

MASTER AGREEMENT

FOR VEHICLE ABATEMENT WORK AT VARIOUS LOCATIONS THROUGHOUT CITY ON AN AS-NEEDED BASIS

EXCLUSIVE RECOVERY, INC. dba EXCLUSIVE TOWING

This Master Agreement for Vehicle Abatement Work at Various Locations Throughout the City on an As-Needed Basis ("Agreement" or "Master Agreement"), is made and entered into this _____ day of _____, 2017 ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and EXCLUSIVE RECOVERY, INC. dba EXCLUSIVE TOWING, a California corporation, 3777 Placentia Lane, Riverside, California 92501 ("Consultant"), in accordance with the following facts:

RECITALS

A. The City, acting through the Code Enforcement Division of the Community & Economic Development Department, issued an open Request for Proposals ("RFP") to establish a contractor panel for vehicle abatement work ("Contractor Panel") whereby, qualified contractors have the opportunity to perform vehicle abatement work ("Specific Project Work") on a rotational basis, at various locations throughout the City on an as-needed basis.

B. Contractor submitted a response to the RFP demonstrating Contractor's willingness and qualifications to perform such work.

C. City desires to include Contractor in its Contractor Panel who will be given an opportunity to perform Specific Project Work on a rotational basis, and Contractor desires to be included in such Contractor Panel.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein to this Agreement, and the following covenants and conditions, the parties agree as follows:

AGREEMENT

1. Contractor's Duties.

1.1 Work Force and Equipment. Contractor shall at all times maintain a work force and equipment capable of performing the Specific Project Work generally described and in accordance with this Master Agreement on an as-needed basis.

1.2 Assignment of Specific Project Work. Contractor shall be assigned Specific Project Work on a rotational basis. However, the City reserves the right, in its sole discretion, to assign Specific Project Work outside of the rotation when City determines it is in its best interest to do so. Execution of this Master Agreement does not guarantee Contractor will be assigned any Specific Project Work.

1.3 Insurance. At all times during the term of this Agreement, Contractor shall maintain insurance required under this Agreement.

1.4 Master Agreement. Contractor understands and agrees that all Purchase Orders for Specific Project Work assigned to Contractor shall be governed by, and Contractor shall perform all Specific Project Work in accordance with, this Master Agreement and the Contract Documents. Contractor's failure to execute this Master Agreement and provide all required insurance documents within thirty (30) calendar days of City Council approval shall result in Contractor's removal from the Panel.

1.5 Contract Documents. Contract Documents for this Master Agreement shall consist of the following: Request for Proposals for Contractor Panel for Vehicle Abatement Work; Contractor's proposal (including any documentation accompanying the Proposal and any post-RFP proposal documentation submitted prior to City's execution of the Master Agreement); this Master Agreement; Scope of Work for assigned Specific Project Work; Purchase Orders (if any) for Specific Project Work; Change Orders; and all other documents, maps, texts and items referred to in the foregoing documents. These Contract Documents are incorporated herein by reference and are intended to be correlative and constitute Contractor's performance obligations.

1.6 Use of Local Labor. In order to promote the employment of local residents, to the extent permitted by law, Contractor shall use its best efforts to actively recruit and employ skilled workers located within a fifty-mile radius of the project site ("Local Labor") to comprise at least fifty percent (50%) of its work force.

1.7 Use of Local Suppliers. In order to promote patronage in the City, Contractor shall use its best efforts to purchase supplies within the City limits.

2. **Work.**

2.1 Contractor shall provide all labor, equipment, and materials for, and shall complete Specific Project Work for all Purchase Orders assigned to Contractor. Contractor understands and agrees that such Specific Project Work may include without limitation, the removal and disposal of inoperable vehicle(s) at various locations throughout the City on an as-needed basis.

2.2 Where Specific Project Work involves trimming and/or removal of dry weeds and vegetation, Contractor understands that discing is not a permissible method of performing Specific Project Work, unless a prior determination by the Community Development Director has been made that discing is appropriate in light of the topographical characteristics of the site. Should such a determination be made, Contractor shall comply with AQMD Rule 403, including watering the site prior to discing.

3. **Effective Date.** This Agreement shall be effective upon the date first written above.

4. **Termination Date.** This Agreement shall terminate on June 30, 2020, or upon the required date for completion of any Specific Project Work, provided that it was assigned prior to June 30, 2020.

5. **Extension.** This Agreement may be extended for a period of three (3) additional years subject to the approval of the City Manager, the availability of budgeted funds and Contractor's submission of verification that it continues to satisfy the RFP prerequisites.

6. **Completion and Acceptance of Work.**

6.1 Inspection. Upon receipt of Contractor's written assertion that the Specific Project Work has been completed, the Specific Project Work will be inspected by an authorized City inspector for acceptance.

7. **Interpretation.**

7.1 Except as expressly modified in this Agreement, the capitalized terms used in this Agreement shall have the meanings defined in the Special Provisions.

7.2 In the event of any contradictory or inconsistent provisions, terms or conditions of the various Contract Documents, the specific terms and conditions in the Contract Documents in the following order of precedence, listed from highest to lowest, shall control in questions of interpretation and have precedence: Master Agreement, including amendments thereto, Purchase Order, and Scope of Work for Specific Project Work.

8. **Payment.**

8.1 Contract Price. City shall pay Contractor the contract price as set forth in the Purchase Order for the Specific Project Work, which includes all California sales or use tax and County and City taxes, for the performance of all of the Specific Project Work ("Contract Price"). The cost for each Specific Project Work shall be governed by the Compensation Schedule attached hereto as Exhibit "A" and incorporated herein by reference. This is Contractor's sole compensation for performance of any Specific Project Work. The total Contract Price for all Specified Project Work assigned to Contractor shall not exceed THREE HUNDRED THOUSAND Dollars (\$300,000.00) ("**Authorized Not to Exceed Amount**").

8.2 Contractor Certification - Contract Price. Contractor hereby certifies that:

8.2.1 Contractor will carefully examine the requirements of each Scope of Work for any assigned Specific Project Work.

8.2.2 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in the Purchase Order.

8.3 Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur as a member of the Panel,

including without limitation, Contractor's cost of maintaining insurance required by this Master Agreement and/or any Purchase Order for Specific Project Work. Contractor's sole compensation, if any, shall be the Contract Price set forth in the Purchase Order for any Specific Project Work.

8.4 Payment of Contract Price. City shall pay Contractor based upon the invoiced amount submitted by Contractor within thirty (30) days of acceptance of the Specific Project Work by the City.

9. **Compensation - Payment of Contractor's Employees.** Contractor shall be solely responsible for the payment of its employees assigned to perform Specific Project Work for City pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Contractor and all subcontractors are required to pay all workers employed in the execution of the Specific Project Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at www.dir.ca.gov/OPRL/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

9.2 Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work; and
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks.
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/Public-Works.html>.

10. **Licenses, Permits and Business Tax.** As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business tax certificate to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of Specific Project Work under this Agreement shall constitute doing business in the City of Riverside, and it shall,

therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. **Business Taxes, Charges or Penalties.** Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under

this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amounts throughout an appeal process and resolution of the dispute over the amount owed.

12. **Consent for Amounts in Excess of Contract Price.** Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City.

13. **Work Deadline.**

13.1 Contractor hereby agrees that Contractor shall complete all Specific Project Work within the time frame indicated on the Notice to Proceed issued by the City.

13.2 Failure of Contractor to complete the Specific Project Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of TWO HUNDRED FIFTY Dollars (\$250.00). Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Specific Project Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

14. **Workers' Compensation Insurance.** By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Specific Project Work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers Compensation Act.

Prior to City's execution of this Agreement, Contractor shall file with City either 1) a Certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof. Contractor's workers' compensation carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a financial class of VII or larger.

15. **Commercial General and Automobile Liability Insurance.** Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as required to insure Contractor against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by Contractor or by anyone directly indirectly employed by, connected with, or acting for or on behalf of Contractor.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a policy holder's rating of A or higher and a Financial Class of VII or larger.

Contractor's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per-occurrence limit and a general aggregate limit in the amount of not less than \$2,000,000.

Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per-occurrence limit, unless otherwise approved by the City's Risk Manager, or his designees. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, and non-Contractor owned vehicles and hired vehicles.

These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations herein.

16. **Additional Insured Endorsements.** Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability, shall be filed with City and shall include City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers and agents for services performed under this Agreement.

- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail.

City, its agents and employees make no representation that the limits of the insurance specified, to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

17. **Indemnification.** Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with the performance of Specific Project Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

18. **Duty to Defend.** Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Specific Project Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

19. **Suspension from Panel.** The Project Manager or other authorized City representative may suspend Contractor from the rotation for Specific Project Work if Contractor has previously received correction notices for substandard or defective work under a Purchase Order for Specific Project Work. Contractor may submit documentation to the Project Manager or other authorized City representative confirming that changes in Contractor's personnel, policies or practices have remedied the cause of the substandard or defective work. It is within the Project Manager's or other authorized City representative's sole discretion to lift Contractor's suspension based upon Contractor's documentation or to proceed with termination of the Master Agreement and any Purchase Orders thereto.

20. **Termination.** The City may terminate Contractor's performance of this Master Agreement and any Purchase Order for Specific Project Work without liability if:

- (1) Contractor fails promptly to begin the Specific Project Work under the Purchase Order; or
- (2) Contractor refuses or fails to supply enough properly skilled workers or proper materials; or
- (3) Contractor fails to perform the Specific Project Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Specific Project Work; or
- (4) Contractor discontinues the prosecution of the Specific Project Work; or
- (5) Any representation or warranty made by Contractor in its Proposal shall have been false or materially misleading when made; or
- (6) Contractor fails to make payment to subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law; or
- (7) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (8) Contractor fails to submit invoices and/or documenting photographs within twenty (20) calendar days of completion and acceptance of Specific Project Work by Code Enforcement; or
- (9) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
- (10) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

21. **Independent Contractor.** Contractor shall at all times during its performance of any Specific Project Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

22. **Non-exclusive Agreement.** The City reserves the right to bid any Specific Project Work outside of the Panel, to enter into contracts with non-panel contractors and to add additional contractors to the Panel that meet the RFP prerequisites, whenever the City deems it to be in its best interest.

23. **Nondiscrimination.** During Contractor's performance of this Agreement and any Purchase Order hereto, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, genetic information, gender, gender identity, or gender expression, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

24. **Accounting Records.** Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement and any Purchase Order hereto. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

25. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

To City
Claudine Sunga
Community & Economic
Development
City of Riverside
3900 Main Street, 2nd Floor
Riverside, CA 92522

To Contractor
Gerald Kohutek
Exclusive Recovery, Inc.
dba Exclusive Towing
3777 Placentia Lane
Riverside, CA 92501

26. **Severability.** Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, 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.

27. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party shall bear their own attorneys' fees and costs.

29. **Waiver.** No action or failure to act by the City shall constitute a waiver any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

30. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

(signatures on following page)

IN WITNESS WHEREOF, City and Contractor have caused this Master Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

EXCLUSIVE RECOVERY, INC.
dba EXCLUSIVE TOWING, a California
corporation

By: _____
Name: GERARD KOSUTH
Its: PRESIDENT

By: _____
Name: D. PERKINSON
Its: SECRETARY

Certified as to Availability of Funds:

By: dan j. gaud, Asst CFO, R.
Chief Financial Officer

Approved as to Form:

By: _____
Deputy City Attorney

EXHIBIT A

COMPENSATION SCHEDULE

City of Riverside
Community & Economic Development Department
Code Enforcement Division
Master Contractor Abatement Compensation Schedule


SERVICE TYPE		CONTRACT PRICE	
Vehicle removal	per vehicle	\$	152.00
Pool pump (includes spa)	per pool	\$	452.00
Weed abatement (mowing/edging)*			
Under 1 acre	per parcel	\$	87.00
Over 1 acre	per acre	\$	67.00
General clean-up			
Handwork labor/equip.	per hour	\$	42.00
Rubbish Removal			
Minimum	per parcel	\$	87.00
Per ton (dump receipt required)	per ton	\$	327.00
Board-up minimum	per parcel	\$	87.00
Small openings (32" X 48" or less)	per opening	\$	45.00
Med./Large openings (36" X 48" to 96" X 58")	per opening		
Windows and openings		\$	100.00
Single entry doors		\$	125.00
Double entry doors/French doors		\$	210.00
6' X 8' sliding glass doors		\$	210.00
10' sliding glass doors		\$	225.00
Cellar/basement doors with framing		\$	125.00
Single car garage door		\$	310.00
Double car garage		\$	410.00
Crawl space opening		\$	50.00
Larger openings and fire damage (labor at \$49.47/hr., materials with receipt and 15% mark-up)			
PRICES BASED ON 5/8" PLYWOOD AND ADEQUATE HARDWARE TO PREVENT ENTRY			
<p>This compensation schedule is subject to annual price adjustments in accordance with the Consumer Price Index.</p> <p>There will be no compensation for overtime or after hour's response unless authorized by the Community & Economic Development Director or Code Enforcement Manager. If a job cannot be completed in 8 hours or less, contractors can return to the job site the following day unless otherwise stated.</p> <p>There will be no compensation for rental of equipment unless authorized by the Community & Economic Development Director or Code Enforcement Manager.</p> <p>*Discing is not a permissible method of performing weed abatement project work. Absolutely no discing without prior authorization is allowed.</p>			

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 4/7/17

EXCLUSIVE RECOVERY, INC.
dba EXCLUSIVE TOWING

By 

Genaro Kowalek President
Name and Title

MASTER AGREEMENT

FOR VEHICLE ABATEMENT WORK AT VARIOUS LOCATIONS THROUGHOUT CITY ON AN AS-NEEDED BASIS

LYLE A. CASTILLO dba TWIN BUILDERS

This Master Agreement for Vehicle Abatement Work at Various Locations Throughout the City on an As-Needed Basis ("Agreement" or "Master Agreement"), is made and entered into this _____ day of _____, 2017 ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and LYLE A. CASTILLO dba TWIN BUILDERS, a sole proprietor, 1709 Via Valmonte Circle, Corona, California 92881 ("Consultant"), in accordance with the following facts:

RECITALS

A. The City, acting through the Code Enforcement Division of the Community & Economic Development Department, issued an open Request for Proposals ("RFP") to establish a contractor panel for vehicle abatement work ("Contractor Panel") whereby, qualified contractors have the opportunity to perform vehicle abatement work ("Specific Project Work") on a rotational basis, at various locations throughout the City on an as-needed basis.

B. Contractor submitted a response to the RFP demonstrating Contractor's willingness and qualifications to perform such work.

C. City desires to include Contractor in its Contractor Panel who will be given an opportunity to perform Specific Project Work on a rotational basis, and Contractor desires to be included in such Contractor Panel.

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1.7 Use of Local Suppliers. In order to promote patronage in the City, Contractor shall use its best efforts to purchase supplies within the City limits.

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8.2.1 Contractor will carefully examine the requirements of each Scope of Work for any assigned Specific Project Work.

8.2.2 Contractor understands that all items to be furnished shall be for the Contract Price, as set forth in the Purchase Order.

8.3 Contractor understands and agrees that City shall not be obligated to compensate Contractor for any expenses or costs Contractor may incur as a member of the Panel, including without limitation, Contractor's cost of maintaining insurance required by this Master Agreement and/or any Purchase Order for Specific Project Work. Contractor's sole compensation, if any, shall be the Contract Price set forth in the Purchase Order for any Specific Project Work.

8.4 Payment of Contract Price. City shall pay Contractor based upon the invoiced amount submitted by Contractor within thirty (30) days of acceptance of the Specific Project Work by the City.

9. **Compensation - Payment of Contractor's Employees**. Contractor shall be solely responsible for the payment of its employees assigned to perform Specific Project Work

for City pursuant to this Agreement, including wages, benefits, payroll deductions, unemployment and worker's compensation, as well as the employer's share of Social Security.

9.1 Contractor and all subcontractors are required to pay all workers employed in the execution of the Specific Project Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at www.dir.ca.gov/OPRL/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

9.2 Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work;
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks; and
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

10. **Licenses, Permits and Business Tax.** As a condition of this Agreement, Contractor and all subcontractors shall secure and maintain at all times, a business tax certificate to operate in the City of Riverside, and shall also secure and maintain at all times, any other licenses or permits which may be required. Contractor understands that its performance of Specific Project Work under this Agreement shall constitute doing business in the City of Riverside, and it shall, therefore, register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code.

11. **Business Taxes, Charges or Penalties.** Contractor acknowledges and agrees that City shall withhold and offset said amounts from any amounts the City owes to Contractor for unpaid business tax, tax penalties, utility charges, invoiced fees or other outstanding debt under this Agreement. The City shall give Contractor written notice of such withholding and offset. In the event of any dispute as to amounts owed to City, City will hold such disputed amounts throughout an appeal process and resolution of the dispute over the amount owed.

12. **Consent for Amounts in Excess of Contract Price.** Contractor hereby agrees that it shall not be compensated for any extra materials used or time expended, over and above the Contract Price, unless prior written approval for the same has been granted by City.

13. **Work Deadline.**

13.1 Contractor hereby agrees that Contractor shall complete all Specific Project Work within the time frame indicated on the Notice to Proceed issued by the City.

13.2 Failure of Contractor to complete the Specific Project Work within the time specified in the Contract Documents and the City's Notice to Proceed will result in damages being sustained by City. Such damages are, and will continue to be impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for the completion of the Work, as adjusted in accordance with Section 6-6 of the Standard Specifications, Contractor shall pay to City, or, at City's sole option, have withheld from monies due Contractor, the sum of TWO HUNDRED FIFTY Dollars (\$250.00). Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Specific Project Work within the allotted time. Such sum is a liquidated damage and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

14. **Workers' Compensation Insurance.** By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Specific Project Work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers Compensation Act.

Prior to City's execution of this Agreement, Contractor shall file with City either 1) a Certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof. Contractor's workers' compensation carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a financial class of VII or larger.

15. **Commercial General and Automobile Liability Insurance.** Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as required to insure Contractor against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by Contractor or by anyone directly indirectly employed by, connected with, or acting for or on behalf of Contractor.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California, with a policy holder's rating of A or higher and a Financial Class of VII or larger.

Contractor's commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, products-completed operations liability, independent contractors liability, personal

injury liability, and contractual liability)), in an amount not less than \$1,000,000 per-occurrence limit and a general aggregate limit in the amount of not less than \$2,000,000.

Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per-occurrence limit, unless otherwise approved by the City's Risk Manager, or his designees. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor-owned vehicles, Contractor-leased vehicles, Contractor's employee vehicles, and non-Contractor-owned vehicles and hired vehicles.

These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations herein.

16. **Additional Insured Endorsements.** Prior to the City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the city evidencing the coverage required by this Agreement, for both commercial general and automobile liability, shall be filed with City and shall include City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims-made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail.

City, its agents and employees make no representation that the limits of the insurance specified, to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

17. **Indemnification.** Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with the performance of Specific Project Work, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

18. **Duty to Defend.** Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Specific Project Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

19. **Suspension from Panel.** The Project Manager or other authorized City representative may suspend Contractor from the rotation for Specific Project Work if Contractor has previously received correction notices for substandard or defective work under a Purchase Order for Specific Project Work. Contractor may submit documentation to the Project Manager or other authorized City representative confirming that changes in Contractor's personnel, policies or practices have remedied the cause of the substandard or defective work. It is within the Project Manager's or other authorized City representative's sole discretion to lift Contractor's suspension based upon Contractor's documentation or to proceed with termination of the Master Agreement and any Purchase Orders thereto.

20. **Termination.** The City may terminate Contractor's performance of this Master Agreement and any Purchase Order for Specific Project Work without liability if:

- (1) Contractor fails promptly to begin the Specific Project Work under the Purchase Order; or

- (2) Contractor refuses or fails to supply enough properly skilled workers or proper materials; or
- (3) Contractor fails to perform the Specific Project Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable Specific Project Work; or
- (4) Contractor discontinues the prosecution of the Specific Project Work; or
- (5) Any representation or warranty made by Contractor in its Proposal shall have been false or materially misleading when made; or
- (6) Contractor fails to make payment to subcontractors for materials or labor in accordance with the respective Contract Documents and applicable law; or
- (7) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- (8) Contractor fails to submit invoices and/or documenting photographs within twenty (20) calendar days of completion and acceptance of Specific Project Work by Code Enforcement; or
- (9) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
- (10) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

21. **Independent Contractor.** Contractor shall at all times during its performance of any Specific Project Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

22. **Non-exclusive Agreement.** The City reserves the right to bid any Specific Project Work outside of the Panel, to enter into contracts with non-panel contractors and to add additional contractors to the Panel that meet the RFP prerequisites, whenever the City deems it to be in its best interest.

23. **Nondiscrimination.** During Contractor's performance of this Agreement and any Purchase Order hereto, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, genetic information, gender, gender identity, or gender expression, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

24. **Accounting Records.** Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement and any Purchase Order hereto. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

25. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

Claudine Sunga
Community & Economic Development
City of Riverside
3900 Main Street
Riverside, CA 92522

Contractor

Lyle A. Castillo
dba Twin Builders
1709 Via Valmonte Circle
Corona, CA 92881

26. **Severability.** Each Agreement provision, term, condition, covenant and/or restriction, in whole and in part, 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.

27. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any

damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party shall be their own attorneys' fees and costs.

29. **Waiver.** No action or failure to act by the City shall constitute a waiver any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

30. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

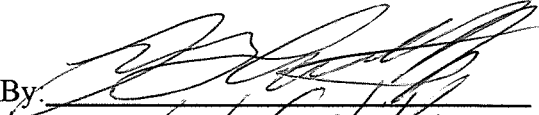
(signatures on following page)

IN WITNESS WHEREOF, City and Contractor have caused this Master Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

LYLE A. CASTILLO
dba TWIN BUILDERS, a sole proprietor

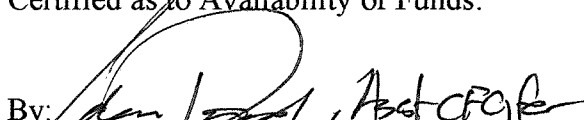
By: _____
City Manager

By: 
Name: Lyle Castillo
Its: owner

Attest: _____
City Clerk

By: _____
Name: _____
Its: _____

Certified as to Availability of Funds:

By: 
Chief Financial Officer

Approved as to Form:

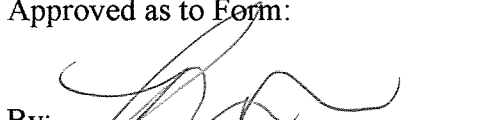
By: 
Deputy City Attorney

EXHIBIT A

COMPENSATION SCHEDULE

City of Riverside
Community & Economic Development Department
Code Enforcement Division
Master Contractor Abatement Compensation Schedule

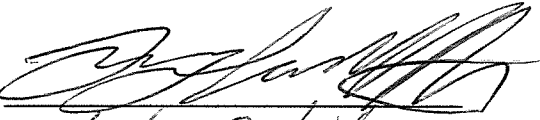
SERVICE TYPE		CONTRACT PRICE	
Vehicle removal	per vehicle	\$	152.00
Pool pump (includes spa)	per pool	\$	452.00
Weed abatement (mowing/edging)*			
Under 1 acre	per parcel	\$	87.00
Over 1 acre	per acre	\$	67.00
General clean-up			
Handwork labor/equip.	per hour	\$	42.00
Rubbish Removal			
Minimum	per parcel	\$	87.00
Per ton (dump receipt required)	per ton	\$	327.00
Board-up minimum	per parcel	\$	87.00
Small openings (32" X 48" or less)	per opening	\$	45.00
Med./Large openings (36" X 48" to 96" X 58")	per opening		
Windows and openings		\$	100.00
Single entry doors		\$	125.00
Double entry doors/French doors		\$	210.00
6' X 8' sliding glass doors		\$	210.00
10' sliding glass doors		\$	225.00
Cellar/basement doors with framing		\$	125.00
Single car garage door		\$	310.00
Double car garage		\$	410.00
Crawl space opening		\$	50.00
Larger openings and fire damage (labor at \$49.47/hr., materials with receipt and 15% mark-up)			
PRICES BASED ON 5/8" PLYWOOD AND ADEQUATE HARDWARE TO PREVENT ENTRY			
<p>This compensation schedule is subject to annual price adjustments in accordance with the Consumer Price Index.</p> <p>There will be no compensation for overtime or after hour's response unless authorized by the Community & Economic Development Director or Code Enforcement Manager. If a job cannot be completed in 8 hours or less, contractors can return to the job site the following day unless otherwise stated.</p> <p>There will be no compensation for rental of equipment unless authorized by the Community & Economic Development Director or Code Enforcement Manager.</p> <p>*Discing is not a permissible method of performing weed abatement project work. Absolutely no discing without prior authorization is allowed.</p>			

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 4/7/17

LYLE A. CASTILLO
dba TWIN BUILDERS

By 
Lyle Castillo owner
Name and Title