



## STAFF COVER MEMO

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<b>Introduction:</b>	August 15, 2022
<b>Agenda Item:</b>	AWARDING THE BID AND AUTHORIZING EXECUTION OF THE CONTRACT WITH SANDY'S TOWING FOR VEHICLE TOWING SERVICES FOR THE CITY OF FRANKLIN DIVISION OF POLICE.
<b>Submitted by:</b>	Adam Colon, Chief of Police
<b>Scope/Description:</b>	<p>On August 4, 2022, the City opened bids to provide vehicle towing, storage and impound services to the Franklin Division of Police. Bids were received from Sandy's Auto &amp; Truck Service Inc. and Steve's Towing and Recovery, LLC. Staff considered the following items when making their recommendation:</p> <ul style="list-style-type: none"><li>• The best interests of the City of Franklin community;</li><li>• Proposed fees for Services;</li><li>• Competence and qualifications to perform the Services, as indicated by stated vendor certifications, licenses, training and experience;</li><li>• Vendor experience in providing similar Services to other governmental entities;</li><li>• Referrals and recommendations from previous or current individuals or entities for whom vendor performs or has performed similar Services; and</li><li>• Vendor ability to perform the Services efficiently based on vendor's profile and availability of personnel, equipment, facilities and resources.</li></ul>
<b>Budget Impact:</b>	The Fees per tow shall include a thirty dollar (\$30) administrative fee, payable to the City for reimbursement of the City's administrative costs associated with coordinating the tow and documenting the tow for the City's records (the "Administrative Fee").
<b>Exhibits:</b>	Exhibit A: VEHICLE TOWING SERVICES AGREEMENT
<b>Recommendation:</b>	Staff recommends that we accept the bid from Sandy's Auto & Truck Service Inc. as the lowest and best bid.

## VEHICLE TOWING SERVICES AGREEMENT

This **TOWING SERVICES AGREEMENT** (this "Agreement") is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") by and between **THE CITY OF FRANKLIN, OHIO**, an Ohio municipal corporation with offices located at 1 Benjamin Franklin Way, Franklin, Ohio 45005 (the "City") and \_\_\_\_\_ with an address at \_\_\_\_\_ ("Vendor") (the City and Vendor may be referred to herein individually as a "Party" and collectively as the "Parties").

A. From time to time, the City is in need of vehicle towing, storage and/or impound services (the "Services"). For the purposes of this Agreement, the term "vehicle" shall be interpreted in accordance with the definition set forth in Ohio Revised Code 4501.01.

B. Vendor warrants that it has adequate personnel, equipment and expertise to perform the Services for the City.

C. The Parties desire to enter into this Agreement whereby Vendor shall provide the Services to the City according to the terms and conditions herein.

### **I. Performance of the Services; Vendor Obligations.**

A. Vendor shall meet all requirements set forth in this Agreement, the Request for Proposals associated with this Agreement, and all documentation submitted to the City in connection with the Request for Proposals.

B. Vendor shall ensure all Vendor personnel performing the Services have a valid Ohio driver's license with a "CDL" endorsement (as applicable and required for each driver). Vendor shall further ensure all Vendor personnel comply with all terms and conditions of this Agreement. Vendor personnel charged with responsibility for operating Vendor vehicles shall maintain a driving record satisfactory to the City at all times during the Term (an individual with more than 3 driver's license points shall not be permitted to perform Services under this Agreement). At all times when performing the Services, Vendor personnel shall be in Vendor uniform and presentable, and act in a respectful and courteous manner, when interacting with the City and the public.

C. Vendor vehicles used in the performance of the Services shall bear signage or lettering on both sides of the vehicles stating Vendor's name.

D. Vendor shall be available to provide the Services, upon the City's request, twenty-four (24) hours per day, seven (7) days per week, 365 days per year.

E. Vendor shall respond to the location designated by the City for the Services (the "Designated Location") within thirty (30) minutes of being contacted by the City to provide the Services. Vendor must immediately notify the City if Vendor is unable to get to the Designated Location within this timeframe; in which case, the City shall have the right, without penalty or obligation to Vendor, to obtain the Services from another towing vendor.

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F. Vendor shall immediately notify the City if Vendor becomes aware that it does not have sufficient personnel, vehicles and/or equipment to perform requested Services; in which case, the City shall have the right, without penalty or obligation to Vendor, to obtain the Services from another towing vendor.

G. Vendor is solely responsible for clean-up and removal of all glass, debris and other materials located at the Designated Location which result from or are otherwise associated with the vehicle(s) which is/are the subject of the Services; including but not limited to all glass, debris, fluids and any other materials associated with a vehicular accident Vendor is responding to pursuant to this Agreement.

H. Vendor shall maintain adequate and appropriately secure space and/or facilities within which to store, on a short and long-term basis, vehicles towed and impounded pursuant to this Agreement (the "Storage Area"). The Storage Area shall be located within five (5) miles of the City of Franklin's corporate lines and shall comply with all applicable federal, State and local laws. Vendor shall implement adequate security measures and protocols to ensure vehicles in the Storage Area are secure at all times while in Vendor's possession. Vendor shall identify for the City, in writing, the location and parameters of the Storage Area, and receive the City's written approval for the Storage Area, prior to or upon execution of this Agreement.

I. The Storage Area shall have a fully enclosed area for impounding of vehicles involved in serious or sensitive law enforcement investigations, which area shall be accessible at any and all times by City of Franklin Division of Police officers.

J. Vendor shall at all times obey all applicable federal, state and local laws, and all lawful instructions from the City and its authorized representatives and agents, during the Term of this Agreement.

K. Vendor shall maintain all vehicles and equipment used by Vendor in providing the Services in compliance with all federal, State and local legal requirements for the same, as well as in accordance with all applicable manufacturer guidelines. Vendor shall maintain adequate vehicles and equipment in an operational and workmanlike condition to continue providing the Services at all times during the Term of the Agreement.

L. Vendor shall make the Storage Area, all Vendor vehicles and equipment, and all vehicles towed and/or impounded pursuant to this Agreement available for the City's inspection at any time.

M. The City may, in its sole discretion and without liability to Vendor, cancel any call for Services at any time prior to Vendor arriving at the Designated Location to provide such Services.

N. Vendor will be available to release towed or impounded vehicles from its custody to an individual who can provide proof of ownership of the vehicle in accordance with applicable law and receipt of the payment provided for in Section II herein, or pursuant to any lawful order of the City or court of law. If any vehicle is towed or impounded at the direction of the City, Vendor shall only release such

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vehicle after obtaining written authorization from the City for the vehicle's release. Vendor shall comply with all applicable State and local laws, regulations, rules and requirements in its release of towed or impounded vehicles.

### II. Payment and Billing.

A. Vendor agrees that it shall only charge costs, expenses and fees for the Services (collectively, the "Fees") which are in accordance with uniform and customary rates charged by similarly situated companies for the provision of similar services. Fuel surcharge fees shall be prohibited. Vendor shall provide the City with a proposed written fee schedule prior to execution of this Agreement, which shall be subject to approval by the City. Vendor agrees to strictly comply with the fee schedule during the Term of this Agreement.

B. The Fees per tow shall include a thirty dollar and 00/100 (\$30) administrative fee, payable to the City for reimbursement of the City's administrative costs associated with coordinating the tow and documenting the tow for the City's records (the "Administrative Fee"). Administrative Fees collected by Vendor pursuant to this Agreement shall be remitted to the City bi-annually (along with Records indicating the vehicles and tows for which the Administrative Fees were collected) on May 1 and November 1 during each year of the Term.

C. The Parties understand and agree that the owner or operator of any vehicle which is towed or impounded pursuant to this Agreement shall be solely responsible for paying Vendor's Fees for the Services (subject to Section II.D. below). Vendor shall invoice the owner or operator of a towed or impounded vehicle directly for the Services.

D. In the event the City requests Services with respect to vehicles owned and operated by the City, or any of its authorized representatives, agents or employees, Vendor shall comply with such request pursuant to this Agreement and there shall be no charge to the City, or the City's representatives, agents or employees, for such Services.

E. Vendor shall provide "roadside" vehicle maintenance service (e.g. battery jump-starts, tire changes, etc.) for City-owned vehicles at no charge to the City.

F. The City shall not be responsible for any Fees associated with the tow or storage of an abandoned or unclaimed vehicle. Vendor shall be entitled to obtain a certificate of title for an abandoned or unclaimed vehicle pursuant to Ohio law. The City shall reasonably cooperate with Vendor in (but shall not share in the cost of) Vendor's efforts to obtain a certificate of title for an abandoned or unclaimed vehicle.

G. In no event shall the City have any responsibility for, or share in the costs associated with, collecting Vendor's Fees for the Services.

H. A maximum of ten (10) times annually, the City shall be entitled to require that Vendor waive its Fees for Services provided with respect to a third-party vehicle when the City determines, in its sole discretion, the Fees should be waived due to the vehicle owner's financial hardship. The City shall

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notify Vendor when it has determined Fees should be waived with respect to a towed vehicle due to financial hardship.

I. Vendor shall accept all major credit cards for payment of Fees at all times during the Term. Vendor shall provide the City with a copy of its current merchant services agreement for acceptance of credit card payments upon Vendor's execution of the Agreement.

### III. Record-Keeping Responsibilities.

A. During the Term of this Agreement, Vendor is required to keep and maintain all records, books and other pertinent documents and information (collectively, the "Records") relating to Services provided under this Agreement. At a minimum, Vendor shall maintain Records containing the following information for each vehicle towed and/or impounded under this Agreement (as applicable):

- (i) Date and original location of towed vehicle;
- (ii) Make, model and year of towed vehicle;
- (iii) Towed vehicle serial number;
- (iv) Towed vehicle license plate number and issuing State;
- (v) Fees associated with the tow and impoundment;
- (vi) Location of vehicle impoundment; and
- (vii) Information associated with release of towed/impounded vehicle (*e.g.* date of release, individual/entity to whom vehicle was released, Fees paid, etc.).

B. Vendor shall promptly transmit copies of all such Records to the City within forty-eight (48) hours of their creation.

C. Vendor shall maintain original Records created pursuant to this Agreement for the entirety of the Agreement Term. Original Records shall be transmitted to the City within seven (7) days of termination of the Agreement; provided, Vendor shall be entitled to retain copies of any Records created pursuant to this Agreement.

D. In the event Vendor receives any written complaints from any individual, whether filed with Vendor or an external private or public agency, as a result of, or in connection with, Services provided under this Agreement, Vendor shall treat such complaints as Records, subject to the record-keeping and record-transmission protocols set forth herein.

E. Vendor shall furnish to the City a monthly report (the "Monthly Report"), within three (3) days of the last day of each month during the Term, containing the information set forth in Section III(A)(i)-(vii) above for each vehicle impounded/stored pursuant to this Agreement and remaining unclaimed as

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of the end of the previous month, as well as information regarding any Section III.D. complaints received in the immediately preceding month. If the third day following the last day of any month falls on a weekend or a federal holiday, the Monthly Report shall be transmitted to the City on the next business day.

F. The City shall have the unrestricted right to access any Records created and/or maintained pursuant to this Agreement.

G. All Records created pursuant to this Agreement shall be the sole property of the City.

## IV. Insurance.

A. Vendor shall maintain in full force and effect throughout the Term of this Agreement insurance coverage as follows:

(i) Commercial General Liability insurance policy or policies to protect against liability to the public incidental to, or resulting from any accident associated with, the Services, with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, covering bodily injury and property damage liability;

(ii) Business Auto Liability insurance policy or policies covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident; and

(iii) Insurance protecting against liability under Worker's Compensation Laws with minimum limits meeting, at a minimum, requirements provided by applicable law.

B. Each of the policies listed under Section IV.A above shall be provided at Vendor's expense and, with the exception of Worker's Compensation coverage, shall protect the City from any and all claims for bodily injury, including accidental death and damage to real and personal property.

C. Vendor agrees that the insurance policy or policies provided for herein shall not be modified, suspended or canceled unless thirty (30) days' prior written notice (ten (10) days for non-payment of premium) is given to the City.

D. Vendor shall provide the City with copies of the policy, policies and/or certificates evidencing compliance with the insurance requirements set forth herein on or before the Effective Date.

## V. Liability; Indemnification.

A. Vendor hereby assumes all responsibility for the condition, safety and security of all vehicles towed, stored and impounded pursuant to this Agreement. Vendor shall be solely responsible, and assumes all liability for, any and all loss or damage caused to any vehicle during its provision of the Services, including but not limited to missing, stolen or exchanged vehicle parts or accessories, and any damage to the interior or exterior of any vehicle.

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B. Vendor hereby agrees to indemnify, defend and hold harmless the City and each of the City's officers, representatives, agents and employees (collectively, the "Indemnified Parties"), from and against any and all claims, actions, damages, fines, penalties, liability and expense (including reasonable attorneys' fees) in connection with loss of life, personal injury, and/or damage to real or personal property associated with or arising out of the Services. Vendor hereby waives all claims against the Indemnified Parties for any damage to any real or personal property, or any injury to any person, in connection with the Services or from any cause whatsoever.

### VI. Term; Termination.

A. This Agreement shall commence on the Effective Date and shall continue for a period of two (2) years thereafter (the "Term"), unless earlier terminated pursuant to the terms and conditions set forth in this Section.

B. In the event the City discovers Vendor is in breach of any term or condition of this Agreement, the City may terminate this Agreement without liability to Vendor. The City shall provide Vendor with a minimum of forty-eight (48) hours' prior written notice of such breach and an opportunity to cure the same to avoid termination. Termination shall be effective on the date when the aforementioned prior notice period has run and the City sends Vendor written notice confirming termination.

C. Either Party may terminate this Agreement by providing thirty (30) days' prior written notice to the other Party of its intent to terminate the Agreement. The terminating Party shall have no liability to the other Party for termination in accordance with this provision.

VII. Non-Discrimination. Vendor represents that is in compliance with all applicable equal employment opportunity requirements under federal, State and local law, and shall perform the Services at all times in a non-discriminatory manner.

VIII. Anti-Abuse of Drugs and Alcohol. Vendor shall make a good faith effort to ensure that no employee of the Vendor will purchase, transfer, use or possess, or be under the influence of alcohol or illegal drugs, or abuse legally obtained drugs while performing the Services. Except for the term "employee", terms in this Section are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

IX. Ethics; Other Applicable Law. Vendor represents that it is familiar with all applicable ethics law requirements, and that it is in compliance with such laws and requirements. Vendor further represents and warrants that it is familiar with all applicable federal, State and local laws governing the Services, including but not limited to Ohio Revised Code 4513.60-.63 and City of Franklin Codified Ordinances 333.11, 335.15, 337.31, 353.01 and 353.02.

X. Notices. Any written notice required hereunder shall be sufficiently given when sent to the intended recipient-Party via: (i) United States certified mail, return receipt requested; (ii) overnight courier with receipt verification; or (iii) by personally delivering such notice to the recipient-Party at the address set forth at the beginning of this Agreement. Either Party may change its address for receipt of notices hereunder by providing written notice of such address change to the other Party.

**XI. Miscellaneous.**

A. The Parties acknowledge and agree that Vendor shall perform the Services set forth in this Agreement as an independent contractor for the City. Nothing in this Agreement shall be construed as creating any type of agent, employee, joint venture, or similar relationship between Vendor and the City.

B. Nothing in this Agreement shall be construed as preventing the City from entering into any other agreement with any other individual or company for the provision of the same or similar services as those provided for herein.

C. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio, regardless of conflict of laws principles. Any suit or cause of action arising out of or in any way related to this Agreement shall be brought in a State court in Warren County, Ohio.

D. Vendor may not assign its rights or obligations under this Agreement without the prior written consent of the City.

E. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes any prior representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, between the Parties.

F. This Agreement may not be modified, altered, amended, waived or changed in any way, except in a writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, heirs, assigns, agents and employees, to the extent permitted by law.

G. If any provision or term of this Agreement is found to be void or unenforceable to any extent and for any reason, it is the agreed upon intent of the Parties that all remaining provisions or terms of this Agreement shall remain in full force and effect to the maximum extent permitted and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

H. This Agreement may be executed in two (2) or more counterparts, all of which shall be read together and be construed as one instrument. A facsimile or PDF copy of a signature shall be as binding as an original signature.

*[Signature Page Follows]*



Exhibit A

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date of the last Party's signature below (the "Effective Date").

**CITY OF FRANKLIN, OHIO**

By: \_\_\_\_\_  
Jonathan Westendorf, City Manager

Date: \_\_\_\_\_

**VENDOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**VENDOR CERTIFICATION FORM**

This Proposal is being submitted on behalf of \_\_\_\_\_  
("Vendor"). I hereby certify that I am a lawful representative of Vendor, authorized to submit this Proposal  
on Vendor's behalf. I further certify that all information contained in this Proposal is true and accurate,  
to the best of my information and belief.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_