

CONTRACT AGREEMENT

between

Tow Company)
Street Address)
City, State ZIP Code)
(hereinafter "Contractor"))

Contract No.: 09-FSP-01

and

Sacramento Transportation Authority)
431 I Street, Suite 106)
Sacramento, CA 95814)
(hereinafter "Authority"))

Term: January 1, 2010 – December 31, 2013

for

FREEWAY SERVICE PATROL SERVICES

Beat 5 — Interstate 80: Interstate 5 to Business 80

Beat 6 — Interstate 5: Elk Grove Blvd. to Elkhorn Blvd/Highway 99

Beat 7 — Interstate/Bus. 80 in Yolo County: Jefferson Blvd. to Solano County Line

D. Fuel Cost Adjustment

The normal range of the price of fuel for the purposes of this contract is \$2.50 to \$3.50 per gallon of diesel. In the event the average monthly retail price for diesel fuel in Northern California falls below \$2.50 per gallon or rises above \$3.50 per gallon, a fuel cost adjustment (FCA) shall be calculated into the hourly rate of compensation on a month-to-month basis as follows:

In months where the average price of diesel fuel is above \$3.50/gallon:

$$(A - \$3.50) * 2.75 = \text{FCA } \underline{\text{added}} \text{ to hourly rate specified above}$$

In months where the average price of diesel fuel is below \$2.50/gallon:

$$(\$2.50 - A) * 2.75 = \text{FCA } \underline{\text{subtracted}} \text{ from hourly rate specified above}$$

where A is the average monthly cash price for diesel fuel in Northern California, as reported weekly by the California Energy Commission and 2.75 is a factor approximating the average number of gallons of fuel consumed or used per hour of operation for one truck.

- E. The compensation set forth above will cover and include all applicable labor surcharges such as taxes, insurance, and fringe benefits, as well as equipment, supplies, tools, indirect costs, overhead, general and administrative expenses, and profit.
- F. Authority shall pay Contractor for the services satisfactorily performed hereunder an amount as calculated above and invoiced to the Authority not more often than monthly. All invoices shall be submitted to Authority and be supported by documentation from CHP dispatch, assist records as described in Section H below, completed timesheets as provided by Authority, or other proof as may be reasonably required by Authority. Payment of the approved portion of such invoice shall be made to Contractor by Authority within thirty (30) calendar days following receipt. Errors in billing will be resolved by CHP, Authority, Caltrans and Contractor within 10 working days of receipt of invoice.
- G. Records and Audit: Contractor shall permit authorized representatives of Authority and any other applicable government agency to inspect and audit all records of Contractor relating to its performance under this Contract from date of Contract through and until expiration of three years after completion of Contract. For purposes of audit, the date of completion of the Contract shall be the date of Authority's payment for Contractor's final billing (so noted on the invoice) under this Contract, or a period of ninety days from the date of Authority's Notice of Final Acceptance.

- H. Extended Hours: Extended hours of service shall be subject to prior approval by CHP and/or Caltrans. CHP shall document all extended hours requests in writing. Extended hours shall be reimbursed at the straight time rate and paid in quarter-hour increments.
- I. Original assist records shall be submitted to Authority by Contractor on a weekly basis.
- J. Performance Deposit: The performance deposit submitted with Contractor's proposal will be deposited into an interest bearing account. At the expiration of the Contract, the performance deposit, plus any accrued interest, will be returned to Contractor less any charges for issued equipment which has not been returned. If Contractor defaults prior to the completion of the Contract, the performance deposit shall be forfeited to the Authority as liquidated damages.

4.0 AUTHORITY REPRESENTATIVES

Norman Hom shall be the Authority's designated representative for the Contract. Representative shall manage all technical aspects related to the performance of this Contract. Contractor shall make such oral or written reports to Authority's Representative as he may request in addition to those specifically required elsewhere by this Contract.

5.0 TERMINATION

- A. Authority may, by written notice to Contractor, terminate this Contract in whole or in part at any time, either for Authority's convenience or because of the failure of Contractor to fulfill its Contract obligations. Upon receipt of such notice, Contractor shall immediately discontinue all services and deliver to Authority all records relating to services provided before termination.
- B. If the termination is for the convenience of Authority, Authority shall pay Contractor the allowable costs incurred prior to effective date of termination.
- C. If the termination is due to the failure of Contractor to fulfill its Contract obligations, Authority may award a contract to a back up contractor. In such case, Contractor shall be liable to the Authority for any reasonable cost or damages occasioned to the Authority thereby.
- D. If, after the notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of Authority. In such event, adjustment shall be made as provided in paragraph B of this Article.
- E. The rights and remedies of the parties provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

- F. Contractor, in executing this Contract, shall be deemed to have waived any and all claims for damages in the event of Authority's termination for convenience as provided in paragraph B of this Article.

6.0 INSURANCE REQUIREMENTS FOR CONTRACTORS

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his/her agents, representatives, or employees.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 001)
2. Insurance Services Office form CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto)
3. Employer's Liability Insurance
4. On-Hook Insurance
5. Inland Marine Floater Insurance
6. Umbrella Insurance
7. Workers' Compensation insurance as required by the State of California, with a Waiver of Subrogation endorsement in favor of STA

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Owned, Non-Owned, and Hired Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

- | | | |
|-------------|--|---|
| 4. On-Hook: | <u>Gross Weight #</u> 10,000 - 20,000 | <u>Minimum Coverage Per Accident</u> \$ 60,000 |
|-------------|--|---|
5. Inland Marine Floater Insurance: \$5,000 or the replacement cost of the equipment supplied by STA, whichever is higher.
6. Umbrella Insurance: \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions must be declared to and approved by Authority. At the option of Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Authority and its subsidiaries, officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

D. Other Insurance Provisions

The general liability and automobile liability are to contain, or be endorsed to contain, the following provisions:

1. Authority, CHP, Caltrans, State of California, and their officials, employees and volunteers are to be covered as insureds as respects:
 - liability arising out of activities performed by or on behalf of the Contractor;
 - products and completed operations of the Contractor;
 - premises owned, occupied or used by the Contractor;
 - automobiles owned, leased, hired, or borrowed by the Contractor.

The coverage shall contain no special limitations on the scope of the protection afforded to Authority, its subsidiaries, officers, officials, employees, or volunteers.

2. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the Authority, its subsidiaries, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its subsidiaries, officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Authority, its subsidiaries, officers, officials, employees, or volunteers.

4. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Authority and its subsidiaries.

E. Acceptability of Insurers

All insurance, with the exception of workers' compensation coverage, is to be placed with insurers currently admitted in California, with a current *A.M. Best's* rating no less than A:VII. Workers' compensation coverage is to be placed with insurers currently admitted in California.

F. Verification of Coverage

Contractor shall furnish Authority with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms approved by Authority's Risk Management Department. All endorsements are to be received and approved by Authority before work commences. Authority may at any time request written verification that insurance coverage is being maintained.

G. Liability and Indemnification

Contractor shall indemnify, hold harmless and defend Authority, CHP, Caltrans, State of California, Sacramento Area Council of Governments, Central Valley Service Authority for Freeway Emergencies, and their officers, officials, by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees) on account of bodily injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of Authority) arising out of or resulting from the acts or omissions to act of Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone of whose acts any of them are liable in the performance of the Work, whether occurring during the course of the contract or after its completion, unless caused solely by the negligence or willful misconduct of the parties to be indemnified.

This indemnity shall survive termination of the Contract or final payment thereunder. This indemnity is in addition to any other rights or remedies which Authority may have under the law. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, Authority may in its sole discretion reserve, retain, or apply any monies due to Contractor under the Contract for the purpose of resolving such claims, provided, however, that Authority may release such funds if Contractor provides Authority with reasonable assurance of protection of Authority's interests. Authority shall in its sole discretion determine whether such assurances are reasonable.

Claims against the parties to be indemnified, by any employee of Contractor, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not limit Contractor's indemnification obligation, set forth above, in any way, by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or its subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts or insurances.

7.0 REVISIONS IN SCOPE OF WORK

- A. Authority may, from time to time, make changes in Article 1 - Scope of Services under this Contract, through a Change Order. A Change Order shall not modify the overall purpose of this Contract.
- B. Extra Work: At any time during the term of this Contract, Authority may order Extra Work to be performed by Contractor. Extra Work is defined as work that was not contained in this Contract; is determined by the Authority to be necessary; and bears a reasonable relation to the work originally described in the Contract.
- C. Upon receipt of a Change Order approved by Authority, Contractor shall continue performance of the Scope of Services as changed. Changes in the Scope of Services and equitable adjustments in compensation and schedule shall be incorporated in written amendments to this Contract either prior to or subsequent to Authority's issuance of a Change Order.

8.0 EQUAL EMPLOYMENT OPPORTUNITY/FAIR EMPLOYMENT & HOUSING ACT

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment," as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations."
- B. Compliance With FEHA: Contractor shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Sec 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the Contract by reference and made a part hereof as if set forth in full.

- C. Nondiscrimination: Contractor, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- E. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities a may be determined by the Authority to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the Authority, and shall set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Agreement, the Authority shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- 1) Withholding of payments to Contractor under this Agreement until Contractor complies;
 - 2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- G. Incorporation of Provisions: Contractor shall include the provisions of subsections A through F, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the Authority may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request the Authority to enter such litigation to protect the interests of the Authority.

9.0 DRUG FREE POLICY

Contractor shall provide a drug free workplace by adopting a drug free workplace policy as set forth in Attachment A.

10.0 PROHIBITED INTERESTS

- A. Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Authority shall have the right to annul this contract without liability.
- B. Contractor agrees that, for the term of this Contract, no member, officer, or employee of Authority or of a local public agency during his/her employment and for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any interest, direct or indirect, in this Contract, or to any benefit arising thereof.
- C. The employment by Contractor of personnel on the payroll of the Authority will not be permitted in the execution of this Contract, even though such employment may be outside of the employee's regular working hours. Further, the employment by the Contractor of personnel who have been on the Authority payroll within one (1) year prior to the date of contract award, where such employment is caused by and/or dependent upon Contractor securing this or related contract with Authority, is also prohibited.

11.0 NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this Contract or changes thereto shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

Sacramento Transportation Authority
431 I Street, Suite 106
Sacramento, CA 95814
Attn: Norman Hom

Tow Company
Street Address
City State ZIP Code
Attn: Contact Person

12.0 COMPLIANCE WITH LAW

Contractor shall familiarize him/herself with and perform the work required under this Contract in conformity with requirements and standards of Authority, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and services may be affected by work under this Contract. Contractor shall also comply with all Federal, California, and local laws and ordinances applicable to any of the work involved in this Contract. This includes but is not limited to compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, Environmental Protection Agency regulations, and the State of California's Energy Policy and Conservation Act.

13.0 DISPUTES

In the event of a disagreement or dispute arising between the parties under this Contract, Authority shall, upon its own initiative or promptly upon the written request of Contractor, make a determination thereof and such determination shall be complied with pending judicial determination of the dispute. Pending final resolution of any dispute hereunder, Contractor shall continue diligently to perform the services under this Contract and in accordance with the Authority's decision or position concerning the disputed matter.

Damage Disputes: Upon receiving a damage complaint from a motorist that Contractor damaged his/her vehicle while lending assistance, Contractor shall immediately notify CHP verbally and provide a follow-up written statement from the involved operator within three working days. Contractor must also notify CHP in writing within three working days regarding the nature of the damage complaint and its disposition. Contractor shall reply to the motorist by telephone within 24 hours of receiving the damage complaint notification. If necessary, Contractor shall send his/her authorized representative and/or insurance company representative to inspect the subject vehicle and complete an incident report within 48 hours after receiving the damage complaint.

If the investigation shows that the damage to the vehicle could have been caused by Contractor, Contractor shall negotiate in good faith to try and resolve the issue and shall report in writing to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after being received.

14.0 GOVERNING LAW

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California.

15.0 ENTIRE AGREEMENT

This Contract, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between Authority and Contractor and supersedes any prior representations, understanding, communications, commitments, agreements, and proposals, oral or written.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed on the date shown below, but effective on the date first hereinabove written.

TOW COMPANY

Tax I.D. Number:

**SACRAMENTO TRANSPORTATION
AUTHORITY**

Authorized Representative

Executive Director

(Date)

(Date)

Approved as to form:

Authority Counsel

Attachment A

DRUG-FREE WORKPLACE POLICY

The company is committed to providing and maintaining a drug-free workplace consistent with the provisions of the Drug-Free Workplace Act of 1988.

Unlawful manufacture, distribution, dispensing, possession of, or use of any controlled substance in the company offices is strictly prohibited. Compliance with this prohibition is a condition of employment. Staff violating this prohibition will be subject to disciplinary action up to and including termination.

The company will provide a drug-free awareness program to inform its staff about:

- The dangers of drug abuse in the workplace;
- The company's policy of maintaining a drug-free workplace;
- Drug counseling, rehabilitation, and other assistance programs that are available; and
- The penalties that may be imposed upon staff members for drug abuse violations occurring in the workplace.

Any staff member who has been convicted of violating any criminal drug statute in the workplace is required to notify the Owner within five days after such conviction. Within ten days after receiving such notice of conviction, the Owner shall notify any federal funding agency requiring such notification, as mandated by the Drug-Free Work-Place Act of 1988. Within thirty days of receiving notice of such conviction, the Owner shall also take one of the following actions with respect to any staff member so convicted:

Initiate disciplinary action and/or require the convicted staff member to participate satisfactorily in a drug-abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

Dissemination of Policy: To achieve the goals of the company's Drug-Free Policy and to ensure that all staff members are aware of the firm's official policy regarding a drug-free workplace, the following steps have been and will be taken:

- Every staff member will be given a copy of the company's Drug-Free Policy.
- The company's Drug-Free Policy will be discussed periodically at management and other staff meetings.
- All new staff members will receive a copy of the company's Drug-Free Policy as part of their initial orientation.