

**SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ACT TOWING, L.L.C.**

THIS SERVICES AGREEMENT (this “Agreement”) is entered into as of May 26, 2020, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and ACT Towing, L.L.C., an Arizona limited liability company (the “Contractor”).

RECITALS

- A. The Town is in need of towing services including, but not limited to, the removal of disabled vehicles from accident scenes, vehicles that constitute traffic hazards, or vehicles that may be evidence of a crime (the “Services”).
- B. Contractor possesses the skill and experience required to provide the Services.
- C. The Mayor and Town Council have determined it is in the Town’s best interest to enter into an Agreement with the Contractor to provide the Services on a rotational basis.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until May 25, 2021 (the “Initial Term”), unless terminated as otherwise provided in this Agreement.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the Town, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iii) the Town approves the additional one-year term in writing (including any price adjustments), as evidenced by the signature of the Mayor or Town Manager thereon, which approval may be withheld by the Town for any reason. The Contractor’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3 Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Contractor shall be deemed to affirmatively assert that (i) the Town is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Contractor claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Scope of Work. This is an indefinite quantity and indefinite delivery agreement for Services as described in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. Services shall only be provided when the Town identifies a need and proper authorization and documentation have been approved. The Town does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

3. Compensation. The Town shall not be responsible for the payment of any fees or costs Contractor shall incur for performance of the Services. Contractor's sole compensation for the Services shall be from fees collected from the owners of the vehicles towed at the rates set forth in the Fee Schedule, attached hereto as Exhibit B and incorporated herein by reference. The Town reserves the right to revise its approved fees at any time, with or without notice to Contractor. If Contractor receives any fees from an owner of a towed vehicle that have been billed to and/or paid by the Chino Valley Police Department ("CVPD"), Contractor shall immediately remit such amounts to the CVPD.

4. Safety Plan. Contractor shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Contractor's sole determination, the Services to be provided do not require a safety plan, Contractor shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town. The Town may use such documents for other purposes without further compensation to the Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Town's sole risk and without liability or legal exposure to Contractor.

6. Contractor Personnel. Contractor shall provide experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement.

9. Materials; Equipment. Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools, transportation and other facilities and services necessary for the proper execution and completion of the Services.

10. Performance Warranty. In addition to any specific obligations set forth in Exhibit A, Contractor warrants that the Services rendered will conform to the requirements of this Agreement and shall be carried out with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies

and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount. The Town may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its

subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 04 13 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Contractor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 13.

12.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a combined single limit of \$1,000,000, and not less than \$100,000 for property damage, each occurrence, on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s Services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Workers’ Compensation Insurance. If Contractor employs anyone who is required by law to be covered by workers’ compensation insurance, Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal

and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

D. Garage Keepers Coverage. Contractor shall maintain Garage Keepers coverage in an amount deemed by Contractor to be adequate and shall provide the Town with proof of said coverage.

E. On Hook/Cargo Coverage. Contractor shall maintain On Hook/Cargo coverage in an amount not less than \$100,000 per occurrence.

12.3 Cancellation and Expiration Notice. Contractor shall provide at least 30 days prior written notice to the Town before insurance required herein expires, is canceled, or is materially changed.

13. Termination; Cancellation. The Town may, by written notice to Contractor as set forth in this Section, terminate this Agreement in whole or in part.

13.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause 60 days after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed Services performed to the termination date.

13.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. If Contractor abandons the Services without the consent of the Town, Contractor shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (A) the difference between the cost of a replacement Contractor to complete the Services and the contract price for Contractor under this Agreement; and (B) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by abandonment of the Services by Contractor. The Town shall use its best efforts to replace Contractor within a reasonable time.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

13.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

13.6 Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, Contractor shall (A) immediately discontinue all Services affected (unless the notice directs otherwise), and (B) deliver to the Town copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the Services including any completed divisible part of the Services which can be deemed to stand alone (the completed divisible parts of the Services will be determined by both parties at the time of termination). Such termination shall not relieve Contractor of liability for errors and omissions. Any use of incomplete documents for the Services or for any other project without the specific written authorization by Contractor will be without liability or legal exposure to Contractor. Contractor shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

14. Miscellaneous.

14.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit A. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.

14.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws, (C) existing and future OSHA standards and (D) all reporting requirements for towed vehicles.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

14.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this

With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Contractor: ACT Towing, L.L.C.
3890 North Highway 89
Chino Valley, Arizona 86323
Attn: Manager

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 14.17 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to

Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

14.18 Israel. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any Town-approved Purchase Order, or the Fee Schedule, the documents shall govern in the order listed herein.

14.20 Time is of the Essence. The timely completion of the Services is of critical importance to the economic circumstances of the Town.

14.21 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

14.22 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

ACT TOWING, L.L.C.,
an Arizona limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ACT TOWING, L.L.C.

[Scope of Work]

See following pages.

SCOPE OF WORK

Prior to Contractor being placed on the rotational tow list, CVPD must inspect and approve all of Contractor's equipment and facilities that will be used in providing the Services. Contractor shall notify the CVPD in writing prior to any change or substitution of the equipment or facilities. If prior notice is not possible due to an emergency situation, written notice within 10 days of any change is required. The Town has designated Randy Chapman as the "Town Representative," but the Town may designate a different person to serve in that role upon 24 hours' notice to the Contractor. All communications to the Town regarding this Agreement shall be through the Town Representative.

1. Requests for Services.

- 1.1 Contractor must be able to respond to requests for Services 24 hours per day, 365 days per year.
- 1.2 Contractor shall provide the Services when and as requested by the Town.
- 1.3 When called by the CVPD, Contractor shall dispatch its own truck; Contractor may not substitute another company to perform the Services.
- 1.4 Contractor shall tow the requested vehicle regardless of its condition or value.
- 1.5 Response time to the designated site shall not be more than 25 minutes, on average, from the receipt of the request from CVPD. Appropriate staffing shall be in place to accommodate this response time 24 hours each day. Average response time will be determined by adding up all of Contractor's recent consecutive response times (up to 15) and dividing by the number of responses.
- 1.6 Failure to respond to a request for Services within 25 minutes may result in: (A) suspension of Contractor from the rotational list; (B) Contractor being placed at the bottom of the rotational list; or (C) cancellation of this Agreement, at the discretion of Town. Extenuating circumstances for delays including, but not limited to, bad weather, severe traffic backup due to crash or additional accidents may be taken into consideration by the Town in its decision to take any action as a result of Contractor's failure to respond within 25 minutes.
- 1.7 Each call to Contractor shall constitute one turn on the rotational list. After each call, Contractor shall be placed at the bottom of the rotation. Contractor shall forfeit its turn and be moved to the bottom of the list if: (A) Contractor fails to answer its telephone, (B) Contractor is unable to respond or provide the Services, or (C) the call is cancelled due to excessive response time. If Contractor arrives more than 30 minutes from the time of the call (per Yavapai County Sheriff's Office "YCSO" record keeping), at the officer's discretion the Contractor may be required to forfeit its turn and be replaced by the next tow company on rotation.

2. Equipment.

- 2.1 Contractor shall have, at a minimum, the following vehicles available at all times, at least one of which is classified as a medium or heavy-duty wrecker:
- A. One power-operated wrecker.
 - B. One rollback wrecker.
- 2.2 All towing vehicles shall:
- A. Have Contractor's name painted on both the driver and passenger sides of the vehicle in lettering at least three inches in height and shall display the current Arizona Department of Public Safety inspection seal.
 - B. Have proper equipment that complies with ARIZ. REV. STAT. § 28-1108 in order to prevent damage to towed vehicles. This equipment includes, but is not limited to: dollies, chains, slings, and bumpers.
 - C. Have the necessary equipment to clean accident scenes including, but not limited to, brooms, shovels and sand or an appropriate absorbent material to be used when sand does not adequately absorb spilled liquids/material.
 - D. Have a functioning two-way radio system with 24-hour dispatching.
 - E. Have the rates posted for all Services.

3. Storage Facilities.

- 3.1 Storage facilities must be located within the corporate limits of the Town of Chino Valley and meet all zoning requirements.
- 3.2 Each facility must be on record with the CVPD and either owned or leased for use by the Contractor. Proof of ownership or lessee status must be provided.
- 3.3 Contractor shall have a staff member on-site at its storage facility to assist customers during business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m., except for the following holidays:
- A. New Year's Day
 - B. Memorial Day
 - C. Independence Day
 - D. Labor Day
 - E. Thanksgiving Day
 - F. Christmas Day

- 3.4 Contractor shall have a telephone number prominently posted at its storage facility for after-hours release of vehicles. The after-hours telephone number shall be answered and responded to at all times so that vehicles may be released after regular business hours, if necessary. Contractor shall maintain with CVPD an emergency phone number to facilitate the release of a vehicle.
- 3.5 Vehicles shall be taken directly to the Contractor's storage facility unless the tow driver is advised otherwise by the CVPD or the vehicle's owner/driver.
- 3.6 The storage facility shall not be located within a wrecking yard that is in the business of dismantling vehicles.
- 3.7 Contractor shall provide a fenced storage area with a secure fence at least six feet in height plus outwardly slanted three-strand (or greater) barbed or razor wire that complies with the requirements of the Chino Valley Town Code and Unified Development Ordinance.
- 3.8 The storage area shall be lit with at least 7.4 lumen light output level of electrical light for each square foot of storage area.
- 3.9 The storage facility shall have a controlled access point and be locked when unattended. Contractor shall be responsible for the safekeeping of vehicles stored and for the items and personal property in the stored vehicles. Vehicles cannot be stored at any location other than those on record with the CVPD.
- 3.10 Vehicles shall not be removed from the initial storage yard for a period of 10 calendar days unless requested by the owner or authorized agent. If, after a period of 10 calendar days, instructions have not been received from an owner or authorized agency, Contractor may remove the vehicle to an alternate storage lot outside the Town boundaries that meets the security requirements listed in this Section. Removal to an alternate lot may not result in any additional charge to the vehicle owner.
- 3.11 A person whose vehicle is stored/impounded for reasons other than evidentiary purposes shall have the right to remove any personal property, perishables, or valuables prior to the release or payment of impound fees (excluding items attached to the vehicle; e.g., stereo equipment, etc.). All storage fees shall be assessed against the vehicle/owner and not against personal property.
- 3.12 Upon reasonable notice, Contractor shall permit inspection of the storage facilities by any member of the CVPD during business hours.

4. Personnel.

- 4.1 Contractor shall have sufficient qualified personnel available for the operation of its vehicles at all times.

- 4.2 All drivers must have a current State of Arizona driver's license, with proper class, endorsements and medical qualifications.
- 4.3 Contractor's personnel (and owners) may not solicit or suggest a repair facility to the owner/driver of a damaged vehicle.
- 4.4 All drivers shall operate the vehicle used for towing in a safe and prudent manner and obey all laws and ordinances at all times.
- 4.5 Drivers shall wear safety vests any time they are in a roadway, including while hooking up vehicles to be towed and when cleaning debris from the scene.
- 4.6 Contractor shall be fully responsible for its drivers' actions.
- 4.7 While performing Services under this Agreement, Contractor's personnel shall refrain from acts of misconduct including, but not limited to, the following:
 - A. Rude or discourteous behavior, including profane and vulgar language.
 - B. Any act of sexual harassment or sexual impropriety.
 - C. Indication of alcohol and/or drug use or appearing at the scene with an alcohol odor emitting from the employee's breath. In such case, the employee shall submit to a preliminary alcohol screening test upon demand of the Town Representative.
 - D. Lack of service, selective service, or refusal to provide service which the employee(s) is capable of performing.
- 5. Information to be Provided by Contractor to Person Responsible for the Towed Vehicle.
 - 5.1 Contractor's business card, which shall contain the following information:
 - A. Contractor's name, address and telephone number.
 - B. Hours of operation.
 - C. Telephone number for after-hours release of vehicles.
 - 5.2 A brochure listing the rates, terms of this Agreement and clear instructions for retrieval of the vehicle.
- 6. Storage/Release of Vehicles.
 - 6.1 When instructed by a Chino Valley Police officer to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall deliver the vehicle to the Town's

storage yard located at 1950 Voss Drive, Chino Valley, Arizona (the “Yard”). (See Paragraph 10 for additional requirements related to vehicles towed pursuant to ARIZ. REV. STAT. § 28-3511).

- 6.2 A vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 may be stored at the Contractor’s impound lot in accordance to Section 11 (Exceptions to Impounding at CVPD).
 - 6.3 It is Contractor’s sole responsibility to determine that the vehicle is being released to the actual owner/authorized agent and shall not release a vehicle until the owner/authorized agent has provided Contractor with a copy of the owner/authorized agent’s valid driver’s license, proof of insurance and current registration for the vehicle.
7. Site Cleanup. Contractor is responsible for cleaning up all debris at the scene of an accident, including all vehicle parts, broken glass, dirt, sand or any other matter left in the roadway as a result of an accident. Contractor is responsible for retention of and/or appropriate disposal of accident debris. **Failure to thoroughly clean up a roadway may result in the driver or company being issued a citation pursuant to ARIZ. REV. STAT. § 28-898(C) or charged with a class 3 misdemeanor pursuant to § 28-7056(A) and possible removal of Contractor from the rotational tow list.**
 8. Cancellation of Services Request. After Contractor has received a request for Services, CVPD may cancel the request at any time. If the cancellation is made prior to any portion of Contractor’s equipment being physically attached to the vehicle to be towed, Contractor shall not charge for the Service. If cancellation is made subsequent to any portion of the tow vehicle’s equipment being physically attached to the vehicle to be towed, Contractor may charge for the Service even if the vehicle is not towed.
 9. Records; Reports.
 - 9.1 Contractor shall maintain a record for one year on each vehicle towed at CVPD’s request. The record shall contain, at minimum, the following information:
 - A. Make, model and year of the vehicle.
 - B. License plate number and state of issue.
 - C. Vehicle identification number.
 - D. Date and time the vehicle was picked up.
 - E. Location where the vehicle was picked up.
 - F. Location where the vehicle was taken (and other storage location(s) as applicable).

- G. Date and time the vehicle was released.
 - H. Name and address of the individual to whom the vehicle was released.
- 9.2 If the vehicle is sold at auction, Contractor shall document, in writing, the date of auction, and the name and address of the person purchasing the vehicle at auction.
 - 9.3 Contractor shall maintain records of itemized tow and storage billing statements.
 - 9.4 Within 10 days after release of a vehicle, Contractor shall notify YCSO Dispatch via facsimile at 928-771-3260.
 - 9.5 Upon reasonable notice, Contractor shall permit inspection of the records (and vehicles) required by this Agreement during business hours as well as an audit of the records at its place of business.
 - 9.6 Contractor shall submit all reports required by ARIZ. REV. STAT. §§ 28-4801 through 28-4884 to the Arizona Department of Transportation.
10. Vehicles Towed Pursuant to ARIZ. REV. STAT. § 28-3511. *The requirements set forth in this section apply only to vehicles towed pursuant to a request from a peace officer to remove and either immobilize or impound a vehicle pursuant to the provisions of ARIZ. REV. STAT. § 28-3511.*
- 10.1 Upon request from CVPD to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall tow, not drive, the vehicle to the Town's Yard. CVPD shall be liable for the vehicle and its contents while the vehicle is impounded at the Yard.
 - 10.2 Contractor shall submit a written invoice to CVPD at the time of delivery for each vehicle it tows to the Yard. CVPD shall retain the invoice and, if a hearing is held and the vehicle released, collect the towing fee from the vehicle owner. The Town shall notify Contractor of the release of the vehicle and shall remit Contractor's towing fee to Contractor within one month of collection.
 - 10.3 If a vehicle stored at the Yard is not released within 30 days of impoundment, the Town shall contact Contractor and Contractor shall tow the vehicle to Contractor's storage facility within one business day of such notice without charge to Town. If the owner subsequently contacts Contractor requesting release of the vehicle, Contractor shall advise the vehicle owner of the requirement for a hearing. If a hearing is held, the Town will collect its hearing fee and impound fees and notify Contractor that the vehicle is available for release. It is the responsibility of Contractor to collect its towing fee and any other impound fees incurred after removal from the Yard. The Town is not responsible and will not pay the towing fee for any vehicle that is not claimed by the owner and subsequently picked up by Contractor.

- 10.4 Failure to notify vehicle owner of the required hearing, prior to release of vehicle, will result in removal of the Contractor from rotational list for 30 calendar days. A second and subsequent violation of this will result in removal from the rotational list for at least one calendar year.
- 10.5 If Contractor obtains possession of any vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 (either through receipt of abandoned vehicle title or by virtue of the owner transferring title to Contractor), Contractor shall provide CVPD with the following information prior to disposing of the vehicle:
 - A. A complete description of the vehicle.
 - B. VIN number.
 - C. Department Report Number.
 - D. A clear copy of the title (front and back).

Upon receipt of this information, CVPD shall prepare a letter authorizing Contractor to take possession of the vehicle and dispose of it in compliance with ARIZ. REV. STAT. § 28-3515.

11. Exceptions to Impounding Vehicles at CVPD, Pursuant to ARIZ. REV. STAT. § 28-3511.

- 11.1 If, after the initial tow or due to collision, a vehicle qualifies for impoundment under ARIZ. REV. STAT. § 28-3511, CVPD may, at its discretion, notify Contractor and order the vehicle to be held under all conditions pursuant to ARIZ. REV. STAT. § 28-3511 at Contractor's approved storage yard.
- 11.2 Any vehicle impounded at Contractor's yard pursuant to ARIZ. REV. STAT. § 28-3511 shall remain at the facility for 30 days, unless written authorization for release is obtained from CVPD.
- 11.3 The vehicle shall not be released until Contractor has received a release from CVPD except as outlined in Section 10.
- 11.4 Contractor shall store the vehicle in accordance with ARIZ. REV. STAT. § 28-3511 and shall only charge the fees outlined in this Agreement.

EXHIBIT B
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
ACT TOWING, L.L.C.

[Fee Schedule]

See following page.

FEE SCHEDULE

(Subject to Change)

TYPE OF SERVICE	TASKS INCLUDED	FEE
Level 1 Service	Unlock Fuel delivery (customer pays for fuel) Tire change (up to 3/4 ton) Jump starts	\$55.00
Level 2 Tow*	Basic tow: Vehicle has keys. Wheels and tires are operable. Vehicle is under 9,000 lb. GVW.	\$95.00
Level 3 Tow*	Accident tow: No keys. Wheels and tires are inoperable. Winching is under 50 feet from tow truck access. Vehicle is under 9,000 lb. GVW.	\$185.00
Level 4 Tow	Vehicle is towed pursuant to A.R.S. § 28-3511. Vehicle is towed as requested by CVPD.	\$200.00
Large Vehicle Tows	9,001 – 16,000 lb. GVW. 16,001 – 26,000 lb. GVW. 26,001 – 80,000 lb. GVW.	\$95.00/hour port to port \$135.00/hour port to port \$175.00/hour port to port
Off-Road Recovery Rate/ Standby Rate***	After first 1/2 hour on scene or vehicle is greater than 50 feet from tow truck access; Vehicle is under 9,000 GVW.	\$95.00
Recovery, Large Vehicles	9,001 – 16,000 lb. GVW. 16,001 – 80,000 lb. GVW.	\$150.00/hour \$250.00/hour
Daily Storage	Regular tow after first full 24-hour period.	\$30.00
Daily Storage	Vehicles impounded pursuant to A.R.S. § 28-3511.	\$15.00
After Hours Gate Fee**		\$65.00
Cost Per Loaded Mile		\$4.50
Filing Fee		Not to exceed \$150.00
Fuel Surcharge	Rate will be recalculated based on EIA rates if diesel prices rise to \$4.50 per gallon or higher.	15% of total service bill

* Level 2 and 3 tows include towing the vehicle inside the boundaries of the Town of Chino Valley. When the vehicle owner or agent requests vehicle be towed to a location outside the Town limits, "Cost per loaded mile" may be charged from the Town limits to the requested destination.

** After Hours Gate Fee will be charged only when the owner or agent of a vehicle requests entrance to the impound facility after normal business hours. It will not be charged when a tow is performed outside normal business hours.

*** Off-road Recovery fee will be charged only when a vehicle has to be recovered more than 50 feet from tow truck access and will be charged at the rate commensurate with the vehicle's registered GVW.

No other miscellaneous charges are allowed. These services shall be considered to be part of the towing fee and include, but are not limited to, such things as Snatch Block, Skates, no key, driveshaft removal, etc.

**SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
CUSTOM RECOVERY, LLC
D/B/A CUSTOM TOWING**

THIS SERVICES AGREEMENT (this “Agreement”) is entered into as of May 26, 2020, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Custom Recovery, LLC, an Arizona limited liability company, d/b/a Custom Towing (the “Contractor”).

RECITALS

- A. The Town is in need of towing services including, but not limited to, the removal of disabled vehicles from accident scenes, vehicles that constitute traffic hazards, or vehicles that may be evidence of a crime (the “Services”).
- B. Contractor possesses the skill and experience required to provide the Services.
- C. The Mayor and Town Council have determined it is in the Town’s best interest to enter into an Agreement with the Contractor to provide the Services on a rotational basis.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until May 25, 2021 (the “Initial Term”), unless terminated as otherwise provided in this Agreement.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the Town, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iii) the Town approves the additional one-year term in writing (including any price adjustments), as evidenced by the signature of the Mayor or Town Manager thereon, which approval may be withheld by the Town for any reason. The Contractor’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement.

The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3 Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Contractor shall be deemed to affirmatively assert that (i) the Town is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Contractor claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Scope of Work. This is an indefinite quantity and indefinite delivery agreement for Services as described in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. Services shall only be provided when the Town identifies a need and proper authorization and documentation have been approved. The Town does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

3. Compensation. The Town shall not be responsible for the payment of any fees or costs Contractor shall incur for performance of the Services. Contractor’s sole compensation for the Services shall be from fees collected from the owners of the vehicles towed at the rates set forth in the Fee Schedule, attached hereto as Exhibit B and incorporated herein by reference. The Town reserves the right to revise its approved fees at any time, with or without notice to Contractor. If Contractor receives any fees from an owner of a towed vehicle that have been billed to and/or paid by the Chino Valley Police Department (“CVPD”), Contractor shall immediately remit such amounts to the CVPD.

4. Safety Plan. Contractor shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration (“OSHA”), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Contractor’s sole determination, the Services to be provided do not require a safety plan, Contractor shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town. The Town may use such documents for other purposes without further compensation to the Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Town’s sole risk and without liability or legal exposure to Contractor.

6. Contractor Personnel. Contractor shall provide experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are

expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement.

9. Materials; Equipment. Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools, transportation and other facilities and services necessary for the proper execution and completion of the Services.

10. Performance Warranty. In addition to any specific obligations set forth in Exhibit A, Contractor warrants that the Services rendered will conform to the requirements of this Agreement and shall be carried out with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount. The Town

may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 04 13 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Contractor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 13.

12.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a combined single limit of \$1,000,000, and not less than \$100,000 for property damage, each occurrence, on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's Services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional

Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Workers’ Compensation Insurance. If Contractor employs anyone who is required by law to be covered by workers’ compensation insurance, Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

D. Garage Keepers Coverage. Contractor shall maintain Garage Keepers coverage in an amount deemed by Contractor to be adequate and shall provide the Town with proof of said coverage.

E. On Hook/Cargo Coverage. Contractor shall maintain On Hook/Cargo coverage in an amount not less than \$100,000 per occurrence.

12.3 Cancellation and Expiration Notice. Contractor shall provide at least 30 days prior written notice to the Town before insurance required herein expires, is canceled, or is materially changed.

13. Termination; Cancellation. The Town may, by written notice to Contractor as set forth in this Section, terminate this Agreement in whole or in part.

13.1 For Town’s Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause 60 days after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed Services performed to the termination date.

13.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party’s nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. If Contractor abandons the Services without the consent of the Town, Contractor shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (A) the difference between the cost of a replacement Contractor to complete the Services and the contract price for Contractor under this Agreement; and (B) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by abandonment of the Services by Contractor. The Town shall use its best efforts to replace Contractor within a reasonable time.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

13.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

13.6 Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, Contractor shall (A) immediately discontinue all Services affected (unless the notice directs otherwise), and (B) deliver to the Town copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the Services including any completed divisible part of the Services which can be deemed to stand alone (the completed divisible parts of the Services will be determined by both parties at the time of termination). Such termination shall not relieve Contractor of liability for errors and omissions. Any use of incomplete documents for the Services or for any other project without the specific written authorization by Contractor will be without liability or legal exposure to Contractor. Contractor shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

14. Miscellaneous.

14.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not

as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit A. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.

14.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws, (C) existing and future OSHA standards and (D) all reporting requirements for towed vehicles.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

14.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Contractor.

14.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

14.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

14.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

14.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for damages that have been reduced to a judgment resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

14.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S.

Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Chino Valley
 202 North State Route 89
 Chino Valley, Arizona 86323
 Attn: Cecilia Grittmann, Town Manager

With copy to: GUST ROSENFELD P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire

If to Contractor: Custom Recovery, LLC, d/b/a Custom Towing
 1222 South Highway 89
 Chino Valley, Arizona 86323
 Attn: Thomas E. Cutlip

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 14.17 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on

Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

14.18 Israel. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any Town-approved Purchase Order, or the Fee Schedule, the documents shall govern in the order listed herein.

14.20 Time is of the Essence. The timely completion of the Services is of critical importance to the economic circumstances of the Town.

14.21 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

14.22 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

CUSTOM RECOVERY, LLC,
an Arizona limited liability company, d/b/a
CUSTOM TOWING

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
CUSTOM RECOVERY, LLC
D/B/A CUSTOM TOWING

[Scope of Work]

See following pages.

SCOPE OF WORK

Prior to Contractor being placed on the rotational tow list, CVPD must inspect and approve all of Contractor's equipment and facilities that will be used in providing the Services. Contractor shall notify the CVPD in writing prior to any change or substitution of the equipment or facilities. If prior notice is not possible due to an emergency situation, written notice within 10 days of any change is required. The Town has designated Randy Chapman as the "Town Representative," but the Town may designate a different person to serve in that role upon 24 hours' notice to the Contractor. All communications to the Town regarding this Agreement shall be through the Town Representative.

1. Requests for Services.

- 1.1 Contractor must be able to respond to requests for Services 24 hours per day, 365 days per year.
- 1.2 Contractor shall provide the Services when and as requested by the Town.
- 1.3 When called by the CVPD, Contractor shall dispatch its own truck; Contractor may not substitute another company to perform the Services.
- 1.4 Contractor shall tow the requested vehicle regardless of its condition or value.
- 1.5 Response time to the designated site shall not be more than 25 minutes, on average, from the receipt of the request from CVPD. Appropriate staffing shall be in place to accommodate this response time 24 hours each day. Average response time will be determined by adding up all of Contractor's recent consecutive response times (up to 15) and dividing by the number of responses.
- 1.6 Failure to respond to a request for Services within 25 minutes may result in: (A) suspension of Contractor from the rotational list; (B) Contractor being placed at the bottom of the rotational list; or (C) cancellation of this Agreement, at the discretion of Town. Extenuating circumstances for delays including, but not limited to, bad weather, severe traffic backup due to crash or additional accidents may be taken into consideration by the Town in its decision to take any action as a result of Contractor's failure to respond within 25 minutes.
- 1.7 Each call to Contractor shall constitute one turn on the rotational list. After each call, Contractor shall be placed at the bottom of the rotation. Contractor shall forfeit its turn and be moved to the bottom of the list if: (A) Contractor fails to answer its telephone, (B) Contractor is unable to respond or provide the Services, or (C) the call is cancelled due to excessive response time. If Contractor arrives more than 30 minutes from the time of the call (per Yavapai County Sheriff's Office "YCSO" record keeping), at the officer's discretion the Contractor may be required to forfeit its turn and be replaced by the next tow company on rotation.

2. Equipment.

- 2.1 Contractor shall have, at a minimum, the following vehicles available at all times, at least one of which is classified as a medium or heavy-duty wrecker:
- A. One power-operated wrecker.
 - B. One rollback wrecker.
- 2.2 All towing vehicles shall:
- A. Have Contractor's name painted on both the driver and passenger sides of the vehicle in lettering at least three inches in height and shall display the current Arizona Department of Public Safety inspection seal.
 - B. Have proper equipment that complies with ARIZ. REV. STAT. § 28-1108 in order to prevent damage to towed vehicles. This equipment includes, but is not limited to: dollies, chains, slings, and bumpers.
 - C. Have the necessary equipment to clean accident scenes including, but not limited to, brooms, shovels and sand or an appropriate absorbent material to be used when sand does not adequately absorb spilled liquids/material.
 - D. Have a functioning two-way radio system with 24-hour dispatching.
 - E. Have the rates posted for all Services.

3. Storage Facilities.

- 3.1 Storage facilities must be located within the corporate limits of the Town of Chino Valley and meet all zoning requirements.
- 3.2 Each facility must be on record with the CVPD and either owned or leased for use by the Contractor. Proof of ownership or lessee status must be provided.
- 3.3 Contractor shall have a staff member on-site at its storage facility to assist customers during business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m., except for the following holidays:
- A. New Year's Day
 - B. Memorial Day
 - C. Independence Day
 - D. Labor Day
 - E. Thanksgiving Day
 - F. Christmas Day

- 3.4 Contractor shall have a telephone number prominently posted at its storage facility for after-hours release of vehicles. The after-hours telephone number shall be answered and responded to at all times so that vehicles may be released after regular business hours, if necessary. Contractor shall maintain with CVPD an emergency phone number to facilitate the release of a vehicle.
- 3.5 Vehicles shall be taken directly to the Contractor's storage facility unless the tow driver is advised otherwise by the CVPD or the vehicle's owner/driver.
- 3.6 The storage facility shall not be located within a wrecking yard that is in the business of dismantling vehicles.
- 3.7 Contractor shall provide a fenced storage area with a secure fence at least six feet in height plus outwardly slanted three-strand (or greater) barbed or razor wire that complies with the requirements of the Chino Valley Town Code and Unified Development Ordinance.
- 3.8 The storage area shall be lit with at least 7.4 lumen light output level of electrical light for each square foot of storage area.
- 3.9 The storage facility shall have a controlled access point and be locked when unattended. Contractor shall be responsible for the safekeeping of vehicles stored and for the items and personal property in the stored vehicles. Vehicles cannot be stored at any location other than those on record with the CVPD.
- 3.10 Vehicles shall not be removed from the initial storage yard for a period of 10 calendar days unless requested by the owner or authorized agent. If, after a period of 10 calendar days, instructions have not been received from an owner or authorized agency, Contractor may remove the vehicle to an alternate storage lot outside the Town boundaries that meets the security requirements listed in this Section. Removal to an alternate lot may not result in any additional charge to the vehicle owner.
- 3.11 A person whose vehicle is stored/impounded for reasons other than evidentiary purposes shall have the right to remove any personal property, perishables, or valuables prior to the release or payment of impound fees (excluding items attached to the vehicle; e.g., stereo equipment, etc.). All storage fees shall be assessed against the vehicle/owner and not against personal property.
- 3.12 Upon reasonable notice, Contractor shall permit inspection of the storage facilities by any member of the CVPD during business hours.

4. Personnel.

- 4.1 Contractor shall have sufficient qualified personnel available for the operation of its vehicles at all times.

- 4.2 All drivers must have a current State of Arizona driver's license, with proper class, endorsements and medical qualifications.
 - 4.3 Contractor's personnel (and owners) may not solicit or suggest a repair facility to the owner/driver of a damaged vehicle.
 - 4.4 All drivers shall operate the vehicle used for towing in a safe and prudent manner and obey all laws and ordinances at all times.
 - 4.5 Drivers shall wear safety vests any time they are in a roadway, including while hooking up vehicles to be towed and when cleaning debris from the scene.
 - 4.6 Contractor shall be fully responsible for its drivers' actions.
 - 4.7 While performing Services under this Agreement, Contractor's personnel shall refrain from acts of misconduct including, but not limited to, the following:
 - A. Rude or discourteous behavior, including profane and vulgar language.
 - B. Any act of sexual harassment or sexual impropriety.
 - C. Indication of alcohol and/or drug use or appearing at the scene with an alcohol odor emitting from the employee's breath. In such case, the employee shall submit to a preliminary alcohol screening test upon demand of the Town Representative.
 - D. Lack of service, selective service, or refusal to provide service which the employee(s) is capable of performing.
5. Information to be Provided by Contractor to Person Responsible for the Towed Vehicle.
- 5.1 Contractor's business card, which shall contain the following information:
 - A. Contractor's name, address and telephone number.
 - B. Hours of operation.
 - C. Telephone number for after-hours release of vehicles.
 - 5.2 A brochure listing the rates, terms of this Agreement and clear instructions for retrieval of the vehicle.
6. Storage/Release of Vehicles.
- 6.1 When instructed by a Chino Valley Police officer to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall deliver the vehicle to the Town's

storage yard located at 1950 Voss Drive, Chino Valley, Arizona (the “Yard”). (See Paragraph 10 for additional requirements related to vehicles towed pursuant to ARIZ. REV. STAT. § 28-3511).

- 6.2 A vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 may be stored at the Contractor’s impound lot in accordance to Section 11 (Exceptions to Impounding at CVPD).
 - 6.3 It is Contractor’s sole responsibility to determine that the vehicle is being released to the actual owner/authorized agent and shall not release a vehicle until the owner/authorized agent has provided Contractor with a copy of the owner/authorized agent’s valid driver’s license, proof of insurance and current registration for the vehicle.
7. Site Cleanup. Contractor is responsible for cleaning up all debris at the scene of an accident, including all vehicle parts, broken glass, dirt, sand or any other matter left in the roadway as a result of an accident. Contractor is responsible for retention of and/or appropriate disposal of accident debris. **Failure to thoroughly clean up a roadway may result in the driver or company being issued a citation pursuant to ARIZ. REV. STAT. § 28-898(C) or charged with a class 3 misdemeanor pursuant to § 28-7056(A) and possible removal of Contractor from the rotational tow list.**
 8. Cancellation of Services Request. After Contractor has received a request for Services, CVPD may cancel the request at any time. If the cancellation is made prior to any portion of Contractor’s equipment being physically attached to the vehicle to be towed, Contractor shall not charge for the Service. If cancellation is made subsequent to any portion of the tow vehicle’s equipment being physically attached to the vehicle to be towed, Contractor may charge for the Service even if the vehicle is not towed.
 9. Records; Reports.
 - 9.1 Contractor shall maintain a record for one year on each vehicle towed at CVPD’s request. The record shall contain, at minimum, the following information:
 - A. Make, model and year of the vehicle.
 - B. License plate number and state of issue.
 - C. Vehicle identification number.
 - D. Date and time the vehicle was picked up.
 - E. Location where the vehicle was picked up.
 - F. Location where the vehicle was taken (and other storage location(s) as applicable).

- G. Date and time the vehicle was released.
 - H. Name and address of the individual to whom the vehicle was released.
- 9.2 If the vehicle is sold at auction, Contractor shall document, in writing, the date of auction, and the name and address of the person purchasing the vehicle at auction.
 - 9.3 Contractor shall maintain records of itemized tow and storage billing statements.
 - 9.4 Within 10 days after release of a vehicle, Contractor shall notify YCSO Dispatch via facsimile at 928-771-3260.
 - 9.5 Upon reasonable notice, Contractor shall permit inspection of the records (and vehicles) required by this Agreement during business hours as well as an audit of the records at its place of business.
 - 9.6 Contractor shall submit all reports required by ARIZ. REV. STAT. §§ 28-4801 through 28-4884 to the Arizona Department of Transportation.
10. Vehicles Towed Pursuant to ARIZ. REV. STAT. § 28-3511. *The requirements set forth in this section apply only to vehicles towed pursuant to a request from a peace officer to remove and either immobilize or impound a vehicle pursuant to the provisions of ARIZ. REV. STAT. § 28-3511.*
- 10.1 Upon request from CVPD to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall tow, not drive, the vehicle to the Town's Yard. CVPD shall be liable for the vehicle and its contents while the vehicle is impounded at the Yard.
 - 10.2 Contractor shall submit a written invoice to CVPD at the time of delivery for each vehicle it tows to the Yard. CVPD shall retain the invoice and, if a hearing is held and the vehicle released, collect the towing fee from the vehicle owner. The Town shall notify Contractor of the release of the vehicle and shall remit Contractor's towing fee to Contractor within one month of collection.
 - 10.3 If a vehicle stored at the Yard is not released within 30 days of impoundment, the Town shall contact Contractor and Contractor shall tow the vehicle to Contractor's storage facility within one business day of such notice without charge to Town. If the owner subsequently contacts Contractor requesting release of the vehicle, Contractor shall advise the vehicle owner of the requirement for a hearing. If a hearing is held, the Town will collect its hearing fee and impound fees and notify Contractor that the vehicle is available for release. It is the responsibility of Contractor to collect its towing fee and any other impound fees incurred after removal from the Yard. The Town is not responsible and will not pay the towing fee for any vehicle that is not claimed by the owner and subsequently picked up by Contractor.

- 10.4 Failure to notify vehicle owner of the required hearing, prior to release of vehicle, will result in removal of the Contractor from rotational list for 30 calendar days. A second and subsequent violation of this will result in removal from the rotational list for at least one calendar year.
- 10.5 If Contractor obtains possession of any vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 (either through receipt of abandoned vehicle title or by virtue of the owner transferring title to Contractor), Contractor shall provide CVPD with the following information prior to disposing of the vehicle:
 - A. A complete description of the vehicle.
 - B. VIN number.
 - C. Department Report Number.
 - D. A clear copy of the title (front and back).

Upon receipt of this information, CVPD shall prepare a letter authorizing Contractor to take possession of the vehicle and dispose of it in compliance with ARIZ. REV. STAT. § 28-3515.

11. Exceptions to Impounding Vehicles at CVPD, Pursuant to ARIZ. REV. STAT. § 28-3511.

- 11.1 If, after the initial tow or due to collision, a vehicle qualifies for impoundment under ARIZ. REV. STAT. § 28-3511, CVPD may, at its discretion, notify Contractor and order the vehicle to be held under all conditions pursuant to ARIZ. REV. STAT. § 28-3511 at Contractor's approved storage yard.
- 11.2 Any vehicle impounded at Contractor's yard pursuant to ARIZ. REV. STAT. § 28-3511 shall remain at the facility for 30 days, unless written authorization for release is obtained from CVPD.
- 11.3 The vehicle shall not be released until Contractor has received a release from CVPD except as outlined in Section 10.
- 11.4 Contractor shall store the vehicle in accordance with ARIZ. REV. STAT. § 28-3511 and shall only charge the fees outlined in this Agreement.

EXHIBIT B
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
CUSTOM RECOVERY, LLC
D/B/A CUSTOM TOWING

[Fee Schedule]

See following page.

FEE SCHEDULE

(Subject to Change)

TYPE OF SERVICE	TASKS INCLUDED	FEE
Level 1 Service	Unlock Fuel delivery (customer pays for fuel) Tire change (up to 3/4 ton) Jump starts	\$55.00
Level 2 Tow*	Basic tow: Vehicle has keys. Wheels and tires are operable. Vehicle is under 9,000 lb. GVW.	\$95.00
Level 3 Tow*	Accident tow: No keys. Wheels and tires are inoperable. Winching is under 50 feet from tow truck access. Vehicle is under 9,000 lb. GVW.	\$185.00
Level 4 Tow	Vehicle is towed pursuant to A.R.S. § 28-3511. Vehicle is towed as requested by CVPD.	\$200.00
Large Vehicle Tows	9,001 – 16,000 lb. GVW. 16,001 – 26,000 lb. GVW. 26,001 – 80,000 lb. GVW.	\$95.00/hour port to port \$135.00/hour port to port \$175.00/hour port to port
Off-Road Recovery Rate/ Standby Rate***	After first 1/2 hour on scene or vehicle is greater than 50 feet from tow truck access; Vehicle is under 9,000 GVW.	\$95.00
Recovery, Large Vehicles	9,001 – 16,000 lb. GVW. 16,001 – 80,000 lb. GVW.	\$150.00/hour \$250.00/hour
Daily Storage	Regular tow after first full 24-hour period.	\$30.00
Daily Storage	Vehicles impounded pursuant to A.R.S. § 28-3511.	\$15.00
After Hours Gate Fee**		\$65.00
Cost Per Loaded Mile		\$4.50
Filing Fee		Not to exceed \$150.00
Fuel Surcharge	Rate will be recalculated based on EIA rates if diesel prices rise to \$4.50 per gallon or higher.	15% of total service bill

* Level 2 and 3 tows include towing the vehicle inside the boundaries of the Town of Chino Valley. When the vehicle owner or agent requests vehicle be towed to a location outside the Town limits, "Cost per loaded mile" may be charged from the Town limits to the requested destination.

** After Hours Gate Fee will be charged only when the owner or agent of a vehicle requests entrance to the impound facility after normal business hours. It will not be charged when a tow is performed outside normal business hours.

*** Off-road Recovery fee will be charged only when a vehicle has to be recovered more than 50 feet from tow truck access and will be charged at the rate commensurate with the vehicle's registered GVW.

No other miscellaneous charges are allowed. These services shall be considered to be part of the towing fee and include, but are not limited to, such things as Snatch Block, Skates, no key, driveshaft removal, etc.

**SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
TRI-CITY TOWING INC.**

THIS SERVICES AGREEMENT (this “Agreement”) is entered into as of May 26, 2020, between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Tri-City Towing Inc., an Arizona corporation (the “Contractor”).

RECITALS

A. The Town is in need of towing services including, but not limited to, the removal of disabled vehicles from accident scenes, vehicles that constitute traffic hazards, or vehicles that may be evidence of a crime (the “Services”).

B. Contractor possesses the skill and experience required to provide the Services.

C. The Mayor and Town Council have determined it is in the Town’s best interest to enter into an Agreement with the Contractor to provide the Services on a rotational basis.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until May 25, 2021 (the “Initial Term”), unless terminated as otherwise provided in this Agreement.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the Town, (ii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iii) the Town approves the additional one-year term in writing (including any price adjustments), as evidenced by the signature of the Mayor or Town Manager thereon, which approval may be withheld by the Town for any reason. The Contractor’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

1.3 Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Contractor shall be deemed to affirmatively assert that (i) the Town is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Contractor claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Scope of Work. This is an indefinite quantity and indefinite delivery agreement for Services as described in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. Services shall only be provided when the Town identifies a need and proper authorization and documentation have been approved. The Town does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

3. Compensation. The Town shall not be responsible for the payment of any fees or costs Contractor shall incur for performance of the Services. Contractor's sole compensation for the Services shall be from fees collected from the owners of the vehicles towed at the rates set forth in the Fee Schedule, attached hereto as Exhibit B and incorporated herein by reference. The Town reserves the right to revise its approved fees at any time, with or without notice to Contractor. If Contractor receives any fees from an owner of a towed vehicle that have been billed to and/or paid by the Chino Valley Police Department ("CVPD"), Contractor shall immediately remit such amounts to the CVPD.

4. Safety Plan. Contractor shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Contractor's sole determination, the Services to be provided do not require a safety plan, Contractor shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town. The Town may use such documents for other purposes without further compensation to the Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Town's sole risk and without liability or legal exposure to Contractor.

6. Contractor Personnel. Contractor shall provide experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement.

9. Materials; Equipment. Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools, transportation and other facilities and services necessary for the proper execution and completion of the Services.

10. Performance Warranty. In addition to any specific obligations set forth in Exhibit A, Contractor warrants that the Services rendered will conform to the requirements of this Agreement and shall be carried out with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to

demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount. The Town may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and

insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 04 13 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. Contractor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 13.

12.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a combined single limit of \$1,000,000, and not less than \$100,000 for property damage, each occurrence, on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s Services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Workers’ Compensation Insurance. If Contractor employs anyone who is required by law to be covered by workers’ compensation insurance, Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor’s employees engaged in the

performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

D. Garage Keepers Coverage. Contractor shall maintain Garage Keepers coverage in an amount deemed by Contractor to be adequate and shall provide the Town with proof of said coverage.

E. On Hook/Cargo Coverage. Contractor shall maintain On Hook/Cargo coverage in an amount not less than \$100,000 per occurrence.

12.3 Cancellation and Expiration Notice. Contractor shall provide at least 30 days prior written notice to the Town before insurance required herein expires, is canceled, or is materially changed.

13. Termination; Cancellation. The Town may, by written notice to Contractor as set forth in this Section, terminate this Agreement in whole or in part.

13.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause 60 days after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed Services performed to the termination date.

13.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. If Contractor abandons the Services without the consent of the Town, Contractor shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (A) the difference between the cost of a replacement Contractor to complete the Services and the contract price for Contractor under this Agreement; and (B) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by abandonment of the Services by Contractor. The Town shall use its best efforts to replace Contractor within a reasonable time.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

13.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

13.6 Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, Contractor shall (A) immediately discontinue all Services affected (unless the notice directs otherwise), and (B) deliver to the Town copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the Services including any completed divisible part of the Services which can be deemed to stand alone (the completed divisible parts of the Services will be determined by both parties at the time of termination). Such termination shall not relieve Contractor of liability for errors and omissions. Any use of incomplete documents for the Services or for any other project without the specific written authorization by Contractor will be without liability or legal exposure to Contractor. Contractor shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

14. Miscellaneous.

14.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit A. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.

14.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws, (C) existing and future OSHA standards and (D) all reporting requirements for towed vehicles.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

14.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this

With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Contractor: Tri-City Towing Inc.
P.O. Box 4105
Chino Valley, Arizona 86323
Attn: Jerry D. Clements

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 14.17 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to

Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

14.18 Israel. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, the Scope of Work, any Town-approved Purchase Order, or the Fee Schedule, the documents shall govern in the order listed herein.

14.20 Time is of the Essence. The timely completion of the Services is of critical importance to the economic circumstances of the Town.

14.21 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

14.22 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

“Vendor”

TRI-CITY TOWING INC.,
an Arizona corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
TRI-CITY TOWING INC.

[Scope of Work]

See following pages.

SCOPE OF WORK

Prior to Contractor being placed on the rotational tow list, CVPD must inspect and approve all of Contractor's equipment and facilities that will be used in providing the Services. Contractor shall notify the CVPD in writing prior to any change or substitution of the equipment or facilities. If prior notice is not possible due to an emergency situation, written notice within 10 days of any change is required. The Town has designated Randy Chapman as the "Town Representative," but the Town may designate a different person to serve in that role upon 24 hours' notice to the Contractor. All communications to the Town regarding this Agreement shall be through the Town Representative.

1. Requests for Services.

- 1.1 Contractor must be able to respond to requests for Services 24 hours per day, 365 days per year.
- 1.2 Contractor shall provide the Services when and as requested by the Town.
- 1.3 When called by the CVPD, Contractor shall dispatch its own truck; Contractor may not substitute another company to perform the Services.
- 1.4 Contractor shall tow the requested vehicle regardless of its condition or value.
- 1.5 Response time to the designated site shall not be more than 25 minutes, on average, from the receipt of the request from CVPD. Appropriate staffing shall be in place to accommodate this response time 24 hours each day. Average response time will be determined by adding up all of Contractor's recent consecutive response times (up to 15) and dividing by the number of responses.
- 1.6 Failure to respond to a request for Services within 25 minutes may result in: (A) suspension of Contractor from the rotational list; (B) Contractor being placed at the bottom of the rotational list; or (C) cancellation of this Agreement, at the discretion of Town. Extenuating circumstances for delays including, but not limited to, bad weather, severe traffic backup due to crash or additional accidents may be taken into consideration by the Town in its decision to take any action as a result of Contractor's failure to respond within 25 minutes.
- 1.7 Each call to Contractor shall constitute one turn on the rotational list. After each call, Contractor shall be placed at the bottom of the rotation. Contractor shall forfeit its turn and be moved to the bottom of the list if: (A) Contractor fails to answer its telephone, (B) Contractor is unable to respond or provide the Services, or (C) the call is cancelled due to excessive response time. If Contractor arrives more than 30 minutes from the time of the call (per Yavapai County Sheriff's Office "YCSO" record keeping), at the officer's discretion the Contractor may be required to forfeit its turn and be replaced by the next tow company on rotation.

2. Equipment.

- 2.1 Contractor shall have, at a minimum, the following vehicles available at all times, at least one of which is classified as a medium or heavy-duty wrecker:
- A. One power-operated wrecker.
 - B. One rollback wrecker.
- 2.2 All towing vehicles shall:
- A. Have Contractor's name painted on both the driver and passenger sides of the vehicle in lettering at least three inches in height and shall display the current Arizona Department of Public Safety inspection seal.
 - B. Have proper equipment that complies with ARIZ. REV. STAT. § 28-1108 in order to prevent damage to towed vehicles. This equipment includes, but is not limited to: dollies, chains, slings, and bumpers.
 - C. Have the necessary equipment to clean accident scenes including, but not limited to, brooms, shovels and sand or an appropriate absorbent material to be used when sand does not adequately absorb spilled liquids/material.
 - D. Have a functioning two-way radio system with 24-hour dispatching.
 - E. Have the rates posted for all Services.

3. Storage Facilities.

- 3.1 Storage facilities must be located within the corporate limits of the Town of Chino Valley and meet all zoning requirements.
- 3.2 Each facility must be on record with the CVPD and either owned or leased for use by the Contractor. Proof of ownership or lessee status must be provided.
- 3.3 Contractor shall have a staff member on-site at its storage facility to assist customers during business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m., except for the following holidays:
- A. New Year's Day
 - B. Memorial Day
 - C. Independence Day
 - D. Labor Day
 - E. Thanksgiving Day
 - F. Christmas Day

- 3.4 Contractor shall have a telephone number prominently posted at its storage facility for after-hours release of vehicles. The after-hours telephone number shall be answered and responded to at all times so that vehicles may be released after regular business hours, if necessary. Contractor shall maintain with CVPD an emergency phone number to facilitate the release of a vehicle.
- 3.5 Vehicles shall be taken directly to the Contractor's storage facility unless the tow driver is advised otherwise by the CVPD or the vehicle's owner/driver.
- 3.6 The storage facility shall not be located within a wrecking yard that is in the business of dismantling vehicles.
- 3.7 Contractor shall provide a fenced storage area with a secure fence at least six feet in height plus outwardly slanted three-strand (or greater) barbed or razor wire that complies with the requirements of the Chino Valley Town Code and Unified Development Ordinance.
- 3.8 The storage area shall be lit with at least 7.4 lumen light output level of electrical light for each square foot of storage area.
- 3.9 The storage facility shall have a controlled access point and be locked when unattended. Contractor shall be responsible for the safekeeping of vehicles stored and for the items and personal property in the stored vehicles. Vehicles cannot be stored at any location other than those on record with the CVPD.
- 3.10 Vehicles shall not be removed from the initial storage yard for a period of 10 calendar days unless requested by the owner or authorized agent. If, after a period of 10 calendar days, instructions have not been received from an owner or authorized agency, Contractor may remove the vehicle to an alternate storage lot outside the Town boundaries that meets the security requirements listed in this Section. Removal to an alternate lot may not result in any additional charge to the vehicle owner.
- 3.11 A person whose vehicle is stored/impounded for reasons other than evidentiary purposes shall have the right to remove any personal property, perishables, or valuables prior to the release or payment of impound fees (excluding items attached to the vehicle; e.g., stereo equipment, etc.). All storage fees shall be assessed against the vehicle/owner and not against personal property.
- 3.12 Upon reasonable notice, Contractor shall permit inspection of the storage facilities by any member of the CVPD during business hours.

4. Personnel.

- 4.1 Contractor shall have sufficient qualified personnel available for the operation of its vehicles at all times.

- 4.2 All drivers must have a current State of Arizona driver's license, with proper class, endorsements and medical qualifications.
 - 4.3 Contractor's personnel (and owners) may not solicit or suggest a repair facility to the owner/driver of a damaged vehicle.
 - 4.4 All drivers shall operate the vehicle used for towing in a safe and prudent manner and obey all laws and ordinances at all times.
 - 4.5 Drivers shall wear safety vests any time they are in a roadway, including while hooking up vehicles to be towed and when cleaning debris from the scene.
 - 4.6 Contractor shall be fully responsible for its drivers' actions.
 - 4.7 While performing Services under this Agreement, Contractor's personnel shall refrain from acts of misconduct including, but not limited to, the following:
 - A. Rude or discourteous behavior, including profane and vulgar language.
 - B. Any act of sexual harassment or sexual impropriety.
 - C. Indication of alcohol and/or drug use or appearing at the scene with an alcohol odor emitting from the employee's breath. In such case, the employee shall submit to a preliminary alcohol screening test upon demand of the Town Representative.
 - D. Lack of service, selective service, or refusal to provide service which the employee(s) is capable of performing.
5. Information to be Provided by Contractor to Person Responsible for the Towed Vehicle.
- 5.1 Contractor's business card, which shall contain the following information:
 - A. Contractor's name, address and telephone number.
 - B. Hours of operation.
 - C. Telephone number for after-hours release of vehicles.
 - 5.2 A brochure listing the rates, terms of this Agreement and clear instructions for retrieval of the vehicle.
6. Storage/Release of Vehicles.
- 6.1 When instructed by a Chino Valley Police officer to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall deliver the vehicle to the Town's

storage yard located at 1950 Voss Drive, Chino Valley, Arizona (the “Yard”). (See Paragraph 10 for additional requirements related to vehicles towed pursuant to ARIZ. REV. STAT. § 28-3511).

- 6.2 A vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 may be stored at the Contractor’s impound lot in accordance to Section 11 (Exceptions to Impounding at CVPD).
 - 6.3 It is Contractor’s sole responsibility to determine that the vehicle is being released to the actual owner/authorized agent and shall not release a vehicle until the owner/authorized agent has provided Contractor with a copy of the owner/authorized agent’s valid driver’s license, proof of insurance and current registration for the vehicle.
7. Site Cleanup. Contractor is responsible for cleaning up all debris at the scene of an accident, including all vehicle parts, broken glass, dirt, sand or any other matter left in the roadway as a result of an accident. Contractor is responsible for retention of and/or appropriate disposal of accident debris. **Failure to thoroughly clean up a roadway may result in the driver or company being issued a citation pursuant to ARIZ. REV. STAT. § 28-898(C) or charged with a class 3 misdemeanor pursuant to § 28-7056(A) and possible removal of Contractor from the rotational tow list.**
 8. Cancellation of Services Request. After Contractor has received a request for Services, CVPD may cancel the request at any time. If the cancellation is made prior to any portion of Contractor’s equipment being physically attached to the vehicle to be towed, Contractor shall not charge for the Service. If cancellation is made subsequent to any portion of the tow vehicle’s equipment being physically attached to the vehicle to be towed, Contractor may charge for the Service even if the vehicle is not towed.
 9. Records; Reports.
 - 9.1 Contractor shall maintain a record for one year on each vehicle towed at CVPD’s request. The record shall contain, at minimum, the following information:
 - A. Make, model and year of the vehicle.
 - B. License plate number and state of issue.
 - C. Vehicle identification number.
 - D. Date and time the vehicle was picked up.
 - E. Location where the vehicle was picked up.
 - F. Location where the vehicle was taken (and other storage location(s) as applicable).

- G. Date and time the vehicle was released.
 - H. Name and address of the individual to whom the vehicle was released.
- 9.2 If the vehicle is sold at auction, Contractor shall document, in writing, the date of auction, and the name and address of the person purchasing the vehicle at auction.
 - 9.3 Contractor shall maintain records of itemized tow and storage billing statements.
 - 9.4 Within 10 days after release of a vehicle, Contractor shall notify YCSO Dispatch via facsimile at 928-771-3260.
 - 9.5 Upon reasonable notice, Contractor shall permit inspection of the records (and vehicles) required by this Agreement during business hours as well as an audit of the records at its place of business.
 - 9.6 Contractor shall submit all reports required by ARIZ. REV. STAT. §§ 28-4801 through 28-4884 to the Arizona Department of Transportation.
10. Vehicles Towed Pursuant to ARIZ. REV. STAT. § 28-3511. *The requirements set forth in this section apply only to vehicles towed pursuant to a request from a peace officer to remove and either immobilize or impound a vehicle pursuant to the provisions of ARIZ. REV. STAT. § 28-3511.*
- 10.1 Upon request from CVPD to tow a vehicle pursuant to ARIZ. REV. STAT. § 28-3511, Contractor shall tow, not drive, the vehicle to the Town's Yard. CVPD shall be liable for the vehicle and its contents while the vehicle is impounded at the Yard.
 - 10.2 Contractor shall submit a written invoice to CVPD at the time of delivery for each vehicle it tows to the Yard. CVPD shall retain the invoice and, if a hearing is held and the vehicle released, collect the towing fee from the vehicle owner. The Town shall notify Contractor of the release of the vehicle and shall remit Contractor's towing fee to Contractor within one month of collection.
 - 10.3 If a vehicle stored at the Yard is not released within 30 days of impoundment, the Town shall contact Contractor and Contractor shall tow the vehicle to Contractor's storage facility within one business day of such notice without charge to Town. If the owner subsequently contacts Contractor requesting release of the vehicle, Contractor shall advise the vehicle owner of the requirement for a hearing. If a hearing is held, the Town will collect its hearing fee and impound fees and notify Contractor that the vehicle is available for release. It is the responsibility of Contractor to collect its towing fee and any other impound fees incurred after removal from the Yard. The Town is not responsible and will not pay the towing fee for any vehicle that is not claimed by the owner and subsequently picked up by Contractor.

- 10.4 Failure to notify vehicle owner of the required hearing, prior to release of vehicle, will result in removal of the Contractor from rotational list for 30 calendar days. A second and subsequent violation of this will result in removal from the rotational list for at least one calendar year.
- 10.5 If Contractor obtains possession of any vehicle towed pursuant to ARIZ. REV. STAT. § 28-3511 (either through receipt of abandoned vehicle title or by virtue of the owner transferring title to Contractor), Contractor shall provide CVPD with the following information prior to disposing of the vehicle:
 - A. A complete description of the vehicle.
 - B. VIN number.
 - C. Department Report Number.
 - D. A clear copy of the title (front and back).

Upon receipt of this information, CVPD shall prepare a letter authorizing Contractor to take possession of the vehicle and dispose of it in compliance with ARIZ. REV. STAT. § 28-3515.

11. Exceptions to Impounding Vehicles at CVPD, Pursuant to ARIZ. REV. STAT. § 28-3511.

- 11.1 If, after the initial tow or due to collision, a vehicle qualifies for impoundment under ARIZ. REV. STAT. § 28-3511, CVPD may, at its discretion, notify Contractor and order the vehicle to be held under all conditions pursuant to ARIZ. REV. STAT. § 28-3511 at Contractor's approved storage yard.
- 11.2 Any vehicle impounded at Contractor's yard pursuant to ARIZ. REV. STAT. § 28-3511 shall remain at the facility for 30 days, unless written authorization for release is obtained from CVPD.
- 11.3 The vehicle shall not be released until Contractor has received a release from CVPD except as outlined in Section 10.
- 11.4 Contractor shall store the vehicle in accordance with ARIZ. REV. STAT. § 28-3511 and shall only charge the fees outlined in this Agreement.

EXHIBIT B
TO
SERVICES AGREEMENT
BETWEEN
THE TOWN OF CHINO VALLEY
AND
TRI-CITY TOWING INC.

[Fee Schedule]

See following page.

FEE SCHEDULE

(Subject to Change)

TYPE OF SERVICE	TASKS INCLUDED	FEE
Level 1 Service	Unlock Fuel delivery (customer pays for fuel) Tire change (up to 3/4 ton) Jump starts	\$55.00
Level 2 Tow*	Basic tow: Vehicle has keys. Wheels and tires are operable. Vehicle is under 9,000 lb. GVW.	\$95.00
Level 3 Tow*	Accident tow: No keys. Wheels and tires are inoperable. Winching is under 50 feet from tow truck access. Vehicle is under 9,000 lb. GVW.	\$185.00
Level 4 Tow	Vehicle is towed pursuant to A.R.S. § 28-3511. Vehicle is towed as requested by CVPD.	\$200.00
Large Vehicle Tows	9,001 – 16,000 lb. GVW. 16,001 – 26,000 lb. GVW. 26,001 – 80,000 lb. GVW.	\$95.00/hour port to port \$135.00/hour port to port \$175.00/hour port to port
Off-Road Recovery Rate/ Standby Rate***	After first 1/2 hour on scene or vehicle is greater than 50 feet from tow truck access; Vehicle is under 9,000 GVW.	\$95.00
Recovery, Large Vehicles	9,001 – 16,000 lb. GVW. 16,001 – 80,000 lb. GVW.	\$150.00/hour \$250.00/hour
Daily Storage	Regular tow after first full 24-hour period.	\$30.00
Daily Storage	Vehicles impounded pursuant to A.R.S. § 28-3511.	\$15.00
After Hours Gate Fee**		\$65.00
Cost Per Loaded Mile		\$4.50
Filing Fee		Not to exceed \$150.00
Fuel Surcharge	Rate will be recalculated based on EIA rates if diesel prices rise to \$4.50 per gallon or higher.	15% of total service bill

* Level 2 and 3 tows include towing the vehicle inside the boundaries of the Town of Chino Valley. When the vehicle owner or agent requests vehicle be towed to a location outside the Town limits, "Cost per loaded mile" may be charged from the Town limits to the requested destination.

** After Hours Gate Fee will be charged only when the owner or agent of a vehicle requests entrance to the impound facility after normal business hours. It will not be charged when a tow is performed outside normal business hours.

*** Off-road Recovery fee will be charged only when a vehicle has to be recovered more than 50 feet from tow truck access and will be charged at the rate commensurate with the vehicle's registered GVW.

No other miscellaneous charges are allowed. These services shall be considered to be part of the towing fee and include, but are not limited to, such things as Snatch Block, Skates, no key, driveshaft removal, etc.