall be responsible for the security of the Facility and shall lease, install and maintain an electric fence inside the existing fencing around the Facility. CONTRACTOR agrees to keep the Facility in good order, including maintaining the grounds and keeping the fenced perimeter free of debris. CITY represents and warrants that the Facility is in good order. CONTRACTOR agrees that repairs to and maintenance of the Equipment and Facility shall be at CONTRACTOR'S expense. CONTRACTOR agrees to assume all construction costs for modifications to the Facility desired by CONTRACTOR. All such modifications shall be approved, in writing, in advance by CITY.

CITY agrees to use its best efforts to assist CONTRACTOR in the disposal of trash in extreme cases.

CITY agrees to make available to the CONTRACTOR an overflow area which the CONTRACTOR will be entitled to use for a limited period of time for the purpose of handling initial backlog issues related to the transition of the Operating Agreement to the new CONTRACTOR.

CONTRACTOR agrees to complete development of the lot adjacent to the current Facility by the end of the 2nd year of the Operating Agreement (November 23, 2000). CONTRACTOR shall secure written approval from the CITY prior to beginning the development project by submitting a written proposal to CITY. CONTRACTOR will be responsible for securing all permits necessary for the development project. CITY will waive and/or pay all permit costs.

CITY agrees to reimburse CONTRACTOR the full cost of development of the adjacent lot if the Operating Agreement is terminated during development of the lot or within three weeks after completion. If the Operating Agreement is terminated at any time thereafter, the CITY will reimburse the CONTRACTOR a pro-rated amount of the cost of development, determined by calculating the total cost of development divided by the number of days remaining on the Operating Agreement on the day the project was completed ("Value" of the development). The CITY will then reimburse the CONTRACTOR for the amount equal to the number of days left on the Operating Agreement, multiplied by the "Value" of each day.

- 4.02 CITY will, on demand, defend, indemnify and hold harmless CONTRACTOR, and its directors, officers, employees, attorneys, affiliates, successors and assigns, for any and all claims, actions, causes of action, judgments, liabilities, damages, losses and expenses arising out of or

in any way connected with any and all "hazardous materials" at, on, under, or emanating from the Facility; provided, however, that such indemnity shall not apply to "hazardous materials" that the CITY and CONTRACTOR agree were released to the environment at or on the Facility solely by CONTRACTOR in a manner inconsistent with the normal mode of operating a facility similar to the Facility. For purposes of this section, CITY's indemnity shall not apply to "hazardous materials" that are released or threatened to be released to the environment from any above ground storage tank installed by the CONTRACTOR. For purposes of this section, "hazardous materials" shall mean any substance, regardless of physical form, that is subject to any past or present federal, state, or local governmental statute, requirement, rule of liability, standard of conduct, or common law relating to the protection of human health, human safety or the environment. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith.

- 4.03 CITY shall designate a representative to act as a liaison between CITY and CONTRACTOR.
- 4.04 CITY does not guarantee any minimum or maximum number of Vehicles to be processed under this Agreement.
- 4.05 CITY warrants that the Facility will be covered by CITY'S Belmont stormwater drainage permit to the extent required by law. CITY shall obtain all other permits and licenses necessary to operate the Facility that CONTRACTOR is unable to obtain due to its status as a licensee.

ARTICLE 5. LIQUIDATED DAMAGES

- 5.01 The parties agree that time is of the essence in this Agreement. The parties agree further that CONTRACTOR'S failure to perform its duties under this Agreement in a timely manner damages CITY.
- 5.02 The following acts or omissions shall be considered a breach of this Agreement and subject to the following liquidated damages:
 - A. Failure to investigate complaint and if determined to be an Abandoned Vehicle, to tag Vehicle within two (2) Business Days of notification by MAC - \$10 per Abandoned Vehicle.
 - B. Failure to tow an Abandoned Vehicle as specified in Article 3.06 - \$50 per Abandoned Vehicle.

- 5.03 The amounts set out in Article 5.02 represent CITY'S damages above and beyond compensation or payments owned to CONTRACTOR for services rendered pursuant to Article 3. Therefore, CITY may withhold compensation for services not rendered in addition to collecting liquidated damages. In addition, CITY may withhold liquidated damages from amounts due for services performed under this Agreement as a set-off. The parties agree that these damages relate to performance and do not limit CITY'S other remedies under this Agreement or as provided by applicable law.
- 5.04 CITY agrees that the all liquidated damages will be foregone during the first six (6) months of the Operating Agreement.

ARTICLE 6. COMPENSATION

- 6.01 CONTRACTOR shall make daily deposits of all Gross Revenues into an account designated by the CITY.
- 6.02 Compensation to the CITY and the CONTRACTOR shall be calculated as follows:

STEP 1: CALCULATION OF ADJUSTED GROSS REVENUE

Gross Revenues
 less
 - Impound Fees
 - Sales Proceeds of Minimum Value Impound Vehicles
 equals
 Adjusted Gross Revenue

STEP 2: CALCULATION OF EARNED ROYALTIES

Adjusted Gross Revenue
 multiplied by
 - Franchise Fee
 equals
 Earned Royalties

STEP 3: CALCULATION OF CITY DISBURSEMENT

Sum of the following:

- Earned Royalties
- Impound Fees
- utility expense
- extra storage expenses
- liquidated damages or any set-off due under Article 9

Total calculation

less

- Eighty Four percent (84%) of City Waived Fees
equals

City Disbursement

STEP 4: CALCULATION OF CONTRACTOR DISBURSEMENT

Gross Revenues

less

-City Disbursement

equals

Contractor Disbursement

- 6.03 CITY agrees that Step 2, when using the graduated Franchise Fee schedule, will not be retroactive for Gross Revenue.
- 6.04 Upon receipt of a properly documented invoice, the CITY shall pay to the CONTRACTOR the amount stated as established by the procedure set forth in 6.02. CONTRACTOR may invoice CITY weekly.
- 6.05 CITY agrees that CONTRACTOR may sell or otherwise dispose of all vehicles remaining at the Facility or otherwise in control of the CITY as transitioned from the prior Contractor (Adesa) subject only to a reduction for the CITY's Franchise Fee of sixteen percent (16%).
- 6.06 CONTRACTOR shall maintain proper accounting records for the scope of all services of this Agreement and provide for an accounting of all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by CITY or its representatives during reasonable business hours. CITY and

its agents, representatives and employees agree to maintain such records and information confidential to the extent permitted by the public records law.

ARTICLE 7. LIABILITY OF PARTIES

7.01 CONTRACTOR agrees to defend, indemnify and hold harmless CITY and its officers, agents, officials, and employees for any and all claims, actions, causes of action, judgments and lien arising out of any negligent or willful act or omission by CONTRACTOR or any of its officers, agents, employees or subcontractors. Such indemnity shall not apply to any and all claims, actions, causes of action, judgments, liabilities, damages, losses and expenses arising out of or in any way connected with any and all "hazardous materials" at, on, under, or emanating from the Facility; provided, however, that such indemnity shall apply to "hazardous materials" that the CITY and CONTRACTOR agree were released to the environment at or on the Facility solely by CONTRACTOR in a manner inconsistent with the normal mode of operating a facility similar to the Facility. For the purpose of this section, CONTRACTOR's indemnity shall apply to "hazardous materials" that are released or threatened to be released to the environment from any above ground storage tank installed by CONTRACTOR. For purposes of this section, "hazardous materials" shall mean any substance, regardless of physical form, that is subject to any past or present federal, state, or local governmental statute, requirement, rule of liability, standard of conduct, or common law relating to the protection of human health, human safety or the environment. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by the enumeration of any insurance coverage required herein. As to any claim for indemnity, CONTRACTOR shall defend such claim at its cost and expense with counsel selected by it. CITY may retain its own counsel at its cost.

ARTICLE 8. INSURANCE

8.01 CONTRACTOR shall, as a condition precedent to this Agreement, purchase and maintain such insurance as will protect it and CITY from the claims set forth below which may arise out of or result from CONTRACTOR'S performance, whether such operations be by CONTRACTOR or by its officers, agents, employees or anyone directly or indirectly employed by CONTRACTOR, or by anyone for whose acts it may be liable:

- A. Claims under Worker's Compensation and Occupational Diseases Acts, and any other employee benefits acts applicable to the performance of the work;
- B. Claims for damages because of bodily injury and personal injury, including death; and
- C. Claims for damage to property.

8.02 CONTRACTOR shall maintain the following coverage as a minimum during the term of this Agreement:

A.	Worker's Compensation and Disability	Statutory
	Employer's Liability	\$100,000
	Bodily Injury by Accident	each accident
	Bodily Injury by Disease	\$500,000
		policy limit
	Bodily Injury by Disease	\$100,000
		each employee
B.	Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
	General Aggregate Limit (other than products/completed operations)	\$1,000,000
	Products/Completed Operations	\$1,000,000
	Personal and Advertising Injury Limit	\$1,000,000
	Each Occurrence Limit	\$1,000,000
	Fire Damage (any one fire)	\$ 50,000
	Comprehensive Auto Liability (single limit) (non-owned)	\$1,000,000
		each accident
	Garage Keeper Legal Liability Comprehensive and collision coverage to full value of CITY'S vehicle while in Auctioneer's safekeeping	\$1,000,000
	Umbrella Excess Liability	\$1,000,000
		each occurrence and aggregate

- 8.03 Certificates of Insurance, naming the City of Indianapolis as an additional insured, showing such coverage then in force, shall be filed with CITY prior to commencement of any service under this Agreement. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or not renewed unless at least thirty (30) days prior written notice has been given to CITY.
- 8.04 CONTRACTOR shall be responsible for all deductible amounts due on the coverage listed above. With CITY'S prior approval, CONTRACTOR may substitute different types of coverage from those listed above so long as the total amount of required protection is not reduced.

ARTICLE 9. TERMINATION

- 9.01 If CONTRACTOR commits a material breach of this Agreement as defined in Article 9.02, CITY, at its sole discretion, may terminate this Agreement. In addition to the foregoing, CITY shall be entitled to all other remedies available at law or in equity, including, but not limited to, damages.
- 9.02 If CONTRACTOR:
- A. Fails on three (3) or more occasions of three (3) Business Days during any year to perform the services required by this Agreement; or
 - B. Neglects, fails, or refuses to comply with any material term of this Agreement, after having received written or oral notice of its obligation to so comply; or
 - C. Disregards laws, ordinances or the instructions of the Director; or
 - D. Fails to provide sufficient workmen and equipment to insure proper completion of the work; or
 - E. Becomes insolvent or declares bankruptcy or commits an act of bankruptcy or insolvency, or allows final judgment arising out of bankruptcy to stand against it unsatisfied for a period of ten (10) days, then such shall constitute a material breach of this Agreement and the Director shall give notice in writing to CONTRACTOR of such breach.
- 9.03 If CONTRACTOR does not remedy the breach to the satisfaction of CITY within three (3) days after date of notice, then the Director shall have full power and authority, without violating this Agreement, to take over the completion of the work, by entering into agreements with others for the

completion of this Agreement, or by other methods as may be required for the completion of this Agreement in an acceptable manner. CONTRACTOR and CITY may agree upon a longer time period within which CONTRACTOR may attempt to remedy a material breach of the Agreement. CITY shall notify CONTRACTOR in writing of its intent to take over the work. After the issuance by CITY of its notice of intention to take over the work under this Agreement, CONTRACTOR shall not remove any of the equipment normally used in the performance of this Agreement until acceptable arrangements to continue the work have been completed by CITY.

- 9.04 No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants and conditions of this Agreement and shall not affect the right of CITY to enforce same. The payment or acceptance of compensation for any period after a default or breach shall not be deemed a waiver of any right or acceptance of defective performance.
- 9.05 Upon termination, the CONTRACTOR shall maintain ownership and possession of all personal property contributed by the CONTRACTOR including, but not limited to, computers, office equipment, and computer software. Within 30 days of the Operating Agreement, CITY shall provide CONTRACTOR with a list of assets belonging to the CITY, and CONTRACTOR will acknowledge said list in writing.

ARTICLE 10. GENERAL PROVISIONS

10.01 Early Termination

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by CITY are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then CONTRACTOR and CITY shall each have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding, in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. CITY shall make its best effort to obtain sufficient funding.

10.02 Successors and Assigns

No portion of this Agreement shall be sublet, assigned or otherwise disposed of by CONTRACTOR without the prior written consent of the Director. CONTRACTOR is fully

responsible for the fulfillment of the terms of this Agreement.

10.03 Extent of Agreement: Integration

This Agreement and the Attachments represent the entire and integrated Agreement between CITY and CONTRACTOR and supersede all prior negotiations, representations, agreements, or contracts, either written or oral.

10.04 Safety

Except as provided in Article 4.02, CONTRACTOR shall be responsible for the safety of its employees at all times and shall provide all equipment necessary to insure their safety.

10.05 Necessary Documentation

Except as provided in Article 4.05, CONTRACTOR will furnish CITY any and all documentation, certification, authorization, license, and permit or registration required by the laws or rules and regulations of the CITY, other units of local government, the State of Indiana and the United States. CONTRACTOR certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its license, permit, registration, authorization or certification in force during the term of this Agreement.

10.06 Applicable Laws

CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, those relating to discrimination in employment, conflicts of interest, public notice, accounting records and requirements. The Mayor's Executive Order No. 1-1987 is hereby incorporated by reference and made as fully a part of this Agreement as if herein set out verbatim. Unless otherwise specified, this Agreement shall be governed by the laws of the United States, and the State of Indiana, and all Municipal Ordinances and Codes of the Consolidated City of Indianapolis.

10.07 Inspection

CONTRACTOR agrees to permit CITY to make reasonable inspections of its operations in connection with the services provided pursuant to this Agreement and agrees to cooperate with CITY in conducting such inspections.

10.08 Non-Discrimination

CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, religion, color, sex, age, handicap, national origin, ancestry, Vietnam-era veteran status or disabled veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

10.09 Amendments

This Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

10.10 Written Notice

All written notices required by this Agreement shall be addressed as follows:

CITY

Ted Rhinehart
Director
Dept. of Public Works
200 E. Washington St.
Ste. 2460
Indianapolis, IN 46204

CONTRACTOR

Jim Edsall, Jr.
General Manager
Last Chance Towing & Sales, Inc.
3924 W. Washington Street
Indianapolis, IN 46241

10.11 Severability and Waiver

In the event any provision of this Agreement is determined by a court of competent jurisdiction or by the laws of the State of Indiana to be null and void, such provision shall be stricken and all other provisions which can be given effect independently of the stricken provision shall remain in full force and effect.

10.12 Disagreements and Service During Disagreement

During any dispute which arises between CITY or other interested party and CONTRACTOR, in any way relating to this Agreement, performance, or compensation hereunder, CONTRACTOR shall continue to render full compliance with all terms and conditions of this Agreement regardless of the nature of the dispute unless CITY fails to make payments to CONTRACTOR under Article 6, a court of competent jurisdiction orders CONTRACTOR otherwise or the Director specifically notifies CONTRACTOR otherwise.

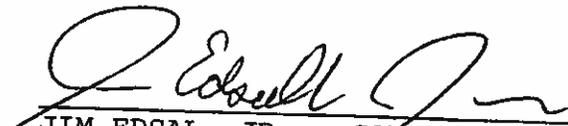
10.13 Force Majeure

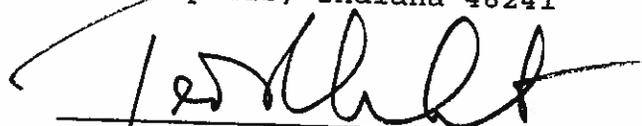
- A. Notwithstanding any provisions other than as set forth in this Article, the performance of this Agreement may be suspended and the obligations thereunder excused in the event that such performance is prevented by an event beyond the control of CONTRACTOR, provided that CONTRACTOR:
- 1) Notifies CITY in writing within two (2) Business Days of the Force Majeure Event; and
 - 2) Proves within seven (7) Business Days to CITY the occurrence of the Force Majeure Event and the time delay to the performance of this Agreement.
- B. Upon finding that a Force Majeure event has occurred, CITY shall extend that time for performance accordingly.
- C. CONTRACTOR shall take all reasonable steps to continue full operation in the event of strikes, slowdowns, walkouts, lockouts, industrial disturbances or other labor disputes, including but not limited to the transfer of personnel from other locations, hiring of additional short-term employees, and contracting with other entities to provide the necessary equipment or manpower required to perform under this Agreement.

10.14 Conflict of Interest

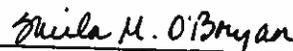
CONTRACTOR warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. CONTRACTOR further covenants that no person having any such interest shall be employed or subcontracted in the performance of services under this Agreement. CITY acknowledges that the operation by CONTRACTOR of its repossession recovery business shall not constitute a conflict of interest as defined in this Article 10.14.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

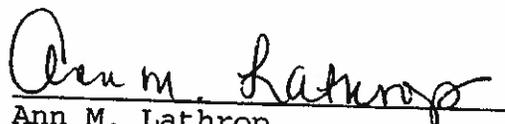

JIM EDSAL, JR. - CONTRACTOR
Last Chance Towing & Sales, Inc.
3924 W. Washington Street
Indianapolis, Indiana 46241


TED RHINEHART - DIRECTOR
CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
200 E. Washington Street
Suite 2460
Indianapolis, Indiana 46204

Approved as to Legal Form:


~~Assistant Corporation Counsel~~
~~for City of Indianapolis~~
Sheila M. O'Bryan, Attorney
Contract Compliance Division

Approved For Execution:


Ann M. Lathrop
Controller

Dated: 12-8-23-58

**ELEVENTH AMENDMENT TO CONTRACTUAL AGREEMENT BETWEEN
- LAST CHANCE WRECKER AND SALES, INC., AND
THE CITY OF INDIANAPOLIS DEPARTMENT OF CODE ENFORCEMENT FOR THE
OPERATION OF THE ABANDONED VEHICLE PROGRAM**

This Eleventh Amendment, made and entered into by and between the City of Indianapolis, Department of Code Enforcement (hereinafter referred to as the "CITY"), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter referred to as the "CONTRACTOR"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

WITNESSETH:

WHEREAS, the City of Indianapolis, Department of Public Works ("DPW") entered into a contractual agreement with the CONTRACTOR on November 23, 1998 (the "AGREEMENT") to manage all phases of the CITY's Abandoned Vehicle Program for the tagging, towing, storage, and disposal of abandoned vehicles and parts in accordance with Indiana Code § 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of the Consolidated City of Indianapolis and Marion County; and

WHEREAS, the AGREEMENT was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005, July 27, 2006, July 7, 2007, November 28, 2007, December 10, 2008, and July 9, 2009; and

WHEREAS, the Department of Code Enforcement was substituted for the Department of Public Works by operation of General Ordinance No. 63, 2009 on January 1, 2010, and therefore, became a party to this AGREEMENT on that date; and

WHEREAS, both the CITY and CONTRACTOR desire to extend the AGREEMENT for a period of five (5) months through July 1, 2010.

NOW THEREFORE, in consideration of the foregoing and the mutual promises hereinafter enumerated, the parties agree to amend the AGREEMENT as follows:

1. **Article 2.01 of the AGREEMENT shall be amended to read, in its entirety, as follows:**

This Agreement shall be effective from the date of execution by all required signatories. CONTRACTOR shall provide services required under ARTICLE 3 beginning November 23, 1998 through July 1, 2010.

2. **Article 10.10 of the AGREEMENT, Written Notice, shall be amended to read, in its entirety as follows:**

All written notices required by this AGREEMENT shall be addressed as follows:

To CITY:

Director
Department of Code Enforcement

To CONTRACTOR:

Jim Edsall, Jr.
General Manager

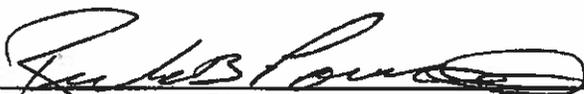
1200 Madison Avenue, Suite 100
Indianapolis, Indiana 46225

Last Chance Wrecker and Sales, Inc.
3924 West Washington Street
Indianapolis, Indiana 46241

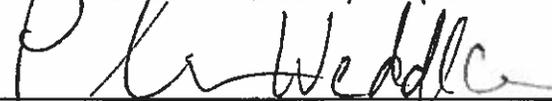
3. All other terms and conditions of the AGREEMENT dated November 23, 1998 and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, and Amendment No. 5 dated July 15, 2005, and Amendment No. 6 dated July 27, 2006, and Amendment No. 7 dated July 7, 2007, and Amendment No. 8 dated November 28, 2007, and Amendment No. 9 dated December 10, 2008, and Amendment No. 10 dated July 9, 2009 shall remain the same as if set forth herein.
4. To the extent any term or provision of the AGREEMENT is in conflict with the terms of this Eleventh Amendment, this Eleventh Amendment shall prevail.

IN WITNESS WHEREOF, this Eleventh Amendment has been executed as of the dates subscribed below.

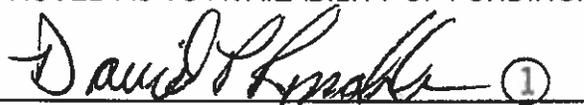
Consolidated City of Indianapolis, Department of Code Enforcement ("CITY"):

By:  Date: 2/3/10
Rick B. Powers, Director

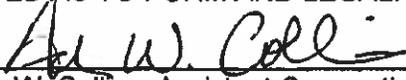
Last Chance Wrecker and Sales, Inc. ("CONTRACTOR"):

By:  Date: 2/10/10
Signature
Chris Weddle
Printed Name
VICE-PRESIDENT
Title

APPROVED AS TO AVAILABILITY OF FUNDING:

By:  ① Date: 3-4-10
David P. Reynolds, Controller

APPROVED AS TO FORM AND LEGALITY:

By:  Date: 1/31/10
Adam W. Collins, Assistant Corporation Counsel

Resolution No. 2010-C10-001, authorizing this Agreement, was approved by the Board of Code Enforcement on January 14, 2009.

AMENDMENT NO. 10
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 10, made and entered into this 9 day of July, 2009, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005, July 27, 2006; July 7, 2007; November 28, 2007; December 10, 2008; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional seven (7) months through January 31, 2010;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Article 2.01 of the Agreement shall be amended to extend the Agreement for an additional seven (7) months through January 31, 2010.
2. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, and Amendment No. 5 dated July 15, 2005, and Amendment No. 6 dated July 27, 2006, and Amendment No. 7 dated July 7, 2007, and Amendment No. 8 dated November 28, 2007, and Amendment No. 9 dated December 10, 2008 shall remain the same as if set forth herein.

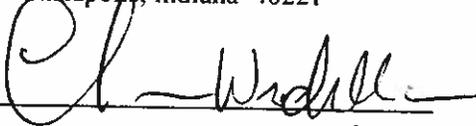
IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

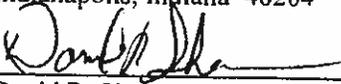
CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

CITY:

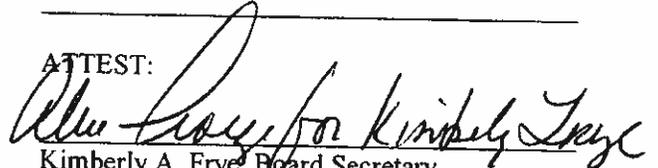
Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: 
Printed: CHRIS WEDDLE
Title: VICE-PRESIDENT
Date: 06-30-09

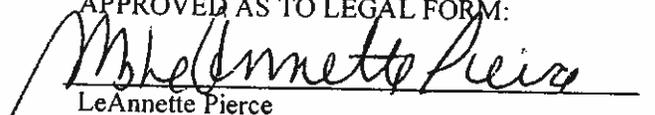
By: 
David R. Sherman
Director
Date: 6/24/09

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

ATTEST:

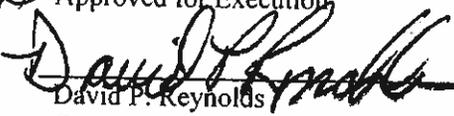

Kimberly A. Frye, Board Secretary

APPROVED AS TO LEGAL FORM:


LeAnnette Pierce
Assistant Corporation Counsel

Date: 06/30/09

- Approved for Availability of Funding
- Approved for Execution

 ①
David P. Reynolds
City Controller

Date: 7-9-09

ccm:
61301C

AMENDMENT NO. 9
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 9, made and entered into this 1st day of January, 200~~8~~⁹, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005, July 27, 2006; July 7, 2007; November 28, 2007; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional six (6) months through June 30, 2009;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Article 2.01 of the Agreement shall be amended to extend the Agreement for an additional six (6) months through June 30, 2009.
2. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, and Amendment No. 5 dated July 15, 2005, and Amendment No. 6 dated July 27, 2006, and Amendment No. 7 dated July 7, 2007, and Amendment No. 8 dated November 28, 2007 shall remain the same as if set forth herein.
3. Article 10.10, "Written Notice" shall be amended to read, "TO CITY: David R. Sherman, Director, Department of Public Works, 200 E. Washington Street, Suite 2460, Indianapolis, IN 46204.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

CITY:

Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: [Signature]
Printed: James Eckhardt
Title: President
Date: 12-12-08

By: [Signature]
David R. Sherman
Director
Date: 12/10/08

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

ATTEST: [Signature]
Kimberly A. Frye, Board Secretary
APPROVED AS TO LEGAL FORM:
[Signature]
LeAnnette Pierce
Assistant Corporation Counsel
Date: 120508

- Approved for Availability of Funding
- Approved for Execution

3W
1/6/08

[Signature] ①
David P. Reynolds
City Controller

Date: 1-12-09

AMENDMENT NO. 8
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 8, made and entered into this _____ day of _____, 2007, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005, July 27, 2006; July 7, 2007; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional one (1) year through December 31, 2008;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Article 2.01 of the Agreement shall be amended to extend the Agreement for an additional one (1) year through December 31, 2008.
2. The Agreement shall be amended to add Article 10.15, Debarment and Suspension, which shall read as follows:
 - (1) CONTRACTOR certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employce, or other person with primary

management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONTRACTOR.

- (2) CONTRACTOR shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.
 - (3) CONTRACTOR shall provide immediate written notice to CITY if, at any time after entering into this Agreement, CONTRACTOR learns that its certification was erroneous when submitted, or CONTRACTOR is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
3. All other terms and conditions of the Agreement dated November 23, 1998, Amendment No. 1 dated April 10, 2002, Amendment No. 2 dated November 27, 2002, Amendment No. 3 dated December 16, 2003, Amendment No. 4 dated September 28, 2004, Amendment No. 5 dated July 15, 2005, Amendment No. 6 dated July 27, 2006, and Amendment No. 7 dated July 7, 2007, shall remain the same as if set forth herein.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

CITY:

Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: [Signature]
Printed: James Edrington
Title: President
Date: 12-3-07

By: [Signature]
Kumar G. Menon
Director
Date: 11/28/07

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

11-28-07

ATTEST:

[Signature]
Kimberly A. Frye, Board Secretary

APPROVED AS TO LEGAL FORM:

[Signature]
Lauren Poppen
Assistant Corporation Counsel

Date: 11/20/07

- Approved for Availability of Funding
- Approved for Execution

[Signature]
Robert J. Clifford
City Controller

①

Date: 12-7-07

AMENDMENT NO. 7
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 7, made and entered into this 7 day of July, 2007,
2007, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter
CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing
and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day
of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging,
towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et.
seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County,
Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December
16, 2003, September 28, 2004, July 15, 2005, July 27, 2006; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an
additional six (6) months through December 31, 2007;

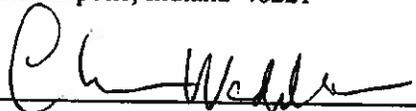
NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the
parties agree to amend the Agreement as follows:

1. Article 2.01 of the Agreement shall be amended to extend the Agreement for an
additional six (6) months through December 31, 2007.
2. Article 10.08 of the Agreement shall be amended to reflect the current Non-
Discrimination language pursuant to Section 581-102 of the Revised Code of the
Consolidated City of Indianapolis, Marion County, Indiana.
3. All other terms and conditions of the Agreement dated November 23, 1998, and
Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27,
2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated
September 28, 2004, and Amendment No. 5 dated July 15, 2005, and Amendment
No. 6 dated July 27, 2006, shall remain the same as if set forth herein.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

By: 

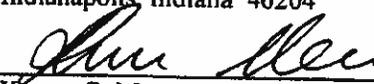
Printed: Chris Weddle

Title: VICE-PRES.

Date: 6-19-07

CITY:

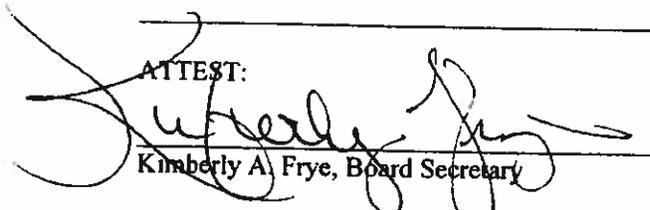
Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: 
Kumar G. Menon
Director

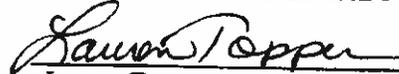
Date: 6-13-07

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

ATTEST:

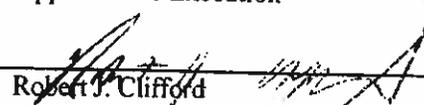

Kimberly A. Frye, Board Secretary

APPROVED AS TO LEGAL FORM:


Lauren Toppen
Assistant Corporation Counsel

Date: 5/30/07

- Approved for Availability of Funding
- Approved for Execution


Robert J. Clifford
City Controller

Date: 7-10-07 ①

~~POI 401773~~
POI 401773

AMENDMENT NO. 6
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 6, made and entered into this 27 day of July 2006, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional one (1) year through June 30, 2007;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Article 3.11 o shall be amended to read, "If the Owner or lienholder fails to remove the Abandoned Vehicle from the Facility within thirty (30) days of the mailing date of notice under Article 3.10, the CONTRACTOR may dispose of Abandoned Vehicles with an estimated market value of less than five hundred dollars (\$500.00) at a properly licensed and zoned automobile scrap yard, as defined in IC 9-13-2-8, or may dispose of the Vehicles according to Article 3.12. Notices to Owners and lienholders of Abandoned Vehicles valued under five hundred dollars (\$500) that are sent pursuant to Article 3.10 shall reflect the thirty (30) day removal period.
2. Article 10.10, "Written Notice" shall be amended to read, "TO CITY: Kumar G. Menon, Director, Department of Public Works, 200 E. Washington Street, Suite 2460, Indianapolis, IN 46204.

3. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, and Amendment No. 5 dated July 15, 2005, shall remain the same as if set forth herein.

The rest of this page is intentionally blank

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

CITY:

Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: 

By: 
Kumar G. Menon
Director

Printed: James Schall III

Title: President

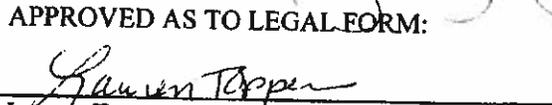
Date: 7/7/06

Date: 6-30-06

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

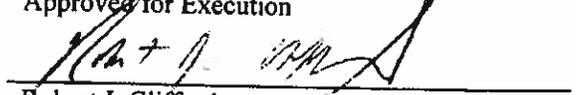
ATTEST:

Kimberly A. Frye, Board Secretary

APPROVED AS TO LEGAL FORM:

Lauren Toppen
Assistant Corporation Counsel

Date: 6/23/06

- Approved for Availability of Funding
- Approved for Execution


Robert J. Clifford
City Controller 1

Date: 7-27-06

CIT 3400326 ELE

AMENDMENT NO. 5
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 5, made and entered into this 15th day of July, 2005, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional one (1) year through June 30, 2006; and

WHEREAS, CITY wishes to adjust the disbursement of compensation under the Agreement; and

WHEREAS, CONTRACTOR agrees to such adjustment.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Section 1.12 of Article 1 of the Agreement shall be amended to read as follows:
"Franchise Fee" shall be defined as the following graduated scale:
(1) 18% of weekly Adjusted Gross Revenues, when weekly Adjusted Gross Revenue is less than or equal to \$29,999; or
(2) 20% of weekly Adjusted Gross Revenues, when weekly Adjusted Gross Revenue is at least \$30,000, but not greater than \$39,999; or
(3) 22% of weekly Adjusted Gross Revenues, when weekly Adjusted Gross Revenue is greater than or equal to \$40,000.

2. Section 1.18 of Article 1 of the Agreement shall be added to read as follows: "Heavy Vehicle Tow" shall be defined as the towing of any vehicle over 19,501 pounds gross vehicle weight rating or the towing of any vehicle that requires the use of a heavy equipment wrecker.
3. Section 2.01 of Article 2 of the Agreement shall be amended to read as follows: This Agreement shall expire at midnight on June 30, 2006, unless otherwise terminated earlier in accordance with the law or this Agreement.
4. Section 3.23 of Article 3 of the Agreement shall be added to read as follows: CONTRACTOR shall pay and absorb all costs incurred as a result of Heavy Vehicle Tows that exceed the tow fee set by Section 611-307 subsection (b) of the Revised Code of Indianapolis and Marion County, Indiana.
5. Section 3.24 of Article 3 of the Agreement shall be added to read as follows: City Waived Fees shall not be deducted from CITY'S compensation. Rather, each party shall absorb the amount of those fees that it would have been otherwise entitled under Section 6.02 had those fees not been waived.
6. Section 6.02 of Article 6 of the Agreement shall be amended to read as follows: Compensation to CITY and CONTRACTOR shall be calculated as follows:

STEP 1: CALCULATION OF ADJUSTED GROSS REVENUE

Gross Revenues less Impound Fees equals Adjusted Gross Revenue.

STEP 2: CALCULATION OF EARNED ROYALTIES

Adjusted Gross Revenue multiplied by Franchise Fee equals Earned Royalties.

STEP 3: CALCULATION OF CITY DISBURSEMENT

Sum of the following equals City Disbursement:

Impound Fees

Earned Royalties

Utility expenses

Liquidated Damages or any set-off due under Article 9

STEP 4: CALCULATION OF CONTRACTOR DISBURSEMENT

Gross Revenues less City Disbursement equals Contractor Disbursement.

7. Section 8.02 of Article 8 of the Agreement shall be amended to read as follows: CONTRACTOR shall maintain the following coverage as a minimum during the term of this Agreement:

A.	Worker's Compensation and Disability	Statutory
	Employer's Liability	\$ 700,000
	Bodily Injury by Accident	each accident
	Bodily Injury by Disease	\$ 700,000

	policy limit
Bodily Injury by Disease	\$ 700,000 each employee
B. Commercial General Liability (occurrence basis) Bodily injury, personal injury, property damage, contractual liability, applicable to any indemnification products/completed operations.	
General Aggregate Limit (other than products/completed operations)	\$5,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each occurrence Limit	\$1,000,000
Fire Damage (any one fire)	\$ 50,000
Comprehensive Auto Liability (single limit) (non-owned)	\$5,000,000 each accident
Garage Keeper Legal Liability Comprehensive and collision coverage to full value of CITY's vehicle while in Auctioneer's safekeeping	\$5,000,000
Umbrella Excess Liability	\$5,000,000 each occurrence and aggregate
8. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, shall remain the same as if set forth herein.	

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

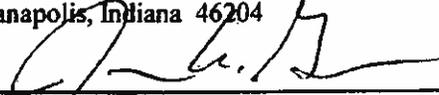
CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

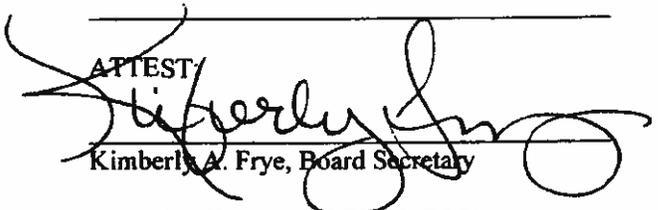
By: 
Printed: JAMES ECKHART
Title: President
Date: 6-20-05

CITY:

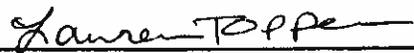
Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: 
James A. Garrard
Director
Date: 6/28/05

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

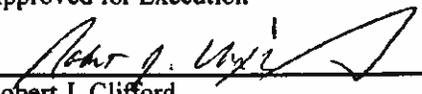
ATTEST

Kimberly A. Frye, Board Secretary

APPROVED AS TO LEGAL FORM:


Lauren Toppen
Assistant Corporation Counsel

Date: 6/14/2005

- Approved for Availability of Funding
- Approved for Execution


Robert J. Clifford
City Controller

Date: 7/15/05

CIT 4400362 A04

1/17/05 CIT 5400166

\$ 927,500.00

(2)

AMENDMENT NO. 4
 TO
 CONTRACTUAL AGREEMENT
 BETWEEN
 LAST CHANCE WRECKER AND SALES, INC.
 AND
 THE CITY OF INDIANAPOLIS
 DEPARTMENT OF PUBLIC WORKS
 FOR THE OPERATION OF
 THE ABANDONED VEHICLE PROGRAM

10
11

THIS AMENDMENT No. 4, made and entered into this 28 day of September, 2004, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

6/23/05

WITNESSETH THAT:

WHEREAS, CITY entered into an Agreement with CONTRACTOR on the 23rd day of November 1998 to manage all phases of CITY'S Abandoned Vehicle Program for the tagging, towing, storage and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended on April 10, 2002, November 27, 2002, and December 16, 2003; and

WHEREAS, CITY has learned that some Vehicles impounded by IPD remain at franchise towing lots for eleven (11) days; and

WHEREAS, CITY has determined that the Agreement shall be amended to reflect that practice; and

WHEREAS, CONTRACTOR is willing to accommodate CITY'S request;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Section 1.06 of Article 1 of the Agreement shall be amended to read as follows:

"Impound Fees" shall be defined as the funds paid by CITY to the Department of Public Safety for storage and towing expenses. Impound Fees include: (1) a \$65.00 base tow fee (\$55.00 base tow fee for Downtown District) for vehicles up to 12,000 GVWR, or an \$80.00 base tow fee for vehicles over 12,000 GVWR but less than 19,500 GVWR; and (2) a storage fee of ten dollars per day.

2. **Section 3.13 of Article 3 of the Agreement shall be amended to read as follows:**
Every Business Day, CONTRACTOR shall receive a list from IPD of Vehicles that are scheduled to be towed on that date from the franchise towing lots. Vehicles shall be scheduled to be towed from franchise towing lots to the Facility for storage as follows:
 - 10 days from date of arrival if Vehicle arrives at franchise towing lot prior to 3:00 p.m.; or**
 - 11 days from date of arrival if Vehicle arrives at franchise towing lot after 3:00 p.m.****Franchise Wrecker shall tow Vehicles from the franchise towing lots to the Facility for storage on their scheduled tow dates, with the exception of Vehicles scheduled to be towed on Sunday. For Vehicles scheduled to be towed on Sunday, Franchise Wrecker may tow those Vehicles on Saturday, one day early. For Vehicles not redeemed from CONTRACTOR within twenty days after the date they were first stored at the franchise towing lots, CONTRACTOR shall follow the procedures specified in Articles 3.07 through 3.12 for processing those Vehicles.**

The following impound fees shall be paid by CITY to the Department of Public Safety, but shall be deducted from CONTRACTOR's revenues in accordance with Article 6.02: (1) storage fees accrued at the franchise towing lots for each day of a Vehicle's storage from the date of the Vehicle's removal up until and including its scheduled tow date, which shall not exceed eleven days; and (2) towing fees due under the Franchise Wrecker towing contracts. Neither CITY nor CONTRACTOR will be responsible for additional charges accrued as a result of Vehicles being towed later than their scheduled tow dates.

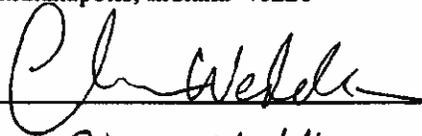
CONTRACTOR shall receive "red tags" from IPD, representing Vehicles that either IPD or the Indianapolis Housing Police have determined to be abandoned and that either IPD or the Indianapolis Housing Police have tagged. CONTRACTOR shall follow the procedures specified in Articles 3.06 through 3.12 for processing those Vehicles. In addition, CONTRACTOR shall notify IPD and the Indianapolis Housing Police daily of their respective "red tag" Vehicles that were moved before reinspection.
3. **Article 10.10 of Article 10 "Written Notice" shall be amended to read, "TO CITY: James A. Garrard, Director, Department of Public Works, 200 E. Washington Street, Suite 2460, Indianapolis, Indiana 46204.**
4. **All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, shall remain the same as if set forth herein.**

The remainder of this page has intentionally been left blank.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

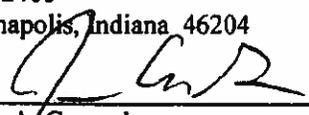
CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

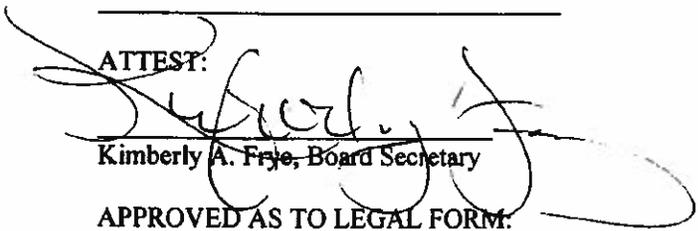
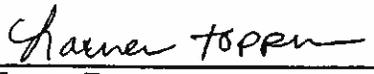
By: 
Printed: Chris Weddle
Title: V.P.
Date: 9-24-04

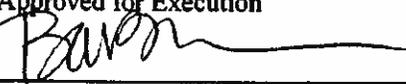
CITY:

Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

By: 
James A. Garrard
Director
Date: 9-11-04

PURSUANT TO AUTHORIZATION OF
BOARD OF PUBLIC WORKS ON

ATTEST:

Kimberly A. Freye, Board Secretary
APPROVED AS TO LEGAL FORM:

Lauren Toppen
Assistant Corporation Counsel
Date: 09/11/04

Approved for Availability of Funding
 Approved for Execution

Barbara A. Lawrence
City Controller
Date: 9/28/04

CIT 3400326
EO

AMENDMENT NO. 3
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 3, made and entered into this 16 day of Dec, 2003, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 *et. seq.* and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was amended April 10, 2002, and amended November 27, 2002; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional eighteen (18) months through June 30, 2005;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

1. Section 1.05 of Article 1 of the Agreement shall be amended to read as follows:
"Adjusted Gross Revenues" shall be defined as Gross Revenues following a reduction for Impound Fees."
2. Section 1.06 of Article 1 of the Agreement shall be amended to read as follows:
'Impound Fees' shall be defined as the funds paid by the City to the Department of Public Safety for storage and towing expense. Impound Fees which includes a \$65.00 base tow fee (\$55.00 base tow fee for Downtown District) for vehicles up to 12,000 GVWR and an \$80.00 base tow fee for vehicles over 12,000 GVWR but less than 19,500 GVR plus a \$100.00 storage fee for vehicles held for 10 days or \$300.00 for vehicles held in excess of 30 days.

3. Section 1.07 of Article 1 of the Agreement, "Sale Proceeds of Minimum Value Impound Vehicles" shall be deleted.
4. Section 1.09 of Article 1 of the Agreement shall be amended to read as follows:
" 'Facility' shall be defined as the buildings, storage lot, sale lot, and parking lot used for the Abandoned Vehicles Program."
5. Section 1.19 of Article 1 of the Agreement shall be added to read as follows:
" 'Franchise Wrecker' shall be defined as the towing contractor paid by the City of Indianapolis, Department of Public Safety to tow Vehicles within a given Franchise district."
6. Section 2.01 of Article 2 of the Agreement shall be amended to add the following:
"Amendment Number 3 shall extend this Agreement so that it expires at midnight on June 30, 2005."
7. Section 3.09 of Article 3 of the Agreement shall be amended to read as follows:
Within three (3) Business Days after an Abandoned Vehicle is towed to the Facility, CONTRACTOR shall contact the Indiana Bureau of Motor Vehicles to acquire the name and most recent address of the person who owns and/or holds a lien on the Vehicle. CONTRACTOR shall contact the IPD Auto Desk to determine whether an Abandoned Vehicle has been reported as stolen. CITY agrees to use its best efforts to secure direct access to the BMV at a reduced cost for the benefit of the CONTRACTOR.
8. Section 3.13 of Article 3 of the Agreement shall be amended to read as follows:
Every Business Day, CONTRACTOR shall receive a list from IPD of Vehicles which have been stored at the franchise towing lots for ten (10) days. Franchise Wrecker shall tow such Vehicles from the franchise towing lots to the Facility. CONTRACTOR shall hold such Vehicles for ten (10) additional days. Franchise Wrecker may elect to tow on the ninth (9th) day those Vehicles that will have been stored for ten (10) days when the tenth (10th) day will fall on a Sunday. CONTRACTOR shall hold these Vehicles for eleven (11) additional days. On the twentieth (20th) day after Vehicles were first stored at the franchise towing lots, CONTRACTOR shall follow the procedures specified in Articles 3.07 through 3.12 for processing the Vehicles.

Storage fees accrued at the Franchise Wrecker lots for the first ten (10) days of storage, with the exception of Vehicles released on the ninth (9th) day, and towing fees due under the Franchise Wrecker towing contracts shall be paid by CITY to the Department of Public Safety, but shall be deducted from CONTRACTOR'S revenues in accordance with Article 6.02. Neither the Department of Public Works nor the Abandoned Vehicle contractor will be responsible for additional charges accrued as a result of vehicles not made available after ten (10) days. Contractor shall receive "red tags" from IPD, representing Vehicles IPD has determined to be abandoned and which have been tagged by IPD. CONTRACTOR shall follow the procedures specified in Articles 3.06 through 3.12 for processing these Vehicles. In addition,

CONTRACTOR shall notify IPD daily of "red tag" Vehicles that were moved before reinspection.

9. Section 3.14 of Article 3 of the Agreement shall be deleted.
10. Section 3.20 of Article 3 of the Agreement shall be deleted.
11. Section 3.22 of Article 3 of the Agreement shall be added to read as follows:
CONTRACTOR shall perform a physical inventory of all Abandoned Vehicles remaining on Facility sale and storage lots each December 31st. CONTRACTOR shall prepare an inventory report for CITY that includes Vehicle year, make, model and Vehicle Identification Number for each Vehicle remaining on Facility sale and storage lots December 31st.
12. Paragraph 2 of section 4.01 shall be modified to add the following sentence: "The CITY agrees to assist the CONTRACTOR in making sure that the Facility is reasonably ADA compliant." Paragraphs 4, 5, and 6 of section 4.01 shall be deleted.
13. Section 6.02 of Article 6 of the Agreement shall be amended to read as follows:
Compensation to the CITY and the CONTRACTOR shall be calculated as follows:
STEP 1: CALCULATION OF ADJUSTED GROSS REVENUE
Gross Revenues less Impound Fees equals Adjusted Gross Revenue.
STEP 2: CALCULATION OF EARNED ROYALTIES
Adjusted Gross Revenue multiplied by Franchise Fee equals Earned Royalties.
STEP 3: CALCULATION OF CITY DISBURSEMENT
Sum of the following equals City Disbursement:
Earned Royalties
Impound fees
Utility expenses
Liquidated damages or any set-off due under Article 9

If the Franchise fee is 16%, the City Disbursement is reduced by Eighty Four percent (84%) of any City waived fees.
If the Franchise fee is 17%, the City Disbursement is reduced by Eighty Three percent (83%) of any City waived fees.
If the Franchise fee is 18%, the City Disbursement is reduced by Eighty Two percent (82%) of any City waived fees.
STEP 4: CALCULATION OF CONTRACTOR DISBURSEMENT
Gross Revenues less City Disbursement equals Contractor Disbursement.
14. Section 6.05 of Article 6 shall be deleted.

15. Section 10.10 of Article 10 of the Agreement shall be amended to read as follows:
Written Notice. All written notices required by this Agreement shall be addressed as follows:

CITY

Barbara A. Lawrence, Director
Department of Public Works
200 E. Washington St. Suite 2460
Indianapolis, IN 46204

CONTRACTOR

James Edsall, Owner
Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, IN 46221

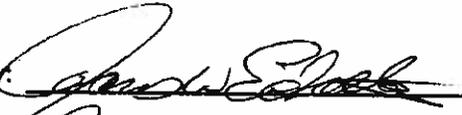
16. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, shall remain the same as if set forth herein.

The remainder of this page has intentionally been left blank.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

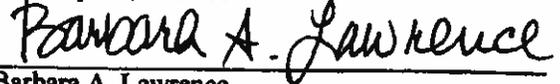
CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

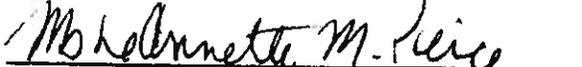
By: 
Printed: James W. Edwards
Title: Owner / Pres
Date: 11-11-03

CITY:

Department of Public Works
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

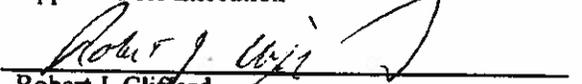
By: 
Barbara A. Lawrence
Director
Date: 11-24-03

APPROVED AS TO LEGAL FORM:


LeAnnette Pierce
Assistant Corporation Counsel

Date: 11/10/03

- Approved for Availability of Funding
- Approved for Execution


Robert J. Clifford
City Controller

Date: 12/16/03

AMENDMENT NO. 2
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 2, made and entered into this 27 day of Nov.,
2002, by and between the City of Indianapolis, Indiana, Department of Public Works (hereinafter
CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance
Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with CONTRACTOR on the 23rd day
of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the
tagging, towing, storage and disposal of Abandoned Vehicles and Parts in accordance with
IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and
Marion County, Indiana; and

WHEREAS, this Agreement was initially amended on April 10, 2002; and

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement
through December 31, 2003;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated,
the parties agree to amend the Agreement as follows:

1. Section 2.01 of Article 2 of the Agreement shall be amended to read
"This Agreement shall expire at midnight on December 31, 2003."
2. Section 10.10 of Article 10 of the Agreement shall be amended to read "Written
Notice. All written notices required by this Agreement shall be addressed as
follows:"

CITY
Barbara A. Lawrence, Director
Department of Public Works
200 E. Washington St. Suite 2460
Indianapolis, IN 46204

CONTRACTOR
Jim Edsall Jr., Owner
Last Chance Wrecker and Sales, Inc.
3924 W. Washington St.
Indianapolis, IN 46241

3. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, shall remain the same as if set forth herein.

The remainder of this page has intentionally been left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

City of Indianapolis
Department of Public Works
200 East Washington, Suite 2460
Indianapolis, IN 46204

By: Barbara A. Lawrence
Barbara A. Lawrence, Director
Department of Public Works

Date: 11/15/02

Pursuant to Authorization of the Board of Public Works on

13th November 2002

Kimberly A. Frye
Board Secretary

Last Chance Wrecker and Sales, Inc.
3924 W. Washington Street
Indianapolis, IN 46241

By: James W. Edrington
Printed: JAMES W EDINGTON JR
Title: Owner

Date: 11-13-02

[] APPROVED FOR AVAILABILITY OF FUNDING:
[] APPROVED FOR EXECUTION:

By: Katherine L. Davis
Katherine L. Davis, City Controller

Date: 11/27/02

APPROVED AS TO FORM AND LEGALITY:

By: LeAnette M. Pierce
LeAnette M. Pierce, Assistant Corporation Counsel

Date: 10/30/02

CIT 2400248

AMENDMENT NO. 1 TO THE
OPERATING AGREEMENT
BETWEEN
DEPARTMENT OF PUBLIC WORKS
AND
LAST CHANCE WRECKING & SALES

THIS AMENDMENT NO. 1 is entered into this 10th day of April, 2002, by and between the City of Indianapolis Department of Public Works (hereinafter "CITY") and Last Chance Towing & Sales, Inc. (formerly doing business as Last Chance Towing and Sales) (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, the CITY entered into an Agreement with CONTRACTOR on November 23, 1998, for CONTRACTOR to operate the CITY's Abandoned Vehicle Program; and

WHEREAS, CITY has determined that Vehicles that meet the definition specified in Article 1.01(7) shall be processed under CITY'S Abandoned Vehicle Program;

WHEREAS, the current Agreement does not address all phases of CITY'S Abandoned Vehicle Program; and

WHEREAS, the CONTRACTOR is willing to accommodate this request;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree to amend the Agreement as follows:

1. Article 3.02 shall be deleted and Article 3.02(A) shall be inserted to read as follows:
 - CONTRACTOR shall investigate all complaints regarding Vehicles that meet the definitions specified in Articles 1.01(1) through 1.01(6), where said complaints are received by 5:00 p.m., within two (2) Business Days after receipt of notice from MAC to determine whether a Vehicle or Parts reported as abandoned constitutes an Abandoned Vehicle. CONTRACTOR'S obligation to investigate begins with the business day following the date the complaint was received.
2. Article 3.02(B) shall be added and shall read as follows:
 - CONTRACTOR shall investigate all complaints regarding Vehicles that meet the definition specified in Article 1.01(7), where said complaints are received by 5:00 p.m., within seven (7) Calendar Days after receipt of notice from MAC to determine whether a Vehicle or Parts reported as abandoned constitutes an Abandoned Vehicle.

RECEIVED
PURCHASING DIVISION
02 APR -4 AM 8: 27

RECEIVED
PURCHASING DIVISION
02 APR 20

3. Article 3.06 shall be modified to read as follows:
 - CONTRACTOR shall reinspect all tagged Vehicles no sooner than seventy-two (72) hours of tagging. CONTRACTOR shall tow Abandoned Vehicles as soon as possible after reinspection, but no more than seven (7) Business Days after receipt of notice of complaint from MAC for Abandoned Vehicles that meet the definitions specified in Articles 1.01(1) through 1.01(6), and no more than ten (10) Calendar Days for Abandoned Vehicles that meet the definition specified in Article 1.01(7).
4. Articles 3.07, 3.11, and 3.12 shall be amended to delete the reference to \$100.00 and replace it with the value of \$500.00.
5. Article 5.02(A) shall be modified to read as follows:
 - Failure to investigate complaint and, if determined to be an Abandoned Vehicle that meets the definitions specified in Articles 1.01(1) through 1.01(6), to tag Vehicle within two (2) Business Days of notification by MAC - \$10 per Abandoned Vehicle.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1 on the date set out above.

CITY:
 City of Indianapolis
 Department of Public Works
 Suite 2460
 200 E. Washington Street
 Indianapolis, IN 46204

CONTRACTOR:
 Last Chance Wrecking & Sales
 3924 W. Washington Street
 Indianapolis, Indiana 46241

By: Barbara A. Lawrence
 Barbara A. Lawrence, Director

By: Jim Edsal, Jr.
 Jim Edsal, Jr.

PURSUANT TO AUTHORIZATION OF
 BOARD OF PUBLIC WORKS
 on 3-27-02

Jim Edsal, Jr.
 Printed

ATTEST:
Kimberly A. Frye
 Kimberly A. Frye, Board Secretary

Quaker
 Title

APPROVED AS TO LEGAL FORM:

APPROVED FOR EXECUTION

Ms LeAnnette M. Pierce
 Ms LeAnnette M. Pierce 03/19/02
 Assistant Corporation Counsel

Katherine L. Davis
 Katherine L. Davis, City Controller

AMENDMENT NO. 12
TO
CONTRACTUAL AGREEMENT
BETWEEN
LAST CHANCE WRECKER AND SALES, INC.
AND
THE CITY OF INDIANAPOLIS
DEPARTMENT OF CODE ENFORCEMENT
FOR THE OPERATION OF
THE ABANDONED VEHICLE PROGRAM

THIS AMENDMENT No. 12, made and entered into this ____ day of _____, 2010, by and between the City of Indianapolis, Indiana, Department of Code Enforcement (hereinafter CITY), and Last Chance Wrecker and Sales, Inc. (formerly doing business as Last Chance Towing and Sales, hereinafter CONTRACTOR):

WITNESSETH THAT:

WHEREAS, the CITY entered into an Agreement with the CONTRACTOR on the 23rd day of November 1998 to manage all phases of the CITY'S Abandoned Vehicle Program for the tagging, towing, storage, and disposal of Abandoned Vehicles and Parts in accordance with IC 9-22-1-1 et. seq. and Sections 611-301 through 307 of the Revised Code of Indianapolis and Marion County, Indiana; and

WHEREAS, this Agreement was previously amended on April 10, 2002, November 27, 2002, December 16, 2003, September 28, 2004, July 15, 2005, July 27, 2006; July 7, 2007; November 28, 2007; December 10, 2008; and July 9, 2009 and in 2010.

WHEREAS, both the CITY and the CONTRACTOR desire to continue the Agreement for an additional six (6) months through December 31, 2011;

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree to amend the Agreement as follows:

- 1. Article 2.01 of the Agreement shall be amended to extend the Agreement for an additional six (6) months through December 31, 2011.**
2. All other terms and conditions of the Agreement dated November 23, 1998, and Amendment No. 1 dated April 10, 2002, and Amendment No. 2 dated November 27, 2002, and Amendment No. 3 dated December 16, 2003, and Amendment No. 4 dated September 28, 2004, and Amendment No. 5 dated July 15, 2005, and Amendment No. 6 dated July 27, 2006, and Amendment No. 7 dated July 7, 2007, and Amendment No. 8 dated November 28, 2007, and Amendment No. 9 dated December 10, 2008, and Amendment No. 10 dated July 9, 2009 and Amendment 11 shall remain the same as if set forth herein.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands.

CONTRACTOR:

Last Chance Wrecker and Sales, Inc.
PO Box 21144
Indianapolis, Indiana 46221

CITY:

Department of Code Enforcement
1200 S. Madison
Suite 100
Indianapolis, Indiana 46225

By: [Signature]

By: [Signature]
Rick Powers
Director

Printed: James W. Eckall III

Title: President

Date: 29 June 2010

Date: 7-1-10

APPROVED AS TO LEGAL FORM:

[Signature]
Richard G. McDermott
Assistant Corporation Counsel

Date: 6/28/10

() Approved for Availability of Funding

[Signature] ①
David P. Reynolds
City Controller

Date: 7-7-10
BW 7/1/10

**FIRST AMENDMENT TO FRANCHISE WRECKER CONTRACT
(LAST CHANCE WRECKER & SALES, INC.)**

This First Amendment to the Franchise Wrecker Contract ("Amendment") is entered into by and between the Indianapolis Department of Code Enforcement ("DCE") and Last Chance Wrecker & Sales, Inc. ("Franchise Wrecker").

RECITALS:

- A. In 2009, the Indianapolis Department of Public Safety ("DPS") for an on the behalf of the Indianapolis Metropolitan Police Department ("IMPD") pursuant to Chapter 611 Article II of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana ("Revised Code") entered into a Franchise Wrecker Contract ("Agreement") with Franchise Wrecker for towing and related services within certain IMPD Districts.
- B. General Ordinance No. 63, 2009, amended Section 611-206 of the Revised Code making the Department of Code Enforcement ("DCE") responsible for entering into contracts with towing vendors for franchise towing services. By operation of law, effective January 1, 2010, the DCE replaced the DPS as the contracting party to the agreement with Franchise Wrecker.
- C. The aforementioned Franchise Wrecker Agreement expires on 12:01 a.m. July 1, 2010.
- D. The parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereunder and under the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCE and Franchise Wrecker agree that the Agreement shall be amended as follows:

1. Recitals; Definitions. DCE and Franchise Wrecker hereby agree that the above and foregoing Recitals are true, correct, and complete and are hereby incorporated and made a part of this First Amendment as if completely and fully set forth herein. The terms used in this First Amendment shall have the definitions ascribed to them in the Agreement, as hereby amended.
2. Article II. Term and Renewal 2.02. The portion of Article II of the Agreement which states that the Agreement... "shall terminate at 12:01 a.m. on July 1, 2010" is hereby amended to state that the Agreement.... "shall terminate at 12:01 a.m. January 1, 2011".
3. Minority participation. To the extent the Franchise Wrecker uses subcontractors or other agents in the performance of services, the DCE encourages Franchise Wrecker to use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under the Agreement; or demonstrate a good faith effort to achieve such percentages.

4. Effect of Amendment. Except as amended herein, all the terms and provisions of the Agreement shall remain in full force and effect and shall not be limited, revised, or modified hereby. To the extent that any terms or provisions of the Agreement are contrary to, contradict, or are inconsistent with the terms or provision set forth in this First Amendment, the terms and provisions set forth in this First Amendment shall control.

5. Authority to Enter into Amendment. Each party represents to the other that (a) the representing party has full power, authority, and legal right to sign and deliver this First Amendment; (b) the representing party has taken all necessary action to authorize the execution of this First Amendment; and (c) each individual executing this First Amendment has been duly authorized to do so on behalf of such representing party, so that upon execution, this First Amendment creates a binding obligation of each representing party, which is fully enforceable in accordance with its terms.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the dates subscribed below.

Department of Code Enforcement

Last Chance Wrecker & Sales, Inc.

By *Rick Powers per M*
Printed: Rick B. Powers, Director

By *J W Edsall*
Printed: James W Edsall III

Date: 29 June 2010

Date: 7-1-10

APPROVED AS TO FORM & LEGALITY:

By: *Richard G. McDermott*
Richard G. McDermott
Asst. Corporation Counsel

Date: 6/25/10

APPROVED AS TO AVAILABILITY OF FUNDING:

By: *David P. Reynolds* ①
David P. Reynolds, City Controller

Date: 7-7-10
7/1/10

**FIRST AMENDMENT TO FRANCHISE WRECKER CONTRACT
(WHEELER'S TOWING SERVICE, INC.)**

This First Amendment to the Franchise Wrecker Contract ("Amendment") is entered into by and between the Indianapolis Department of Code Enforcement ("DCE") and Wheeler's Towing Service, Inc. ("Franchise Wrecker").

RECITALS:

- A. In 2009, the Indianapolis Department of Public Safety ("DPS") for an on the behalf of the Indianapolis Metropolitan Police Department ("IMPD") pursuant to Chapter 611 Article II of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana ("Revised Code") entered into a Franchise Wrecker Contract ("Agreement") with Franchise Wrecker for towing and related services within certain IMPD Districts.
- B. General Ordinance No. 63, 2009, amended Section 611-206 of the Revised Code making the Department of Code Enforcement ("DCE") responsible for entering into contracts with towing vendors for franchise towing services. By operation of law, effective January 1, 2010, the DCE replaced the DPS as the contracting party to the agreement with Franchise Wrecker.
- C. The aforementioned Franchise Wrecker Agreement expires on 12:01 a.m. July 1, 2010.
- D. The parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereunder and under the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCE and Franchise Wrecker agree that the Agreement shall be amended as follows:

1. Recitals; Definitions. DCE and Franchise Wrecker hereby agree that the above and foregoing Recitals are true, correct, and complete and are hereby incorporated and made a part of this First Amendment as if completely and fully set forth herein. The terms used in this First Amendment shall have the definitions ascribed to them in the Agreement, as hereby amended.
2. Article II. Term and Renewal 2.02. The portion of Article II of the Agreement which states that the Agreement... "shall terminate at 12:01 a.m. on July 1, 2010" is hereby amended to state that the Agreement.... "shall terminate at 12:01 a.m. January 1, 2011".
3. Minority participation. To the extent the Franchise Wrecker uses subcontractors or other agents in the performance of services, the DCE encourages Franchise Wrecker to use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under the Agreement; or demonstrate a good faith effort to achieve such percentages.

4. Effect of Amendment. Except as amended herein, all the terms and provisions of the Agreement shall remain in full force and effect and shall not be limited, revised, or modified hereby. To the extent that any terms or provisions of the Agreement are contrary to, contradict, or are inconsistent with the terms or provision set forth in this First Amendment, the terms and provisions set forth in this First Amendment shall control.

5. Authority to Enter into Amendment. Each party represents to the other that (a) the representing party has full power, authority, and legal right to sign and deliver this First Amendment; (b) the representing party has taken all necessary action to authorize the execution of this First Amendment; and (c) each individual executing this First Amendment has been duly authorized to do so on behalf of such representing party, so that upon execution, this First Amendment creates a binding obligation of each representing party, which is fully enforceable in accordance with its terms.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the dates subscribed below.

Department of Code Enforcement

Wheeler's Towing Service, Inc.

By Rich Powers per M
Printed: Rick B. Powers, Director

By EDDIE WHEELER
Printed: Eddie Wheeler

Date: 29 June 2010

Date: 7-1-10

APPROVED AS TO FORM & LEGALITY:

By: Richard G. McDermott
Richard G. McDermott
Asst. Corporation Counsel

Date: 6/25/10

APPROVED AS TO AVAILABILITY OF FUNDING:

By: David P. Reynolds ①
David P. Reynolds, City Controller

Date: 7-7-10
Bw 7/1/10

**FIRST AMENDMENT TO FRANCHISE WRECKER CONTRACT
(INDY TOWING SERVICE, INC.)**

This First Amendment to the Franchise Wrecker Contract ("Amendment") is entered into by and between the Indianapolis Department of Code Enforcement ("DCE") and Indy Towing Service, Inc. ("Franchise Wrecker").

RECITALS:

- A. In 2009, the Indianapolis Department of Public Safety ("DPS") for an on the behalf of the Indianapolis Metropolitan Police Department ("IMPD") pursuant to Chapter 611 Article II of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana ("Revised Code") entered into a Franchise Wrecker Contract ("Agreement") with Franchise Wrecker for towing and related services within certain IMPD Districts.
- B. General Ordinance No. 63, 2009, amended Section 611-206 of the Revised Code making the Department of Code Enforcement ("DCE") responsible for entering into contracts with towing vendors for franchise towing services. By operation of law, effective January 1, 2010, the DCE replaced the DPS as the contracting party to the agreement with Franchise Wrecker.
- C. The aforementioned Franchise Wrecker Agreement expires on 12:01 a.m. July 1, 2010.
- D. The parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereunder and under the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCE and Franchise Wrecker agree that the Agreement shall be amended as follows:

1. Recitals; Definitions. DCE and Franchise Wrecker hereby agree that the above and foregoing Recitals are true, correct, and complete and are hereby incorporated and made a part of this First Amendment as if completely and fully set forth herein. The terms used in this First Amendment shall have the definitions ascribed to them in the Agreement, as hereby amended.
2. Article II. Term and Renewal 2.02. The portion of Article II of the Agreement which states that the Agreement... "shall terminate at 12:01 a.m. on July 1, 2010" is hereby amended to state that the Agreement.... "shall terminate at 12:01 a.m. January 1, 2011".
3. Minority participation. To the extent the Franchise Wrecker uses subcontractors or other agents in the performance of services, the DCE encourages Franchise Wrecker to use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under the Agreement; or demonstrate a good faith effort to achieve such percentages.

4. Effect of Amendment. Except as amended herein, all the terms and provisions of the Agreement shall remain in full force and effect and shall not be limited, revised, or modified hereby. To the extent that any terms or provisions of the Agreement are contrary to, contradict, or are inconsistent with the terms or provision set forth in this First Amendment, the terms and provisions set forth in this First Amendment shall control.

5. Authority to Enter into Amendment. Each party represents to the other that (a) the representing party has full power, authority, and legal right to sign and deliver this First Amendment; (b) the representing party has taken all necessary action to authorize the execution of this First Amendment; and (c) each individual executing this First Amendment has been duly authorized to do so on behalf of such representing party, so that upon execution, this First Amendment creates a binding obligation of each representing party, which is fully enforceable in accordance with its terms.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the dates subscribed below.

Department of Code Enforcement

Indy Towing Service, Inc.

By Rick Powers per ML
Printed: Rick B. Powers, Director

By Cynthia L. King
Printed: Cynthia L. King

Date: 29 June 2010

Date: 6/30/10

APPROVED AS TO FORM & LEGALITY:

By: Richard G. McDermott
Richard G. McDermott
Asst. Corporation Counsel

Date: 6/25/10

APPROVED AS TO AVAILABILITY OF FUNDING:

By: David P. Reynolds ①
David P. Reynolds, City Controller

Date: 7-7-10
BW 7/1/10

**FIRST AMENDMENT TO FRANCHISE WRECKER CONTRACT
(COOK'S TOWING SERVICE, INC.)**

This First Amendment to the Franchise Wrecker Contract ("Amendment") is entered into by and between the Indianapolis Department of Code Enforcement ("DCE") and Cook's Towing Services, Inc. ("Franchise Wrecker").

RECITALS:

- A. In 2009, the Indianapolis Department of Public Safety ("DPS") for an on the behalf of the Indianapolis Metropolitan Police Department ("IMPD") pursuant to Chapter 611 Article II of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana ("Revised Code") entered into a Franchise Wrecker Contract ("Agreement") with Franchise Wrecker for towing and related services within certain IMPD Districts.
- B. General Ordinance No. 63, 2009, amended Section 611-206 of the Revised Code making the Department of Code Enforcement ("DCE") responsible for entering into contracts with towing vendors for franchise towing services. By operation of law, effective January 1, 2010, the DCE replaced the DPS as the contracting party to the agreement with Franchise Wrecker.
- C. The aforementioned Franchise Wrecker Agreement expires on 12:01 a.m. July 1, 2010.
- D. The parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereunder and under the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCE and Franchise Wrecker agree that the Agreement shall be amended as follows:

- 1. Recitals; Definitions. DCE and Franchise Wrecker hereby agree that the above and foregoing Recitals are true, correct, and complete and are hereby incorporated and made a part of this First Amendment as if completely and fully set forth herein. The terms used in this First Amendment shall have the definitions ascribed to them in the Agreement, as hereby amended.
- 2. Article II. Term and Renewal 2.02. The portion of Article II of the Agreement which states that the Agreement... "shall terminate at 12:01 a.m. on July 1, 2010" is hereby amended to state that the Agreement... "shall terminate at 12:01 a.m. January 1, 2011".
- 3. Minority participation. To the extent the Franchise Wrecker uses subcontractors or other agents in the performance of services, the DCE encourages Franchise Wrecker to use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under the Agreement; or demonstrate a good faith effort to achieve such percentages.

4. Effect of Amendment. Except as amended herein, all the terms and provisions of the Agreement shall remain in full force and effect and shall not be limited, revised, or modified hereby. To the extent that any terms or provisions of the Agreement are contrary to, contradict, or are inconsistent with the terms or provision set forth in this First Amendment, the terms and provisions set forth in this First Amendment shall control.

5. Authority to Enter into Amendment. Each party represents to the other that (a) the representing party has full power, authority, and legal right to sign and deliver this First Amendment; (b) the representing party has taken all necessary action to authorize the execution of this First Amendment; and (c) each individual executing this First Amendment has been duly authorized to do so on behalf of such representing party, so that upon execution, this First Amendment creates a binding obligation of each representing party, which is fully enforceable in accordance with its terms.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the dates subscribed below.

Department of Code Enforcement

Cook's Towing Services, Inc.

By Rick Powers per ML
Printed: Rick B. Powers, Director

By Arnell B Coakley
Printed:

Date: 29 June 2010

Date: 7-1-10

APPROVED AS TO FORM & LEGALITY:

By: Richard G. McDermott
Richard G. McDermott
Asst. Corporation Counsel

Date: 6/25/10

APPROVED AS TO AVAILABILITY OF FUNDING:

By: David P. Reynolds ①
David P. Reynolds, City Controller

Date: 7-7-10
7/1/10

**FIRST AMENDMENT TO FRANCHISE WRECKER CONTRACT
(INTERSTATE/DELAWARE & SOUTH TOWING, INC.)**

This First Amendment to the Franchise Wrecker Contract ("Amendment") is entered into by and between the Indianapolis Department of Code Enforcement ("DCE") and Interstate/Delaware & South Towing, Inc. ("Franchise Wrecker").

RECITALS:

- A. In 2009, the Indianapolis Department of Public Safety ("DPS") for an on the behalf of the Indianapolis Metropolitan Police Department ("IMPD") pursuant to Chapter 611 Article II of the "Revised Code of the Consolidated City and County" of Indianapolis and Marion County, Indiana ("Revised Code") entered into a Franchise Wrecker Contract ("Agreement") with Franchise Wrecker for towing and related services within certain IMPD Districts.
- B. General Ordinance No. 63, 2009, amended Section 611-206 of the Revised Code making the Department of Code Enforcement ("DCE") responsible for entering into contracts with towing vendors for franchise towing services. By operation of law, effective January 1, 2010, the DCE replaced the DPS as the contracting party to the agreement with Franchise Wrecker.
- C. The aforementioned Franchise Wrecker Agreement expires on 12:01 a.m. July 1, 2010.
- D. The parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth hereunder and under the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCE and Franchise Wrecker agree that the Agreement shall be amended as follows:

1. Recitals; Definitions. DCE and Franchise Wrecker hereby agree that the above and foregoing Recitals are true, correct, and complete and are hereby incorporated and made a part of this First Amendment as if completely and fully set forth herein. The terms used in this First Amendment shall have the definitions ascribed to them in the Agreement, as hereby amended.
2. Article II. Term and Renewal 2.02. The portion of Article II of the Agreement which states that the Agreement... "shall terminate at 12:01 a.m. on July 1, 2010" is hereby amended to state that the Agreement... "shall terminate at 12:01 a.m. January 1, 2011".
3. Minority participation. To the extent the Franchise Wrecker uses subcontractors or other agents in the performance of services, the DCE encourages Franchise Wrecker to use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, and three percent (3%) Veteran's Business Enterprises in the performance of services under the Agreement; or demonstrate a good faith effort to achieve such percentages.

4. Effect of Amendment. Except as amended herein, all the terms and provisions of the Agreement shall remain in full force and effect and shall not be limited, revised, or modified hereby. To the extent that any terms or provisions of the Agreement are contrary to, contradict, or are inconsistent with the terms or provision set forth in this First Amendment, the terms and provisions set forth in this First Amendment shall control.

5. Authority to Enter into Amendment. Each party represents to the other that (a) the representing party has full power, authority, and legal right to sign and deliver this First Amendment; (b) the representing party has taken all necessary action to authorize the execution of this First Amendment; and (c) each individual executing this First Amendment has been duly authorized to do so on behalf of such representing party, so that upon execution, this First Amendment creates a binding obligation of each representing party, which is fully enforceable in accordance with its terms.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the dates subscribed below.

Department of Code Enforcement

Interstate/Delaware & South Towing, Inc.

By Rick Powers per M
Printed: Rick B. Powers, Director

By Bruce K Meyer
Printed:

Date: 29 June 2010

Date: _____

APPROVED AS TO FORM & LEGALITY:

By: Richard G. McDermott
Richard G. McDermott
Asst. Corporation Counsel

Date: 6/25/10

APPROVED AS TO AVAILABILITY OF FUNDING:

By: David P. Reynolds ①
David P. Reynolds, City Controller

Date: 7-7-10
BW 7/1/10

**AMENDMENT NUMBER 2
TO THE
AGREEMENT
BETWEEN
THE DEPARTMENT OF PUBLIC WORKS (FLEET SERVICES)
AND
URS MIDWEST, Inc. dba
INTERSTATE TOWING SERVICE
FOR
EMERGENCY WRECKER SERVICE FOR
CITY OWNED VEHICLES and EQUIPMENT**

THIS AMENDMENT number 2 is entered by and between the City of Indianapolis Department of Public Works (Fleet Services) (hereinafter referred to as "City") and URS MIDWEST, Inc. (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the City entered into an Agreement (ITB-5967) with Contractor for the Contractor to supply and deliver emergency wrecker service for a two (2) year period; and

WHEREAS, this Agreement was previously amended for a two year term expiring April 3, 2010; and

WHEREAS, the parties both agree to extend this Agreement for an additional two (2) year period at the same price, terms and conditions, except as otherwise modified herein;

NOW THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

1. Section 3.01 shall be amended to add the following: Amendment number 2 hereby extends this Agreement for twenty-four (24) months through and including April 2, 2012.
2. All other terms and conditions of the original Agreement and the subsequent amendments shall remain in effect.

(Rest of this page is intentionally blank)

IN WITNESS WHEREOF, the parties of this AGREEMENT have hereunto set their hands.

CITY OF INDIANAPOLIS:
Department Of Public Works
Fleet Services
200 East Washington Street
Suite 2460
Indianapolis, Indiana 46204

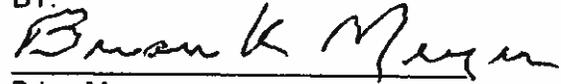
CONTRACTOR:
Brian Meyer
Interstate Towing
301 S. Kitley Avenue
Indianapolis, IN. 46219

BY:



David R. Sherman, Director

BY:



Brian Meyer

Date 5/20/2010

Date 5-12-10

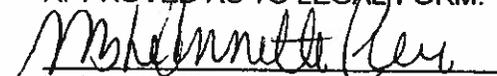
ATTEST:



Kimberly Frye, Board Secretary

5/20/2010
Date

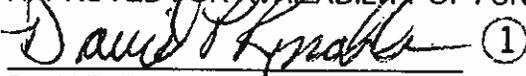
APPROVED AS TO LEGAL FORM:



LeAnnette Pierce
Assistant Corporation Counsel

04/17/10
Date

APPROVED FOR EXECUTION ():
APPROVED FOR AVAILABILITY OF FUNDS ():

 ①

David P. Reynolds
City Controller

5-14-07
Date

icm
5/12/10

**Amendment Number 1
To the
Service Agreement
Between the
City of Indianapolis
And
United Road Towing dba/
Interstate, Delaware and South
For
EMERGENCY WRECKER SERVICE FOR
CITY OWNED VEHICLES/EQUIPMENT**

This Amendment Number 1 to the Service Agreement (hereinafter referred to as "Amendment") is entered into by and between the **City of Indianapolis, Fleet Services** (hereinafter referred to as "City"), and **United Road Towing dba/ Interstate, Delaware and South**, (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, City and Contractor entered into an Agreement (ITB No. 5967) (hereinafter referred to as "Original Agreement") for Contractor to supply and deliver Emergency Wrecker Service for a two (2) year period; through and including April 3, 2008.

WHEREAS, the Contractor has performed satisfactorily the services required under the Original Agreement and the City desires that the Contractor provide services for an additional two-year period; and

WHEREAS, the Contractor is willing to perform said services at the same prices and terms.

NOW THEREFORE, the parties agree that the Original Agreement should be amended as follows:

1. Section 3.01 of the Original Agreement shall be amended to add the following: This Amendment No.1 shall extend the Original Agreement for twenty-four (24) months, through and including April 3, 2010.
2. Section 5.13 of the Original Agreement shall be amended to reflect the current Non-Discrimination language pursuant to Section 581-102 of the Revised Code of the Consolidated City of Indianapolis, Marion County, Indiana.
3. A new Section 5.23 shall be added to the Original Agreement and shall read as follows:

Debarment and Suspension

1. Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any

Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

2. Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.
3. Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certification was erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
4. All other terms and conditions of the Original Agreement (including all attachments not hereby amended) shall remain in full force and effect.
5. This Amendment shall become effective on the latest date of execution by a required party.

(REST OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the ____ day of _____, 2008.

Contractor:

United Road Towing Service, dba/ Interstate, Delaware and South
301 S. Kitley Ave.
Indpls., IN 46219

By Brian K Meyer

Printed BRIAN K MEYER

Title: General Manager

Date 3/27/08

City:

DEPARTMENT OF PUBLIC WORKS
200 East Washington Street
Indianapolis, Indiana 46204

APPROVED FOR AVAILABILITY OF
FUNDING: (✓) or EXECUTION ()

David Sherman

David Sherman
Director

Date 2-22-08

David P. Reynolds ①

David Reynolds
City Controller

Date 4-7-08

ccm
4/3/08

APPROVED AS TO LEGAL FORM:

Lauren Toppen

Lauren Toppen
Assistant Corporation Counsel

**AGREEMENT BETWEEN
CITY OF INDIANAPOLIS FLEET SERVICES
AND
INTERSTATE TOWING
(DIVISION OF UNITED ROAD SERVICE, INC.)
FOR
EMERGENCY WRECKER SERVICE
FOR CITY OWNED VEHICLES / EQUIPMENT**

This Service Contract (hereinafter referred to as "Contract"), entered into by and between the City of Indianapolis, Indianapolis Fleet Services, (hereinafter referred to as "City"), and **Interstate Towing (Division of United Road Service, Inc.)** (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

1.01 The "Contract", as referred to herein, shall mean this Contract executed by City and Contractor, and shall include these Terms and Conditions, the Attachments described in Section 1 and attached hereto, and any written supplemental contract or modification entered into between City and Contractor, in writing, after the date of this Contract.

1.02 This Contract constitutes the entire contract between the parties and supersedes all prior contracts, written or verbal, between City and Contractor. No statements, promises or contracts whatsoever, in writing or verbal, in conflict with the terms of the Contract have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Contract may be amended and modified only in writing signed by both City and Contractor.

1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.

1.04 Any interpretation applied to this Contract, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Contract.

1.05 This Contract shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

1.06 This Contract shall be construed under and governed by the laws of the State of Indiana.

SECTION II. DUTIES OF CONTRACTOR

2.01 The Contractor shall provide the services as set forth in Attachment A, attached hereto and made a part thereof.

SECTION III. TERM

3.01 This Contract shall commence at the time of execution by all parties. The initial contract term shall be for a period of two (2) years after date of execution by all parties.

3.02 This Contract may be renewed beyond the expiration by contract of parties. The term of the renewal shall not be longer than the term of the original Contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the Contract shall remain the same as set forth herein, and may be amended only by written instrument signed by both City and Contractor and attached hereto as an amendment.

SECTION IV. COMPENSATION

4.01 The Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Contract necessary to complete the work as defined in *Attachment A*.

4.02 Payment will be in conformance with *Attachment B* to this Contract.

4.03 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Contract and shall cooperate with and provide any other necessary information to City. City shall pay Contractor within thirty days after receipt of such properly itemized claim forms.

SECTION V. GENERAL PROVISIONS

5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the Consolidated City of Indianapolis and of Marion County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by the City for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate the City in any way.

5.02 Subcontracting. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Contract or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Contract.

5.03 Necessary Documentation. Contractor certifies that it will furnish the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Contract. Failure of the Contractor to comply with this paragraph shall constitute a material breach of this Contract.

5.04 Confidentiality of City Information.

5.04.1 Contractor understands that the information provided to it or obtained from City during the performance of its services is confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's Work Product generated during the performance of this Contract is confidential to City. The failure to comply in all material respects with this section shall be considered a material breach of this Contract. The obligations of this section shall survive the termination of this Contract and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or

thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide notice to the City prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

5.04.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, the City that is required to be kept confidential by City pursuant to Indiana law except as contemplated by this section, clause (d).

5.05 Records: Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Contract. Contractor shall make such materials available at its offices at all reasonable times during the Contract period and for three (3) years from the date of final payment under this Contract for inspection by the City or any other authorized representative of the City of Indianapolis, Marion County, Indiana. Copies thereof, if requested, shall be furnished at no cost to the City.

5.06 Ownership of Documents and Materials.

5.06.1 All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Contract, shall be considered "work for hire" and the Contractor transfers any ownership claim to the City of Indianapolis and all such matters will be the property of the City of Indianapolis. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the City, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the City and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the City. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers in accordance with professional standards.

5.06.2 Notwithstanding anything to the contrary contained in this Contract, it is understood and agreed that Contractor shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Contractor prior to, or acquired by Contractor during the performance of this Contract and the same shall not be deemed to be Work Product or Work For Hire and Contractor shall not be restricted in anyway with respect thereto.

5.07 Insurance.

5.07.1 Contractor shall, as a prerequisite to this Contract, purchase and thereafter maintain such insurance as will protect it and the City from claims set forth below which may arise out of or result from Contractor's operations under this Contract, whether such operations be by the Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

Coverage

Worker's Compensation & Disability	Statutory
Employer's Liability	\$100,000
Bodily Injury by Accident	each accident
Bodily Injury by Disease	\$500,000 policy limit

Bodily Injury by Disease	\$100,000 each employee
Commercial General Liability (Occurrence Basis) Bodily injury, personal injury, property damage, contractual liability, products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000
NOTE: <u>GENERAL AGGREGATE TO APPLY PER PROJECT</u>	
Comprehensive Auto Liability (Owned, hired & non-owned) Bodily injury & property damage	\$500,000 each accident (single limit)
Umbrella Excess Liability occurrence & aggregate	\$1,000,000

5.07.2 With the prior approval of the City, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.07.3 Certificates of Insurance, naming the City of Indianapolis as "additional insured" (except Workers Compensation), showing such coverage then in force (but not less than the amount shown) shall be filed with the City prior to the commencement of any work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City.

5.07.4 Notwithstanding any other provision of this Contract, Contractor shall provide all insurance coverage required by the documents provided by City.

5.08 Termination for Cause or Convenience.

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Contract, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Contract, then City may, without prejudice to any other right or remedy, terminate this Contract in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for

anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.08.2 This Contract may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice (delivered certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with City prior to termination. If City effects termination for convenience, Contractor's compensation shall be equitably adjusted.

5.08.3 Upon receipt of a termination action for default or for the City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Contractor in performing this Contract, whether completed or in process.

5.08.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment of the price provided for in this Contract shall be made as provided in Paragraph 5.08.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.09 Termination for Failure of Funding. Notwithstanding any other provision of this Contract, if funds for the continued fulfillment of this Contract by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Contract without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Contract shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Indemnification. Contractor agrees to indemnify, defend, and hold harmless the City of Indianapolis and its officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission by Contractor or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. The City shall not provide such indemnification to the Contractor, provided, however, that the Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omission of the City.

5.11 Notice. Any notice or other correspondence required to be sent under this Contract shall be sent to:

To Contractor:

Daren Gilbert, General Manager
Interstate Towing
(Division of United Road Service, Inc.)
301 S. Kitley Ave.
Indianapolis, IN 46219

To City:

Indianapolis Fleet Services
Attn: Ron Stinson
1651 W. 30th St
Indianapolis, IN 46208

5.12 Disputes. Contractor shall carry on all work required under this Contract and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by the City or the Contractor as a result of such failure to proceed shall be borne by the

Contractor, and the Contractor shall make no claim against the City for such costs. The City may withhold payments on disputed items pending resolution of the dispute.

5.13 Non-discrimination. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Contract.

5.14 Conflict of Interest. Contractor certifies and warrants to City that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Contract has or will have any conflict of interest, direct or indirect, with City.

5.15 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.16 Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

5.17 Applicable Laws; Forum. The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. This includes the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Contract shall be reviewed by the City and the Contractor to determine whether the provisions of the Contract require formal modification.

This Contract shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

5.18 Waiver. The City's delay or inaction in pursuing its remedies set forth in this Contract, or available by law, shall not operate as a waiver of any of the City's rights or remedies.

5.19 Severability. If any provision of this Contract is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Contract which can operate independently of such stricken provisions shall continue in full force and effect.

5.20 Attorneys' Fees. Contractor shall be liable to the City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.

5.21 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors,

administrators and assigns of such other party, in respect to all covenants of this Contract; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Contract without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.

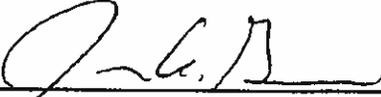
5.22 Authority to Bind Contractor. Notwithstanding anything in this Contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor designated above, has filed proof of such authority with City and has obtained all necessary or applicable approval from the home office of the Contractor to make this Contract fully binding upon the Contractor when his/her signature is affixed and accepted by the City.

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IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates subscribed below.

Indianapolis Fleet Services,
Department of Public Works
Consolidated City of Indianapolis, ("City")

Interstate Towing
(Division of United Road Service, Inc.)

By: 

By: 

Printed: James A. Garrard

Printed: Daren Gilbert

Title: Director, Department of Public Works

Title: Gen. Mgr.

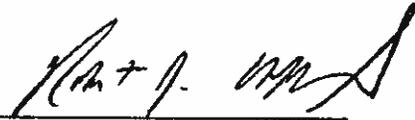
Date: 3/22/06

Date: 3/30/06

APPROVED AS TO FORM & LEGALITY:

APPROVED FOR EXECUTION:

By: 

By:  ①

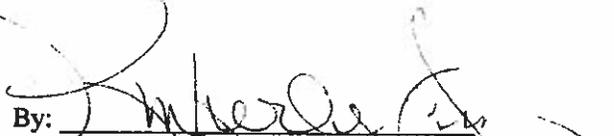
Lauren Toppen
Assistant Corporation Counsel

Robert J. Clifford
City Controller

Date: 3/19/2006

Date: 4-3-06

ATTEST:



Kimberly A. Frye, Board Secretary

Date: 3/23/06

ATTACHMENT A
Scope of Services

1. Contractor shall provide tow-in (wrecker) service for disabled vehicles and/or equipment owned and operated by the City of Indianapolis.
2. Contractor must be able to provide twenty-four (24) hour service, seven (7) days per week, including holidays. Contractor must also meet all zoning regulations for operating a twenty-four (24) hour business.
3. Contractor must be able to furnish all necessary tooling and equipment to facilitate towing of all equipment with automatic transmissions and vehicles with extended bumpers.
4. Contractor must be able to arrive at the scene of any occurrence when so ordered by authorized personnel within thirty (30) minutes after being summoned. Portal to portal should be approximately one (1) hour or less. Failure to comply may be cause for contract termination.
5. Contractor shall have an adequate number of tow trucks or other towing equipment to adequately service this bid within the specified response time at all times. This equipment shall have a power operated winch, ground-and-tow sling which is capable of hoisting and pulling a vehicle, must be able to wheel-lift tow all type vehicles within a minimum 10 ton capacity. Equipment must also have a fire extinguisher plus sufficient equipment to remove debris from an accident scene. Successful contractor shall clean debris from street if situation requires it. Each tow truck shall have the capability to dolly vehicles.

Contractor must furnish an updated equipment list upon request during the term of this contract. Failure to maintain an inventory of adequate equipment may be cause for contract termination.

6. Contractor must be able to provide service for winching an off the road vehicle back on the road. Such bids shall be submitted for the off the road winching of vehicles of all weight capacity.
7. Wrecker driver must conduct a walk around inspection of the vehicle prior to moving the vehicle and inform operator to remove personal property or valuables left in the vehicle. If not removed from the vehicle, contractor shall list those items and inspection concerns on the towing invoice.
8. If contractor is unable to provide service, they must subcontract it out at the same price as this bid to a wrecker service of their choice. If service is subcontracted out, Indianapolis Fleet Services (IFS) must be notified and approve subcontractor prior to sending tow truck.
9. IFS may abort run anytime prior to hook-up at no charge to the City.
10. All drivers utilized in the performance of this contract must be bonded, insured, and licensed.

ATTACHMENT A
Scope of Services

11. Contractor should be OEM certified to provide warranty towing service for all applicable City vehicles as covered by the OEM manufacturer warranty towing coverage.

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ATTACHMENT B

Pricing Form

1. Charge for towing of automobiles in Marion County. Includes "backing off" brakes and/or removing driveshaft/axle (when required).

Under one ton cost per unit (Single Rear Wheel)	\$45.00	1
Loaded cost per mile outside of Marion County	\$1.50	2
One ton through 19,500 GVWR (Dual Rear Wheels)	\$65.00	3
Loaded cost per mile outside of Marion County	\$1.50	4
Trucks Over 19,501 GVWR (Excluding equipment of a specialized nature and Fire Apparatus)	\$150.00	5
Loaded cost per mile outside of Marion County	\$3.00	6
Motorcycles cost per unit	\$55.00	7
Loaded cost per mile outside of Marion County	\$1.50	8

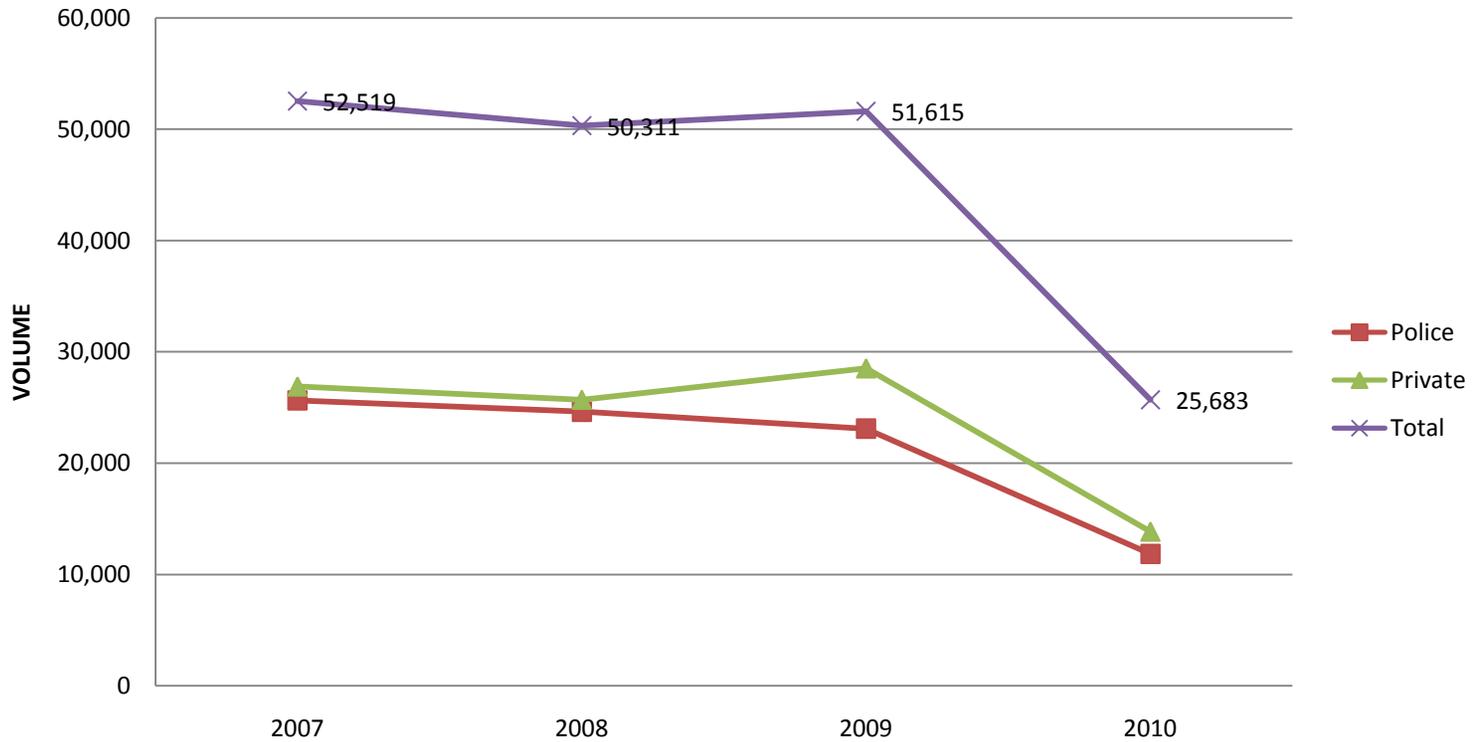
2. Charge for towing of equipment of a specialized nature from the point of disablement to anywhere within Marion County. This equipment would be classified as: backhoes, tractors, hop-toes, road graders, front-end loaders, and other construction equipment. Cost to include off-loading.

Cost per unit	\$70.00/Hour-2 Hour Minimum	9
Loaded cost per mile outside of Marion County	\$ (Hourly)	10

3. Charge for towing of one (1) ton or more fire fighting equipment and other heavy fire apparatus to anywhere in Marion County including "backing-off" brakes and/or removing driveshaft/axle (when required).

Cost per unit	\$160.00	11
Loaded cost per mile outside of Marion County	\$3.00	12

IMPD AUTO DESK TOWS PROCESSED



IMPD AUTO DESK TOWS				
Year	2007	2008	2009	2010 YTD*
Police	25,620	24,608	23,089	11,842
Private	26,899	25,703	28,526	13,841
Total	52,519	50,311	51,615	25,683

***Note:** YTD Tows from 1/1/2010 to 6/30/2010

Abandoned Tow Report

Year:	Year-to-date Towed
2005	7,332
2006	5,552
2007	4,405
2008	3,137
2009	2,945

2010	Towed per Month
Jan	329
Feb	244
March	217
April	109
May	250
June	158

ITB 7265 1 Year Term Contract for Franchise Wrecker Service Bid Tabulation

Vendor	Wheeler's Towing Service	Last Chance Wrecker Service	Interstate Delaware & South	Cook's Towing Service	Indy Towing Service
DISTRICT- Less Than 9,000 Lbs GVWR					
SOUTHEAST	\$73.00		\$51.51	\$57.00	\$65.00
SOUTHWEST	\$78.75			\$59.00	
NORTHWEST	\$73.75				\$65.00
NORTH		\$55.00	\$50.76		\$65.00
EAST		\$60.00	\$52.26		\$75.00
DOWNTOWN	\$63.75	\$60.00	\$52.51		
DISTRICT- Greater Than 9,000 Lbs GVWR					
SOUTHEAST	\$65.00 / 10%		\$81.76 / 10%	\$50.00 / 10%	
SOUTHWEST	\$65.00 / 10%		\$82.76 / 10%	\$50.00 / 10%	
NORTHWEST	\$65.00 / 10%				
NORTH		\$100.00 / 20%	\$79.26 / 10%		
EAST		\$100.00 / 20%	\$82.76 / 10%		
DOWNTOWN	\$65.00 / 10%	\$100.00 / 20%	\$82.51 / 10%		