

## TOW SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of November 2023 by and between the CITY OF UPLAND, a municipal corporation organized under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue, Upland CA 91786 and, hereinafter referred to as "CITY," and STEVE's Towing, a California Corporation, with its principal place of business at 9529 8<sup>th</sup> Street, Rancho Cucamonga, CA 91730, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, it is the desire of the CITY and the CONTRACTOR to enter into a non-exclusive Agreement for towing services that will, from time-to-time, be requested by the Upland Police Department, pursuant to the terms and conditions set forth herein and in the Towing Policy and Procedures, attached as Exhibit A hereto;

AGREEMENT:

NOW, THEREFORE, the parties hereto agree as follows:

1. CONTRACTOR shall perform tow services on a non exclusive basis as an Official Tow Provider and furnish all labor and equipment necessary to implement towing, storing and impounding of motor vehicles in the City of Upland as directed by, and subject to the satisfaction of, the Upland Police Department. All towing services shall be performed in accordance with all applicable provisions of law, and the provisions of this agreement and Exhibit A attached as hereto and incorporated by reference herein.
2. Term. The provisions of this agreement shall be effective as of, November 1, 2023 and continue through October 31, 2026, unless sooner terminated as provided herein. There shall be two (2) one year renewal options extending the term of this agreement, subject to the written consent of both parties.
3. Insurance. The CONTRACTOR shall not commence work under this agreement until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this agreement the following policies of insurance:
  - (a) Compensation insurance: Before beginning work, the CONTRACTOR shall furnish to the CITY a certificate of insurance as proof that it has taken out full compensation insurance for all persons whom the CONTRACTOR may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract. Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees.

CONTRACTOR, prior to commencing work, shall sign and file with the CITY a certificate as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of work of this contract."

- (b) For all operations of the CONTRACTOR or any subcontractor authorized to perform the work herein, insurance with the following minimum limits and coverage:
- (1) Commercial General Liability (occurrence) – for bodily injury, death and property damage for products/completed operations and any and all others activities undertaken by the CONTRACTOR in the performance of this agreement;
  - (2) Comprehensive Automobile Liability (occurrence) – for bodily injury, death and property damage insuring against all liability arising out of the use of any vehicle;
  - (3) Garage-keepers Legal Liability (occurrence)- insuring against all liability for claims alleging damage of any nature to any vehicle towed, impounded or otherwise stored by CONTRACTOR, while in possession of CONTRACTOR, or otherwise under CONTRACTOR'S custody and/or control, in an amount not less than Seventy –Five Thousand Dollars (\$75,000.00);
  - (4) On-hook Liability (occurrence) based upon the unladen weight of each tow truck- insuring against all liability for damage to any vehicle towed by CONTRACTOR, or otherwise physically connected to CONTRACTOR'S tow truck. For a tow truck of less than 20,000 pounds unladen, such insurance limits shall be no less than Fifty Thousand Dollars (\$50,000.00), and Seventy-Five Thousand Dollars (\$75,000.00), for tow trucks having and unladen weight of 20,000 pounds or more;
  - (5) Other required insurance, endorsements or exclusions as required by the CITY;
  - (6) The policies of insurance required in subsections 1 and 2 of this Section (b) shall have no less than the following limits of coverage:
    - (i) \$1,000,000 (One Million Dollars) for bodily injury or death;
    - (ii) \$1,000,000 (One Million Dollars) for property damage;
    - (iii) Not less than Two Million Dollars (\$2,000,000) combined Single Limit for Injuries, including Accidental Death and Property Damage Insurance.
- (c) Each such policy of insurance required in Section (b) shall:
- (1) Be subject to no deductible amount unless otherwise approved in writing by CITY;
  - (2) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated AVIII or better according to the most recent A.M. Best Co. Rating Guide;
  - (3) Name as additional insured the CITY, its elected officials, officers, agents, and employees;

- (4) Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insured shall be called upon to cover a loss under said policy;
  - (5) Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;
  - (6) All insurance coverage shall contain a clause substantially in the following words; "It is hereby understood and agreed that this policy shall not be canceled nor coverage reduced except upon thirty (30) days' prior written notice to the City of Upland of such cancellation or reduction in coverage as evidenced by a return receipt for a registered letter." CONTRACTOR agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions;
  - (7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;
  - (8) Specify that the insurer waives all rights of subrogation against any of the named additional insureds; and
  - (9) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorney's fees, shall be paid in addition to and shall not deplete any policy limits.
  - (10) Otherwise be in form satisfactory to CITY.
  - (11) Prior to commencing performance under this agreement, the CONTRACTOR shall furnish the CITY with certificates and original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All certificates with endorsements or policies shall be received and approved by the CITY before CONTRACTOR commences performance. CONTRACTOR shall provide CITY with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.
4. Indemnity. The CONTRACTOR shall indemnify, defend and hold the CITY, its elected officials, officers, agents, and/or employees free and harmless from all claims, liabilities, costs, and demands of any description arising out of CONTRACTOR'S performance of this agreement or any supplemental agreement, to the extent such claims or demands are alleged to be the result of an act or omission of CONTRACTOR, or any of CONTRACTOR'S employees, officers, agents or anyone acting on behalf of CONTRACTOR. CONTRACTOR'S duty to indemnify shall include payment of all actual attorney's fees, experts' costs, court costs and all other costs of litigation incurred by CITY.

Claims hereby covered shall include, but are not limited to, any loss, theft, damage, or break-ins as to automobiles under CONTRACTOR'S custody or control. Claims hereby covered shall also include claims alleging that the procedures utilized in the care, custody, control, and/or selling of vehicles do not comply with statutory or constitutional requirements.

CONTRACTOR shall provide proof to the CITY of having obtained insurance coverage guaranteeing CONTRACTOR'S obligations under this Section. This insurance shall guarantee that CONTRACTOR shall defend and hold free and harmless the CITY, and shall pay any judgments, claims or settlements arising from any of the aforementioned described acts or omissions, including claims alleging that the procedures utilized in towing, storing, and/or selling vehicles failed to comply with statutory requirements.

5. Independent Contractor It is expressly understood and agreed that in the furnishing of all labor and equipment and in the performance of all work under this agreement, the CONTRACTOR is acting as an independent contractor and not as an agent, servant, or employee of the City of Upland.
6. Fees/Services Except as otherwise provided by law, all towing and storage charges shall be paid by the owner or lawful possessor of the towed, stored or impounded vehicle.

Except as otherwise provided by law, CONTRACTOR shall provide tow services in accordance with the following Fee Schedule for those services requested by the City of Upland Police Department:

a. TOW, STORAGE AND DEFINITION OF SERVICE

TOWS

City-owned Vehicles:

City owned vehicles that weigh less than 3 tons and are within 50 miles of the City Yards located at 1370 N. Benson Avenue, Upland will not be charged for towing. Those over the weight limit or outside the mileage will be billed at the tow company's normal rate. This is inclusive of 30 day storage lien sale vehicles into and out of the CITY's storage facility.

FEES

No Charge

30-Day Impounded Vehicles:

Vehicles that are impounded for 30-days and will be stored at the Upland Police impound lot located at 1370 N. Benson Avenue, Upland (Tow company will bill every thirty days for above described vehicles and the City of Upland will pay 30 days net upon receipt and verification of invoice.)

\$ 150.00

SERVICES

Change of flat tire of City of Upland Police owned vehicles. (When the City Yard is closed and a police vehicle within the above described mileage limits needs a tire changed. Outside of the mileage limits would incur the tow company's normal charge for a flat tire change.)

No Charge

Storage fees are to be in compliance with California Vehicle Code section 22658.

Automobile (Storage)	<u>\$ 70.00</u> Per Day
Motorcycles (Storage)	<u>\$ 70.00</u> Per Day
Trucks, Trailers, Boats or Others (Storage): 20' to 40' in Length	<u>\$ 75.00</u> Per Day
50' and Over	<u>\$ 75.00</u> Per Day

- b. The Upland Police Department shall, insofar as possible, attempt to limit impound calls for 72 hour violation vehicles to the period between the hours of 7:00 a.m. and 9:00 p.m., Sunday through Saturday. However, towing services shall be available 24 hours per day for emergencies, and the maximum permitted response time shall not exceed 25 minutes. "Response time" shall mean that period of time commencing upon receipt of request for service from the Upland Police Department, and ending upon the actual time of arrival of CONTRACTOR'S tow vehicle at the scene. At no time prior to receiving written notice shall any of CONTRACTOR'S employees, officers, agents or anyone else acting on CONTRACTOR'S behalf, have any physical contact with any impounded vehicle or any of the contents therein, except as specifically required in order to perform services required by this agreement, or where otherwise directed by a representative of the Upland Police Department.
- c. CITY shall not be responsible for the CONTRACTOR'S fees that are the result of calls made to CONTRACTOR by the Upland Police Department on behalf of third parties where such third parties have already removed their vehicles at the time the CONTRACTOR'S arrival at the towing scene or when third parties otherwise decline to use the CONTRACTOR'S services. In such situations, the CONTRACTOR will look to the third parties for payment of its fees. CITY shall not be responsible for fees when calls for service are cancelled by the Upland Police Department when the call was initiated for service by the CITY employee during a work related function. No billing to the CITY shall occur for any other tows except 30 day impounds without prior approval from an Upland Police Department supervisor. The tow company will allow two non-billable tows a month (non-cumulative) to the CITY; this is only to be utilized due to CITY employee towing errors, occurring from work related activity. These non-billing requests will be at the direction of the Patrol Division Commander or his/her designee.

- d. If a CONTRACTOR'S response is greater than the allotted time stipulated within this contract, the original tow may be cancelled and the tow for the following week called to respond. The City shall not be billed for the cancelled tow. This shall only occur at the discretion of a supervisor.
  - e. CONTRACTOR'S fees shall be subject to adjustment once each year to reflect changes in labor, equipment, repair, and fuel costs. Proposed adjustments may be approved by the Chief of Police based upon documented increases in the cost-of-living index as established by the United States Department of Labor.
7. Release of Vehicles No vehicle stored or impounded at the direction of the Upland Police Department shall be released without written approval of the Upland Police Department.
  8. Mediation of Disputes A representative of the Upland Police Department who is not assigned to patrol or traffic duties shall mediate any dispute between the CONTRACTOR and the CITY regarding the administration of this Agreement and the decision shall be binding on the CONTRACTOR. Notwithstanding the foregoing, disputes concerning a suspension of CONTRACTOR as an Official Tow Provider shall be governed by the provisions of Section 13 of this agreement.
  9. Entire Agreement This agreement and Exhibit A constitute the entire contract between the CITY and CONTRACTOR. No representation, agreement or promise, whether express or implied, shall be binding upon either party hereto unless expressly set forth herein. Any changes or modifications of any of the terms and conditions herein shall be in writing and executed by the parties hereto, provided, however, that CONTRACTOR understands and agrees that it will, if required by the CITY, execute such further agreements as the CITY requires to provide additional insurance protection for the CITY against third party claims arising from CONTRACTOR'S operations pursuant to this agreement.
  10. Termination Either the CITY and/or the CONTRACTOR may terminate this agreement upon giving to the other thirty (30) days' prior written notice of said termination. Termination may be with or without cause and, upon termination, neither party shall have any further liability hereunder provided, however, that CONTRACTOR'S obligations pursuant to Section 3(c)(4) shall continue for the maximum period permitted by law.

As an alternative to termination, and at CITY'S option, whenever CONTRACTOR is determined to have materially violated any provision of this Agreement, including any of the provisions set forth in Exhibit A hereto, CITY may temporarily suspend CONTRACTOR'S status as an Official Tow Provider. In such event, CONTRACTOR shall be provided written notice of the suspension and the grounds therefore. Such suspension may continue until CONTRACTOR provides evidence satisfactory to the Chief of Police that it has corrected the violation and, where applicable, has taken appropriate steps to insure that a similar violation will not again occur. The period of suspension shall not exceed ninety (90) days, unless otherwise agreed upon in writing by the parties.

CONTRACTOR may appeal such suspension, including the grounds or duration thereof, by filing a written appeal and request for hearing with the Chief of Police within five (5) business days of the date of the notice of suspension. The Chief of Police shall schedule and conduct a hearing within ten (10) business days, and shall affirm, reverse or reverse with conditions that the appealed decision. The decision of the Chief of Police shall be final unless, within five (5) business days of the date of such decision, CONTRACTOR files a written appeal and request for hearing with the City Manager. In such event, the City Manager shall schedule and conduct a hearing within ten (10) business days and the City Manager's decision shall be final.

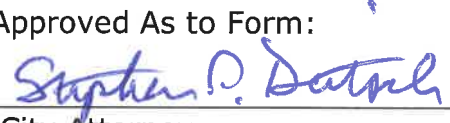
11. Assignment. This agreement may not be assigned in whole or in part, nor shall CONTRACTOR subcontract any portion of the work required to be performed herein or utilize equipment or storage yard not owned or leased by CONTRACTOR, without the prior written consent of the CITY, and any attempted assignment thereof without such consent shall be null and void.
12. Attorney's Fees. Should it be necessary for any party to commence any legal action or proceeding for breach or to enforce the terms or conditions hereof, the prevailing party in such action shall be entitled to recover from the unsuccessful party all reasonable attorney's fees, experts' costs, and all other costs of suit.
13. Severability. Should any provision, section, word or sentence of this agreement or Exhibit A hereto be declared invalid or preempted by a court of competent jurisdiction, such invalidity or preemption shall not affect any remaining provision, section, word or sentence of this agreement.

[Signatures on following page]

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By:   
Michael Blay, City Manager

Attest:   
Keri Johnson, City Clerk

Approved As to Form:   
City Attorney

CONTRACTOR: STEVE's Towing

BY: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

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

BY: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

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

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: \_\_\_\_\_  
Michael Blay, City Manager

Attest:

\_\_\_\_\_  
Keri Johnson, City Clerk

Approved As to Form:

\_\_\_\_\_  
City Attorney

CONTRACTOR: STEVE's Towing

BY: \_\_\_\_\_

*Miguel Leyva*

(Printed Name)

Title: *president/owner*

BY: \_\_\_\_\_

*Miguel Leyva*

(Printed Name)

Title: *V. President/owner*

EXHIBIT A

CITY OF UPLAND  
POLICE DEPARTMENT

2. UNDER NO CIRCUMSTANCES SHALL AN OFFICIAL TOW PROVIDER RESPOND TO ANY ACCIDENT SCENE OR SCENE OF POLICE ACTIVITY UNLESS SPECIFICALLY REQUESTED TO DO SO BY THE UPLAND POLICE DEPARTMENT.
3. All tow vehicles shall be equipped and each towing business shall be licensed as required by law. All tow vehicles shall be inspected to insure compliance with all provisions of Sections 24605, 25253, 27700 and 27907 of the California Vehicle Code, and any and all other applicable statutes, rules and regulations. Inspections may be conducted by a captain of the Upland Police Department or his designee as deemed necessary, or by any other entity designated by the Upland Police Department. The name of the business shall be conspicuously displayed on each side of each tow vehicle.
4. Each Official Tow Provider shall at all times maintain in force and full effect one of the forms of financial responsibility as specified in Section 16021 and 16055 of the California Vehicle Code. Each Official Tow Provider is required to file with the Police Department proof that such financial responsibility is in fact in effect and in full force (insurance binder from company or agent shall be sufficient proof).
5. All required tow, storage and impound services shall be available on a 24-hour, 7 day-a-week basis during the company's weekly rotation turn. Tow companies will be rotated on a weekly basis defined as Sunday 12:00 am to the following Saturday 11:59 pm.
6. All Official Tow Provider storage and office facilities (capable of completing vehicle releases) must be within a five mile radius from the Upland Police Department, 1499 W. 13<sup>th</sup> Street. Upland.
7. Adequate security for vehicles and property at the required storage facility must be provided. Minimum standards shall consist of:
  - a. A wall or fence at least six feet in height surrounding the police storage and impound lot. The minimum capacity of such shall be fifty (50) vehicles, and the lot shall conform to land use regulations of the City or County jurisdiction in which it is located.
  - b. At least one gate or door that will allow adequate vehicular access to the lot and an adequate locking device on such gate or door.
  - c. Such additional security devices and lighting as deemed necessary by the Police Department.
8. Tow truck drivers shall possess sufficient skills and ability to ensure a safe and proper execution of their service responsibilities. All drivers shall possess a proper class and valid driver's license according to Section 12804 of the California Vehicle Code. No tow truck owner, operator, or driver shall be allowed to provide tow services if he or she has been convicted of driving under the influence within the past seven (7) years, or convicted for any felony or theft related crime within the last ten (10) years. Further, no tow company employee, agent, owner may operate a tow vehicle in the performance of official police tow services if he or she has been convicted of three (3) or more moving violations in the previous three (3) years. Prior to commencing service as an Official Tow Provider or driver thereof, and each two (2) years thereafter, each tow truck operator and driver thereof shall be fingerprinted by the Upland Police Department, at the tow truck operator's expense, for purposes of verifying compliance with this section. Each Official Tow Provider shall immediately advise the Chief of Police of the Upland Police Department of any facts which would cause such Provider, or any tow truck owner, operator, or driver thereof, to be disqualified from providing services due to any criminal conviction or conviction of traffic violations. Each Official Tow Provider shall comply with

all California Vehicle Code reporting requirements, including the requirements set forth in Section 10650 and 10652. The Police Department shall be furnished a copy of the report which the tow operator is required to furnish the Department of Justice by receipted mail. The copy of said notice to the Police Department may be forwarded by regular mail to the attention of the Patrol Division Commander.

9. Each Official Tow Provider shall maintain records of tow services furnished pursuant to this agreement which include a description of each vehicle towed, the nature of service, time and location of call, and the response time from receipt of call to arrival of the tow truck at the scene. Such records shall be maintained for no less than one (1) year and shall be subject to inspection by Upland Police Department.
10. Upon request, adequate impound space is to be provided to accommodate vehicles held for the purpose of processing for physical evidence. Such impound space shall be within or contiguous to the required tow yard and shall be protected by an enclosure consisting of a separate fenced yard or area and gate with a locking device for protection from contamination. Protection shall also be provided to preclude evidence contamination by employees and other individuals during normal business hours if requested to hold for prints.
11. Each Official Tow Provider shall clean up and remove all debris from the accident scene as required by Vehicle Code Section 27700 and Police Department personnel.
12. Each Official Tow Provider shall have available for its immediate use, at least four tow trucks, one of which shall be twin-boomed and one of which shall be of flat bed design. All tow trucks shall be at least one ton and dual-wheeled. During checkpoints assigned companies are required to have a minimum of three tows and drivers at the scene. Only the on-scene supervisor may make exceptions to this.
13. Checkpoint tow rotations will be rotated after each individual checkpoint. Night time (starting after 6:00 pm) checkpoints and daytime (starting before 6:00 pm) will be rotated in the same manner however tracked separately as there are typically more night time checkpoints than day time.
14. All tow trucks shall be equipped with a vehicle dolly and a fully functioning commercial VHF or UHF two-way radio, cellular or other wireless telephone and a GPS or similar device.
15. Tow and storage rates shall be conspicuously posted in the office of the towing service, and shall, at all times, be available for review by any member of the public. Each Official Tow Provider shall accept major credit cards for the payment of towing, storage and/or impound fees.
16. Each Official Tow Provider shall maintain a business office for release of vehicles and the required storage and impound lot available for use twenty-four (24) hours per day, seven (7) days per week.
17. All employees shall be provided with a distinctive highly reflective uniform shirt. A highly reflective vest may be worn in lieu of the reflective type uniform, these must be ANSI class II or class III in order to meet Federal Highway Administration rules. Each uniform shall state the tow company name, as well as the employee's name, in a conspicuous place. Each employee shall have sufficient uniforms so as to maintain a neat and clean appearance at all times. The reflective uniform and/or vest must be worn when the driver is within the roadway or performing a tow service for department personnel.
18. Each owner and employee shall, at all times, treat members of the public courteously and fairly and shall take all reasonable steps to avoid disputes. In furtherance thereof, each Official Tow Provider shall establish a written procedure for accepting written complaints from members of the public. Written complaints received shall be maintained for no less than one (1) year and shall be available for inspection upon request by a member of the Upland Police Department. These customer service standards shall be in addition to any and all customer service standards as may be adopted by the Upland

Police Department and provided to the Official Tow Provider. Each employee shall be provided a copy of this Tow Policy and Procedures.

19. Complaint files containing officer complaints regarding individual tow companies will be maintained by the Traffic Division. By appointment, these files are subject to viewing by the tow company's owners or his/her designee, only the respective files may be viewed.
20. In addition to towing and storage rates required to be posted, each Official Tow Provider shall also conspicuously post in its business office area open to the public, a copy of this Tow Policy and Procedures and written notice of the procedure to file a written complaint.
21. Response time is defined as "less than twenty five minutes".