

**VEHICLE TOWING AND IMPOUND
SERVICES CONTRACT BETWEEN**

**City of Lynden
300 Fourth Street
Lynden, WA 98264**

AND

THIS AGREEMENT (“Contract”) is made and entered into this ____ day of _____, 2025, by and between the **CITY OF LYNDEN** (“CITY”) and _____ (“CONTACTOR”). The City and Contractor may be referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, the City desires to contract with a private firm to provide towing and impound services for unauthorized and abandoned vehicles, and

WHEREAS, Contractor desires to have an exclusive arrangement with the City for the provision of towing and impound services,

NOW THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are acknowledged by execution, the Parties hereby agree and covenant as follows:

SECTION I: TERM AND EFFECTIVE DATE

The Contract will become effective [**Contract Start Date**] and terminate [**Contract End Date**], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual Contract of the parties. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of the City.

SECTION II: RELATIONSHIP OF THE PARTIES

The Parties agree that they are each independent entities operating pursuant to the terms and conditions of this Contract. No agent, employee, servant or representative of any Party shall be deemed an employee, agent, servant or representative of any other Party for any purpose. Additionally, neither Party shall be deemed to be the agent servant or representative of the other Party.

SECTION III: SERVICES

3.1 Scope of Work. The Parties agree that Contractor shall provide vehicle towing services on demand of the City. The services to be provided are described in more detail in the Scope of Work, attached as **Attachment A** hereto and fully incorporated herein by reference. Contractor shall perform all work in accordance with Attachment A.

- 3.2 Contract. “Contract” means this Contract and any attachments and amendments accepted by the City, including Attachment A hereto.
- 3.3 Personnel. Contractor shall have and maintain complete responsibility for its Personnel. “Personnel” means Contractor and Contractor’s employees, subcontractors, volunteers, interns, agents, and any other person utilized by Contractor directly or indirectly or through third parties to perform any Services under the Contract. Contractor shall promptly remove any Personnel performing Services on request from an authorized City Representative.
- 3.4 Standards. Contractor warrants that i) Contractor has the qualifications, knowledge, experience, skills, staff, and resources necessary to provide all Services; ii) all Services shall be provided by Personnel experienced in their respective fields and in a manner consistent with the standards of care, skill, diligence, and knowledge commonly possessed and exercised by experienced professionals in the same discipline in the same or similar circumstances; and iii) all Services shall be provided consistent with all Standards identified in the Scope of Work and the City’s reasonable satisfaction.

SECTION IV: COMPENSATION AND PAYMENT

4.1 Exclusive Arrangement: This Agreement establishes an exclusive arrangement for the provision of towing services to the City on an as-requested basis. The City does not provide compensation to the Contractor for maintaining availability or for general towing services under this Agreement. The Contractor shall charge towing rates to the individuals or entities responsible for the tow. The City shall be responsible for payment only when the tow is of a City-owned vehicle and requested by the City, or as otherwise specifically required by Attachment A.

Notwithstanding the foregoing, the City reserves the right to utilize other towing operators when necessary to ensure timely response and clean-up in the event of accidents or other time-sensitive incidents. This exclusive arrangement applies only to the towing services described in the Scope of Work and shall not extend to towing services requiring the use of Class B, B-2, C, or D tow trucks, or to any other services outside the Scope of Work.

4.2 Invoice and Payment. Contractor shall submit monthly invoices to the City consistent with requirements set forth in the Scope of Work, including a detailed summary of the work performed during the pay period. The City shall review all submitted invoices promptly and shall make payment, if necessary, within 30 days from the date the City receives a complete and correct invoice.

4.3 Insurance/W-9 Compliance. All payments are expressly conditioned upon Contractor’s compliance with all insurance requirements and submission of a current IRS W-9 form to the City. Payments may be suspended in full in the event of noncompliance. Upon full compliance, payments will be released to Contractor unless otherwise provided herein.

4.4 Restrictions. Contractor will only be entitled to receive payment for Services expressly authorized in the Contract and received and accepted by the City during the Contract term.

Contractor acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

SECTION V: TERMINATION

5.1 For Convenience. The City may terminate this Contract, in whole or in part, without penalty, for any reason or no reason, with ten (10) business days prior written notice to the Contractor.

5.2 For Funding Issues. If any funding for Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the City may at its sole discretion: (1) accept a decreased price offered by Contractor or (2) terminate the Contract. Nothing herein shall be construed to limit the City's ability to terminate this Contract and seek services from another tow operator.

5.3 Termination for Default. The City may immediately terminate the Contract, in whole or part, due to the failure of Contractor to comply with any Contract term or condition or if the County determines Contractor has been debarred, suspended or otherwise lawfully prohibited from providing Services. Contractor shall immediately notify the City if Contractor becomes suspended or debarred.

5.4 Procedures. Upon receipt of notice of termination, Contractor shall stop all Services as directed in the notice, notify Personnel of the termination date, and minimize further costs. All goods, materials, documents, data, and reports prepared by Contractor under the Contract shall become the property of, and delivered to, the City on demand. A final payment will be made to Contractor only for Services performed and accepted by the City through the termination effective date, less any liquidated damages assessed for nonperformance. No costs incurred after the effective date of the termination will be paid.

SECTION VI: INDEMNITY AND INSURANCE

6.1 Indemnification. Contractor shall indemnify, defend and hold the City, its officers, agents and employees harmless from all suits, claims, damages or liabilities of any nature, including attorney fees, costs and expenses, for or on account of injuries or damages sustained by any person or property resulting from the negligent acts or omissions of Contractor, Contractor's employees, or Contractor's authorized agents, to the extent and in the same proportion as Contractor, Contractor's employees or Contractor's authorized agents are determined to be at fault. The obligations of this section shall not extend to claims or causes of action arising from the sole negligence of the City.

6.2 Insurance. Contractor shall purchase and maintain at their own expense the insurance noted below. All insurance shall remain in effect for the duration of the Contract term. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of Contractor under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid

by Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, employees, or agents. Contractor's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, subject to the limits of the insurer's liability.

6.2.1 Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability Insurance with minimum coverage of \$2,000,000 per incident, claim, or occurrence, and \$4,000,000 in the aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability and contractual damages. Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct or contractor, its subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits. Commercial General Liability coverage shall name, by certificate and endorsement, the City, its officers, agents, employees and volunteers as additional insureds with respect to Contractor's work or services provided under this Contract.

6.2.2 Commercial Automobile Liability Insurance. Contractor shall maintain Commercial Automobile (Fleet) Liability Insurance with a minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance and Commercial General Liability.

6.2.2 Workers' Compensation Insurance. Contractor shall maintain workers' compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor's Personnel eligible for such coverage.

6.2.3 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.

6.2.4 Review of Policy Provisions. Contractor shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

6.2.5 Waiver of Subrogation. Contractor agrees to waive all rights of subrogation against the City, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should Contractor enter into a waiver of subrogation on a pre-loss basis.

6.2.6 Claims-Made. If Contractor's liability coverage is written as a claims-made policy, Contractor shall purchase an extended-reporting period or "tail" coverage for a minimum of

three (3) years following completion of the performance or attempted performance of the provisions of this Contract.

6.2.7 Additional Insured, Endorsement and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the City, it's elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by Contractor and its subcontractors. Endorsement is not required if Contractor is a self-insured government entity or insured through a government risk pool authorized by Washington State.

The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than thirty (30) days' prior notice of termination, cancellation, nonrenewal or reduction in coverage. At the time of execution, Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: City of Lynden, 300 Fourth Street Lynden, WA 98264.

SECTION VII: AMENDMENTS AND SUBCONTRACTS

7.1 Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.

7.2 Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.

7.3 Assignments. Except with the prior written consent of the other party, each party shall not assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law any right, duty, obligation, or remedy under the Contract. Any purported assignment or transfer in violation of this section shall be void.

7.4 Subcontracts. No Subcontract will be effective unless Contractor obtains prior written approval from the City. Contractor shall provide the City a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.

SECTION VIII. REPRESENTATIONS AND RECORDS

8.1 Licenses, Permits and Taxes. Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue.

Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.

8.2 Compliance with Laws and Standards. Contractor and its Personnel, and the Services provided by Contractor and its Personnel, shall comply with all applicable laws, codes, and standards in effect at any given time regardless as to whether such laws are referred to by the City. If deemed necessary for the Services provided, Contractor and its Personnel shall submit to a background check as directed by the City.

8.3 Nondiscrimination. Contractor and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of the Contract.

8.4 Public Records. Contractor agrees the Contract and all records associated with the Contract shall be available to the City for inspection and copying by the public pursuant to the Public Records Act, chapter 42.56 RCW (“Act”). If the City determines that records in the custody of Contractor are needed to respond to a request under the Act, Contractor shall make all such records promptly available to the City at no cost to the City. With the exception of the Contract, if Contractor considers any portion of any record, electronic or hard copy, to be protected from disclosure under the Act, Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the City receives a request under the Act to inspect or copy proprietary information that has been identified by Contractor as protected from disclosure and the City determines that release of the information is required by the Act or otherwise appropriate, the City’s sole obligation will be to make a reasonable effort to notify Contractor of the request and the date that such protected information will be released unless Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If Contractor fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has no obligation on behalf of Contractor to claim any exemption from disclosure under the Act. The City will not be liable to Contractor for releasing records pursuant to the Act.

8.5 Audit and Record Retention. Contractor and its Personnel shall retain all books, documents, and records relating to performance of the Contract and Services provided in connection with the Contract for six (6) years after completion of the Contract or longer if requested by the City. All records shall be subject to inspection and audit by the City. Upon request, Contractor shall promptly make available to the City a legible copy of all books, documents, and records at no cost to the City.

SECTION III: PROFESSIONAL RESPONSIBILITY

All towing and storage services shall be performed in accordance with the provisions of RCW 46.55, WAC 204-91A and WAC 308-61 and the Lynden Municipal Code, all as currently formulated or as may be subsequently amended.

SECTION IV: DUTIES OF THE PARTIES

Contractor agrees to tow and impound non-City owned vehicles pursuant the Scope of Work, attached as Attachment A hereto, upon request from the City, from city streets rights of way and public property at no cost to the City. In exchange for this promise, City agrees to enter into a relationship with Contractor, whereby Contractor will be the primary entity authorized to perform impound services for the City, provided that, should Contractor be unable to timely respond due to lack of equipment or personnel, or fail to respond to the City's request for impound services, within a reasonable time, the City may engage the services of a different towing company to perform the impound service requested. The Contractor, upon initial request by the City, will give the City approval to take its request to another towing company if the Contractor is unable to immediately fulfill a request for services. If such approval is withheld despite the Contractor's inability to perform, the City may nonetheless proceed engage a different towing company for the requested service.

SECTION IX: RIGHTS AND REMEDIES

9.1 Failure to Perform. If City determines Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within ten (10) days' following notice from the City, the City may without penalty, in its discretion, withhold all monies due Contractor until such failure is cured to the reasonable satisfaction of the City. Failure to perform impound services, or to perform services requested or as required by law, shall constitute a material breach of this Contract.

9.2 Right of Assurance. If the City in good faith has reason to believe Contractor does not intend, or is unable to perform, or continue performing under the Contract, the City may demand in writing that Contractor give a written assurance of intent to perform. Should Contractor fail to provide adequate assurance to the reasonable satisfaction of the City, by the date specified the demand, the City may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.

9.3 Responsibility for Errors. All Services shall be completed to the reasonable satisfaction of the City and as required herein. Upon request, Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by the City, at no additional cost to the City. In the event of an error or omission under the Contract, Contractor shall, at no cost to the City, provide all necessary estimates and all other professional services the City deems necessary to rectify and correct the matter to the satisfaction of the City. Contractor shall continue to be responsible for the quality and accuracy of Services, even after the termination or expiration of the Contract.

9.4 Remedies. All City rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to the City at law and in equity.

9.5 Right of Off-Set; Reimbursement. The City will be entitled to offset against any sums due Contractor and to obtain reimbursement from Contractor for any damages, expenses, or costs

incurred by the City due to Contractor's nonconforming performance or failure to adequately perform the Services under the Contract.

9.6 Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.

9.7 Breach. In the event of a material breach by Contractor the City may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. Contractor shall be liable to the City for any and all costs, expenses, penalties, and fees incurred by the City in procuring such Services in substitution for those due from Contractor under the Contract.

SECTION X: DISPUTES, GOVERNING LAW AND VENUE

10.1 Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the City. In the event a dispute arises regarding the terms of this Agreement, the parties shall first endeavor, in good faith, to resolve the matter amicably between themselves in a timely manner. If such resolution is not possible within 30 calendar days of initial written notice, the parties agree to timely mediate the dispute with a neutral third party (through Whatcom Dispute Resolution or another mutually agreeable mediator or service). If a dispute cannot be timely resolved through mediation, then the parties agree to submit the dispute to binding arbitration with JAMS (Judicial Arbitration and Mediation Services) or such other arbitration service or arbitrator as the parties mutually agree. Each party shall be responsible for their own attorney fees, whether incurred in the preparation of this Agreement or related to any future dispute.

10.2 Governing Law and Venue. This Contract is to be governed and construed under the laws of the State of Washington. The venue for any cause of action arising out of this Contract shall be Whatcom County Superior Court.

SECTION XI: NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations desired or required to be given under this Contract by either Party to the other shall be in writing and shall be sufficiently given if personally hand-delivered to the Party to receive the same or if sent by certified mail, return receipt requested, postage prepaid, and addressed to the Party to receive the same at the address listed below, or to such other address as each respective Party may designate from time to time by written notice to the other.

CITY:
City Administrator
City of Lynden
300 Fourth Street

CONTRACTOR:

SECTION XII: GENERAL PROVISIONS

12.1 Severability. If any portion of this Contract shall be deemed void, illegal or unenforceable, the balance of this Contract shall not be affected thereby.

12.2 Counterparts. The Contract may be executed in counterparts, each of which will be deemed an original, but which together will constitute one and the same agreement.

12.3 No Third-Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third-party beneficiary or provide any rights or benefits to any person or entity other than the City and Contractor.

SECTION XII: ENTIRE AGREEMENT

This Contract including, including all attachments, combines all understandings between the Parties and supersedes all prior proposals, quotations, solicitations, negotiations, representations, agreements, or understandings, regarding this project, whether written or oral. This Contract may be amended only by written agreement of the Parties.

IN WITNESS WHEREOF the following Parties hereby enter into this Contract and acknowledge that they understand and mutually agree with the above terms and have executed this Contract as of the date written and have received a copy of this Contract, and that they are authorized to execute this Contract.

CONTRACTOR

CITY OF LYNDEN

By: _____
Its: _____

By: Scott Korthius
Its: Mayor

Attested by:

City Clerk

APPROVED AS TO FORM

Robert Carmichael,
City Attorney