

OFFICIAL POLICE TOW TRUCK  
SERVICE AGREEMENT

BY AND BETWEEN

THE CITY OF RIVERSIDE

AND

EXCLUSIVE RECOVERY, INC.

DBA: Exclusive Towing

## **OFFICIAL POLICE TOW TRUCK SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal ("City") and Exclusive Recovery, Inc., an Official Police Towing 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 Chapter 5.15 entitled "Regulations of Official Police Tow Truck Service" of the City of Riverside Municipal Code ("RMC") commencing with §5.15.010 ("ROPTTS Ordinance") to provide services at the request of the City Police Department throughout the boundaries of the City, 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 ROPTTS 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 ROPTTS Ordinance, and in such a manner so as to reasonably implement the ROPTTS Ordinance between the parties.

C. In consideration of being selected and designated by the City as an Official Police Towing 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 the City Police Department pursuant to the terms and conditions of this Agreement.

### **SCOPE OF SERVICES**

Contractor 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 Towing Service.
6. "Council" shall mean the City Council of the City of Riverside.
7. "Franchise Fee" shall mean the fee payable by OPTS to City as authorized by RMC § 5.15.095.
8. "Gross Vehicle Weight Rating (GVWR)" means the weight specified by the manufacturer as the loaded weight of a single vehicle.
9. "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.
10. "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.
11. "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.
12. "Official Police Tow Service" shall mean a "towing company" within the meaning of RMC §5.15.020.
13. "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.

14. "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.
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. "ROPTTS Ordinance" shall mean that ordinance of the City of Riverside at 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. Also includes 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. Contractor agrees to provide to the City, upon City's request, City-generated tow services.
2. Contractor shall be available to respond with sufficient operational equipment to handle any tow call (within the selected operating class: heavy duty and /or light duty) twenty-four (24) hours a day, seven (7) days a week, including holidays.
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 Contractor may be required to provide in any time period. There shall be no obligation upon City to provide Contractor with any minimum number of City-generated tows during any time period.
5. Subcontractors shall be approved by Contract Administrator 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 Contractor to provide the highest levels of customer service is of utmost importance to the City of Riverside and is the main reason for awarding the Agreement. The Contractor shall comply with all provisions of Riverside Municipal Code Chapter 5.15.

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 contract. Any failure to comply with this section is a material breach of this agreement.

#### **D. CENTRAL COMMUNICATIONS CENTER**

Contractor 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 the contractor within four (4) rings.

Contractor 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**

Contractor shall comply with Riverside Municipal Code Section 5.15.110 J. 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. **Only vehicles and related items being held as evidence shall be kept in the evidence hold area.** 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.

OPTS may release personal property from an impounded vehicle where such vehicle is impounded pursuant to the "SAFE STREETS ACT".

## 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 until January 1, 2019, 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 Paragraph 3 of this Agreement.
2. **Renewal Term:** The term of this Agreement is eligible to be extended by two (2) 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 ROPTTS Ordinance. Notwithstanding the foregoing, the Agreement is subject to suspension and/or termination during any Renewal Term pursuant to Paragraph 3 of this Agreement.
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 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 ROPTTS 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 ROPTTS 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 ROPTTS Ordinance, and relinquish and lose its status as an Official Police Towing Service. Notwithstanding the foregoing, termination of the Agreement under this paragraph shall not release OPTS from its obligation to pay any Franchise Fee or part thereof, which is outstanding, due, or has accrued.

4. **Fines in Lieu of Suspension and/or Termination:** Per the Agreement, the City retains the right to suspend and/or terminate Contractors as outlined. Additionally, in lieu of suspension and/or termination of this Agreement, City may impose fines as outlined below for breaches of this Agreement:

Exceeding the maximum Response Time	\$200 each violation
Excessive Passes (3 per month)	\$500
Equipment Violations or Business Omissions (If violation is not addressed within 10 days a suspension may result)	\$200 per day
Unauthorized release of vehicles	\$1000
Lack of required equipment	\$200 each violation
Failure to meet yard standards (Pursuant to RMC Section 5.15.100, violation must be addressed within 5 business days)	\$500

#### H. OPTS OBLIGATIONS.

1. **Operation as Official Police Towing Service:** OPTS shall operate as, and perform all the services required of, an Official Police Towing Service as set forth in, and shall otherwise tow and store all vehicles in compliance with, the ROPTTS 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.<sup>1</sup> 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.

- 1.2.1 Any Contractor that receives a DMV Pull Notice Program action notification shall provide the Contract Administrator with the driver name and notification summary by 0900 hours the following business 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.

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<sup>1</sup> 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, 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.

- 1.4 **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 ROPTTS Ordinance regarding any towing company's operation as an Official Police Towing 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 any such changes, revisions, amendments, or other modifications shall become applicable to OPTS thirty (30) days after the City provides written notice of such changes, revisions, amendments, or other modifications to OPTS. OPTS shall take, at sole cost and expense, all measures reasonably necessary to ensure that it complies with the ROPTTS 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 Vehicles Impounded by the Riverside Police Department:** In the event a vehicle is stored, impounded, or held for evidence at the direction of the Police Department, and it is subsequently determined that the City is liable for the costs of the towing and storage, the towing company agrees not to assess the City for such costs.
    - 2.2 **Towing of Police Department Vehicles:** For tow services of Police Department vehicles inside the city limits, the tow companies shall provide this service and will be allowed to charge the Police Department \$116 for the service performed. Upon completion of the tow service, the tow company shall be placed back on top of the rotation.

For tow service of Police Department vehicles outside the city limits, the tow companies shall provide this service and will be allowed to charge the police department \$168 plus mileage (@ \$2.25 per mile) from portal to portal. Upon completion of the tow service, the tow company will not be placed on top of the tow rotation.

- 2.3 Contractor may not charge towing or storage rates in excess of amounts listed on Exhibit "B"

3. **Payment of Franchise Fee:** In consideration of this Agreement, OPTS shall pay a fee ("Franchise 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 Franchise 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. The amount payable to the City as the Franchise Fee during the term shall not be subject to any increase as a result of an increase in the Rates for Services that become effective;
- 3.2 **Timing of Payments:** At the sole option of the City, the Franchise Fee may be billed in monthly, quarterly, or other semi-annual installments during each year of the Agreement. OPTS shall make payment of the Franchise Fee to the City consistent with the billing period selected by the City. OPTS shall make payment of and deliver the Franchise 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 Franchise 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 Franchise Fee:** No Franchise 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 Towing 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 Franchise Fee pursuant to this Agreement.

4. **Financial Statement Submitted with Franchise Fee:** In addition to the annual audited income statement required by RMC §5.15.095 and the monthly report 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 Franchise Fee to the City, a financial report in such a form and containing such information as may be required by the Chief Financial Officer that documents, supports, and verifies OPTS' calculation and payment of the Franchise Payment.
  - 4.1 In order to facilitate this process, each day (excluding holidays) by 9:00 am, each OPTS shall submit to the Contract Administrator the updated, electronic tow inventory form.
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 following information in a reasonably accessible format including, but not limited to, all tow services furnished at the initiation of the City, a description of vehicles towed and stored, with regard to each vehicle towed or stored, the license plate and/or VIN, the case number, the nature of the act, the date of the act, the time of notification by the City, the time of the tow truck dispatch, the time of arrival of the tow truck at the scene, the location of calls, the total itemized charges of towing and storage, the disposition of all vehicles towed and/or stored at the initiation of the City, copies of all invoices, receipts, evidence of payment, and any other record reasonably necessary to document, substantiate, and verify the calculation of the Franchise Fee. The 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 maintained by the OPTS must be able to be accessed quickly and efficiently.
6. **Compliance with Law:** OPTS 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 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 Section 5.15.145. However, when an allegation of misconduct or a potential breach of this Agreement is identified, the Contract Administrator will conduct an investigation of the allegations. As part of the investigative process and prior to the City reaching a conclusion as to the allegations, the involved OPTS will be provided an opportunity to meet with the investigating authority and provide information that is relevant to the allegations.

#### **I. REPRESENTATIONS AND WARRANTIES BY OPTS.**

1. **Business License:** OPTS 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 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 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 Contract Administrator 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 **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.
  - 2.3 **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.
  - 2.4 **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 officers, employees, and agents as an additional insured" and must contain the following provisions:

2.4.1 **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.

2.4.2 **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.

2.5 **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 officers, officials, directors, agents, servants, employees, 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 ROPTTS Ordinance.

## **K REMEDIES.**

1. **Liquidated Damages:** OPTS agrees that OPTS' failure to meet the average response times or failure to meet the maximum response times for any single request for tow service as required under this Agreement and pursuant to RMC §5.15.150, will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. OPTS agrees to pay to the City, subject to City's compliance with the notice and hearing provisions of RMC §5.15.145, five hundred dollars (\$500) each and every time OPTS fails to meet the average response time requirements for any thirty (30) day calendar period. OPTS further agrees to pay to the City, subject to City's compliance with the notice and hearing provisions of RMC §5.15.145, two



hundred dollars (\$200) each and every time OPTS fails to meet the maximum response time for any single request for tow service by the Policy Department. OPTS agrees that said sums are the minimum value of the costs and actual damages caused by OPTS' failure to complete service within the allotted time period. Such sum is a liquidated damage and shall not be construed as a penalty.

2. **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, email 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:

Exclusive Recovery, Inc.  
3777 Placentia Lane  
Riverside, CA 92501

Facsimile transmission may be made to: 951.682.2043

E-mail correspondence may be made to: [jerrykohutek@yahoo.com](mailto:jerrykohutek@yahoo.com)

[Dispatch@exclusivetowing.com](mailto:Dispatch@exclusivetowing.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 ROPTTS 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 ROPTTS Ordinance, and in such a manner so as to reasonably implement the ROPTTS Ordinance, as the ROPTTS Ordinance is in effect at the time this Agreement is executed and as the ROPTTS 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,

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.

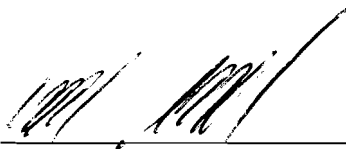
11. **Effective Date of Agreement:** This Agreement shall not become binding and effective until the date it has been formally approved by the City Council for the City and executed by the appropriate authorities of OPTS and the City.

IN WITNESS WHEREOF City and Exclusive Recovery, Inc., 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.

Exclusive Recovery, Inc.  
a California corporation

By: \_\_\_\_\_  
John Russo, City Manager

By:  \_\_\_\_\_  
Gerald Kohutek  
President

Attest

By: \_\_\_\_\_  
City Clerk

By:  \_\_\_\_\_  
Desiree Peterson, V.P.

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Neil Okazaki  
Deputy City Attorney

Attachments:  
Exhibits A, B

## **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:

## EXHIBIT B

### City of Riverside Approved Vehicle Towing Rate Schedule

Tow Rates Effective 0001 hours, January 21, 2015

#### TYPE OF SERVICE

STANDARD (CHP Class A)  
MEDIUM DUTY (CHP Class B)  
HEAVY DUTY (CHP Class C)  
SUPER HEAVY DUTY (CHP Class D)

#### MAXIMUM APPROVED RATE

\$233.00 (per hour, portal to portal)  
\$269.00 (per hour, portal to portal)  
\$334.00 (per hour, portal to portal)  
\$381.00 (per hour, portal to portal)

EXTRA LABOR AT THE SCENE  
(Standard - CHP Class A only)

\$116.50 Per half hour, or portion thereof (after first 30 minutes)

DOLLIES (if required)

\$45.00 (no extra labor allowed)

#### VEHICLE STORAGE (OUTSIDE)

STANDARD (CHP Class A)  
MEDIUM DUTY (CHP Class B)  
HEAVY DUTY (CHP Class C)  
SUPER HEAVY DUTY (CHP Class D)

#### MAXIMUM APPROVED RATE

\$50.00 (per vehicle per day)  
\$52.00 (per vehicle per day)  
\$59.00 (per vehicle per day)  
\$59.00 (per vehicle per day)

#### VEHICLE STORAGE (INSIDE)

STANDARD (CHP Class A)  
MEDIUM DUTY (CHP Class B)  
HEAVY DUTY (CHP Class C)  
SUPER HEAVY DUTY (CHP Class D)

\$54.00 (per vehicle per day)  
\$56.00 (per vehicle per day)  
\$66.00 (per vehicle per day)  
\$67.00 (per vehicle per day)

#### SPECIAL SERVICES

GATE FEE  
(after business hours/on weekends)

\$116.50

SERVICE CALLS

\$116.50 (first half hour)  
\$50.75 per quarter hour thereafter

**MAXIMUM APPROVED RATE**

**MAXIMUM APPROVED RATE**

**MAXIMUM APPROVED RATE**