

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT
(TOWING CONTRACT)**

THIS AGREEMENT is made and entered into in duplicate this 1st day of January, 2016, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the "CITY" and Summit Towing, a Washington State Corporation, hereinafter referred to as the "SERVICE PROVIDER."

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER agrees to provide towing and storage of vehicle services as may from time to time be requested by the CITY through the term of this Agreement as follows:

A. Towing of vehicles as requested to the SERVICE PROVIDER'S facility.

B. Towing services to CITY'S storage facility in circumstances where such request is made outside the rotating tow company request policy in effect city-wide. Such circumstances normally occur where a private vehicle constitutes evidence of a crime or where a CITY vehicle becomes inoperable and requires towing.

Other terms and conditions related to SERVICE PROVIDER'S services are set forth in Exhibit "A" attached hereto and incorporated herein.

2. TERM.

The term of this Agreement shall begin on January 1, 2016, and shall extend to December 31, 2018. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for services performed under this Agreement pursuant to the accepted bid proposal attached hereto as Exhibit "B" and by this reference incorporated herein.

D. The SERVICE PROVIDER shall submit to the CITY Finance Department an invoice for services rendered during the pay period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

E. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term unless the contract term ends at the end of the calendar year where invoices must be submitted no more than five (5) business days following the end of the calendar year. Failure to submit a timely invoice will result in non-payment of services and funds will be forfeited.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the

discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. It is recognized that SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with SERVICE PROVIDER'S ability to perform the Services. SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

E. 2008 Early Retirement Factor Retirees. Washington State law requires reporting of any contractor, independent contractor or personal service contractor that has retired from the State of Washington using the 2008 Early Retirement Factor (ERF). Stricter return to work restrictions apply to retirees under the 2008 ERF. The SERVICE PROVIDER must verify retirement status by completing a Service Provider Retirement Status Form, attached as Exhibit "C", for each of SERVICE PROVIDER'S owners and for each person providing service under this Agreement.

6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent or servant from employment on this Project. The SERVICE PROVIDER may however employ that individual on other non-CITY related projects.

7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials,

officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. SERVICE PROVIDER expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. INSURANCE.

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, their agents, representatives, employees or subcontractors.

The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

A. Automobile Liability insurance with limits not less than \$1,000,000 combined single limit covering all of Service Provider's vehicles.

B. Garagekeeper's Legal Liability insurance covering the care, custody and control of any/all autos in SERVICE PROVIDER'S care or yard with a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 aggregate limit.

Coverage shall include hook coverage for vehicles in tow.

The CITY shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.

11. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee

or applicant for employment on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law.

D. Nondiscrimination in Benefits. **The provisions of this subsection are only applicable to contracts with an estimated value of \$50,000 or more.** Pursuant to Tumwater Municipal Code (TMC) Chapter 3.46, SERVICE PROVIDER shall provide employee benefits or an equivalent sum to the domestic partners of their employees involved in SERVICE PROVIDER'S operations applicable to this Agreement if such benefits are provided to employees' spouses as more particularly set forth in Chapter 3.46 of the TMC, a copy of which is attached hereto if applicable.

E. If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the CITY in the event this provision applies.

14. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered with the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

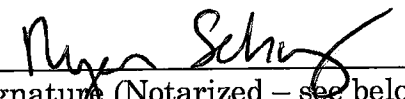
CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501



Pete Kmet
Mayor

SERVICE PROVIDER:

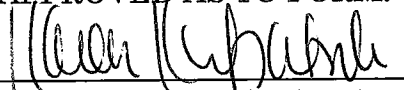
Summit-bwing Inc.
Address: 525 B Donlee Ln
City/State/Zip: Olympia WA. 98502
Tax ID #: 20-1876959
Phone Number 360 754-8858

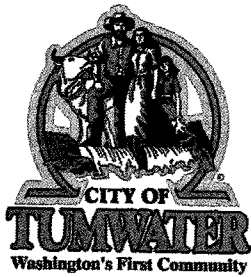

Signature (Notarized – see below)
Printed Name: Ryan Schult
Title: Pres.

ATTEST:


Melody Valiant, City Clerk

APPROVED AS TO FORM:


Karen Kirkpatrick, City Attorney



City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4126

EXHIBIT "B"

BID PROPOSAL

In response to the City of Tumwater request for proposals for the towing and/or storage of impounded, and city owned vehicles, the undersigned does hereby submit the following bid (less sales tax) for a three year period from date of contract:

IMPOUND FEE:

A) Class 'A' Tow Truck _____ \$ 45.00
B) Class 'B' Tow Truck _____ \$ 125.00 per hour
C) Class 'C' Tow Truck _____ \$ 125.00 per hour
D) Class 'D' Tow Truck _____ \$ N/A
E) Class 'E' Tow Truck _____ \$ 45.00

MILEAGE RATE: _____ \$ 3.50 A mile

DOLLY RATE: _____ \$ 35.00

STORAGE FEE:

A) Outside _____ \$ 20.00
B) Inside _____ \$ 20.00

STORAGE LOCATION: 525 B Dunlee Ln NW Olympia, Wa. 98502

OTHER (DESCRIBE) winch out \$ 85.00

DATE: 11/3/15 Roadside svc. { Lockouts 45.00
Jumpsuits 45.00
Tire change 45.00

COMPANY NAME:

Summit Towing

Ryan Schultz
Signature

COMPANY ADDRESS:

525 B Dunlee Ln NW

Ryan Schultz
Name (Printed)

Olympia, Wa. 98502

pres.
Title

SERVICE PROVIDER RETIREMENT STATUS FORM


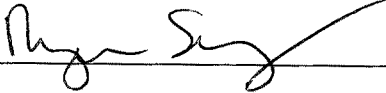
Complete this form for each owner, and each employee, independent contractor or person providing service to the City of Tumwater.

I have retired from a Washington State Retirement System using the 2008 Early Retirement Factor?

☐ Yes

☒ No

I verify the information above is true and correct.

Name of Owner, Employee, Independent Contractor or Person: (Please print) Ryan Schultz	Social Security Number (If answering "yes" above) 
Signature 	Date 11/3/15