



AGENDA REPORT

Meeting Date: October 7, 2014
Item Number: D-8
To: Honorable Mayor & City Council
From: David L. Snowden, Chief of Police
Subject: AMENDED AND RESTATED AGREEMENT FOR POLICE AND CITY VEHICLE TOWING SERVICES, LIEN SALE PROCESSING SERVICES AND VEHICLE AUCTION SERVICES BY AND BETWEEN THE CITY OF BEVERLY HILLS AND CLASSIC TOW, INC. DBA TIP TOP TOW SERVICE

Attachments: 1. Amended and Restated Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an Amended and Restated Agreement between the City of Beverly Hills and Classic Tow, Inc. DBA Tip Top Tow Services, Inc.

INTRODUCTION

On November 1st 2012, the City entered into an agreement with Tip Top Tow Services, Inc. for official police towing services. The original agreement was for light-duty services only. The Police Department occasionally requires medium and heavy duty towing services and does not currently have a vendor agreement for these services. This Amended and Restated Agreement will facilitate adding these services with the City's existing vendor.

DISCUSSION

Due to recent events in the Trousdale area staff recognized the need for contractual medium and heavy duty tow services. Tip Top Tow Services is equipped to provide these services. Because the City's need for medium and heavy duty tow services is only occasional staff believes combining these services with the existing tow services

contract is merited. The Amended and Restated Agreement addresses the following issues: Clarifies language in the original agreement, defines and includes in the Scope of Work 'Heavy-Duty Tow' and 'Medium-Duty Tow', and revises the definition of 'Vehicle towing service' to include heavy-duty tow and recovery services.

Exhibit B adds fees for Heavy-Duty Tow and Medium-Duty Tow services not covered in the original agreement. No changes are being recommended to the fees that were established in the original Exhibit B for the duration of the agreement.

FISCAL IMPACT

No fiscal impact for the clarifications to the original agreement. Staff expects approximately \$20,000-\$25,000 in heavy duty towing services annually, most of which is paid for by private parties.



Laurence S. Wiener, City Attorney
City Attorney Approval



David L. Snowden, Chief of Police
Police Approval

Attachment 1

**AMENDED AND RESTATED
AGREEMENT
FOR
POLICE AND CITY VEHICLE TOWING SERVICES,
LIEN SALE PROCESSING SERVICES AND
VEHICLE AUCTION SERVICES
BY AND BETWEEN
THE CITY OF BEVERLY HILLS
AND
CLASSIC TOW, INC. DBA TIP TOP TOW SERVICE**

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement for Police and City Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services (“Agreement”) is dated October __, 2014, and between the City of Beverly Hills, a California municipal corporation (“City”), and Classic Tow, Inc. dba Tip Top Tow Service, a California corporation (“Vendor”), and fully amends, restates and replaces in its entirety that Agreement for Official Police and City Tow Services, dated November 1, 2012 and identified as Agreement Number 472-12.

RECITALS

A. City has a need for police and City vehicle towing services, lien sale processing services and auctioning services.

B. Vendor desires to provide police and City towing services, vehicle lien sale processing services and vehicle auctioning services to City.

C. Vendor represents that it is qualified and able to perform such services.

D. City, for the purpose of ensuring the continued protection and preservation of the health, welfare and safety of its residents, desires to retain Vendor to provide such services.

The parties therefore agree as follows:

ARTICLE 1. SCOPE OF SERVICES, TERM AND TERMINATION.

1.1 Scope of Services.

1.1.1 Scope of Services. Vendor shall provide Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services, in accordance with the provisions of this Agreement and as more particularly described in **Exhibit A**.

1.1.2 Non-Exclusive Agreement. Vendor acknowledges and agrees that City may enter into agreements with other persons or entities for the provision of vehicle towing services, lien sale processing services and auctioning services similar to the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services provided by Vendor under this Agreement.

1.2 Term.

1.2.1 Initial Term. The initial term of this Agreement shall commence on November 1, 2012 and expire at 11:59 p.m. on October 31, 2013, unless extended as provided in Section 1.2.2 of this Agreement or earlier terminated as provided in Sections 1.3 of this Agreement.

1.2.2 Extension Terms. The City Representative, in his or her sole discretion, may approve up to four (4) one-year extensions in writing.

1.3 Suspension and Termination of Agreement. The parties may suspend or terminate this Agreement as follows:

1.3.1 Termination or Suspension by City. City may suspend or terminate this Agreement as follows:

(a) **By Right.** City may terminate this Agreement for any reason on thirty (30) calendar days' written notice to Vendor. Upon receipt of notice of termination from City, Vendor shall cease all services performed under this Agreement on or before the effective date of termination specified in the notice. In the event of termination of this Agreement by City due to no fault or failure of performance by Vendor, City shall pay Vendor for Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services satisfactorily rendered up to the effective date of termination. Except as otherwise provided in this Agreement, all rights and obligations of the parties cease on termination of this Agreement due to no fault or failure of performance by Vendor. Neither party shall be liable to the other for damages of any kind, including incidental or consequential damages, resulting from the termination of this Agreement under this Section 1.3.1(a).

(b) **For Fraud.** City may terminate this Agreement immediately in the event that City reasonably determines that any of the representations and warranties made by Vendor under this Agreement are or become materially false or inaccurate. Except as otherwise provided in this Agreement, all rights and obligations of the parties cease on termination of this Agreement due to Vendor's misrepresentations or breach of warranties. City shall not be liable to Vendor for damages of any kind, including incidental or consequential damages, resulting from the termination of this Agreement under this Section 1.3.1(b).

(c) **For Default.** If Vendor commits an event of default, as set forth in Article 8 of this Agreement, materially breaches any provision of this Agreement or otherwise fails to comply with the terms of this Agreement, and (i) if within thirty (30) calendar days after City has given Vendor written notice of Vendor's default, material breach or violation Vendor has not cured the default, material breach or violation, or, (ii) if the default, material breach or violation cannot be reasonably cured within the thirty (30) day time period, if Vendor has not commenced the cure within the thirty (30) day time period, diligently continued to pursue the cure, and completed it within sixty (60) days after Vendor's receipt of City's notice, then City may suspend Vendor from performing services under this Agreement until such time as Vendor cures the default, material breach or violation or terminate this Agreement at any time thereafter without further notice to Vendor. Except as otherwise provided in this Agreement, all rights and obligations of the parties cease on termination of this Agreement due to Vendor's default under, material breach of or violation of this Agreement. City shall not be liable to Vendor for damages of any kind, including incidental or consequential damages, resulting from the termination of this Agreement under this Section 1.3.1(c).

1.3.2 Termination by Vendor. Vendor may terminate this Agreement by providing City with ninety (90) calendar days' written notice of Vendor's intention to terminate. Vendor's written notice of intent to terminate shall clearly set forth the reasons for termination and the effective date of termination. Except as otherwise provided in this Agreement, all rights and obligations of the parties cease on termination of this Agreement pursuant to this Section 1.3.2. City shall not be liable to Vendor for damages of any kind, including incidental or consequential damages, resulting from the termination of this Agreement under this Section 1.3.1(b).

ARTICLE 2. DEFINITIONS.

2.1 Definitions. For purposes of this Agreement, the following words and phrases shall have the following meanings:

2.1.1 "BHMC" means the Beverly Hills Municipal Code.

2.1.2 “City Clerk” means the City Clerk of the City of Beverly Hills.

2.1.3 “City Manager” means the City Manager of the City of Beverly Hills.

2.1.4 “Chief of Police” means the Chief of Police of the City of Beverly Hills.

2.1.5 “City’s Facility” shall mean the vehicle storage facilities owned or operated by City and includes the “Sub-Garage Facility” located at 336 Foothill Road, Beverly Hills, California 90210 and the “Surface Lot Facility” located at 332 Foothill Road, Beverly Hills, California 90210.

2.1.6 “DMV” shall mean the California Department of Motor Vehicles.

2.1.7 “Emergency Towing” means an urgent and immediate need for towing when (1) an inoperative vehicle is located within a traffic lane or other hazardous location or (2) there is a public safety reason for the tow which is authorized by the California Vehicle Code or other state or local law and requested by an (i) officer of the Police Department or (ii) officer or employee of the Office of the City Manager, the Fire Department or the Transportation Division who is authorized to request towing pursuant to Section 1-3-201 of the BHMC.

2.1.8 “Fire Department” means the Fire Department of the City of Beverly Hills.

2.1.9 “Heavy-Duty Towing” means the need for towing of any vehicle described in California Vehicle Code Section 34500, as amended, superseded or supplemented with a gross vehicle weight of 26,001 or more pounds.

2.1.10 “Lien Sale Processing Services” include Vendor’s processing, on City’s behalf, of lien sales of a towed vehicles stored at the City’s Facility in compliance with California Civil Code Section 3067 *et seq.* and any other applicable state law, as more particularly described in **Exhibit A**.

2.1.11 “Medium-Duty Vehicles” for the purpose of determining tow rates, shall mean any vehicle with a gross vehicular weight rating of 10,000-26,000 pounds.

2.1.12 “Non-Emergency Towing” means a need for towing when there is no emergency but the tow is authorized by the California Vehicle Code or other state or local law and requested by an (i) officer of the Police Department or (ii) officer or employee of the Office of the City Manager, the Fire Department or the Transportation Division who is authorized to request towing pursuant to Section 1-3-201 of the BHMC.

2.1.13 “Police Department” means the Police Department of the City of Beverly Hills.

2.1.14 “Standard Towing” means the need for towing of any vehicle not described in California Vehicle Code Section 34500, as amended, superseded or supplemented.

2.1.15 “Tow Truck” is defined as set forth in Section 615(a) of the California Vehicle Code, as amended, superseded or supplemented.

2.1.16 “Traffic Bureau Commander” means the Traffic Bureau Commander of the Police Department.

2.1.17 “Transportation Division” means the Transportation Division of the Public Works & Transportation Department of the City of Beverly Hills.

2.1.18 “Vehicle Auction Services” means Vendor’s satisfaction, on City’s behalf, of City’s liens on towed vehicles stored at the City’s Facility through a lien sale auction in accordance with California Civil Code Section 3067 *et seq.*, as amended, superseded or supplemented.

2.1.19 “Vehicle Towing Service” shall mean the activity of towing vehicles within City which shall include the towing of privately-owned vehicles, the towing of City owned vehicles and equipment, Emergency Towing, Non-Emergency Towing and the following services:

(a) Road Service Call: Including, but not limited to, tire changes, jump-starts, refilling, and similar services needed to service vehicles.

(b) Standard Towing: Towing of automobiles, light trucks, motorcycles, specialty equipment or other vehicles as necessary.

Vehicle Towing Services also include the storage of vehicles at either the Vendor’s Primary Facility or the City’s Facility, as set forth in Section 1.3 of the Agreement, and all other services performed incident to towing, such as, but not limited to, the release of vehicles to the registered owner or representative from either the Vendor’s Primary Facility or City’s Facility. Vehicle Towing Service shall include Heavy-Duty Towing.”

2.1.20 “Vendor’s Primary Facility” shall mean Vendor’s vehicle storage facility located at 1654 12th Street, Santa Monica, California 90404.

ARTICLE 3. COLLECTION OF CITY’S VEHICLE STORAGE FEES AND IMPOUND RELEASE FEES.

3.1 Collection of Vehicle Storage and Impound Release Fees. In accordance with Section 4.3.2 of this Agreement, Vendor shall, on City’s behalf, collect City’s vehicle storage fees and impound release fees for the storage and release of vehicles at the City’s Facility, as set forth in **Exhibit B**, from either the legal or registered owner of the vehicle or from the lien sale proceeds from the auction of the vehicle. Not later than the fifteenth (15th) calendar day of each month, Vendor shall deliver vehicle storage and impound release fees collected during the prior month to the Police Department at the following address: City of Beverly Hills, Police Department, Attention: Traffic Bureau Commander, 464 N. Rexford Drive, Beverly Hills, California 90210.

ARTICLE 4. COMPENSATION AND PAYMENT.

4.1 Compensation.

4.1.1 Vehicle Towing Services Rates. As full compensation for Vendor’s Vehicle Towing Services, and subject to the maximum amount of compensation from City to Vendor hereafter provided, Vendor shall charge to vehicle owners the rates set forth in **Exhibit B**. The maximum amount of compensation that City shall pay Vendor pursuant to this Agreement for Vehicle Towing Services provided for City-owned vehicles in any one fiscal year is Five Thousand Dollars (\$5,000). The rates set forth in **Exhibit B** include payment for all equipment, materials and supplies. City shall not withhold federal payroll, state payroll and other taxes, or other similar

deductions from each payment made to Vendor. No claims for compensation that exceed the Five Thousand Dollar (\$5,000) maximum amount of compensation will be allowed unless the City Council authorizes such excess claims in writing prior to the performance of the related services. Any excess claims authorized by the City Council shall be paid at the rates set forth in **Exhibit B** or at a rate mutually agreed to by the parties.

4.1.2 Lien Sale Processing Services. As full compensation for Vendor's Lien Sale Processing Services, Vendor shall charge the rates set forth in **Exhibit B**. City shall not withhold federal payroll, state payroll and other taxes, or other similar deductions from each payment made to Vendor.

4.1.3 Vehicle Auction Services. Vendor shall perform Vehicle Auction Services at no charge to City.

4.1.4 Additional Services. No claims for additional services performed by Vendor will be allowed unless the City Council authorizes the additional services in writing prior to the performance of the additional services or the incurrence of additional expenses. Any additional services authorized by the City Council shall be compensated at the rates set forth in **Exhibit B** or at a rate mutually agreed to by the parties in writing.

4.2 Monthly Statements. Not later than the fifteenth (15th) calendar day of each month, Vendor shall submit to City separate statements for (i) Vehicle Towing Services, (ii) Lien Sale Processing and Vehicle Auction Services and (iii) additional services performed pursuant to this Agreement during the prior month. All statements shall describe in detail the services performed during the prior month. The statements for Vehicle Towing Services shall categorize charges by City department and list (i) privately-owned vehicles towed to the Vendor's Primary Facility, privately-owned vehicles towed to the City's Facility and City-owned vehicles towed, (ii) the days towed, (iii) the mileage towed, (iv) the flat rate charged to the private vehicle's legal or registered owner or the rate per mileage charged to City, (v) road service call charges, (vi) miscellaneous towing charges, (vii) City's storage fees collected for impounded vehicles stored at the City's Facility, (viii) release dates of impounded vehicles and (ix) impound release fees collected for impounded vehicles released from the City's Facility. The statements for Lien Sale Processing and Vehicle Auction Services shall list (i) the vehicles, (ii) the values of each vehicle, (iii) the date of auction (iv) the lien sale amount and (v) the distribution of the lien sale auction proceeds. In each statement for additional services, Vendor shall attach documentation of City's prior approval of such additional services and costs. City shall review the statements and notify Vendor in writing within ten (10) business days of any disputed amounts. City shall pay all undisputed statement amounts attributable to City within thirty (30) calendar days of receipt of each invoice and remit payments to: Classic Tow, Inc. dba Tip Top Tow Service, 1654 12th Street, Santa Monica, California 90404. City shall pay all undisputed statement amounts for Vehicle Towing Services up to the maximum amount set forth in Section 4.1.1 of this Agreement. If City disputes an amount in a statement, City shall give Vendor written notice of such dispute within thirty (30) calendar days of City's receipt of the statement containing the disputed amount.

4.3 Method of Payment.

4.3.1 Payment for Privately-Owned Vehicles Towed to, Stored at and Released from the Vendor's Primary Facility. Vendor shall collect Vendor's towing and storage fees, as set forth in **Exhibit B**, from the vehicle's legal or registered owner. City shall not be responsible for

payment of Vendor's towing and storage fees for privately-owned vehicles towed to, stored at and released from the Vendor's Primary Facility. Vendor shall waive Vendor's storage fee if a vehicle is released within one (1) hour of storage at Vendor's Primary Facility and otherwise impose Vendor's storage fees in accordance with California Vehicle Code Section 3068.1(a)(1).

4.3.2 Payment for Privately-Owned Vehicles Towed to and Stored at the City's Facility and Sold by Lien Sale Auction. In the event a vehicle is sold by lien sale auction, Vendor shall collect Vendor's towing and lien sale processing fees and City's storage fees, as set forth in **Exhibit B**, from the lien sale auction proceeds. City shall not be responsible for payment of Vendor's towing fees for privately-owned vehicles towed to and stored at the City's Facility and sold by lien sale auction. Vendor shall remit City's storage fees to City in accordance with Section 3.1 of this Agreement. If the amount of the lien sale auction proceeds is insufficient to recover one hundred percent (100%) of Vendor's towing and lien sale processing fees and City's storage fees incurred by a vehicle, the lien sale auction proceeds shall be distributed in the following order: (i) towing fees to Vendor; (ii) lien sale processing fees to Vendor; and (iii) storage fees to City. If the amount of the lien sale proceeds exceed the towing, storage and lien sale processing fees incurred by the vehicle, Vendor shall remit the amount in excess to the DMV in accordance with the applicable provisions of the California Vehicle and Civil Codes.

4.3.3 Payment for Privately-Owned Vehicles Towed to and Stored at the City's Facility and not Sold by Lien Sale Auction. In the event Vendor does not receive a qualifying bid for a vehicle during a lien sale auction, Vendor shall submit statements to City for Vendor's towing and lien sale processing fees, as set forth in **Exhibit B**, in accordance with Section 4.2 of this Agreement. City shall make payment of Vendor's fees in accordance with Section 4.2 of this Agreement.

4.3.4 Payment for Privately-Owned Vehicles Towed to and Stored at the City's Facility and Redeemed Prior to Lien Sale Auction. In the event a vehicle is redeemed prior to lien sale auction, Vendor shall collect Vendor's towing and lien sale processing fees and City's storage fees, as set forth in **Exhibit B**, from the person redeeming the vehicles. In accordance with California Vehicle Code Section 3074, Vendor shall not: (i) access the Lien Sale Preparation Fee set forth in **Exhibit B** until Vendor requests the names and addresses of all persons having an interest in the vehicle from the DMV; (ii) charge more than fifty percent (50%) of the Lien Sale Preparation Fee until the lien sale notifications are mailed to all interested parties and Vendor has possession of the required lien processing documents; or (iii) assess the Lien Sale Preparation Fee if a vehicle is redeemed within seventy-two (72) hours from initial storage at the City's Facility.

4.3.5 Payment for Privately-Owned Vehicles Towed to, Stored at and Released from the City's Facility by City. City shall collect Vendor's towing fees on Vendor's behalf and City's storage and impound release fees, as set forth in **Exhibit B**, and, if applicable, the DMV Lien Sale Application Filing Fee from the vehicle's legal or registered owner upon City's release of a vehicle to the vehicle's legal or registered owner from the Surface Lot Facility. Not later than the fifth (5th) calendar day of each month, City shall submit to Vendor a report by fax or email of privately-owned vehicles towed to the City's Facility by Vendor that were released from the City's Facility by City to the vehicle's legal or registered owner during the prior month. Vendor shall include Vendor's towing fees for such released vehicles in Vendor's statements for Vehicle Towing Services in accordance with Section 4.2 of this Agreement. City shall make payment of Vendor's towing fees in accordance with Section 4.2 of this Agreement.

4.3.6 Payment for Privately-Owned Vehicles Towed to, Stored at and Released from the City's Facility by Vendor. Vendor shall collect Vendor's towing fees, as set forth in **Exhibit B**, and, if applicable, lien sale application filing fees from the vehicle's legal or registered owner upon Vendor's release of a vehicle to the vehicle's legal or registered owner. Vendor shall direct the vehicle's legal or registered owner to make payment of City's storage and impound release fees directly to City prior to Vendor's release of the vehicle to the vehicle's legal or registered owner. City shall not be responsible for payment of Vendor's towing fees for privately-owned vehicles towed to, stored at and released from the City's Facility by Vendor.

4.3.7 Payment for Vehicle Towing Services Provided for City Owned Vehicles. Vendor shall submit statements to City for fees for Vehicle Towing Services provided for City owned vehicles in accordance with Section 4.2 of this Agreement. City shall make payment of Vendor's fees in accordance with Section 4.2 of this Agreement.

ARTICLE 5.^{*} PARTY REPRESENTATIVES.

5.1 Party Representatives. For purposes of this Agreement, the City Representative shall be the Police Chief or his or her designee (the "City Representative"). For purposes of this Agreement the Vendor Representative shall be Moshe Ben Dayan. Vendor shall not designate another as the Vendor Representative without City's prior written consent.

5.2 City Representative. The City Representative shall administer this Agreement. Unless otherwise specified in this Agreement, any approval of City required under this Agreement shall mean the approval of the City Representative.

5.3 Vendor Representative. The Vendor Representative shall be principally responsible for Vendor's duties and obligations under this Agreement and shall serve as Vendor's principal liaison to City. Vendor shall authorize the Vendor Representative to act on Vendor's behalf with respect to the services required under this Agreement. The Vendor Representative shall direct all of Vendor's activities and personally supervise Vendor's performance of the services required under this Agreement. Unless otherwise specified in this Agreement, any approval of Vendor required under this Agreement shall mean the approval of the Vendor Representative. The Vendor Representative shall keep the City Representative informed of Vendor's performance of services under this Agreement. The Vendor Representative shall refer any decisions that must be made by City under this Agreement to the City Representative.

ARTICLE 6. GENERAL PROVISIONS.

6.1 Insurance. Vendor shall, at its sole cost and expense, procure and maintain in full force and effect, throughout the term of this Agreement, inclusive of any extension term, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services required under this Agreement by Vendor, its agents, representatives, employees or subcontractors. Vendor shall procure and maintain insurance policies of the types and meeting the requirements set forth below, and shall provide to City a certificate of insurance, or other such evidence reasonably acceptable to City, verifying the existence of such policies:

6.1.1 Minimum Scope of Insurance Coverage. Vendor shall procure and maintain policies of insurance with minimum scopes of coverage at least as broad as the following:

- (a) Comprehensive General Liability Insurance;
- (b) Comprehensive Automobile Liability Insurance;
- (c) Garage Keepers Legal Liability Insurance;
- (d) Workers' Compensation Insurance, as required by California law; and
- (e) Employer's Liability Insurance.

6.1.2 Minimum Limits. Vendor shall procure and maintain policies of insurance with minimum limits no less than the following:

- (a) Comprehensive General Liability of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate, combined single limit, against any bodily injury, death, personal injury, or property damage. In Comprehensive General Liability Insurance or other form in which a general aggregate limit is used, the general limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
- (b) Automobile Liability of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (c) Garage Keepers Legal Liability of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence.
- (d) Worker's Compensation in an amount required by California law.
- (e) Employer's Liability of One Million Dollars (\$1,000,000) or in an amount required by law, whichever is greater, per accident for bodily injury or disease.

6.1.3 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Vendor shall either:

- (a) Reduce or eliminate such deductibles or self-insured retentions as respects City, its elected and appointed officials, officers, employees, agents, representatives, attorneys, and volunteers; or
- (b) Procure a bond, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6.1.4 Required Endorsements. All of the policies of insurance required by this Agreement shall contain, or be endorsed to contain, the following provisions:

- (a) City, its elected and appointed officials, officers, employees, agents, representatives, attorneys and volunteers shall be named as additional insured parties, and the policies shall specifically state that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
- (b) The insurance coverage provided by Vendor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City, its officers, officials,

employees or volunteers shall be in excess of Vendor's own insurance and shall not contribute with it.

(c) The insurance policies shall contain no special limitations on the scope of protection afforded to City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or volunteers. Further, the policies shall expressly waive the right of subrogation against City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or volunteers.

(d) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or volunteers.

(e) The insurance coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) Each insurance policy required by this Article 6 shall be endorsed to state that coverage shall not be suspended, voided, and/or canceled by either party, and that there shall be no reduction in the amount of coverage or in the limits applicable thereto except after thirty (30) days' prior written notice has been given to City, said written notice to be delivered by U.S. certified mail, return receipt requested addressed to City as set forth in Section 6.4 of this Agreement.

(g) City, in its sole discretion, may waive all or some portion of the above referenced insurance if such waiver is in writing and executed by City's Risk Manager.

6.1.5 Required Insurance Rating. Any insurance policy required by this Agreement shall be placed with an insurer admitted in the State of California with a current A.M. Best's rating of no less than B+:VII in the latest edition of A.M. Best's Insurance Guide.

6.1.6 Original Certificates Required. At all times during the term of this Agreement, Vendor shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in **Exhibit C**. The certificate or certificates of insurance shall show that the required policies of insurance are in effect, in the required amounts and shall contain the endorsements set forth in Section 6.1.4 of this Agreement. Vendor shall, prior to performance of services under this Agreement, file with the City Clerk the original certificates effecting coverage required by this Section 6.1.6. The endorsements shall be signed by the person authorized by that insurer to bind coverage on its behalf. Vendor shall submit the endorsements to City for City's approval prior to Vendor performance of services this Agreement. As an alternative to City's forms, Vendor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

6.1.7 Failure to Maintain Required Insurance. Vendor agrees that if it fails to keep the aforesaid insurance policies in full force and effect, City may, at its sole option, either (i) immediately terminate this Agreement or, (ii) if insurance is available at a reasonable cost, take out the necessary insurance and pay, at Vendor's cost and expense, the premium thereon.

6.1.8 Subcontractors. Vendor shall require that all subcontractors, or any other entities providing services under this Agreement, procure and maintain insurance policies of the types and meeting the requirements set forth in this Section 6.1. Vendor assumes all responsibility for

ensuring that such insurance coverage is provided in conformity with the requirements of this Section 6.1.

6.2 Indemnification.

6.2.1 Indemnification. Vendor shall indemnify, hold harmless and defend City, its elected and appointed officials, officers, employees, agents and independent contractors serving in the role of City officials, servants, representatives, attorneys and volunteers (collectively "Indemnitees"), from and against any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages, penalties, obligations or injuries of any nature whatsoever, including reasonable fees of accountants, attorneys and other professionals, and all costs associated therewith (collectively "claims") that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization, in law or equity, whether actual, alleged or threatened, arising out of or in any way connected with any acts or omissions of Vendor, its officials, officers, employees or agents in Vendor's performance of services under this Agreement or Vendor's failure to comply with its obligations set forth in this Agreement, including the Indemnitees' active or passive negligence, except for claims arising from the sole negligence or willful misconduct of Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. If Vendor is required to indemnify the Indemnities in accordance with the provisions of this Section 6.2, Vendor shall:

(a) Defend any action or actions filed in connection with the claims with counsel of City's choice and pay all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith; and

(b) Promptly pay any judgment rendered against Vendor or City covering the claims and save and hold City harmless therefrom; and

(c) In the event City is made a party to any action or proceeding filed or prosecuted against Vendor for such claims, pay City any and all costs and expenses incurred by City in such actions or proceedings, together with reasonable attorney's fees.

6.2.2 Survival. The terms of this Section 6.2 shall survive the expiration or termination of this Agreement.

6.3 Assignment or Transfer Prohibited. Vendor shall not assign, sell, subcontract or otherwise transfer any of its obligations, rights, benefits, or other interests it may have under this Agreement to any other person or entity without City's prior written consent to such assignment, sale, subcontract or transfer. City may, in its sole discretion, withhold consent to any sale, assignment, subcontract or other transfer of this Agreement with or without cause. City's consent to an assignment, sale, subcontract or transfer shall neither relieve Vendor of its obligations under, nor alter the terms of, this Agreement. For purposes of this Section 6.3, the assignment, sale or other transfer from any person or group of persons collectively having an interest of fifty percent (50%) or more in Vendor (whether by means of ownership of stock, partnership interests, tenancy or otherwise) of such interest to any other person or entity shall be deemed an assignment subject to the provisions of this Section 6.3. Any attempted or purported assignment, sale, subcontract or other transfer by Vendor without City's prior written consent shall be null, void and of no effect.

6.4 Notices. Unless otherwise specified in this Agreement, all notices, consents, requests, demands or other communications required or permitted under this Agreement shall be in writing and shall conclusively be deemed effective (1) on personal delivery, (2) on confirmed delivery by courier service, or (3) three business days after deposit in the United States mail, by first class, certified or registered mail, postage prepaid, addressed to the party to be notified as set forth below:

City: City of Beverly Hills Police Department
Attn: Chief of Police
464 North Rexford Drive
Beverly Hills, California 90210

with a copy to:

City of Beverly Hills
Attn: City Attorney
455 North Rexford Drive
Beverly Hills, California 90210

Vendor: Classic Tow, Inc. dba Tip Top Tow Service
1654 12th Street
Santa Monica, California 90404
Attention: Moshe Ben Dayan

Any party may change its address for purposes of this Section 6.4 by giving written notice of its new address to the other party in the manner set forth above.

6.5 Authority to Enter Agreement. The parties warrant that the individuals signing this Agreement have the legal power, right, and authority to execute into this Agreement so as to bind each respective party to perform the obligations and conditions imposed upon each party herein.

6.6 Severability. Whenever possible, each and every provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision, or portion thereof, of this Agreement, or the application of the same to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such provision, or portion thereof, shall be severed from this Agreement and shall not affect the validity of the remaining portions of this Agreement. The parties expressly declare that each would have entered into this Agreement, and each and every section and provision herein, irrespective of the fact that any one or more provisions may be declared invalid or unconstitutional.

6.7 Independent Contractor. Vendor is, and shall at all times remain as to City, a wholly independent contractor. Vendor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Vendor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Vendor or any of Vendor's employees, except as set forth in this Agreement. Vendor shall pay all required taxes on amounts paid to Vendor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Vendor shall fully comply with the workers' compensation law regarding Vendor and its employees. Vendor shall indemnify and hold City harmless from any failure of Vendor to comply

with applicable workers' compensation laws. City may offset against the amount of any compensation due to Vendor under this Agreement any amount due to City from Vendor as a result of Vendor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.7.

6.8 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire any right by virtue of this Agreement.

6.9 Entire Agreement. This Agreement and all exhibits referred to in this Agreement constitutes the final, complete and exclusive statement of the parties pertaining to the provision of Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services and supersedes all other prior or contemporaneous oral or written understandings and agreements of the parties, including the Agreement for Official Police and City Tow Services, dated November 1, 2012 and identified as Agreement Number 472-12. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement.

6.10 Modification. This Agreement may be modified, supplemented or amended only by a writing signed by both parties.

6.11 Binding on Successors and Assigns. This Agreement, and each and every covenant, obligation, and condition herein, shall be binding on and shall inure to the benefit of the successors and assigns of City and Vendor.

6.12 Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

6.13 Ambiguities. Each party and its legal counsel have participated full in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

6.14 Cooperation and Further Acts. The parties agree to execute such other instruments and to do such further acts as may be required by or reasonably necessary to carry out the provisions of this Agreement.

6.15 Reservation of Rights. The parties expressly reserve all rights that they may possess under the law, unless expressly waived herein. By entering into this Agreement, neither party waives any rights that it now or may later enjoy under applicable law, and City and Vendor specifically reserve their rights to take full advantage of any changes in the law during the term of this Agreement.

6.16 Force Majeure. If either party fails to perform its obligations under this Agreement due to strikes, lockouts, labor disputes, inability to obtain labor, governmental restrictions, regulations or controls, civil commotion, fire or other casualty, emergency, or any other cause beyond the reasonable control of the party, then that party's performance will be excused for a period equal to any such prevention, delay or stoppage.

6.17 Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” or “agrees” are mandatory, and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” and “including” are not limiting.

6.18 Incorporation of Recitals. The recitals set forth above are incorporated this Agreement by reference.

6.19 Separate Writings and Exhibits. Exhibits A, B and C and all provisions of the BHMC applicable to the performance of Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control. If any inconsistency exists or arises between a provision of this Agreement and an applicable provision of the BHMC, the provisions of the BHMC shall control.

6.20 Time of Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing may not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

ARTICLE 7. VENDOR’S REPRESENTATIONS AND OBLIGATIONS.

7.1 Personnel. Vendor represents that it has or shall secure, at its own expense, all personnel, including Tow Truck operators, required to perform the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement. Subject to Section 6.3 of this Agreement, Vendor may employ subcontractors in the performance of the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement upon obtaining City’s prior written approval of the subcontract.

7.2 Vendor’s Interests. Vendor affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement. Vendor shall not employ or associate with any person having such a conflict of interest during the term of this Agreement.

7.3 Compliance with Laws. Vendor shall perform the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement in compliance with federal, state and local laws, including, the California Vehicle and Civil Codes and the BHMC.

7.4 Standards for Vendor’s Primary Facility. Vendor shall ensure that the Vendor’s Primary Facility:

7.4.1 Is safe and secure for the storage of vehicles;

7.4.2 Has a storage yard with a minimum storage capacity forty (40) vehicles;

7.4.3 Is equipped with a working security system(s), as approved by the Chief of Police, at the time that a vehicle towing service permit is issued for the Vendor’s Primary Facility to monitor the Vendor’s Primary Facility when unattended;

7.4.4 Is equipped with a working lighting system with a minimum average lighting intensity in the storage yard of three-fourths foot-candle (.75 fc) at all times;

7.4.5 Has an investigative hold area with a minimum storage capacity of four (4) vehicles for vehicles held for criminal or evidentiary examinations and that is (i) isolated from other storage areas in the Vendor's Primary Facility, (ii) covered, (iii) capable of protecting the vehicles from the natural elements and (iv) posted and cordoned off by means of a fence, gate or other permanent barrier, as approved by the Chief of Police, so as to prohibit entry by unauthorized persons.

7.5 Equipment Requirements. Vendor shall, at its sole cost and expense, provide all equipment required for Vendor's performance of Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement. Vendor shall maintain a sufficient number of Tow Trucks in close proximity to City's jurisdictional limits to provide the Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement. Vendor shall provide all equipment necessary to efficiently and effectively store impounded vehicles in the Sub-Garage Facility and may store this equipment in the Sub-Garage Facility.

7.6 Uniform Requirements. Vendor's Tow Truck operators shall wear a uniform, as approved by the City Representative, when providing Vehicle Towing Services under this Agreement.

7.7 Rates and Charges.

7.7.1 Rates. Vendor shall only charge the rates set forth in **Exhibit B** for Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services provided under this Agreement.

7.7.2 Posting of Rates. Vendor shall conspicuously post and maintain a schedule of rates consistent with the rates set forth in **Exhibit B** in the business office of the Vendor's Primary Facility or such other place where customer financial transactions occur. The letters on such signs shall be a minimum of one inch (1") high with one-fourth inch (1/4") stroke and a contrasting color from the background.

7.7.3 Statement of Charges. For all vehicles towed to or stored at either the Vendor's Primary Facility or the City's Facility pursuant to this Agreement, Vendor shall furnish without charge a statement of charges to the following persons or their agents: (i) the City officer or employee authorizing the Vehicle Towing Services, (ii) the registered or legal owner of the towed or stored vehicle, or (iii) the registered or legal owner's insurance carrier.

7.7.4 Discretionary Waiver of Rates. The City Representative shall determine whether a vehicle qualifies for a discretionary waiver of all or a portion of the rates set forth in **Exhibit B**. With respect to storage rates, the City Representative shall not waive more than two (2) days of storage costs per vehicle. If the City Representative makes such a determination, Vendor shall waive all or a portion of the rates as directed by the City Representative. No more than five (5) vehicles per month may qualify for a discretionary waiver.

7.8 Hours of Operation and Release of Vehicles.

7.8.1 Hours of Operation. Vendor shall be available twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, including holidays, to promptly respond to any call from City for Vehicle Towing Services, Lien Sale Processing Services or Vehicle Auction Services required under this Agreement.

7.8.2 Hours for Release of Stored Vehicles. At a minimum, the Vendor's Primary Facility shall be open and available for the release of stored vehicles between the hours of 7:00 a.m. and 7:00 p.m. PST, Monday through Friday, and between the hours of 9:00 a.m. and 5:00 p.m. PST, Saturday and Sunday, including holidays. Notwithstanding the above, if City requests that Vendor tow and store a privately-owned vehicle in connection with a special event, as designated by the Police Department, the Vendor's Primary Facility shall be open and available for release the stored vehicle for a minimum of four (4) hours following the conclusion of the special event.

7.8.3 Authorization to Release Stored Vehicles. Vendor shall not release any vehicle towed or stored pursuant to this Agreement without the Police Department's prior written authorization to Vendor.

7.9 Response Times to Calls for Vehicle Towing Services.

7.9.1 Response Time. Upon receipt of a request from City for Vehicle Towing Services within City's jurisdictional limits, Vendor shall immediately dispatch an available, unassigned Tow Truck and operator to respond to the location of the requested service within fifteen (15) minutes of City's request.

7.9.2 Notice of Response Time.

(a) Response Time Delays. Vendor shall promptly notify a requesting City official or employee if Vendor is delayed and unable to respond to the location of the requested service within fifteen (15) minutes of City's request. Vendor's notice shall include the reason for the delay and Vendor's estimated time of arrival of the Tow Truck and operator.

(b) Extraterritorial Requests. Upon receipt of a request from City for Vehicle Towing Services for City-owned vehicles at a location outside of City's jurisdictional limits, Vendor shall advise the requesting City official or employee of Vendor's estimated time of arrival of the Tow Truck and operator.

7.10 Inspections. The City Representative may periodically inspect the Vendor's Primary Facility for compliance with the requirements of this Agreement.

7.11 Vendor's Correspondence with the Police Department.

7.11.1 Monthly Reports. Not later than the fifteenth (15th) calendar day of each month, Vendor shall submit to the Traffic Bureau Commander of the Police Department a report for Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services performed pursuant to this Agreement at the Police Department's request during the prior month. The reports shall be addressed as follows: City of Beverly Hills Police Department, Attn: Traffic Bureau Commander, 464 North Rexford Drive, Beverly Hills, California 90210. Each report shall contain the following information:

- prior month;
- (a) Number of calls for service received by Vendor from City during the prior month;
 - (b) Number of vehicles towed by Vendor at City's request;
 - (c) A detailed breakdown of the number of vehicles towed showing:
 - (i) Total number of vehicles impounded by City pursuant to the California Vehicle Code;
 - (ii) Total number of 30-day vehicles impounded by City pursuant to the California Vehicle Code;
 - (iii) Total number of vehicles towed at the legal or registered owner's request and initiated by the Police Department;
 - (iv) Total number of vehicles towed at the Police Department's request that remain in storage as of the date of the report;
 - (v) Total number of vehicles towed City's request, excluding the Police Department's requests;
 - (vi) The storage facility to which each vehicle was towed (City's Facility or Vendor's Primary Facility); and
 - (vii) Total number of vehicles stored at the City's Facility and subsequently sold by Vendor at lien sale auction;
 - (d) The name, police permit number and operator's license number and expiration date of Tow Truck operators employed by Vendor during any period of the reporting month.
 - (e) An explanation of Vendor's delayed response time for each tow where Vendor's response time to the location of the request for service was in excess of thirty (30) minutes; and
 - (f) A detailed breakdown of the fees for Vehicle Towing Services and Lien Sale Processing Services collected by Vendor from lien sale auction proceeds, including the amounts retained by Vendor and the amounts remitted to City from Vendor.
- (a) **Documents.** Vendor shall submit copies of the following documents to the Traffic Bureau Commander of the Police Department within fifteen (15) calendar days after the parties' signing of this Agreement: (i) all permits and licenses required in connection with the operation of Vendor's business; (ii) a current and valid City business license; and (iii) all certificates of insurance required under Section 6.1.6 of this Agreement. The documents shall be addressed as follows: City of Beverly Hills Police Department, Attn: Traffic Bureau Commander, 464 North Rexford Drive, Beverly Hills, California 90210. The Traffic Bureau of the Police Department shall maintain copies of the documents at all times during the term of this Agreement.

7.12 Identification Cards.

7.12.1 Identification Cards Required. Vendor and all persons employed by Vendor in the performance of this Agreement shall apply for and obtain identification cards issued under the provisions of Article 2 of Chapter 1 of Title 4 of the BHMC. Each applicant for an identification card shall be at least eighteen (18) years of age and shall possess a valid driver's license (including a proper driver's license classification for the assigned Tow Truck) issued by the State of California. Vendor shall not allow any employee to apply for or possess an identification card if the employee:

(a) Has been convicted of reckless driving or driving under the influence of alcohol or narcotics within seven (7) years preceding the filing of the application for an identification card; or

(b) Has been convicted of a moving traffic violation within one (1) year preceding the filing of the application for an identification card; or

(c) Has physical impairments that creates an unreasonable risk to persons or property in the performance of Vehicle Towing Services.

Notwithstanding this provision, Vendor may request that the Chief of Police issue a conditional identification card to an employee. The Chief of Police may issue a conditional identification card if the he or she finds that unique circumstances exist as to the applicant and the conditions imposed are adequate to protect the public health, welfare and safety.

7.12.2 Revocation. Any identification card issued pursuant to this Agreement and the provisions of Article 2 of Chapter 1 of Title 4 of the BHMC shall be immediately relinquished by the cardholder upon the suspension or revocation of the cardholder's California driver's license.

7.13 Records. Vendor shall, throughout the term of this Agreement and for a minimum of three (3) years following the expiration or termination of this Agreement, maintain full business records. Vendor shall maintain the business records at the Vendor's Primary Facility or such other location reasonably accessible to City and make the business records available for City's review and audit at all times during Vendor's normal business hours. The business records shall include the following information in a reasonably understandable format: (i) all Vehicle Towing, Lien Sale Processing and Vehicle Auction Services provided pursuant to this Agreement, (ii) a description of the vehicles towed and stored, (iii) with regards to each vehicle towed, the date of towing, the time of City's request for Vehicle Towing Services, the requested service location, the time of Vendor's dispatch of a Tow Truck, and the time of the arrival of the Tow Truck at the requested service location, (iv) Vendor's total itemized charges for Vehicle Towing, Lien Sale Processing and Vehicle Auction Services, (v) the disposition of all vehicles towed or stored at City's request, including vehicles sold through lien sale auction, (vi) records pertaining to Vendor's compliance with state law regarding vehicle lien sales, (vii) copies of all invoices, receipts, and evidence of payment, and (viii) any other record reasonably necessary to document, substantiate and verify Vendor's compliance with the terms of this Agreement.

7.14 Permits and Licenses. Vendor shall obtain and maintain, at all times during the term of this Agreement, and at its sole cost and expense, all appropriate permits, licenses, and certificates as may be required in connection with Vendor's performance of Vehicle Towing Services, Lien Sale

Processing Services and Vehicle Auction Services under this Agreement, including a current and valid City business license, as required by the BHMC.

7.15 Prohibited Acts.

7.15.1 Vendor shall not attach a vehicle to a Tow Truck on a Non-Emergency Towing assignment without first receiving written authorization to tow the vehicle from the legal or registered owner, driver or other person in control of the vehicle. The authorization shall list Vendor's towing services offered, the rates and charges required, Vendor's name, address, and telephone number, and Vendor's days and hours of operation for the release of vehicles. Vendor shall sign the authorization to tow and furnish the legal or registered owner, driver or other person in control of the vehicle a copy of the signed authorization.

7.15.2 Vendor shall not make any repairs or alterations to a vehicle towed and stored pursuant to this Agreement without the prior authorization of the vehicle's legal or registered owner, the insurance carrier of the vehicle's legal or registered owner, or the authorized agents thereof. Vendor shall not remove parts or accessories from any vehicle towed and stored pursuant to this Agreement without the prior authorization of the vehicle's legal or registered owner, the insurance carrier of the vehicle's legal or registered owner, or the authorized agents thereof, except as required for security purposes and permitted under federal, state or local law. Vendor shall list all part and accessories removed from vehicles for security purposes in the itemized statement, which statement Vendor shall maintain in the business office of Vendor's Principal Facility. The provisions of this Section 7.15.2 shall not be construed to prohibit Vendor from making emergency repairs or alterations permitted under federal, state or local law necessary to permit Vendor's authorized towing of a vehicle.

7.15.3 Vendor shall not remove a vehicle involved in a collision prior to the Police Department's arrival at the location of the collision, when a person, as a result of the collision, suffers death or injury, or the driver of an involved vehicle, or a party to the collision, is under the influence of an intoxicant of any nature, or there is evidence that the removed vehicle was involved in a hit and run collision.

ARTICLE 8. EVENTS OF DEFAULT.

8.1 Events of Default. In addition to any other basis for termination of this Agreement, and without limiting any other basis, City may suspend or terminate this Agreement pursuant to the provisions of Article 8 of this Agreement if any one or more of the following events of default under this Agreement occur:

8.1.1 Vendor fails to provide or maintain in full force and effect the insurance coverage required under Section 6.1 of this Agreement.

8.1.2 Vendor violates any order or ruling of any regulatory body having jurisdiction over Vendor relative to Vendor's towing business, unless such order or ruling is being contested by Vendor by appropriate proceedings conducted in good faith.

8.1.3 Vendor practices any fraud or deceit upon City or upon persons to whom it provides Vehicle Towing Services pursuant to this Agreement, as determined by a court of law.

8.1.4 Vendor becomes insolvent, unable or unwilling to pay its debts and obligations to City, or is adjudged to be bankrupt.

8.1.5 Vendor fails to comply with any provision set forth in this Agreement.

8.1.6 Vendor fails to comply with any applicable federal, state or local laws and regulations in Vendor's performance of this Agreement.

8.1.7 Vendor performs Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services required under this Agreement in a fraudulent or disorderly manner, or in a manner that endangers the public health, welfare or safety.

8.1.8 Vendor maintains or operates Tow Trucks in an unsafe manner.

8.1.9 Vendor, its agents, directors, representatives or employees, obtain a tow contract by use of fraud, trickery, dishonesty or forgery, as determined by a court of law.

8.1.10 Vendor commits a prohibited act set forth under Section 7.16 of this Agreement.

8.1.11 Vendor, its agents, directors, representatives or employees tow a vehicle to a location other than the Vendor's Primary Facility or the City's Facility in the performance of Vehicle Towing Services under this Agreement without City's prior written authorization.

8.1.12 Vendor, its agents, directors, representatives or employees, after towing a vehicle to the Vendor's Primary Facility or the City's Facility, tows the vehicle to another location for storage without City's prior written authorization or the authorization of the vehicle's registered or legal owner.

8.1.13 Vendor, its agents, directors, representatives or employees, conspire with any person to defraud City, any owner of any vehicle towed or stored pursuant to this Agreement, any insurance company, or any other person financially interested in the cost of the towing or storage of any vehicle towed pursuant to this Agreement, by making false or deceptive statements relating to the towing or storage of any vehicle.

8.1.14 Vendor, its agents, directors, representatives or employees, remove a vehicle involved in a collision prior to the Police Department's arrival at the location of the collision, when a person, as a result of the collision, suffers death or injury, or the driver of an involved vehicle, or a party to the collision, was under the influence of an intoxicant of any nature, or there is evidence that the removed vehicle is involved in a hit and run collision.

8.1.15 Vendor, its agents, directors, representatives or employees, charge for services not performed, equipment not employed or used, services or equipment not needed, or otherwise materially misstate the nature of any service performed or equipment used.

ARTICLE 9. REMEDIES.

9.1 Liquidated Damages. Vendor agrees that Vendor's failure to meet the fifteen (15) minute response time for tow service, as described in Section 7.9.1 of this Agreement, will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and

extremely difficult to determine. Vendor agrees to pay to City Five Hundred Dollars (\$500) each and every time in any thirty (30) calendar-day period Vendor exceeds the fifteen (15) minute response time without providing City with notice of response times in accordance with Section 7.9.2 for three (3) or more requests for Vehicle Towing Services. Vendor further agrees to pay to City One Hundred Dollars (\$100) each and every time Vendor exceeds the fifteen (15) minute response time for tow service, as described in Section 7.9.1 of this Agreement, for any single request for Vehicle Towing Services by more than fifteen (15) minutes. Vendor agrees that said sums are the minimum value of the costs and actual damages to City caused by Vendor's failure to respond to requests for Vehicle Towing Services within the fifteen (15) minute response time. Such sum is a liquidated damage and shall not be construed as a penalty.

9.2 Legal Actions.

9.2.1 Jurisdiction and Venue. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in the Superior Court in and for the County of Los Angeles, State of California or in the United States District Court for the Central District of California.

9.2.2 Governing Law. The laws of the State of California shall govern this Agreement and any dispute arising from the relationship between the parties to this Agreement.

9.2.3 Attorney Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney fees, costs and expenses incurred in connection with the prosecution or defense of such action, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled under law.

9.3 Waiver. No delay or omission to exercise any right, power or remedy accruing to a party under this Agreement shall impair any right, power or remedy of that party, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver any breach, any failure of a condition, or any right or remedy under this Agreement (1) shall be effective unless it is in writing and signed by the party making the waiver, (2) shall be deemed to be a waiver of, or consent to, any other breach, failure of a condition, or a right or remedy, or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

ARTICLE 10. SIGNATURES.

10.1 Counterpart Originals. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

The parties are signing this Agreement on the date stated in the introductory clause.

CITY OF BEVERLY HILLS, a municipal corporation

LILI BOSSE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

VENDOR: CLASSIC TOW, INC. dba TIP TOP TOW
SERVICE

MOSHE BEN DAYAN
President

STEPHANIE MCCOLGAN
Secretary

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager

DAVID L. SNOWDEN
Chief of Police

GEORGE CHAVEZ
Director of Public Works Services

RALPH MUNDELL
Fire Chief

KARL KIRKMAN
Risk Manager

FOR RALPH MUNDELL

EXHIBIT A

SCOPE OF SERVICES

A. Vehicle Towing Services

Vendor shall (1) provide towing services for vehicles upon City's request, including Emergency Towing, Non-Emergency Towing, Heavy-Duty Towing, and Standard Towing, (2) respond to City's requests for road service, including requests for tire changes, jump-starts, refilling or other similar road services, (3) store towed vehicles at either the Vendor's Primary Facility or the City's Facility, and (4) provide all other services incident to towing, including the release of vehicles to legal or registered vehicle owners from the Vendor's Primary Facility or the City's Facility.

1. Vehicle Towing Services – City Facility. Vendor shall tow impounded vehicles to and store the vehicles at the City Facility as follows:
 - a. The Sub-Garage Facility.
 - i. Vendor shall tow vehicles impounded pursuant to California Vehicle Code Sections 14602.6, 22651(i), 22651(o) and 22655.5, as indicated to Vendor by City, to the Sub-Garage Facility for storage.
 - ii. The Traffic Bureau Commander, in his or her discretion, may authorize Vendor's towing of vehicles impounded pursuant to other statutory authorities to the Sub-Garage Facility for storage.
 - iii. City shall establish the maximum number of impounded vehicles that may be towed to and stored at the Sub-Garage Facility. Vendor shall store all impounded vehicles in excess of the maximum number permitted to be stored at the Sub-Garage Facility at the Surface Lot Facility.
 - b. The Surface Lot Facility.
 - i. Vendor shall tow vehicles impounded for "no stopping zone" and other parking violations that occur on weekdays between the hours of 3:00 p.m. and 6:30 p.m. to the Surface Lot Facility for temporary storage.
 - ii. Vendor shall staff the Surface Lot Facility between the hours of 3:00 p.m. and 7:00 p.m. and conduct all services required to impound and release vehicles towed to and temporarily stored at the Surface Lot Facility. City shall provide Vendor with access to an office at the Surface Lot Facility to transact business related to the release of vehicles stored at the Surface Lot Facility.
 - iii. Vendor shall only release vehicles stored at the Surface Lot Facility to the person(s) named on the release documentation provided to Vendor from the Police Department. Vendor, at no cost to City, shall tow all vehicles not retrieved from impound by 7:00 p.m. from the Surface Lot

Facility to the Sub-Garage Facility. Not later than 8:00 p.m. each weekday, Vendor shall provide the Traffic Bureau Commander with a daily report identifying the unretrieved impounded vehicles that Vendor tows back to the Sub-Garage Facility.

2. Vehicle Towing Services – Vendor’s Facility. Vendor shall tow all vehicles not subject to Section A.1. of this **Exhibit A** to the Vendor’s Primary Facility for storage.

B. Lien Sale Processing Services

Vendor shall, on City’s behalf, process lien sales of a towed vehicle stored at the City’s Facility in compliance with California Civil Code Section 3067 *et seq.* and any other applicable state law.

1. Lien Sale Processing Services for Vehicles Valued at \$4,000 or less (“Standard Liens”).
 - a. Unless otherwise required under California Civil Code Section 3067 *et seq.*, if Vendor determines the value of a vehicle to be \$4,000 or less, Vendor shall:
 - i. Finding the vehicle’s owner. Within fifteen (15) days of the date the vehicle was towed, Vendor shall complete a Registration Information Request for Lien Sale (INF 1126) form and submit it to the DMV in order to receive a vehicle history record with the registered and legal owner(s) of record and known interested parties from the DMV.
 - ii. Storage lien limitation. Pursuant to California Civil Code Section 3068.1(b), the period of time for City’s storage lien shall not exceed sixty (60) days, unless (1) a Declaration of Opposition is filed with the DMV pursuant to California Civil Code Section 3072, (2) the vehicle has an out-of-state registration, (3) the vehicle’s identification number has been altered or removed or (4) a person who has an interest in the vehicle has become known to Vendor after Vendor has complied with California Civil Code Section 3072(b), and then the period of time may be for a period not to exceed one hundred twenty (120) days.
 - iii. Starting the sale process. Vendor shall apply to the DMV for authorization to conduct a lien sale auction according to the provisions of California Civil Code Section 3072. At least thirty-one (31) days, but no more than forty-one (41) days before the lien sale date (not counting the day the notice is mailed), Vendor shall send a Notice of Pending Lien Sale for Vehicle Valued \$4,000 or Less (REG 668) by certified mail (return receipt requested) or U.S. Postal Service Certificate of Mailing to: (1) registered owner(s); (2) legal owner(s); (3) any known interested parties; and (4) the DMV (by certified mail only; no return request requested). The notices mailed to the registered owner(s), legal owner(s) and known interested parties shall include a return envelope pre-addressed to the DMV. If DMV has no record of the vehicle, Vendor shall send REG 668 only to each interested party known to Vendor and one (1) to the DMV.

- iv. Posting the sale notice. At least ten (10) days prior to, and including the lien sale auction date, Vendor shall post REG 668 in a conspicuous place at the Surface Lot Facility. Vendor shall post REG 668 by folding the document so the registered owner's, legal owner's and interested party's addresses are not visible.
 - v. Opposition to the lien sale. If the DMV denies the lien sale or cancels its authorization of the lien sale, Vendor shall consult with City regarding and obtain City's prior approval of Vendor's continued pursuit of the lien sale.
2. Lien Sale Processing Services for Vehicles Valued at more than \$4,000 ("Long Liens").
- a. Unless otherwise required under California Civil Code Section 3067 *et seq.*, if Vendor determines the value of a vehicle to be more than \$4,000, Vendor shall:
 - i. Starting the sale process. Vendor shall apply to the DMV for authorization to conduct a lien sale auction according to the provisions of California Civil Code Section 3071. Vendor shall pay the application fee, which fee shall be recovered by Vendor from the buyer at the time of the lien sale or the registered or legal owner if the vehicle is redeemed.
 - ii. Storage lien limitation. Pursuant to California Vehicle Code Section 22851, the period of time for City's storage lien shall not exceed sixty (60) days, unless Vendor files an application for authorization to conduct the lien sale within thirty (30) days after the lien arises, and then the period of time may be for a period not to exceed one hundred twenty (120) days.
 - iii. Authority to conduct the lien sale. Vendor shall await authorization from the DMV before proceeding with the lien sale process.
 - iv. Starting the sale process. Twenty (21) days before the lien sale auction date Vendor shall provide by certified mail, return receipt requested, a Notice of Pending Lien Sale (REG 280) to each of the following: (1) the legal owner, if any, (2) the registered owner, (3) any interested parties and (4) the DMV. At least five (5) days, but not more than twenty (20) days before the lien sale (not counting the auction sale date), Vendor shall give notice of the lien sale by advertising the lien sale for one (1) day in a newspaper of general circulation in the County of Los Angeles. The notice shall specify the date, time and place of the lien sale auction (the Surface Facility Lot) and the make, year model, vehicle identification number, license number, state of registration, if available, and, with respect to motorcycles, the engine number.

- v. Opposition to the lien sale. If the DMV cancels its authorization of the lien sale, Vendor shall consult with City regarding and obtain City's prior approval of Vendor's continued pursuit of the lien sale.

C. Vehicle Auction Services

Vendor shall, on City's behalf, satisfy City's liens on towed vehicles stored at the City's Facility through a lien sale auction in accordance with California Civil Code Section 3067 *et seq.*

1. Vehicle Auction Services for Standard Liens.

- a. Unless otherwise required under California Civil Code Section 3067 *et seq.*, if Vendor determines the value of a vehicle to be \$4,000 or less, Vendor shall:
 - i. Day of lien sale auction. On the lien sale auction date, Vendor shall make the vehicle available for inspection at least one (1) hour prior to the lien sale auction. Vendor shall conduct a public auction at which anyone may appear and bid on the vehicle. Vendor shall not allow or accept sealed bids.
 - ii. If the vehicle is sold. Vendor shall complete the Certification of Lien Sale for Vehicle Valued \$4,000 or Less (REG 168A) and give REG 168A to the buyer along with the DMV vehicle record history information (see Section B.1.a.i of this **Exhibit A**), the postal receipts or the U.S. Postal Service Certificate of Mailing and Posting (see Section B.1.a.ii of this **Exhibit A**) and, if applicable, a smog certification. If the auction sale price exceeds the amount of the lien, Vendor shall make a copy of REG 168A and mail the form with the excess money to the DMV's Lien Sales Unit within five (5) days of the sale date at the address shown on REG 168A. Vendor shall remove and destroy the license plates on the vehicle. Within five (5) days of the sale date, Vendor shall submit a Notice of Transfer and Release of Liability (REG 138) to the DMV.
 - iii. If no one places a qualifying bid. Vendor shall complete REG 168A showing City as both the buyer and seller. Vendor shall remove and destroy the license plates on the vehicle. Within five (5) days of the lien sale auction date, Vendor shall submit Notice of Transfer and Release of Liability (REG 138) to the DMV.

2. Vehicle Auction Services for Long Liens.

- a. Unless otherwise required under California Civil Code Section 3067 *et seq.*, if Vendor determines the value of a vehicle to be more than \$4,000, Vendor shall:
 - i. Day of lien sale auction. Vendor shall make the vehicle available for inspection by the public at the Surface Facility Lot for at least one (1) hour before the lien sale auction. Vendor shall not allow or accept sealed bids.

- ii. If the vehicle is sold. Vendor shall keep the vehicle for a 10-day redemption period (not counting the date of sale) before the buyer may take possession of the vehicle and apply for transfer of ownership. After the 10-day redemption period, Vendor shall provide the buyer with: (1) a completed and signed Certification of Lien Sale (REG 168), (2) a copy of the authorization letter from the DMV to conduct the lien sale (REG 338) (3) the postal receipts for notices sent by Vendor, and, if applicable, (4) a smog certification. Vendor shall remove and destroy the vehicle's license at the time of the sale and submit a Notice of Transfer and Release of Liability to the DMV within five (5) days of the lien sale. If the auction price exceeds the amount of the lien, Vendor shall remit the excess amount must to the DMV's Lien Sale Unit within fifteen (15) days after the sale date.

- iii. If no one places a qualifying bid. Vendor shall complete REG 168 showing City as both the buyer and seller.

EXHIBIT B

RATES

Vehicle Towing Services	Rate
Road Service Calls	
Towing Rates for Privately-Owned Vehicles (paid by private vehicle owner or through lien sale auction proceeds)	
Standard Vehicles Towed to Vendor's Primary Facility	\$160.00
Standard Vehicles Towed to City's Facility	\$160.00
Standard Vehicles Towed from the Sub-Garage Facility to the Surface Facility or the Surface Facility to the Vendor's Primary Facility	No Charge
Medium Duty Vehicles (10,000 to 26,000 lbs)	\$250.00
Heavy Duty Vehicles (26,001 lbs.)	\$300.00
Towing Rates for City Vehicles (paid by City)	
Towed to City's Facility (first 10 miles)	No Charge
Towed to City's Facility (after first 10 miles)	\$6.50/mile
Miscellaneous Towing Services for Privately-Owned Vehicles	
Storage Rates (Vendor's Primary Facility)	
Standard Vehicles (paid by private vehicle owner)	\$48.00/day
Motorcycles (paid by private vehicle owner)	\$30.00/day
Medium Duty Vehicles (10,000 to 26,000 lbs)	\$65/day
Heavy Duty Vehicles (26,001 lbs.)	\$75/day

Storage Rates (City's Facility)	
Vehicles (paid by private vehicle owner or through lien sale auction proceeds)	Fee per City Council Ordinance or Resolution ¹
Impound Release Fee (City's Facility) (paid by private vehicle owner or through lien sale auction proceeds)	Fee per City Council Ordinance or Resolution ¹
Heavy-Duty Towing Services	Rate
Heavy Duty Towing Recovery (Rollover, winch out, tilt up)	\$330/hr
Rotator Service	\$750/hr
Specialized Labor for Heavy Duty recovery	\$170/hr
Lowboy Service for Heavy Duty recovery	\$350/hr
Service Call (clean-up, debris, lock-out, tire change, etc.)	\$75/hr
Lien Sale Processing Services	Rate
Lien Sale Processing Fee - Standard Liens (paid through lien sale auction proceeds)	\$70.00
Lien Sale Processing Fee - Long Liens (paid through lien sale auction proceeds)	\$100.00
Lien Sale Preparation Fee – Standard Liens (paid by the person redeeming the vehicle or through lien sale auction proceeds)	\$70.00
Lien Sale Preparation Fee – Long Liens (paid by the person redeeming the vehicle or through lien sale auction proceeds)	\$100.00
DMV Lien Sale Application Filing Fee (paid by the person redeeming the vehicle or through lien sale auction proceeds)	Fee Per DMV Fee Schedule
Vehicle Auction Services	Rate
Lien Sale Auction of Vehicles	No Charge

¹ Vendor shall collect this fee on City's behalf and remit collected payments to City on a monthly basis.



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
ADDRESS _____
: _____

RM02.DOC REVISED 10/14/96.

EXHIBIT C