

## AGREEMENT FOR TOWING AND IMPOUND SERVICES

This AGREEMENT is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Spring Lake Park, a Minnesota municipal corporation (the “City”), and Citywide Service Corp., a Minnesota corporation (“Citywide”).

### RECITALS

WHEREAS, Citywide is engaged in the towing and impound service business, with offices in Spring Lake Park, Blaine and elsewhere;

WHEREAS, the City desires to engage Citywide to provide impound services to the City, including the Spring Lake Park Police Department, for the purpose of safe towing and storage of all vehicles impounded;

NOW, THEREFORE, in consideration of the following mutual promises and covenants and other valuable consideration, the receipt and sufficiency of which are expressly acknowledged by each party, IT IS HEREBY AGREED:

### TERMS

1. **Incorporation.** The above Recitals are a material part of this Agreement and are incorporated herein.

2. **Terms.**

2.1 **Initial Term.** The initial term of this Agreement shall commence as of \_\_\_\_\_ (the “Commencement Date”) and end December 31, 2018 (the “Initial Term End Date”) (the period from the Commencement Date through the Initial Term End Date shall be referred to hereinafter as the “Initial Term”), unless terminated earlier pursuant to paragraph 13.

2.2 **Renewal.** The parties may renew this Agreement for additional one-year periods, upon mutual agreement by the parties, in writing. If City determines to put the City’s towing and impound services out for proposals from other service providers following the Initial Term, City will give Citywide no less than sixty (60) days’ written notice of the same. As part of said written notice, City shall also specifically identify any material concerns, if any exist, which City has had with Citywide’s performance during the Initial Term, though no material concerns shall be required as the basis for an election not to renew.

If, as of the Initial Term End Date, this Agreement has not been renewed and the City has not contracted for the services to be provided hereunder with Citywide for another term or with another party, then this Agreement will continue in full force and effect and may be terminated upon sixty (60) days’ written notice to Citywide.

3. **Services.** Citywide shall provide the towing, impounding and storage of motor vehicle services consistent with the following standards:

Provide towing services to the Spring Lake Park Police Department on an as needed and as directed basis, twenty-four (24) hours per day and three hundred sixty-five (365) days per year.

Respond to all police tow requests in a reasonable amount of time.

Provide services at a reasonable rate of charge to the vehicle owners.

Provide a fenced and locked storage area for vehicles towed and impounded for the Spring Lake Park Police Department.

Cleanup debris caused by accidents.

Provide towing services to the Spring Lake Park Police Department for vehicles seized for forfeiture purposes by the Spring Lake Park Police Department.

Provide for release of impounded vehicles seven (7) days per week.

Provide storage to the Spring Lake Park Police Department for vehicles placed on investigative hold by the Spring Lake Park Police Department at a cost to be determined by **Exhibit A**.

Provide for release of impounded vehicles seven (7) days per week.

Hold vehicles towed and impounded and personal property therein placed on hold by the Spring Lake Park Police Department, until approval from the Spring Lake Park Police Department, provided that child safety seats from such held vehicles may be released to the registered owner without regard to payment of the actual towing, administrative, storage, and sales tax charges.

Release vehicles and/or personal property therein, which have not been placed on investigative hold by the Spring Lake Park Police Department consistent with Citywide's policies so long as the same comply with all applicable laws, ordinances, rules, and/or regulations..

Provide towing of City Public Safety vehicles and other City-owned vehicles (not including vehicles intended for off-road use), upon request of the City, at no charge.

Maintain proper records of all vehicles towed, stored, released, held, junked or destroyed. The record keeping system shall meet the approval of the Chief of Police and Citywide shall make records available at all times for inspection by authorized City representatives upon reasonable notice.

Citywide shall prepare and provide a comprehensive monthly report of all vehicles towed, stored, released, held, junked or destroyed, in a form acceptable to the City's Chief of Police.

4. **Charges.** In exchange for the services provided under this Agreement, Citywide shall be entitled to charge the fees stated on **Exhibit A**. The fees stated on **Exhibit A** may be adjusted from time to time upon agreement between Citywide and City to reflect appropriate rates based on retail rates of services and the relevant circumstances then existing, including but not limited to the nature and volume of services being provided. In order to effect such adjustment, Citywide shall provide an updated **Exhibit A** to the City at least thirty (30) days before the rates stated therein shall go into effect and, after those thirty (30) days, unless the City objects in writing to any of the rates stated therein, City shall be deemed to have agreed to such rates and the updated **Exhibit A** shall replace the then-current **Exhibit A** to this Agreement and remain in effect until amended. City agrees that, in considering any updated **Exhibit A**, it will not unreasonably object to Citywide's proposed rates. Should City raise an objection to any proposed rates, City and Citywide agree to promptly engage in good faith negotiations to resolve the objection and determine a mutually acceptable adjusted fee. In the event of a timely objection to an update to **Exhibit A**, no update shall take effect until terms for the same are mutually agreed upon. Citywide shall provide to the City such information as is reasonably necessary to allow the City to confirm that the charges by Citywide are consistent with the charges listed in any then-current **Exhibit A**.

5. **Premises and Facilities.** Citywide shall, at its sole cost and expense, maintain and use the storage and parking facilities located at 2535 85th Avenue NE, Blaine, MN 55449 and/or 1224 County Road 10 NE, Spring Lake Park, MN 55432 (together, the "Facility") to provide the services required by this Agreement. The Facility shall include, at a minimum, outdoor storage capacity of thirty (30) vehicles and indoor storage capacity of one (1) vehicle. The City shall have access to the Facility, including indoor and outdoor storage areas, twenty-four (24) hours per day and three hundred sixty-five (365) days per year. Citywide shall provide a designated representative located at the Facility for the purpose of releasing vehicles to authorized persons at least as follows: Monday through Friday between the hours of 8:00 A.M. and 5:00 P.M. (excluding legal holidays), on Saturdays (excluding legal holidays) by appointment between the hours of 8:00 A.M. and 5:00 P.M., and on Sundays and legal holidays by appointment between the hours of 12:00 P.M. and 2:00 P.M.

6. **Equipment.** Citywide shall own and maintain, at its sole cost and expense, the equipment necessary to provide the services set forth in this Agreement. Citywide agrees to maintain all equipment in good repair and working order. Such maintenance shall include, but not be limited to, all required Minnesota Department of Transportation inspections, annual vehicle inspections by an ASE Certified Automotive Technician, and regularly scheduled vehicle maintenance.

7. **Personnel.** Citywide agrees to employ and/or contract with a sufficient number of trained and qualified personnel to provide immediate and prompt services as ordered and directed by the City during this Agreement. Subject to any applicable laws against disclosure of the same, Citywide shall provide the City with a list of all current employees and any new employees including full name and date of birth, during the term of this Agreement. Citywide shall conduct a criminal background check and an annual driver's license check on all Citywide drivers prior to permitting the same to conduct towing operations within the City. The City may conduct an audit to verify Citywide's compliance with this provision.

8. **Communications.** Citywide shall maintain a telephone number during the term of this Agreement which will be answered twenty-four (24) hours per day and three hundred sixty-five (365) days per year, for the purpose of responding to requests for services.

**9. Insurance.**

**9.1 Policies and Limits.** During the Term of this Agreement, Citywide shall procure and maintain at its own expense insurance coverage and certificates which evidence such, as follows:

- A. Commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) for death, bodily injury, including, without limitation, injuries sustained from assault and battery, and property damage arising out of a single occurrence;
- B. Automobile liability insurance of two million dollars (\$2,000,000) per person for death, bodily injury and property damage;
- C. Garage Keepers Legal Liability;
- D. Hazardous Load Insurance required by applicable federal and state law; and
- E. Workers' Compensation Insurance covering all of Citywide's employees, agents, and any other persons working under this Agreement for whose actions or omissions Citywide is liable, in accordance with the Minnesota Workers' Compensation Law.

Citywide shall have the City named as an additional insured on any and all commercial general liability policies obtained or maintained pursuant to this Agreement and such coverage shall be primary and non-contributory as to City policies.

**9.2 Proof of Coverage.** Citywide will furnish the City with Certificates of Insurance to demonstrate compliance with the insurance requirements of this Agreement prior to the Commencement Date. All Certificates shall provide that the insurance company shall give thirty (30) days' written notice to the City of cancellation, non-renewal or any material change in the policy. Citywide agrees to furnish notice to the City, upon the City's reasonable request, acknowledgement(s) that the required policies remain in effect. Further, Citywide shall notify the City within three (3) business days of any cancellation, non-renewal or any material change in the policy of which Citywide becomes aware.

**9.3 No Waiver of Immunities or Tort Limits.** Nothing in this Agreement is intended to and does not in any manner act as a waiver of the City's immunities or tort limits contained in Minnesota Statutes chapter 466.

**10. Indemnification.** Citywide shall defend, indemnify and hold harmless the City and its Councilmembers, officers, agents, employees and insurers from and against all claims, damages, losses or expenses, including attorneys' fees and the costs of defense that are caused directly or indirectly by Citywide, its agents and employees, arising out of or relating in any manner to the services provided or to be provided under this Agreement, except to the extent such

claims, damages, losses or expenses are attributable to the City or its Councilmembers, officers, agents, employees, or others for whom the City is legally responsible as a result of any of their negligent or intentional misconduct. Likewise, the City shall defend, indemnify and hold harmless Citywide and its officers, agents, employees and insurers from and against all claims, damages, losses or expenses, including attorneys' fees and the costs of defense that are caused directly or indirectly by the City, its agents and employees, arising out of or relating in any manner to the City's obligations under this Agreement, except to the extent such claims, damages, losses or expenses are attributable to Citywide or its officers, agents, employees, or others for whom Citywide is legally responsible as a result of any of their negligent or intentional misconduct.

**11. Independent Contractor.** The parties agree that nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of joint venturers or co-partners between the parties or as constituting one party as the agent, representative or employee of the other party for any purpose or in any manner whatsoever. Citywide has and retains full control and supervision over the services to be performed under this Agreement and is and shall remain an independent contractor under this Agreement. Citywide and its officers, agents, employees, representatives and any other persons engaging in the performance of any activity under this Agreement shall have no employment relationship with the City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of such persons while so engaged, and any and all claims whatsoever on behalf of any such person arising out of employment or alleged employment with Citywide, including, without limitation, claims of discrimination against Citywide or its officers, agents, contractors or employees, shall in no way be the responsibility of the City, and Citywide shall defend, indemnify and hold the City and its Councilmembers, officers, agents, employees and insurers harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court.

**12. Compliance.** The City and Citywide agree to comply with all applicable federal, state, municipal and local laws, ordinances and regulations in the performance of this Agreement.

**13. Minnesota Government Data Practices Act.** Citywide agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, and all other applicable state or federal rules, regulations, or orders pertaining to privacy or confidentiality. The Contractor understands that all of the data created, collected, received, stored, used, maintained, or disseminated by Citywide in performing those functions that the City would perform is subject to the requirements of Chapter 13, and Citywide must comply with those requirements as if it were a government entity. This does not create a duty on the part of Citywide to provide the public with access to public data if the public data is available from the City, except as required by the terms of this Agreement.

**14. Response Time.**

**14.1 Timely Appearance, Late Fee.** Under typical circumstances, within twenty (20) minutes of receipt of a request for towing services from the City, Citywide shall respond and arrive at the designated site with the personnel, vehicles and equipment reasonably anticipated to be necessary to perform the towing services contemplated by this Agreement. Should Citywide fail to arrive at the designated site with the reasonably anticipatable necessary and proper personnel, vehicles and equipment within that time

(all such events herein referenced individually as a “failure to timely appear”), the City may call another towing company to provide the service. In the event that the City retains another company to provide services after a failure to timely appear by Citywide, Citywide shall not charge any fee related to that event to the City. Upon the passage of thirty (30) minutes from Citywide’s receipt of a request for towing services from the City, if the City has not yet retained an alternate service and Citywide has not responded to and arrived at the designated site as specified in this Agreement, and barring any reasonable basis under the circumstances for a delayed response (e.g., adverse weather or traffic conditions, atypical situations encountered on scene, equipment and personnel needed to complete the services were not reasonably anticipatable based upon the information provided by the request for towing services from the City), the City may impose a penalty of fifty dollars (\$50) on Citywide for each such event. Such penalty shall be owed in addition to any other fees or reimbursements contemplated in this Agreement and shall be paid within fifteen (15) days of the City’s issuance of written notice of such a penalty or credited against the next bill sent from Citywide to the City.

**14.2 Inability to Respond.** Upon receipt of a request for towing services from the City, if Citywide is unable to respond in the manner set forth herein due to conditions beyond its control, Citywide shall immediately notify the requesting City representative of Citywide’s inability to respond and the reason(s) for that inability. Upon receipt of such notice, the City may immediately retain services from an alternate provider. If Citywide’s inability to respond is due to Citywide’s negligence or willful misconduct, Citywide shall be responsible for refunding the City for any charges or costs incurred in securing alternate services which are in excess of the applicable fees outlined in **Exhibit A**. For the purposes of this section, negligence may include, but is not limited to, reasonably anticipatable equipment failures or improper personnel scheduling in light of reasonably anticipatable needs of the City for services under this Agreement.

**14.3 Emergency Situations.** In the event of an emergency, the City maintains the right (without penalty or violation of this Agreement), to retain the most immediately available towing/impound service provider, even if that provider is not affiliated with Citywide. The existence of an emergency shall be determined in the City’s sole discretion.

**14.4 Private Tow Request by Owner/Operator.** The City may honor (without penalty or violation of this Agreement) a timely request by a private owner/operator for towing/impound services to be provided by an alternative provider. In such an event, the owner/operator is solely responsible for all associated charges.

**15. Termination.** This Agreement is terminable by the City if Citywide materially breaches the Agreement upon ten (10) days’ written notice identifying said breach(es). If Citywide does not, within those same ten (10) days, cure the breach, the City shall be entitled to immediately cancel and terminate the Agreement. This Agreement is terminable by Citywide if City materially breaches the Agreement upon ten (10) days’ written notice identifying said breach(es). If City does not, within those same ten (10) days, cure the breach, Citywide shall be entitled to immediately cancel and terminate the Agreement.

16. **Notices.** Any notice or demand, which may or must be given or made by the parties under the terms of this Agreement or any statute or ordinance, shall be in writing and be sent registered or certified mail to the other party addressed as follows:

TO: City City Administrator  
1301 81<sup>st</sup> Avenue NE  
Spring Lake Park, MN 55432  
\_\_\_\_\_  
\_\_\_\_\_

COPY TO: City Attorney Carson, Clelland & Schreder  
6300 Shingle Creek Parkway  
Suite 305  
Brooklyn Center, MN 55430

TO: Citywide Citywide Service Corp.  
Attn: Brett Letourneau, Owner  
9309 83rd Avenue North  
Brooklyn Park, MN 55445

Either party may designate a different addressee at any time by giving written notice to the other party as provided in this paragraph. Any notice delivered by hand shall be deemed received upon actual delivery.

17. **Assignment.** Neither party shall transfer, lease or otherwise assign its rights, interest and obligations under this Agreement without the prior written consent of the other party; provided that Citywide may transfer, lease or otherwise assign its rights, interest and obligations under this Agreement to an entity controlled by Owner (identified above) without such prior written consent so long as such other entity agrees in writing to be legally bound to the terms of this Agreement.

18. **Third Party Beneficiary.** This Agreement is created for the sole benefit of parties and shall not create any third party beneficiary rights.

19. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective representatives, successors and heirs, and to the extent authorized under this Agreement, their assigns.

20. **Survival.** If any term or provision in this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the extent permitted by law.

21. **Choice of Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with Minnesota law. Any and all suits brought by either Party under this Agreement shall be initiated and maintained in any court of competent jurisdiction in the County of Anoka, State of Minnesota.

22. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and any prior understandings or representations of any kind preceding the execution of this Agreement shall not be binding upon either party.

23. **Modification.** This Agreement may only be amended or modified by written instrument executed by all parties.

24. **Acknowledgement.** Each of the parties affirms and acknowledges that it has fully read, appreciates, and understands the words, terms, conditions and provisions of this Agreement and is fully satisfied with the same.

25. **Authority.** Each party represents and warrants it has the power and authority to enter into this Agreement. Each party further represents and warrants that the person or persons executing this Agreement on its behalf has full and complete legal authority to do so, and thereby binds the party and, to the extent permitted by this Agreement, its successors and assigns.

26. **Waiver.** The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

**CITY OF SPRING LAKE PARK**

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

Its: \_\_\_\_\_

**CITYWIDE SERVICE CORP.**

By: \_\_\_\_\_  
Brett Letourneau

Its: \_\_\_\_\_  
Owner



**EXHIBIT A  
RATE SCHEDULE**

Rates in effect as of \_\_\_\_\_

<b>Service</b>	<b>Amount for Each Service (Exclusive of Any Applicable Taxes)<sup>1</sup></b>
City of Spring Lake Park Public Safety Vehicles and Other City-Owned Vehicles (not including vehicles intended for off-road use)	No charge
Typical (Non-Heavy Duty) Tow for Impounded Vehicle or Other Tow At City Request, Not Including Accident Related Vehicle	\$95.00
Typical (Non-Heavy Duty) Tow for Accident-Related Vehicle	\$125.00
Typical (Non-Heavy Duty) Use of Dolly or Flatbed	\$35.00
Typical Accident Debris Clean Up Without Fluid Absorbent	\$25.00
Typical Accident Debris Clean Up With Fluid Absorbent	\$45.00
Vehicles Subject to Forfeiture	\$175.00 (flat rate)
Winching/Recovery	Reasonable retail rate as dictated by circumstances of the required service (typically a set rate plus an hourly rate) with a \$100 minimum
Heavy Duty Towing or Use of Dolly or Flatbed for Heavy Duty	Reasonable retail rate as dictated by circumstances of the required service (typically a set rate plus an hourly rate)
Administrative Fee	\$35.00
Storage	\$45.00 per day

Any service provided hereunder may be charged at a higher charge if the services provided justify such higher charge because of the involved vehicle's condition or other atypical situations so warrant. For example, if a passenger car cannot be towed using conventional methods because of the car's atypical factory or after-market condition, Citywide may charge the flatbed charge in addition to the typical towing charge. For another example, if a service requires additional work, such as unlocking vehicles, disconnecting linkages or drive shafts, unusual road clean-up, snow shoveling, work off the main roadway, or the use of additional equipment, Citywide may charge the reasonable retail rates for such services in addition to the typical rates described above. In all cases, the rates must be justifiable under the circumstances by Citywide.

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<sup>1</sup>Rates are subject to adjustment as provided in Exhibit A and as described in paragraph 4 of the Agreement.