

OFFICIAL POLICE TOW TRUCK
SERVICE AGREEMENT

BY AND BETWEEN

THE CITY OF RIVERSIDE

AND

PEPE'S INC.,
dba PEPE'S TOWING SERVICE

**OFFICIAL POLICE TOW TRUCK
SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the CITY OF RIVERSIDE, a California charter city and municipal ("City") and PEPE'S INC., a California corporation, doing business as PEPE'S TOWING SERVICE, an Official Police Tow Service ("OPTS" or "Contractor") on the following terms and conditions:

RECITALS

A. OPTS is a towing company selected and designated by the City pursuant to Riverside Municipal Code ("RMC") Chapter 5.15 ("Tow Ordinance") to provide services at the request of the Riverside Police Department ("RPD") throughout the boundaries of the City of Riverside, on call, on a rotation basis, for any police emergency situation where a tow truck is required.

B. The parties desire to enter into this Agreement pursuant to RMC § 5.15.080 in order to implement the Tow Ordinance. It is understood and agreed by the parties that this Agreement, and each term and condition stated herein, shall be interpreted in such a manner so as to be consistent with the Tow Ordinance, and in such a manner so as to reasonably implement the Tow Ordinance between the parties.

C. In consideration of being selected and designated by the City as an Official Police Tow Service pursuant to RMC § 5.15.080 and in consideration of the benefits OPTS will receive as a result thereof, OPTS agrees to perform vehicle towing and storage services for RPD pursuant to the terms and conditions of this Agreement.

SCOPE OF SERVICES

OPTS shall perform the following services:

A. DEFINITIONS

1. "Central Communications Center" shall mean the City of Riverside communications facility located at 10540 Magnolia Avenue or a dispatch service designated by the City of Riverside.
2. "Chief of Police" shall mean the Chief of Police of the City of Riverside, or the Chief's designee.
3. "City-Generated Tows" shall mean the towing of vehicles requested by the City to include, but not limited to, the following:

Tows of vehicles impounded by the City which said vehicles are held for investigation or as evidence in a criminal case;

Emergency tows of vehicles involved in accidents, and/or stalled vehicles obstructing traffic, and/or vehicles illegally parked, and/or tows of vehicles whose driver is incapacitated or physically unable to drive said vehicle, and/or tows of vehicles whose driver has been arrested and/or detained and cannot drive the vehicles, and/or tows of vehicles under the mandatory 30-day impound (i.e., Vehicle Code. § 14602.6);

4. "Contract Administrator" shall mean the individual designated by the Police Chief of the City of Riverside or his or her designee to administer the Agreement.
5. "Contractor" shall mean the Official Police Tow Service.
6. "Council" shall mean the City Council of the City of Riverside.
7. "Gross Vehicle Weight Rating (GVWR)" means the weight specified by the manufacturer as the loaded weight of a single vehicle.
8. "Hazardous Material" means any substance, material, or device posing an unreasonable risk to health, safety, or property during transportation, as defined by regulations adopted pursuant to Section 2402.7. "Hazardous Material" includes explosives, and hazardous wastes or substances as defined by regulations adopted pursuant to Section 25141 of the Health and Safety Code and medical wastes, as defined in Section 117690 of the Health and Safety Code.
9. "Low-Valued Vehicle" shall mean a vehicle determined to be a "low-valued vehicle" within the meaning of Vehicle Code §§ 22670, 22851.2, and 22851.3.
10. "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.
11. "Official Police Tow Service" shall have the same meaning as defined in RMC § 5.15.020 ("a towing company having a contractual relationship with the City of Riverside to provide towing services to the Police Department. An official police tow service shall be used by the Police Department for any policy emergency situation where a tow truck is required.")
12. "Owner" means the person having all the incidents of ownership including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; the person entitled to the possession of a vehicle as the purchaser under a security agreement; or the State, or any county, city, district or

political subdivision of the State, or the United States, when entitled to possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 30 consecutive days or more.

13. "Passenger Vehicle" means any motor vehicle, other than a motor truck, truck tractor, or a bus, as defined in Section 233 of the California Vehicle Code, and used or maintained for the transportation of persons. The term "passenger vehicle" shall include a housecar.
14. "Per-Tow Fee" shall mean the fee payable by OPTS to City as authorized by RMC § 5.15.095.
15. "Private Property Towing" shall mean towing a vehicle without the consent of the owner from privately owned parking lots, parking garages, or private streets located within the City of Riverside.
16. "RMC" shall mean the City of Riverside Municipal Code.
17. "Tow Ordinance" shall mean Chapter 5.15 of the Riverside Municipal Code entitled "Regulation of Riverside Police Official Police Tow Truck Service" commencing with §5.15.010 *et seq.*
18. "Tow Truck" means a truck as defined in Section 615 of the California Vehicle Code, and shall also include slide back carriers and wheel lift vehicles. "Tow Truck" means a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. "Tow Truck" does not include an automobile dismantler's tow vehicle or a reposessor's tow vehicle.
19. "Trailer" shall mean a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle. "Trailer" includes a semi-trailer when used in conjunction with an auxiliary dolly, if the auxiliary dolly is of a type constructed to replace the function of the drawbar and the front axle or axles of a trailer.
20. "State of California Vehicle Report" (also designated as CHP 180 Form) means a written authorization by a Police Officer or other authorized employee of the City of Riverside.
21. "VIN or Vehicle Identification Number" means the motor number, serial number, or other distinguishing number, letter, mark, character, or datum, or any combination thereof, required or employed by the manufacturer or the Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle or motor vehicle part or for the purpose of registration.

22. "Vehicle" shall mean any "vehicle" as defined in Vehicle Code § 670 and any "motor vehicle" as defined in Vehicle Code § 415. Parts or components of a vehicle that become separated from that vehicle shall not be considered to be a separate vehicle for purposes of this agreement.

B. SERVICES TO BE PROVIDED

1. OPTS agrees to provide to the City, upon City's request, City-generated tow services.
2. OPTS shall be available to respond with sufficient operational equipment to handle any tow twenty-four (24) hours a day, seven (7) days a week, including holidays. For a job requiring a tow truck OPTS does not possess, OPTS shall still respond and have a City-approved subcontractor handle the tow.
3. All drivers shall clean up debris and fluids at collision scenes as requested by RPD and required pursuant to CVC 27700 (removing debris from roadway) and shall transport/dispose of these items in compliance with all federal, state and local regulations concerning hazardous materials and hazardous waste.
4. The City places no maximum on the number of City-generated tows that OPTS may be required to provide in any time period. There shall be no obligation upon City to provide OPTS with any minimum number of City-generated tows during any time period.
5. Subcontractors shall be approved by City prior to beginning of this Contract. Any changes after commencement of Contract shall be submitted to Contract Administrator for approval.

C. STANDARDS OF SERVICE

The ability of OPTS to provide the highest levels of customer service is of utmost importance to the City of Riverside and is the primary reason for awarding the Agreement. OPTS shall at all times comply with all provisions of the Tow Ordinance.

The City reserves the right to inspect facilities, offices, vehicles, equipment, premises, and all records related to OPTS functions at any time during the life of the Agreement. Any failure to comply with this section is a material breach of this Agreement.

D. CENTRAL COMMUNICATIONS CENTER

OPTS shall provide the Contract Administrator with one (1) phone number to be used for the dispatch of tows twenty-four (24) hours a day, seven (7) days a week. This phone number shall not include pagers and must be answered by an employee or authorized agent

of OPTS within four (4) rings.

OPTS shall notify Contract Administrator of any change in this phone number forty-eight hours prior to the change in phone number.

The City of Riverside may choose to install a computerized dispatch and communication system at the Central Communication Center. The purpose of such a system would be to provide automated dispatch, electronically linking the city with its contracted tow companies.

Contractor and Subcontractors may be required to house the appropriate hardware, software, and communications that are compatible with any system installed by the City and to make staff available for any necessary training. This system may include installations at both storage facilities and in tow vehicles.

Contractor and Subcontractors may be required to cooperate and coordinate with the City, and its authorized system vendor(s), in meeting the necessary and on-going requirements of the system.

E. REGULAR / EVIDENCE STORAGE FACILITIES

OPTS shall at all times comply with RMC § 5.15.110 K. All evidence vehicles must be able to be safely placed into the storage area without risk of causing damage or compromising the evidence vehicle. The area must possess adequate lighting and have electrical power immediately available. As stated in RMC § 5.15.110 K, indoor storage areas may be used for other purposes when not required by RPD. RPD reserves the right to require any other security devices it deems reasonably necessary. Any failure to comply with this section is a material breach of this agreement.

F. RELEASES INVOLVING POLICE INVESTIGATIVE HOLDS AND IMPOUNDS

Contractor shall not release vehicles or property in vehicles which have been impounded or put on investigative hold by the Riverside Police Department. The Riverside Police Department may authorize the release of impounded vehicles, personal property from impounded vehicles, or vehicles with Police Investigative holds.

G. TERM OF AGREEMENT.

1. **Initial Term:** The term of this Agreement shall commence on the day the City executes this Agreement and shall remain in effect for three (3) years until December 31, 2023, when the Agreement shall expire and terminate unless the Agreement has been renewed for a subsequent Renewal Term as provided for in this Agreement. Notwithstanding the forgoing, the Agreement is subject to early termination pursuant to the provisions herein and/or the Tow Ordinance.

2. **Renewal Term:** The term of this Agreement is eligible to be extended by three (3) separate Renewal Terms of one (1) year each to companies in good standing. Each extension of the term of this Agreement is subject to the following: (i) OPTS must file with the City, at least one hundred and twenty (120) days prior to expiration of the then current term, a Written Request for Extension citing this provision; and (ii) The City, in the reasonable exercise of its discretion, may approve or deny OPTS' request upon consideration of OPTS' past conduct under this Agreement and the Tow Ordinance. Notwithstanding the foregoing, the Agreement is subject to suspension and/or termination during any Renewal Term pursuant to provisions herein.
3. **Suspension and Termination of Agreement:** The Agreement may be suspended and/or terminated by the parties before the expiration of any term only as follows:
 - 3.1 **Suspension and Termination by The City:** The City may suspend and/or terminate this Agreement under any of the following circumstances:
 - 3.1.1 **Pursuant to Ordinance:** The City may suspend and/or terminate this Agreement for OPTS's, including any subcontractor of OPTS's, violation of the Tow Ordinance and/or in accordance with, and under the procedures set forth in RMC §§ 5.15.140 and/or 5.15.145.
 - 3.1.2 **Breach of Representation or Warranty:** The City may, at its sole option, terminate this Agreement in the event any of the representations and warranties made by OPTS under this Agreement are, or at any time during this Agreement become, materially false or inaccurate.
 - 3.1.3 **Litigation:** The City may, at its sole option, terminate this Agreement in the event that any non-party to this Agreement files a legal action or administrative proceeding that challenges the effectiveness, validity, or constitutionality of the Tow Ordinance and/or this Agreement, that challenges the City's authority to negotiate or enter into this Agreement, or that in any other manner challenges the Tow Ordinance and/or this Agreement or any actions taken under color of this Agreement.
 - 3.2 **Termination by OPTS:** This Agreement shall terminate thirty (30) days after OPTS provides the City with written notice of OPTS' intention to terminate the Agreement. Upon OPTS' termination of this Agreement, OPTS shall relinquish all rights it may have under this Agreement and the Tow Ordinance, and relinquish and lose its status as an Official Police Tow Service. Notwithstanding the foregoing, termination of the Agreement under this paragraph shall not release OPTS from its obligation to pay any Per-Tow Fee or part thereof, which is outstanding, due, or has accrued.

H. OPTS OBLIGATIONS.

1. **Operation as Official Police Tow Service:** OPTS shall operate as, and perform all the services required of, an Official Police Tow Service as set forth in, and shall otherwise tow and store all vehicles in compliance with, the Tow Ordinance including, but not limited to:

- 1.1 **Standards for Tow Truck Equipment:** OPTS shall take, at its sole cost and expense, all measures reasonably necessary to ensure that it complies with the “Standards for Tow Truck Equipment” as set forth in RMC § 5.15.100 and pass inspection by the California Highway Patrol or the Riverside Police Department.

1.2 Standards for Tow Truck Owner//Drivers/Employees: OPTS shall ensure that all owners/drivers be 18 years of age or older, successfully complete a background check administered by the Contract Administrator or his/her designee, provide Live Scan fingerprints, maintain a valid California Driver’s License, and have prior towing related experience. They shall have no felony convictions within the past seven (7) years, no DUI’s within four (4) years, or any convictions of moral turpitude.¹ Misdemeanor convictions will not result in an automatic disqualification however each applicant history will be evaluated on a case by case basis. They shall have less than five (5) citations within the past three (3) years, provide proof of enrollment in the DMV Pull Notice Program (pursuant to CVC 1808.1) and shall provide proof of enrollment into a Random Drug Screen Program (as defined in Title 29 Code of Federal Regulations Parts 40 and 382). Drivers shall be professional, polite, well-groomed and wear an appropriate uniform (consisting of a collared uniform shirt with company name and employee’s name, pants or professional short pants and safety shoes) and utilize appropriate safety garments (such as reflective vests). They shall also be free of visible tattoos and facial piercings.

¹ Crimes of moral turpitude are generally defined as acts of baseness, vileness or depravity in the private and social duties, they are contrary to the accepted and customary rule of moral, right and duty between people and can be either felonies or misdemeanors. Crimes of moral turpitude include but are not limited to arson, burglary, blackmail, forgery, fraud, larceny (grand or petty), robbery, theft, perjury, contributing to the delinquency of a minor, assault with intent to kill, commit rape, sex with a minor, commit robbery or commit serious bodily harm, battery, pimping and pandering, child endangerment, battery on a spouse, indecent exposure, evading police, auto theft and DUI.

- 1.2.1 Any Contractor that receives a DMV Pull Notice Program action notification shall provide the Contract Administrator of the driver name and notification summary by 0900 hours the following day.
- 1.3 **Standard Rules for Operation:** OPTS shall take, at its sole cost and expense, all measures reasonably necessary to ensure that it complies with the “Standard Rules of Operation” as set forth in RMC § 5.15.110. OPTS must maintain an accurate list of drivers, ensure they are currently licensed, and in compliance with the OPTS agreement.
- 1.4 **Response Times:** OPTS shall take, at sole cost and expense, all measures reasonably necessary to ensure that it complies with the requirements for “Response Times” as set forth in RMC §5.15.120.
- 1.5 **Modification of Standards and Requirements:** OPTS understands, acknowledges, and agrees that the standards and requirements set forth in the Tow Ordinance regarding any towing company’s operation as an Official Police Tow Service may, from time to time during the term of this agreement, be changed, revised, amended, or otherwise modified by the City in its sole discretion. OPTS further understands, acknowledges, and agrees that applicable Tow Ordinance amendments shall require an amendment to this Agreement, to be signed and returned by OPTS within sixty (60) days of receiving the stated Agreement amendment. OPTS understands, acknowledges, and agrees that OPTS’s failure to sign and return the stated Agreement amendment within the stated time frame shall result in OPTS forfeiting the remainder of the Agreement term, and this Agreement shall be automatically cancelled. OPTS shall take, at sole cost and expense, all measures reasonably necessary to ensure that it complies with the Tow Ordinance as so changed, revised, amended, or otherwise modified.
2. **Fees for Services:** OPTS shall only charge those Fees for Services as are determined by the City in accordance with RMC § 5.15.080. OPTS understands, acknowledges and agrees that the Fees for Services as determined by the City may, from time to time during the term of this Agreement, be changed, revised, amended, or otherwise modified by the City in its sole discretion. OPTS shall take, at its sole cost and expense, all measures reasonably necessary to ensure that it complies with Fees for Services as so changed, revised, amended, or otherwise modified. Any such changes, revisions, amendments, or other modifications to the Fees for Services shall become applicable to OPTS as of the Effective Date specified by the City in the City’s written notice of such changes, revisions, amendments, or other modifications to OPTS.
- 2.1 **Fees for Evidence-Stored Vehicles by the Riverside Police Department:**
In the event a vehicle is “evidence-stored” at the direction of the Police

Department, OPTS may charge the Police Department the amounts authorized under RMC § 5.15.110(B)(8).

- 2.2 OPTS shall under no circumstances charge towing or storage rates in excess of amounts stated in RMC § 5.15.080.

3. **Payment of Per-Tow Fee:** In consideration of this Agreement, OPTS shall pay a fee ("Per-Tow Fee") to the City as follows:

- 3.1 **Term:** For the term of the Agreement, including any renewal terms, OPTS shall pay to the City a Per-Tow Fee which equals the product of Sixty Five Dollars (\$65.00) multiplied by the total number of Vehicles towed by OPTS pursuant to this Agreement.

- 3.2 **Timing of Payments:** At the sole option of the City, the Per-Tow Fee may be billed in monthly, quarterly, or other semi-annual installments during each year of the Agreement. OPTS shall make payment of the Per-Tow Fee to the City consistent with the billing period selected by the City. OPTS shall make payment of and deliver the Per-Tow Fee to the City within thirty (30) calendar days after the end of the applicable billing period as determined by the City.

- 3.3 **Late Payments:** Any Per-Tow Fee owed to the City by OPTS which is more than ten (10) calendar days overdue, shall accrue interest from the eleventh (11th) calendar day at the lower of a rate of 10% per month, or the maximum rate allowed by law.

- 3.4 **Exemption from Per-Tow Fee:** No Per-Tow Fee shall be paid by OPTS to the City, with regard to the towing of any Vehicle that is considered by the City, in its sole discretion, to be: (i) A Low-Valued Vehicle; (ii) The result of a valid request for towing service by a current member of the Automobile Club of Southern California or other officially recognized auto club where OPTS is under contract with said auto club to perform the requested towing service; (iii) The result of a valid request for towing services from the private citizen driver or owner of the Vehicle who, prior to the tow, requested the services of a specific Official Police Tow Service or other non-approved towing service; In addition, the towing of any Vehicle specified in subparts (i) through (iii) herein, shall not be included within the total number of Vehicles towed by OPTS for the purposes of calculating the Per-Tow Fee pursuant to this Agreement.

4. **Financial Statement Submitted with Per-Tow Fee:** In addition to daily reports required by RMC § 5.15.110 H, OPTS shall deliver to the City, at the time OPTS is required to make payment of and deliver the Per-Tow Fee to the City, a financial report in such a form and containing such information as may be required by the

City's Finance Director that documents, supports, and verifies OPTS' calculation and payment of the Per-Tow Payment.

5. **Records:** OPTS shall maintain, in a reasonably accessible location and subject to the City's inspection and audit during normal business hours, records containing the information required under RMC Chapter 5.15, including specifically § 5.15.110 H. OPTS shall keep a written record of every vehicle stored for a period of more than twelve (12) hours and shall be kept for one year pursuant to CVC 10650. In addition to the one year requirement, records for all vehicles towed under this contract shall be maintained for not less than four (4) years from the date of each tow. Records shall conform to generally accepted accounting principles. The OPTS shall file required reports and notifications with the California Department of Motor Vehicles (DMV) in the manner required by law. The records keeping system maintain by the OPTS must be able to be accessed quickly and efficiently.
6. **Compliance with Law:** OPTS, including OPTS's subcontractors, shall, at all times, comply with all applicable provisions of federal and state law, and comply with applicable City ordinances, rules, and regulations, including but not limited to those listed in Exhibit "A". OPTS shall submit a driver information form on all employees hired to drive for OPTS. The form shall be submitted to Police Tow Coordinator within five (5) days of employment. Forms should be completed for all employees who will be interacting with the public and/or anyone with a financial interest in the towing agency with regard to the Standard Rules of Operation of an OPTS per RMC §5.15.110. These employees shall submit to a criminal history records check and must provide fingerprints via Live Scan as part of the application process and they are subject to Police Department review (per CVC 2432.3 – criminal history checks for towing employees). The towing agency shall be required to pay the costs of the fingerprints and records check. Non-compliance with this provision shall constitute a material breach of this agreement. If the employee is released, the Police Department shall be notified by the end of the next business day.
7. **Permits and Licenses:** OPTS, including OPTS's subcontractors, shall obtain, and at all times during the term of this Agreement maintain, at its sole cost and expense, all appropriate permits, licenses, and certificates as may be required in connection with the performance of services hereunder.
8. **Investigative Process:** The City retains the ability to immediately suspend a Contractor per RMC §§ 5.15.140 and 5.15.145. The procedure for such action against OPTS shall be as set forth in RMC §§ 5.15.140 and 5.15.145. OPTS agrees that OPTS shall be responsible for the actions or omissions of its subcontractor(s), and agrees that OPTS shall be subject to suspension and/or termination under RMC §§ 5.15.140 and 5.15.145 for the actions or omissions of OPTS's subcontractor(s) as though they were the actions or omissions of OPTS.

I. REPRESENTATIONS AND WARRANTIES BY OPTS.

1. **Business License:** OPTS, including OPTS's subcontractor(s), represents and warrants that it has, and at all times during the term of this Agreement will maintain, a valid business license for the City in compliance with RMC § 5.15.090.
2. **Tow Truck Equipment:** OPTS represents and warrants that its, and/or its subcontractor's (as applicable), tow truck equipment complies, and at all times during the term of this Agreement shall continue to comply, with the Standards for Tow Truck Equipment set forth in RMC § 5.15.100.
3. **Standard Rules for Operation:** OPTS represents and warrants that it and its subcontractor(s), as applicable, shall, at all times during this Agreement continue to, conduct its operations under this Agreement in compliance with the "Standard Rules of Operation" as set forth in RMC § 5.15.110. The OPTS shall not be directly involved in the towing business with any other towing service provider or applicant in the City of Riverside without prior approval of the City prior to the beginning of this Contract. The OPTS shall not be directly involved with a business providing private security, parking, or other services which have the power or duty to patrol or enforce parking regulations on public and private property. Directly involved shall mean any of the following in common between the OPTS and any other towing related business:
 1. Business License
 2. Insurance
 3. Tow truck or equipment ownership
 4. Employees

Storage facilities sharing property with other businesses or services must be separated by conditions or barriers meeting the approval of the Riverside Police Department and RMC § 5.15.110 and RMC § 19.415.

J. INSURANCE AND INDEMNIFICATION.

1. **Insurance Policies:** Within fifteen (15) days after execution of this Agreement, and in any event prior to OPTS' commencing operation under this Agreement, OPTS shall procure insurance policies of the type, and meeting the requirements stated below, and shall provide to the City a Certificate of Insurance, or other such evidence reasonably acceptable to the City, for such insurance policies:
 - 1.1 **General Liability Insurance:** A policy of General Liability Insurance covering and protecting OPTS, its officers, employees, and agents from loss including injury or death resulting therefrom suffered or alleged to have been suffered by any person or persons, other than employees of OPTS, resulting directly or indirectly from the performance or execution of this

Agreement. This insurance must cover OPTS' assumption of all liability caused by or arising out of all aspects of the provision of towing services. This insurance policy must be of comprehensive form on an occurrence basis, with a combined minimum limit of one million dollars (\$1,000,000), and a two million dollar (\$2,000,000) aggregate limit. This insurance policy must provide for the payment of attorney fees, and payment of actual damages from successful litigation against OPTS and/or the City, as a result of errors or omissions in the operation or management of the towing business.

1.2 **Auto Liability Insurance:** A policy of Auto Liability Insurance covering and protecting OPTS, its officers, employees, and agents from loss including injury or death resulting therefrom suffered or alleged to have been suffered by any person or persons, other than employees of OPTS, resulting directly or indirectly from the performance or execution of this Agreement. This insurance must cover OPTS' assumption of all liability caused by or arising out of all aspects of the provision of towing services. This insurance policy must be on an occurrence basis, with a combined single limit of one million dollars (\$1,000,000) and a two million dollar (\$2,000,000) aggregate limit.

1.3 **Property Damage Insurance:** A policy of Property Damage Insurance protecting OPTS against loss from liability imposed by law for damage to any property, including Vehicles, caused directly or indirectly by the performance or execution of this Agreement which insurance shall also cover accidents arising out of the use and operation of automobiles and trucks. OPTS shall provide fire and extended coverage for all Vehicles, including property contained in Vehicles, impounded and stored under this Agreement. The minimum limit of this coverage shall be \$250,000, to cover all liability caused by or arising out of all aspects of the provision of towing, storing, and impounding services.

1.4 **Workers' Compensation Insurance:** A policy of Workers' Compensation Insurance covering all employees of OPTS.

2. **Provisions Relating to Insurance Policies:** The following provisions are applicable to all insurance provisions, except as otherwise may be expressly provided:

2.1 **Unified Policy:** OPTS may obtain, if it is able, one single unified policy that meets all of the requirements set forth in this Agreement for the General Liability Insurance policy, the Auto Liability Insurance Policy, and the Property Damage Policy, or any combination of two such policies. OPTS must have a separate Workers' Compensation Insurance policy.

- 2.2 **Subcontractor's Insurance:** OPTS shall include in all subcontracts a requirement that each subcontractor obtain and maintain, at a minimum, all insurance required by Section J, subsection 1, of this Agreement. City reserves the right to require certificates of insurance from OPTS for each of OPTS's subcontractors. OPTS acknowledges that regardless of insurance obtained by its subcontractors, OPTS shall be fully responsible to the City for any and all actions or omissions of its subcontractor(s).
- 2.3 **Approval:** All insurance policies required of OPTS under this Agreement are subject to the final approval of the City's Risk Manager and the City Attorney.
- 2.4 **Insurer:** All insurance policies required of OPTS under this Agreement shall be obtained from a company, or other business entity, authorized to do such insurance business in California.
- 2.5 **Additional Insured:** All insurance policies required of OPTS under this Agreement, except for the Workers' Compensation Insurance policy, shall name "the City of Riverside, its City Council and all of its respective council members, its officials, officers, directors, employees, managers, commission members, representatives, and agents as an additional insured" and must contain the following provisions:
- 2.5.1 **Cancellation:** It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the Risk Manager for the City of Riverside shall have received written notice of such cancellation or reduction. The notice shall be deemed effective on the date delivered to the Risk Manager as evidenced by properly validated return receipt.
- 2.5.2 **Waiver of Subrogation Right:** The insured waives any right of subrogation against the City of Riverside which might arise by reason of any payment under these policies.
- 2.6 **Review:** At the end of each year of this Agreement, the City reserves the right to review the insurance coverage requirements and to require more or less insurance, depending upon assessment of the risk exposure, OPTS past experience, and the availability and affordability of increased liability insurance coverage with corresponding adjustments to rates.
3. **Indemnity:** OPTS expressly agrees to and shall indemnify, defend with counsel of the City's choice, release, and hold the City, its City Council, and all of its respective officials, officers, directors, managers, employees, agents, servants, attorneys, and contractors, harmless from and against any claim, liability, loss, damage, entry, costs, or expenses (including, but not limited to, reasonable

attorney's fees, expert fees, and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person and which was caused, in whole or in part, by any acts, errors or omissions, whether active or passive, of OPTS or its officers, directors, agents, servants, employees or contractors, in any way arising out of their performance of this Agreement or any actions permitted under the Tow Ordinance.

K REMEDIES.

1. **Legal Actions:** Any party may institute a legal action to require the cure of any default and to recover damages for any default or breach, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:
 - 2.1 **Jurisdiction and Venue:** Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that county, or in the United States District Court for the Central District of California. OPTS specifically waives any rights provided to it pursuant to California Code of Civil Procedure § 394 or federal or state statutes or judicial decisions of like effect.
 - 2.2 **Applicable Law:** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.
3. **No Waiver:** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

L. GENERAL TERMS AND CONDITIONS.

1. **Independent Contractor:** The parties intend that the relationship created between them under this Agreement is that of an employer-independent contractor. The manner and means of conducting the work are under the control of OPTS, except to the extent they are limited by statute, rule, or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of OPTS' service under this Agreement. None of the benefits provided by the City to its employees, including but not limited to, unemployment insurance, workers' compensation insurance, retirement and deferred compensation plans, vacation and sick leave, are available from the City to OPTS or any of its employees or agents.
2. **Assignment Prohibited:** OPTS shall not assign, sell, or otherwise transfer any of its obligations, rights, benefits, or other interest it may have under this Agreement

to any other person or entity without first obtaining the express written consent of the City, which consent the City may withhold with or without cause in its sole discretion. The sale, assignment, or other transfer of any person or group of persons collectively having an interest of 50% or more in OPTS (whether by means of ownership of stock, partnership interests, or tenancy in OPTS) to any other person or entity shall be considered an assignment subject to this paragraph.

3. **Notices and Communications Between the Parties:** The nature of the communication should determine the manner. For routine communications, e-mail correspondence/notifications are sufficient. Formal notices and demands between the parties shall be given in writing and personally served or dispatched by certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this section, or telefaxed to the telefax number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Paragraph. Any such notice shall be deemed to have been received upon the date personal service is effected, if given by personal service, or upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to the City:

Police Department
CITY OF RIVERSIDE
8181 Lincoln Avenue
Riverside, California 92504
Attn: Police Tow Coordinator

Facsimile transmission may be made to :(951) 826-8730

If notice is to be made to OPTS:

Pepe's, Inc. dba Pepe's Towing Service
Attn: Christopher Navarro
2000 W. Key Street
Colton, CA 92324

Email transmission may be made to: cnavarro@pepestow.com

4. **Non-liability of Agency Officials and Employees:** No board member, official, consultant, attorney, or employee of the City shall be personally liable to OPTS, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the City or for any amount which may become due to OPTS or to its successor, or on any obligations arising under this Agreement.

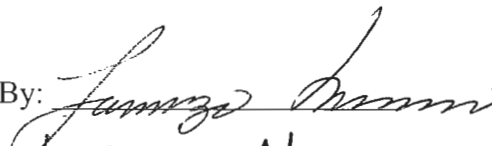
5. **No Third Party Beneficiaries:** This Agreement, its provisions, and its Covenants, are for the sole and exclusive benefit of the City and OPTS. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.
6. **Integration:** This Agreement and any amendments thereto constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
7. **Amendment:** This Agreement may only be amended in writing executed by both of the parties, except that this Agreement may be deemed amended upon deliver to OPTS by the City of any revisions, amendments, or modifications of the Tow Ordinance as provided in the Agreement.
8. **Counterpart Originals:** This Agreement may be executed in duplicate originals, each of which is deemed to be an original.
9. **Interpretation:** The City and OPTS acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. It is understood and agreed by the parties that this Agreement, and each term and condition stated herein, shall be interpreted in a such a manner so as to be consistent with the Tow Ordinance, and in such a manner so as to reasonably implement the Tow Ordinance, as the Tow Ordinance is in effect at the time this Agreement is executed and as the Tow Ordinance may thereafter be amended, renumbered, repealed and reenacted, or otherwise modified.
10. **Severability:** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.
11. **Effective Date of Agreement:** This Agreement shall not become binding and effective until the date it has been formally approved by the City Council for the City and executed by the appropriate authorities of OPTS and the City.

IN WITNESS WHEREOF City and PEPE'S INC., doing business as PEPE'S TOWING SERVICE have caused this Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation.

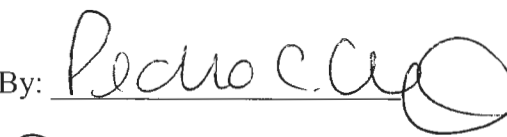
PEPE'S INC., a California
corporation doing business as
PEPE'S TOWING SERVICE

By: _____
City Manager

By: 
Lorenzo Navarro
[Printed Name]
Vice President
[Title]

Attest:

By: _____
City Clerk

By: 
Pedro C. Ortiz
[Printed Name]

APPROVED AS TO FORM:

Chief Financial Officer
[Title]

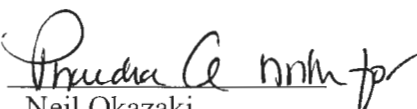
By: 
Neil Okazaki
Deputy City Attorney

EXHIBIT A

Applicable California Vehicle Code and Civil Code Laws

Note: The laws which govern a tow operator's business and vehicle operations are included in, but not limited to, this Attachment. The list of laws included herein is intended as a general guide only. It is the tow operator's responsibility to know and comply with all federal and state statutes and all local ordinances relating to the operator's business operations; including those which are and are not listed in this document, both new statutes or ordinances subsequently adopted, as well as, amendments, repeals, or modifications of existing statutes and ordinances including but not limited to those described in this attachment.

1. General

- A. The operator shall be able to properly conduct a lien sale as outlined in Division 11, Chapter 10, Article 2, beginning with Section 22851 of the California Vehicle Code (CVC).
 - B. The operator and/or the operator's agents who drive tow trucks shall be properly licensed in accordance with Section 12804.9 of the CVC.
- 1) Commercial driver licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. The following table shows the correct license class and endorsement for the vehicle or cargo being transported: