

STATE OF TEXAS  
COUNTY OF BEXAR

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MUNICIPAL WRECKER  
SERVICES AGREEMENT  
BANIS TOWING

This agreement is entered into by and between the City of Leon Valley, a Texas municipal corporation (hereinafter referred to as “the City of Leon Valley” or “City”) acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_, passed and approved July 18, 2023 and Banis Towing, a Texas corporation, acting by and through its President (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”.

City hereby grants to Contractor the right to provide, and Contractor hereby commits to provide Wrecker Services at City’s direction to the City of Leon Valley. The granting of this right by City does not guarantee Contractor any quantity of work or monetary gain.

The Parties hereto severally and collectively agree, and by the execution here of are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described in this Agreement.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings as set out below.

Certified Letter Fee: A fee for sending out certified letters detailing the location and status of a vehicle.

Chief: Shall mean the Leon Valley Police Department Chief of Police.

City: Is defined in the preamble of the Agreement as the City of Leon Valley, Texas, a municipal corporation, a Home Rule governmental entity, incorporated in accordance with the laws of the State of Texas.

City-Owned Vehicles: Shall mean a vehicle owned or leased by the City of Leon Valley and operated as part of the normal course of business of the City. Such vehicles may be operated during all times of the day or night.

Consent Tow: Shall mean any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle.

Contractor: Is defined in the preamble of this Agreement as Banis Towing and includes its successors.

Courtesy Tow: Shall mean the towing of legally parked vehicles, at no charge to the vehicle owner and at the direction of the City, for the purpose of clearing an area for city sponsored special events, construction or other occasions as determined by the City.

Dispatched Location: Shall mean the location provided by the City to the Contractor where wrecker services are to be undertaken under this Agreement.

Equipment: Shall mean vehicles and associated tools and materials needed to perform wrecker services in accordance with this Agreement.

Event of Default: Shall mean either party's failure to comply with any one or more of the provisions of this Agreement, is provided a time to cure the non-compliance and at the end of the time to cure said non-compliance remains uncured.

Impound Lot: Shall mean a location operated by the City of Leon Valley to store operable apprehended persons' vehicles, abandoned vehicles or any other motor vehicle requested by the City of Leon Valley.

Non-consent Tow: Shall mean a tow of a motor vehicle requested by Public Safety officials.

Personnel: Shall mean employees and sub-contractors of Contractor who are performing services under this Agreement.

Public Safety: Shall mean any peace officer employed by the City of Leon Valley or persons authorized by the City of Leon Valley to maintain the public health, safety and welfare of the citizens of the City of Leon Valley.

Required Response Time: Shall mean the maximum amount of time allowed for a wrecker to arrive ready to perform wrecker services at a specific location after the request has been made by the City.

Response Time Performance Rating: Shall mean the monthly percentage of dispatched wrecker calls arriving at the directed location within the Required Response Time. A satisfactory Response Time Performance Rating is ninety-eight percent (98%) and is calculated by dividing the number of wreckers arriving within the Required Response Time in the month by the number of requests by the City for wrecker services in that month.

Response Time Violation: Shall mean instances in which City requests "Wrecker Services" as defined below to a specific location, and Contractor fails to arrive at the location prepared to perform "Wrecker Services" within the Required Response Time. Response Time Violations are subject to liquidation damages.

Towing Operations: Shall mean the detailed manner in which Contractor performs "Wrecker Services" as defined below, including towing and recovery services, heavy-duty

recovery, impounding and storage of vehicles. In all cases, Contractor shall ensure that it abides by standards of procedure accepted within the towing industry and that no damage occurs to property of the City or a third-party.

Wrecker Services: Shall mean all labor, equipment (including tools) and material necessary for the prompt, reliable and efficient removal of motor vehicles from public streets, ways or other public property which are, including but not limited to: 1) abandoned; 2) involved in a collision; 3) parked in violation of law; and/or 4) are to be inspected for evidence (including recovered stolen vehicles and vehicles owned or operated by individuals in the custody of law enforcement). "Wrecker Services" includes but is not limited to all associated administrative services and the associated clean-up and/or containment of debris and materials, with the exception of hazardous materials, from accident scenes, public Right-of-Ways and private property.

## II. TERM

- 2.1 Term. The term of this Agreement shall be five (5) years commencing on June 16, 2023 and terminating on June 30, 2028.
- 2.2 Renewal Term. There will be no renewal term for this Agreement.

## III. SCOPE OF SERVICES

- 3.1. Contractor's Responsibility. In addition to those services that may encompass "Wrecker Services" as defined in this Agreement, Contractor is specifically responsible for the services described herein.
- 3.2. Towing Management. Contractor shall manage all Non-consent towing services and operations for the City of Leon Valley and ensure that Wrecker Services are performed to industry standard procedures that achieve safe and reliable towing service, and to preserve personal property in possession or care or care of Contractor. City may direct, amend or alter Contractor's Towing Operations utilized in the performance of this Agreement.
  - a) Towing to Leon Valley Impound Lot. Contractor shall manage all Non-wrecked vehicles directed by the Leon Valley Police Department to the Leon Valley Impound Lot.
  - b) Towing to Banis Towing Yard. Contractor will tow all wrecked vehicles or any other vehicle to its impound lot as directed by the Leon Valley Police Department.
  - c) Staffing Plan. Contractor shall be responsible for implementing a staffing plan to adequately serve the City of Leon Valley, and meet the response Time as defined in this Agreement. Such staffing plan must include

adequate labor to undertake the management, operation and administration of Wrecker Services for the City of Leon Valley.

- d) Uniforms. All employees or subcontractors of Contractor performing services under this Agreement shall be uniformed including identification badges, well-groomed, clean, prompt and courteous in order to provide service under this Agreement.
- e) Safety Plan. Contractor shall establish a Safety Plan which provides a safe and healthy workplace, and minimize on-the-job injuries by implementing safety standards based on applicable legal codes, rules and industry standards
- f) OSHA, Training, Certifications, Registrations and Continuing Education. In addition to the Safety Plan implemented by Contractor in accordance with this Agreement, Contractor shall comply with the Occupational Safety and Health Act (OSHA), and ensure that all wrecker operators/drivers are permitted and licensed to perform Wrecker Services by the Texas Department of Licensing and Regulations (TDLR).
- g) Incident Management Towing Operator's License. All such drivers shall possess an Incident Management Towing Operator's License in accordance with Texas Occupational Code, Title 14, Section 2308.103, and shall maintain the required level of Continuing Education in order to renew such Incident Management Towing Operator's License. Evidence of such license shall be available to City upon request.
- h) Labor Relations. Contractor shall be responsible for labor relations with any trade or union represented among Contractor's Personnel, and shall negotiate and be responsible for adjusting all disputes between itself and Contractor's Personnel, contractors or any union representing such Personnel or sub-contractors. Contractor shall ensure that in any agreement that Contractor has with any of its sub-contractors that there be a similar provision whereby the sub-contractors will indemnify and hold City harmless for any damages or losses, including attorney's fees resulting from any and all labor relation disputes.
- i) Acquiring Uncollected Towing Fees. All fees owed to Contractor in relation to the performance of Wrecker Services for vehicles towed to Banis Towing yard under this Agreement shall be the responsibility of and be collected by Contractor. Regardless of the collection of towing fees, Contractor shall be responsible for paying City its commission as required under Section 7.1 of this Agreement. All fees collected by the City in relation to the vehicles towed to the City of Leon Valley Impound Lot shall be collected by the City and will be paid to the contractor within

ten (10) days of receipt of invoice presented to Contractor. The invoice will be submitted monthly and shall include a monthly log that providing the following information to the City:

1. Location vehicle towed from;
2. Date and time vehicle towed;
3. Make, model and color of vehicle towed;
4. License plate number; and
5. Vehicle Identification Number (VIN).

j) Complaint Resolution Process. Contractor shall have in place and make available to City prior to the commencement of this Agreement a Complaint Resolution Process. Such Process shall be used to address third-party complaints against the manner in which Contractor has provided services hereunder. Contractor shall provide a copy of any written complaints and any information and/or documentation relating to any individual complaint. Contractor shall use its best efforts to minimize complaints and resolve disputes with third-parties.

k) Contractor's Reporting Requirements. Contractor shall report to City, monthly activity of Wrecker Services performed hereunder to include, but not be limited to, the number of requests for Wrecker Services made by City, location the vehicle was towed to, the number of dispatched vehicle responses by Contractor to City's requests, Response Times to City's request, the number of Response Time Violations by Contractor and any additional information as requested by City. Additionally, Contractor shall promptly inform City of any vehicle accident involving a towing vehicle operated by Contractor. City may consider the accident, and surrounding circumstances, in reviewing Contractor's performance hereunder.

1. City's Performance Review. At any time, including monthly, quarterly or annually, City may conduct a performance review of this Agreement. The information used in assessing Contractor's performance may include the information submitted by Contractor and any other information deemed pertinent by City.

3.3. Equipment. Contractor shall provide all Equipment necessary to perform Wrecker Services in the City of Leon Valley. All Equipment shall be in good working order for the duration of this Agreement. Contractor shall supply, upon request by City, a list of Contractor Equipment inventory dedicated to performance of this Agreement. In addition, Contractor shall ensure that Contractor's Equipment meets the following minimum criteria:

a) Vehicles. Contractor shall have immediate access to a sufficient number of light duty tow trucks, medium duty tow trucks and heavy duty tow trucks necessary to perform under this Agreement. No vehicles used to perform Wrecker Services hereunder shall be older than ten (10) years, and Contractor shall allow City access to inspect Contractor's vehicles or other Equipment upon request. All vehicles shall be equipped, at a minimum, with the following:

1. Permanent labeling on each side door of the vehicle with the Tow Contractor's name;
2. A four-way emergency flashing system and at least one flashing amber light (or other color permitted by State law) at least five (5) inches in diameter, mounted high on the tow truck;
3. A light mounted behind the cab of the tow truck capable of illuminating the area of the tow scene under dark or foggy conditions;
4. Portable auxiliary brake lights, emergency flasher, turn signal, and taillight with protective pads/covers on the bottom, for use on towed vehicle;
5. A warning alarm, clearly audible above the surrounding noise in the vicinity and designed to sound when the tow vehicle is shifted into reverse to signify that the vehicle is backing;
6. A fire extinguisher with an Underwriter's Laboratory rating of at least 58:C. Class B and C trucks shall carry fire extinguishers with a cumulative UL rating of at least 1 OB:C;
7. A broom, shovel, container for accident debris, ten (10) pounds of grease and fluid absorbent material, and any other equipment necessary to clean up an accident scene in accordance with State and local law;
8. At least six (6) flares or other emergency reflective devices;
9. Tires, adequate in size and rating for the size and weight of the tow truck, with not less than 3/32nds inch of tread and mounted on rims secured with the manufacturer's recommended number of lug nuts;
10. Two-way radio equipment or cellular telephone capable of communicating with the Tow Contractor's dispatcher at all

times. Such equipment shall be approved and licensed in accordance with Federal law; and

11. Any other equipment required by State law.

- b) Maintenance. Contractor shall ensure that all of Contractor's Equipment is subject to a Maintenance Plan that includes daily, weekly, monthly and annual maintenance to support the safe and reliable operation of such Equipment.

3.4. Contractor's Personnel. Contractor shall supply Personnel as may be necessary to perform the required services of this Agreement. All Personnel working under this Agreement shall be fully qualified and legally capable of performing their individual job duties, including possessing any necessary licenses or specialized training mandated by Federal, State, local laws or regulations.

- a) TDLR. Contractor shall ensure that all wrecker drivers meet the criteria set forth by the Texas Department of Licensing and Regulations (TDLR), and shall provide proof of such compliance to City upon request by City.
- b) Employee Criminal Background Check Plan. Contractor shall ensure that all Personnel performing under this Agreement are subject to criminal background checks and history checks. Any costs associated with the performance of a criminal background check or issuance of a permit in accordance with Section 2308.201(d) of the Texas Occupational Code, Title 14, shall be paid by Contractor.
- c) Permission to Operate. Additionally, Contractor shall not allow an employee or applicant for employment to operate under this Agreement, and any application or permit for such operation shall be denied or withdraw when applicant or employee:
  - 1. Is under indictment or has been convicted or granted deferred adjudication that has not resulted in a dismissal for the offense of criminal homicide including murder, capital murder, manslaughter, but excluding criminally negligent homicide;
  - 2. During the seven (7) years immediately preceding the application for employment, the applicant was convicted or granted deferred adjudication that has not resulted in a dismissal for the offense of criminal homicide, including murder, involuntary manslaughter, criminally negligent homicide, rape, sexual assault, sale or possession of illegal drugs robbery or felony theft;
  - 3. Is under indictment or charged by information or complaint or convicted or granted deferred adjudication that did not result in dismissal for any offense involving fraud or theft the

unauthorized use of a vehicle, violation of any State or Federal laws regulating firearms, violence to any person except conduct classified as no greater than a Class C misdemeanor offense under State law prostitution or the promotion of prostitution, sexual assault, sexual abuse, lewdness or indecency, for use, sale or possession of drugs, driving while intoxicated, or any job related offense;

4. Is on probation, parole, or mandatory supervision for an offense noted herein;
5. Has falsified or materially altered or omitted pertinent information in any governmental record, including an application for employment as a driver; and
6. Has been convicted of four (4) or more moving violations of the traffic laws of this or any other state within the twelve (12) month period immediately preceding the date of the application of employment.

d) Twelve Hour Work Rule. Contractor shall establish a twelve (12) hour work rule requiring that no wrecker driver is on-duty for more than twelve (12) hours within any eighteen (18) hour period. Contractor shall document the implementation and compliance of such rule, and upon the request of City, provide such documentation to City.

3.5. Contractor's Towing Operations. Contractor shall operate and be capable of providing Wrecker Services in accordance with this Agreement twenty-four (24) hours a day, three-hundred-sixty-five (365) days a year including weekends and holidays. Contractor shall perform Wrecker Services under the laws, regulations, orders, ordinances and guidelines of the State of Texas, Bexar County and the City.

a) Dispatching. Contractor shall be capable of receiving requests for Wrecker Services from the City on a twenty-four (24) hour basis, three-hundred-sixty-five (365) days a year and immediately dispatch the appropriate Equipment and Personnel to the directional location to perform Wrecker Services within the Response Time of thirty (30) minutes.

1. Backup Dispatch. Contractor shall have in place a dispatch system or procedure approved by City in writing that will act as a backup system for such circumstances as when Contractor's primary dispatch system is inoperable by no fault of the Contractor.

b) Response Time and Response Time Performance Rating. City and Contractor agree that the Required Response Time for Wrecker Services performed under



this Agreement is **thirty (30) minutes**. Contractor shall maintain a monthly Response Time Performance Rating of at least ninety eight percent (98%) throughout the Term of this Agreement. Contractor shall report all Response Times, Response Time Performance Ratings and Response Time Violations to City on a monthly basis. Contractor shall submit documentation along with Response Time Violations indicating the reasons for the violation and any preventative measures that have been taken to correct Response Time Violations.

1. Traffic Laws. Contractor shall arrive at the tow scene with suitable Personnel and equipment and shall obey all traffic laws.
2. Multiple Towing Vehicles Required. When multiple towing vehicles are required to perform Wrecker Services, the Response Time of the second vehicle shall be no later than thirty (30) minutes from the time a second vehicle is requested.
3. Courtesy Tows. Upon direction of City through its police officers or authorized staff, Contractor shall tow vehicles for accommodations of public utility work, parades or street closures, street construction, for actual or threatened riot or civil disorder and/or emergency situations. Courtesy Tows are exempted from the City's compensation under Article VII.
4. Police Directed Tows. At the direction of any City police officer, Contractor shall perform a Non-consent Tow and shall obey police officers in performing such tows. Contractor shall ensure that such service is performed with all due care to avoid interference with police information.

3.6. Emergency Contingency Plan. In the event of an emergency such as declared disasters, evacuations, severe inclement weather or any other event deemed by the City, the City's Emergency Operations Coordinator, or the City Manager, Contractor shall ensure continued operations by coordinating with one (1) or more backup Wrecker Service provider whose purpose is to assist Contractor in meeting the requirements of this Agreement. Such backup Wrecker Service provider shall be named by the City through its Chief of Police at the time of the declared or deemed emergency. Contractor shall ensure that the backup Wrecker Service provider is utilized to appropriately cover a high volume of calls generated by any emergency.

- a) Wrecker Services performed under this Section 3.6 shall not be calculated in Contractor's Response Time Performance Ratings, and shall not subject the Contractor to any fees under Article IV of this Agreement. However, such instances must be documented and reported to City by Contractor's monthly reporting in order to be exempted

3.7. Contractors Prohibitions. In the performance of this Agreement, Contractor shall be prohibited from the following:

- a) Causing damage to persons or property of others;
- b) Acting or inferring that Contractor's vehicles are emergency vehicles;
- c) Operating overhead emergency lights while en route to or from a tow scene;
- d) Disobeying traffic control devices (traffic lights, STOP signs, etc.);
- e) Using any type of siren;
- f) Soliciting those at the scene of an accident or disabled vehicles;
- g) Requiring the performance of repair work on a vehicle involvement in an accident or breakdown in connection with providing towing service for such vehicle or limiting, in any way, a vehicle owner/operator's ability to have the vehicle towed to a destination of their choice, unless otherwise directed by authorized City personnel;
- h) Making any repairs or alterations to a vehicle without first being authorized by the owner, an authorized insurance company, or other authorized agent of the vehicle owner;
- i) Towing any vehicle which is occupied by any person except as specifically directed by a police officer;
- j) Charging for service not performed or making duplicate charges for the same service or charge any fee in excess of those permitted under this Agreement;
- k) Using profane or obscene language which offends a customer or any other person;
- l) Being verbally or physically offensive, abusive, disrespectful or discourteous to any customer, motorist, City employee or any other person;
- m) Touching any customer, motorist, City employee or any other person;
- n) Performing services under this Agreement while consuming, or while under the influence of alcohol or drugs, whether legal or illegal, (if using prescription drugs, must be of the type where driving or operating machinery is not prohibited on the prescription label);

- o) Any vehicle or other equipment in performance of this Agreement in a careless, reckless, or negligent manner; and
- p) Requiring any vehicle owner/owner's agent to make any statement or sign any document relieving the Contractor from responsibility for the condition of the vehicle or its personal effects prior to the owner/owner's agent's inspection of vehicle or personal effects.

3.8 Contractor's Performance. All work performed by Contractor hereunder shall be performed to the satisfaction of the City. The determination made by the City shall be final, binding and conclusive on all Parties hereto.

#### IV. FEE SCHEDULE

4.1 Fees to City. Contractor acknowledges and agrees that complying with the duties and responsibilities hereunder is material to the performance of this Agreement. Contractor further acknowledges and agrees that any non-compliance may be harmful to the public health, safety and welfare of the citizens of Leon Valley, Contractor or its Personnel. Thus, Contractor agrees that non-compliance with certain duties and responsibilities hereunder shall be assessed a fee. Contractor further agrees that these fees do not constitute a waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement and shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Thus Contractor agrees that the following fees shall be paid to City for non-compliance with the following duties and responsibilities hereunder:

- a) Response Time Performance Rating. Failure to maintain a monthly Response Time Performance Rating of ninety-eight percent (98%) shall result in Contractor being assessed a fee in the amount of twenty-five and no/100 dollars (\$25.00) per month for each month failing below a ninety-eight percent (98%) Response Time Performance Rating. Additionally, Contractor shall be assessed an additional ten and no/100 dollars (\$10.00) for each percentage point below ninety-eight percent (98%). Fractions of a percent shall be rounded to the nearest whole percent. The Response Time Performance Rating shall be measured by the response time required in section b) below;
- b) Thirty (30) Minute Response Time. Failing to respond within thirty (30) minutes of a request shall result in a fee of five and no/100 dollars (\$5.00) being assessed to Contractor per occurrence;
- c) Use of Safety Chains. The improper use of safety chains and/or wheel straps shall result in a fee of fifty and no/100 dollars (\$50.00) being assessed to Contractor per occurrence.

1. Safety chains and wheel straps should be used to secure vehicles in tow. When using wheel lifts, two safety chains connected from the rear of the wrecker to the vehicle being towed along with two-wheel straps should be used.
  2. Rollback/Flatbed Wreckers should use two safety chains on the rear of their bed and two safety chains on the front of their bed securing the vehicle to prevent movement in any direction should the driver be involved in an accident. The loading device does not count as or take place of the safety chains as the wench may fail.
  3. Dollies should be secured to the towed vehicle using wheel straps to secure the wheels being carried to the dollies.
- d) Reflective Vests or Jackets. Failure to wear Reflective/Safety Vest shall result in a fee of fifty and no/100 dollars (\$50.00) being assessed to Contractor per occurrence.
1. Wrecker drivers should wear a reflective vest or reflective jacket at all times while working outside of the tow vehicle. Reflective vests or jackets must meet the ANSI/ISEA 107-2015 requirements for high visibility safety apparel. During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket; however, the fluorescent shirt must meet the ANSI/ISEA 107-2015 requirements for high visibility safety apparel.
- e) Improper Use of Tow Lights. The improper use of tow lights shall result in a fee of twenty-five and no/100 dollars (\$25.00) being assessed to Contractor per occurrence.
1. Tow lights should be placed on top of and at the outer edges of the end of the vehicle being towed which is the furthest from the wrecker, no more than four (4) feet from the trailing edge. Should the vehicle be made of a material that will not hold the magnetic light, the vehicle should be towed using a rollback wrecker.
- f) Failure to Clean Debris. Failure to properly clean and clear debris from roadways and pedestrian ways shall result in a fee of fifty and no/100 dollars (\$50.00) being assessed to Contractor per occurrence.
- g) Twelve (12) Hour Limit. Failure to adhere to the twelve (12) hour limit shall result in a fee of twenty-five and no/100 dollars (\$25.00) being assessed to Contractor per occurrence.

1. No wrecker driver shall work beyond his/her scheduled twelve hour shift unless deemed an emergency by the Chief of Police or his/her designee.

h) TDLR. Any violation of State towing laws and/or rules as posted by the Texas Department of License and Regulations shall result in a fee of twenty-five and no/100 dollars (\$25.00) being assessed to Contractor per occurrence.

4.2 Submission of Fees. Once notified in writing by City of violations by Contractor and fees assessed to Contractor for such violations under this Article VIII hereunder for the month immediately following the month in which the fee was assessed.

## **V. VEHICLE STORAGE FACILITIES**

5.1 Inspection of Facility. Contractor's Vehicle Storage Facility is subject to inspection by State, City and County authorized health department officials, fire department, and police department and other agencies relative to safety requirements.

5.1.1 Contractor shall immediately notify the Chief of Police, in writing, of any notices of violations which are received during or in connection with inspections performed under Section 5.1 above. A copy of any such report received by Contractor shall be immediately sent to the Chief of Police, unless the notice or report was generated by the Leon Valley Police Department.

5.1.2 City shall have the option to be present at all inspections and shall be given prior notice of inspections whenever possible within two (2) business days of inspection days.

5.2 City's Access to Facility. In addition to any rights of access granted to City in this Agreement, City may at any time during the term of this Agreement, have access to Contractor's Storage Facility for the purposes of inspection and to ensure compliance with the terms of this Agreement.

## **VI. RATES FOR SERVICE**

6.1 City-Owned Vehicles. Wrecker Services shall be provided by Contractor to City at no cost for all City-Owned Vehicles, as defined in this Agreement. Such services include tows, jump starts and tire changes. Any vehicle that is towed from outside of Bexar County will be charged per mile from the point of pickup to the Bexar County line via the most expeditious route.

6.2 Seizure Vehicle. The Contractor will tow, at no cost, any vehicle subject to or under seizure by the Leon Valley Police Department. If a vehicle is subject to seizure, towed by the Contractor and it is later determined that the vehicle will not be seized, the Contractor will be notified to retrieve the vehicle. The responsible party for the vehicle will be liable

for all charges from the tow to the Contractors facility and all other charges associated with the tow and storage.

6.3 Types of Payment. Contractor shall accept cash, credit card and debit card but shall not trade or barter for service.

## VII. CHARGES AND FEES

7.1 City's Commission. As consideration for the right to provide Wrecker Services in accordance with the terms and conditions of this Agreement, Contractor shall pay to City **Twenty and no/100 dollars (\$20.00)** per non-consent tow to the Banis Vehicle Storage Facility, including instances when an owner or operator of a vehicle arrives prior to a vehicle being removed and Contractor receives a fee for releasing the vehicle. Such payment shall be due to City in accordance with Article VIII of this Agreement and shall be due regardless of Contractor's actual receipt of payment from a third-party. The fee paid to the City will increase by the Consumer Price Index unadjusted twelve (12) month period ending in March of each year. If there is a decrease in Consumer Price Index unadjusted twelve (12) month period, the amount due the City will not decrease from previous year.

7.2 Collection of fees by City. The City will collect a ninety-five and no/100 (\$95.00) rate charge to be paid to Contractor for all vehicles towed by Contractor to the City of Leon Valley Impound Lot. Such payment shall be due to Contractor in accordance with Article VIII of this Agreement and shall be due regardless of City's actual receipt of payment from a third-party.

7.3 Certified Letter Fee. Contractor may assess a certified letter fee of twenty-five and no/100 dollars (\$25.00) per certified letter sent to a vehicle owner as required by State law.

7.4 Fee Schedule.

ITEM	DESCRIPTION	UNIT PRICE
1	Rate charge for towing vehicles up to and including twenty-five feet (25') in length (light duty) within the City. Indicate hourly or flat rate.	\$95.00
2	Rate charge for towing vehicles greater than twenty-five feet (25') in length (medium duty) within the City. Indicate hourly or flat rate.	\$285.00
3	Rate charge for towing heavy duty vehicles (i.e. commercial trailers, tractors, etc.) within the City. Indicate hourly or flat rate. 10,000 lbs to 26,000lbs	\$425.00
4	Per mile charge for towing vehicles located outside the City's ETJ up to the corporate City limits. Rate charge identified under Items 1 or 2 would apply upon reaching City's ETJ.	\$3.00

5	Rate charge, if applicable, for towing recreational vehicles, such as motorcycles, within the City. Indicate hourly rate.	\$125.00
6	Rate charge for towing vehicles on a tilt bed. Indicate hourly rate.	\$95.00
7	Rate charge for off-road and/or winch-out recovery. Indicate hourly rate.	\$225.00
8	Vehicles towed to auction for the City of Leon Valley. (Per Vehicle)	\$75.00
9	Vehicles weight over \$26,000 lbs GVW	\$690.00
10	Daily Impound Fee	\$20.00
11	Daily storage fee	\$20.00
21	Storage Fee for Leon Valley on hold vehicles	\$0

### **VIII. PAYMENT TERMS**

8.1 Within ten (10) calendar days following the close of each month, Contractor shall submit to City the commission fees as specified in Article VII. In the event Contractor does not submit the commission fees by the tenth (10<sup>th</sup>) calendar day following the close of the month, City shall give Contractor two (2) calendar days from the receipt of notice to submit the required commission fees unless the time period is extended in writing at the sole discretion of the City. Failure by Contractor to submit commission fees within two (2) calendar days' notice shall subject Contractor to a fee of an additional ten percent (10%) of the amount due and owing by Contractor to City and shall be an Event of Default.

8.2 Within ten (10) calendar days following the close of each month, Contractor will submit to the City an invoice that includes log of each vehicle towed by Contractor to the City Impound Lot. The log will include the following information:

- a) Location vehicle towed from;
- b) Date and time vehicle towed;
- c) Make, model and color of vehicle towed;
- d) License plate number of vehicle towed; and
- e) Vehicle Identification Number (VIN) of vehicle towed.

8.3 The City will pay Contractor the rate charged for vehicles towed to the City Impound Lot in accordance with the charges and fees listed in Article VII. City agrees to pay the charges and fees within ten (10) calendar days of receipt of the invoice and log submitted by Contractor.

### **IX. RECORDS RETENTION**

9.1 Records Retention Period. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may,

at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention period.

9.2 Specified Records. Contractor shall retain all records, including but not limited to, tow invoice copies, inventory and condition reports for Contractor's Equipment and may facility inspection records. Within twenty-four (24) hours of the City's request, Contractor shall make available such records for inspection, audit or copying by City or its authorized representative.

9.3 Notification. Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third-party, which pertain to the documentation and record reference herein.

## **X. SUSPENSION/TERMINATION**

10.1 Suspension. City may summarily suspend this Agreement should there be reason to believe that Contractor has breached this Agreement, including violation of any City, State or Federal laws. Such suspension shall remain in effect until such time as the City determines appropriate measures to ensure Contractor's future compliance. Grounds for such suspension include, but are not limited to the following:

- a) Failure to abide by any terms or conditions of this Agreement;
- b) Failure to keep and maintain adequate proof of insurance or bond as required by this Agreement;
- c) Use of substandard, unauthorized or dangerous equipment;
- d) Failure to maintain any equipment required under this Agreement;
- e) Failure to pay City's commission or any other fees collectible under this Agreement;
- f) Failure to maintain a Response Time Performance Rating of ninety-eight percent (98%) for three (3) consecutive months;
- g) The commission of any crime by Contractor, or any owner, part owner, partner, business associate, principal party, officer or director; and
- h) Failure to dismiss any Personnel in violation of sub-paragraph 3.4(c)(1-6) hereunder.

10.2 Termination Defined. For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement term as stated in Article II, or earlier termination pursuant to any of the provisions hereof.



10.3 Termination without Cause. This Agreement may be terminated by either party upon a sixty (60) calendar day's written notice, which notice shall be provided in accordance with Article XI.

10.4 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article XI, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event of Default under this Agreement:

10.4.1 The breach of any term or condition of this Agreement.

10.4.2 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XVI - Assignment and Sub-contracting.

10.5 Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have **ten (10) calendar days** after receipt of the written notice, in accordance with Article XI, to cure such default. If Contractor fails to cure the default within such ten **(10) day cure period**, City shall have the right, without further notice or adoption of an ordinance, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. In addition to the breach of any term or condition of this agreement, following actions are also defaults which may be cured by Contractor:

10.5.1 Performing unsatisfactorily in the sole discretion of City.

10.5.2 Bankruptcy or selling substantially all of company's assets.

10.6 Termination by Law. If any State or Federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

10.7 Ceasing Operations. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its sub-contractors pursuant to this Agreement.

10.8 Termination Not Sole Remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

10.9 Transition Period. Regardless of the method by which this Agreement is terminated, Contractor agrees to provide a transition period of termination for a period not to exceed

two (2) months upon City's request. During such transition period, Contractor may continue to provide Wrecker Services as provided for under this Agreement.

## XI. NOTICE

11.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when **the communication is delivered via e-mail** as provided below by the contractor or delivered personally (with receipt acknowledged), or three (3) days after depositing same via United States Postal Service (USPS) mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a courier service for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

### If intended for City, to:

City of Leon Valley  
Attn: City Manager  
6400 El Verde Road  
Leon Valley, Texas 78238

### With a copies to:

City of Leon Valley  
Attn: Chief of Police  
6400 El Verde Road  
Leon Valley, Texas 78238

City of Leon Valley  
Attn: City Attorney  
6400 El Verde Road  
Leon Valley, Texas 78238

### If intended for Contractor, to:

Banis Towing  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## XII. DOCUMENTS, REPORTS, AUDITS

12.1 Documents. Contractor and its sub-contractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the Wrecker Services rendered hereunder (hereafter referred to as “documents”), and shall make such documents available to the City at their respective offices or through electronic delivery, at all reasonable times and as often as City may deem necessary during the Initial Term, Renewal Term and any extension here of, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

12.2 Reports. Upon the request of City, Contractor shall provide all reports relating to the performance of Wrecker Services under this Agreement. Contractor shall provide such reports to City within five (5) business days after Contractor receives City’s written requests, unless the Parties agree in writing on a longer period of time.

12.2.1 City may require Contractor to submit reports in a format that is reasonably requested by the City. Contractor may seek approval of the City by proposing a format in which information shall be provided to City.

12.3 Financial Audit Report. As a service provider of City, Contractor’s financial condition is pertinent to City’s ability to serve the public at large. Within twenty (20) days of City’s request, Contractor shall submit a financial statement audited by an independent certified public accountant (CPA) in accordance with generally accepted auditing standards. The audited financial statement shall include a detailed schedule of receipts and expenditures by budgeted cost category. Contractor shall submit the audited financial statements and any management letter prepared by the independent Certified Public Accountant to both the City’s Finance Department and the Leon Valley Police Department, both located at 6400 El Verde Road, Leon Valley, Texas 78238.

### **XIII. INSURANCE**

13.1 Contractor Insurance. Not later than the Effective Date of this Agreement, and at all times during the term of this Agreement, Contractor shall obtain and cause to be in full force and effect the following insurance:

- a) Providers shall obtain and maintain in full force and effect, insurance with an insurance company licensed to do business in the state and acceptable to the City as determined by its representative. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poor. Contractor shall furnish the City with proof of such insurance so required, and to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the City’s Risk Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Contractor.

b) Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City's Risk Manager, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, at the Contractor's sole expense, insurance coverage in the following type and minimum amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation	(Minimum statutory limits, and statutory employers \$100,000.00/\$500,000.00/\$100,000.00 as amended)
(2) Commercial general (public) liability, to include coverage for the following where the exposure exists: (a) Premises Operations; (b) Independent Contractors; (c) Products/Completed Operations;  (d) Personal Injury; (e) Contractual Liability; and (f) Explosion, collapse and underground property damage.	Combined single limit for bodily injury and property damage \$1,000,000.00 per occurrence or its equivalent.
(3) Comprehensive automobile insurance coverage for loading and unloading hazards, for: (a) Owned/leased automobiles; (b) Non-owned automobiles; and (c) Hire automobiles.	Combined single limit injury and damage \$2,000,000.00 per occurrence or its equivalent.
(4) Pollution liability insurance  (a) Bodily Insurance (b) Property Damage (c) Cleanup Cost	\$1,000,000.00 per occurrence

c) City shall be entitled, upon request and without expense, to received copies of certificates of insurance evidencing coverage stated above. City also may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where polity provisions are established by law or regulation binding upon either the City or Contractor or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by City, Contractor shall exercise reasonable efforts to accomplish the changes and shall pay the cost thereof.

d) Contractor shall agree that, with respect to the above required insurance, all insurance certificates will contain the following required provisions:

1. Name City and its officers, employees, board members and elected representatives as additional insureds (as the

interests of each insured may appear) as to all applicable coverage;

2. Provide for thirty (30) days' notice to the City for cancellation, non-renewal, or material change;
  3. Provide for notice to City by certified mail; and
  4. Provide that all provisions of this Agreement, as amended, concerning liability, duty, and standard of care, including the indemnity sections, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.
- e) The insurance certificates obtained by Contractor in compliance with this section shall be subject to approval by the City's designated representative, and such proof of insurance shall be filed and maintained with the City during the term of this Agreement, or any extension or renewal thereof, and may be filed and maintained with the City during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Contractor shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect insurance coverage related to this Agreement.
- f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Contractor and the City and shall be primary coverage by the policies.
- g) The policy clause "other insurance" shall not apply to the City where the City is an insured on the policy.
- h) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments, which all are set at the sole risk of Contractor. Insurance policies obtained by Contractor shall provide that the issuing company waives all right of recovery by way of subrogation or assignment against the City in connection with any damage covered by these policies.
- i) Self-insurance. At the City's reasonable discretion, and with adequate financial documentation from Contractor and in compliance with applicable State laws, the City may accept, in lieu of the insurance requirements described above, a self-insurance provision in this Agreement which provides substantially similar protection to the above requirements.

13.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreements, but in no instance, will City allow modification whereupon City may incur increased risk.

13.3 Copies upon Request. The City shall be entitled, upon request and without expense to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies).

13.4 Incorporated Provisions. Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Workers' Compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
2. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium.

13.5 Suspension, Cancellation or Non-Renewal. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.6 Stop Work Order. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder until such time as Contractor demonstrates compliance with the requirements of this Article XIII.

13.7 No Limitation. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or it sub-contractors' performance of the work covered under this Agreement.

13.8 Liability for Equipment. Contractor and any sub-contractors are responsible for all damages to its own equipment.

#### **XIV. INDEMNIFICATION**

**14.1 CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUB-CONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHEE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.**

**14.1.1 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS, THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, PROVIDED, HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

14.1.2 The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise the City in writing within twenty-four (24) hours of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and

defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.

14.2 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory council of its own selection and at its own expense, without waiving the foregoing.

14.3 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of Contractor, any sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts, any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any sub-contractor under workers' compensation or other employee benefit acts.

## **XV. INDEPENDENT CONTRACTOR**

15.1 Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, sub-contractors and Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, sub-contractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this agreement and that the Contractor has no authority to bind the City.

## **XVI. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

16.1 No Assignment. This Agreement is not assignable.

16.2 Sub-contracting. Contractor is not prohibited from sub-contracting for specific services related to this Agreement where Contractor retains full responsibility for act of the sub-contractor and such sub-contracting is approved in writing by the City prior to the sub-contractor. Any work or services approved for sub-contracting hereunder shall be sub-contracted only by written contract and, unless specific waiver is granted in writing



by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by sub-contractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any sub-contractor of Contractor, for performance of services or payment of fees.

16.3 Change of Ownership. Contractor agrees to notify the City of any changes of ownership interest or control of Contractor's business entity not less than thirty (30) calendar days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any change of ownership interest or control of its business entity may be grounds for the termination of this Agreement at the sole discretion of City.

## **XVII. AMENDMENTS**

17.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms here of, shall be effected by an amendment, in writing, executed by both City and Contractor.

## **XVIII. SEVERABILITY**

18.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future Federal, State or local laws, including but not limited to the City of Leon Valley Code of Ordinances, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision here of and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XIX. CERTIFICATIONS/LICENSE/PERMITS**

19.1 Certifications. Contractor warrants and certifies that Contractor and any other person authorized or designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competency standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

19.2 License and Permits. Contractor and any sub-contractor involved in the provision of any services under this Agreement, shall at its own expense and cost, procure and keep in force during the term of this Agreement, all permits and licenses required by law to provide such services, and shall provide copies of such permits and licenses upon request to the City within then (10) business days after receiving a request from City.

19.2.1 Nothing contained herein shall be construed as binding the City to the issuance of any license or permit needed by Contractor or any of Contractor's sub-contractors to enable anyone to provide service hereunder.

## **XX. OWNERSHIP AND LICENSES**

20.1 No Copyright. In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government record produced by or on behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.

20.2 Government Record. The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the State, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

20.3 Property of City. Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement will belong to and be the property of City and Contractor will be required to turn over to City, all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this Agreement to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

20.4 Applicable Law. In accordance herewith, Contractor agrees to comply with all applicable Federal, State and local laws, rule and regulations governing documents and ownership, access and retention thereof.

## **XXI. NON-WAIVER OF PERFORMANCE**

21.1 Unless otherwise specifically provided for in this Agreement, a waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same of any other term, condition, covenant or guarantee herein contained. Further, any failure of City to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by City of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the City. No act or omission by City shall in any manner impair or

prejudice any right, power, privilege, or remedy available to City or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXII. LAW APPLICABLE**

**22.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMED IN BEXAR COUNTY, TEXAS.**

22.2 Venue. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

## **XXIII. LEGAL AUTHORITY**

23.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

## **XXIV. PARTIES BOUND**

24.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXV. CAPTIONS**

25.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXVI. ENTIRE AGREEMENT**

26.1 This Agreement, together with its authorizing ordinance and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise regarding the subject, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XVII.

{signatures following this page}

**EXECUTED:**

**(City)**  
**City of Leon Valley**

**(Contractor)**  
**Banis Towing**

By: \_\_\_\_\_  
Name: Crystal Caldera, PhD.  
Title: City Manager

By: \_\_\_\_\_  
Name: Don Banis  
Title: President

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

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

Approved as to form:

By: \_\_\_\_\_  
Name: Nicole Warren  
Title: City Attorney, City of Leon Valley

REVISED