

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **BIG TOE TOWING LLC**, a Colorado company authorized to do business in the State of Colorado (“**Contractor**”) (collectively the “**Parties**”).

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Denver International Airport (“**DEN**”); and

WHEREAS, the City desires to obtain 24-hour on-site, standby, and contingency professional towing services at DEN; and

WHEREAS, the City has undertaken a competitive process to solicit and receive proposals for such services, and has selected the proposal submitted by Contractor; and

WHEREAS, Contractor’s proposal was selected for award of the Towing Services (the “**Project**”); and

WHEREAS, Contractor is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

1. LINE OF AUTHORITY:

The Chief Executive Officer of the Department of Aviation or their designee or successor in function (the “**CEO**”), authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the DEN Parking and Transportation Systems department. The relevant Senior Vice President (the “**SVP**”), or their designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Contractor hereunder shall be processed in accordance with the Project Manager’s directions.

2. SCOPE OF WORK AND CONTRACTOR RESPONSIBILITIES:

A. Scope of Services. Contractor shall provide professional services and deliverables for the City as designated by the CEO, from time to time and as described in the attached *Exhibit A* (“**Scope of Work**”), in accordance with the schedules and budgets set by the City. Without requiring amendment to this Agreement, the City may, through an authorization or similar form issued by the CEO and signed by Contractor, make minor changes, additions, or deletions to the

Scope of Work without change to the Maximum Contract Amount.

A. Standard Operating Procedures. “Standard Operating Procedures”, “SOPs”, or “Operating Procedures” means a document (*Exhibit B*) issued to the Contractor by the CEO or his/her authorized representative pursuant to this Agreement, which sets forth detailed procedures or requirements for specific aspects of the Contractor’s work hereunder. The City may make changes to the SOPs upon mutual agreement between the Parties.

Standard of Performance. Contractor shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

B. Time is of the Essence. Contractor acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Contractor shall perform all work under this Agreement in a timely and diligent manner.

C. Subcontractors.

i. In order to retain, hire, and/or contract with an outside subcontractor that is not identified in this Agreement for work under this Agreement, Contractor must obtain the prior written consent of the CEO. Contractor shall request the CEO’s approval in writing and shall include a description of the nature and extent of the services to be provided; the name, address and professional experience of the proposed subcontractor; and any other information requested by the City.

ii. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

iii. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

iv. Contractor is subject to Denver Revised Municipal Code (“D.R.M.C.”) § 20-112, wherein Contractor shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

v. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City’s approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City’s approval of a subcontractor does not relieve Contractor of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

D. Personnel Assignments.

i. Contractor or its subcontractor(s) shall assign all key personnel identified in this Agreement to perform work under this Agreement (“**Key Personnel**”). Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the Director or their authorized representative. In the event that replacement of Key Personnel is necessary, the City in its sole discretion shall approve or reject the replacement, if any, or shall determine that no replacement is necessary.

ii. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Contractor and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

iii. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel or other personnel, whether of Contractor or its subcontractor(s), is not acceptable or that any such personnel is no longer needed for performance of any work under this Agreement, the Project Manager shall notify Contractor and may give Contractor notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the personnel, as applicable.

iv. If Contractor fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Contractor that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Contractor shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Contractor’s failure to obtain the Project Manager’s approval shall be grounds for Termination for Cause in accordance with this Agreement.

3. OWNERSHIP AND DELIVERABLES:

Upon payment to Contractor, all records, data, deliverables, and any other work product prepared by Contractor or any custom development work performed by Contractor for the purpose of performing this Agreement on or before the day of the payment, whether a periodic or final payment, shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Contractor and the City, Contractor shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Contractor or otherwise saved or maintained by Contractor as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Contractor also agrees to allow the City to review any of the procedures Contractor uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Contractor shall deliver any information requested pursuant to this Section within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

4. TERM AND TERMINATION:

A. **Term.** The Term of this Agreement shall commence on the Date of Execution (“DOE”) and shall expire (3) Three Years after DOE, unless terminated in accordance with the terms stated herein (the “**Expiration Date**”).

B. If the Term expires prior to Contractor completing the work under this Agreement, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Contractor has no right to compensation for services performed after the Expiration Date without such express approval from the CEO.

C. **Suspension and Termination.**

i. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Contractor shall, as directed in the notice, stop work and submit an invoice for any work performed but not yet billed. Any milestones or other deadlines shall be extended by the period of suspension unless otherwise agreed to by the City and Contractor. The Expiration Date shall not be extended as a result of a suspension.

ii. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Contractor.

iii. Termination for Cause. In the event Contractor fails to perform any provision of this Agreement, the City may either:

a. Terminate this Agreement for cause with ten (10) days prior written notice to Contractor; or

b. Provide Contractor with written notice of the breach and allow Contractor an Opportunity to Cure.

iv. Opportunity to Cure. Upon receiving the City’s notice of breach pursuant to Section 4(C)(iii)(b), Contractor shall have five (5) days to commence remedying its defective performance. If Contractor diligently cures its defective performance to the City’s satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Contractor fails to cure the breach to the City’s satisfaction, then the City may terminate this Agreement pursuant to Section 4(C)(iii)(a).

v. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Contractor the reasonable cost of only those services performed to the satisfaction of the CEO prior to the notice of suspension or termination. Contractor shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Contractor has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the suspension or termination process or as provided in Section 4(C)(vi) below.

vi. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Section 4(C)(ii), Contractor may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section 4(C)(v). In no event shall the total sums paid by the City pursuant to this Agreement, including Sections 4(C)(v) and (C)(vi), exceed the Maximum Contract Amount.

vii. No Claims. Upon termination of this Agreement, Contractor shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Contractor shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

D. Remedies. In the event Contractor breaches this Agreement, Contractor shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Contractor's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Section 8 and Section 10 otherwise provided for in this Agreement.

5. COMPENSATION AND PAYMENT:

A. Maximum Contract Amount. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of **One Million Five Hundred Ninety-Two Thousand Six Hundred Ninety-Two Dollars and No Cents (\$1,592,692.00)** ("**Maximum Contract Amount**"). Contractor shall perform the services and be paid for those services as provided for in this Agreement up to the Maximum Contract Amount.

B. Limited Obligation of City. The obligations of the City under this Agreement shall extend only to monies appropriated and encumbered for the purposes of this Agreement. Contractor acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. Payment Source. For payments required under this Agreement, the City shall make payments to Contractor solely from funds of the Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. Basis for Contractor's Fee. Contractor's fee is based on the rates found in *Exhibit A*.

E. Payment Schedule. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Contractor's fees and expenses in accordance

with this Agreement. Unless otherwise agreed to in writing, Contractor shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Amount.

F. Invoices. On or before the fifteenth (15th) day of each month, Contractor shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Contractor under this Agreement. In submitting an Invoice, Contractor shall comply with all requirements of this Agreement and:

- i. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
- ii. Include a statement of recorded hours that are billed at an hourly rate;
- iii. Include the relevant purchase order ("**PO**") number related to the Invoice;
- iv. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
- v. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
- vi. Include the signature of an authorized officer of Contractor, along with such officer's certification they have examined the Invoice and found it to be correct; and
- vii. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
- viii. Late Fees. Contractor understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City's Prompt Payment Ordinance.
- ix. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Contractor's engagement, are in accordance with this Agreement, and Contractor receives prior written approval of the SVP or their authorized representative.

G. Timesheets. Contractor shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets and any other related documents upon the City's request.

H. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final Invoice resulting from a Termination of this Agreement, where the SVP or their authorized representative determines the amount invoiced exceeds the amount

owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Section 9.

I. Carry Over. If Contractor's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Contractor if the CEO determines such fees are reasonable and appropriate and provides written approval of the expenditure.

6. MWBE, WAGES AND PROMPT PAYMENT:

A. Minority/Women Business Enterprise.

i. This Agreement is subject to Denver Revised Municipal Code (“**D.R.M.C.**”), Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto.

The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“**DSBO**”) is 0%.

ii. Under D.R.M.C. § 28-68, Contractor has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MWBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other agreement modifications, or as otherwise described in D.R.M.C. § 28-70. Contractor acknowledges that:

a. If required by DSBO, Contractor shall develop and comply with a Utilization Plan in accordance with D.R.M.C. § 28-63. Along with the Utilization Plan requirements, Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.

b. If Agreement modifications are issued under the Agreement, Contractor shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such agreement, upon any of the bases discussed in D.R.M.C. § 28-70, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

c. If amendments or other agreement modifications are issued under the Agreement that include an increase in the scope of work of this Agreement, which increases the dollar value of the Agreement, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be immediately submitted

to DSBO for notification purposes.

d. Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subconsultants are subject to the original goal. Contractor shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with D.R.M.C. § 28-70. Contractor must also satisfy the requirements under D.R.M.C. §§ 28-64 and 28-73 with regard to changes in scope or participation. Contractor shall supply to the DSBO Director all required documentation described in D.R.M.C. §§ 28-64, 25-70, and 28-73, with respect to the modified dollar value or work under the Agreement.

e. Failure to comply with these provisions may subject Contractor to sanctions set forth in D.R.M.C. § 28-76 of the MWBE Ordinance.

f. Should any questions arise regarding DSBO requirements, Contractor should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

B. Prompt Pay of MWBE Subcontractors. For agreements of one million dollars (\$1,000,000.00) and over to which D.R.M.C. § 28-135 applies, Contractor is required to comply with the Prompt Payment provisions under D.R.M.C. § 28-135, with regard to payments by the Contractor to MWBE subcontractors. If D.R.M.C. § 28-135 applies, Contractor shall make payment by no later than thirty-five (35) days from receipt by Contractor of the subcontractor's invoice.

C. Prevailing Wage. To the extent required by law, Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§ 20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

i. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

ii. Contractor shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

iii. Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

iv. Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

v. If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

D. City Minimum Wage. To the extent required by law, Contractor shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. §§ 20-82 through 20-84, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

E. City Prompt Pay.

i. The City will make monthly progress payments to Contractor for all services performed under this Agreement based upon Contractor's monthly invoices or shall make payments as otherwise provided in this Agreement. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118 applies to invoicing and payment under this Agreement.

ii. Final Payment to Contractor shall not be made until after the Project is accepted, and all certificates of completion, record drawings, reproducible copies, and other deliverables are delivered to the City, and the Agreement is otherwise fully performed by Contractor. The City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the SVP.

7. INSURANCE REQUIREMENTS:

A. Contractor shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* ("**Insurance Requirements**") during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance must be received and accepted by the City before any airport access or work commences.

B. Contractor shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Contractor from liabilities arising out of the performance of the terms and conditions of this Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall assess its own risks and maintain higher limits and/or broader

coverage as it deems appropriate and/or prudent. Contractor is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Contractor; (ii) damage, theft, or destruction of Contractor's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

8. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Contractor’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

9. SURETY BONDS:

A. Payment and Performance Bond (“Performance Bond”) satisfactory to the City and County of Denver on the form required by the City, in an amount not less than Fifty Thousand Dollars and Zero Cents (**\$50,000.00**) is required of the Contractor to guarantee that it will perform the work in strict accordance with this Agreement and pay all debts incurred in performing the services required hereunder. The Surety named in the Bond must be authorized to do business in the State of Colorado.

B. The Contractor’s Performance Bond must either be renewed annually by the Surety named in the Bond or be replaced with an identical Bond covering the subsequent year of the contract issued by another Surety which has been approved in advance by the CEO. If the CEO does not receive written notice from the Surety at least forty-five days before it expires or does not receive a substitute Bond in the form required by the City from an approved Surety at least forty- five days before the Bond expires, then the Contractor shall be in default of this Agreement and the CEO may immediately terminate this Agreement by giving the Contractor written notice of such default. If the City elects to extend this Agreement for up to three additional one-year periods at the same prices, terms and conditions pursuant to Section 4 of this Agreement, the Contractor shall obtain and submit either an extension of the existing Performance Bond or an identical Bond from another Surety that is acceptable to the City. Under no circumstances shall the City be liable to the Contractor for any costs incurred or payments made by the Contractor to obtain an extension of an existing Bond or a new Bond.

C. The only acceptable alternative to a Performance Bond is an Irrevocable Unconditional Letter of Credit from a local financial institution in form acceptable to the City and County of Denver in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). Renewal of said Irrevocable Unconditional Letter of Credit during the term and any one-year extensions of the Contract shall be as set out above with respect to the Performance Bond.

D. The form of Performance Bond attached hereto as **Exhibit D** and incorporated herein by reference must be used by the Contractor and its surety. Attorneys-in-Fact who sign bonds must file with such bonds a certified copy of their Power-of-Attorney to sign such bonds that is certified to include the date of the Bond.

10. DISPUTES:

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to the right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

11. GENERAL TERMS AND CONDITIONS:

A. **Status of Contractor.** Parties agree that the status of Contractor shall be an

independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the “**City Charter**”). It is not intended, nor shall it be construed, that Contractor or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Contractor shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by Contractor to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Contractor hereunder.

C. Compliance with all Laws and Regulations. Contractor and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, and the State of Colorado and with the City Charter, ordinances, Executive Orders, and rules and regulations of the City.

D. Compliance with Patent, Trademark and Copyright Laws.

i. Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Contractor will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Contractor prepares any documents which specify any material, equipment, process or procedure which is protected, Contractor shall disclose such patents, trademarks and copyrights in such documents.

ii. Pursuant to Section 8, Contractor shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

E. Notices.

i. Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Contractor to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by the City to:

Big Toe Towing LLC
2531 West 62nd Court, Unit K
Denver, CO 80221
Attn: Jason Hendley

ii. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested; express mail (Fed Ex, UPS, or similar service) or package shipping or courier service; or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for any other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection (E)(ii).

iii. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

F. Rights and Remedies Not Waived. In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Contractor. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

G. No Third-Party Beneficiaries. The Parties agree that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

H. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

I. Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Airport System and to any other bond

ordinances which amend, supplement, or replace such bond ordinances.

J. Venue. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

K. Cooperation with Other Contractors.

i. The City may award other contracts for additional work, and Contractor shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Contractor to coordinate its work under this Agreement with one or more such contractors.

ii. Contractor shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

L. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

M. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

N. Coordination and Liaison. Contractor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the SVP or their authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Contractor's work.

O. No Authority to Bind City to Contracts. Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

P. Information Furnished by the City. The City will furnish to Contractor information concerning matters that may be necessary or useful in connection with the work to be performed by Contractor under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Contractor understands and acknowledges that the information provided by the City to Contractor may contain unintended inaccuracies. Contractor shall be responsible for the verification of the information provided to Contractor.

Q. Severability. In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall

be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

R. Taxes and Costs. Contractor shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

S. Environmental Requirements. Contractor, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

i. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), per – and polyfluoroalkyl substances (PFAS), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.* (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.* (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

ii. Contractor shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

iii. Contractor agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Contractor agrees to evaluate methods to reduce the generation and disposal of waste materials.

iv. In the case of a release, spill or leak as a result of Contractor's activities under this Agreement, Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Contractor shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Contractor of any pollutant or hazardous material.

T. Non-Exclusive Rights. This Agreement does not create an exclusive right for Contractor to provide the services described herein at DEN. The City may, at any time, award other agreements to other contractors or consultants for the same or similar services to those described herein. In the event of a dispute between Contractor and any other party at DEN, including DEN itself, as to the privileges of the parties under their respective agreements, CEO shall determine the privileges of each party and Contractor agrees to be bound by CEO's decision.

12. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS:

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Contractor is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. No Discrimination in Employment. In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

C. Advertising and Public Disclosures. Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or their authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Contractor shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Contractor's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

i. Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 *et seq.*, and Contractor agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Contractor asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Contractor to the City shall be considered confidential by the City only to the extent provided in CORA, and Contractor agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

ii. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any material Contractor may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Contractor objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Contractor agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Contractor does not wish disclosed. Contractor agrees to defend, indemnify, and hold

harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Contractor's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

i. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. §20-276.

ii. Additionally, Contractor agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO, shall have the right to examine any pertinent books, documents, papers and records of Contractor related to Contractor's performance of this Agreement, including communications or correspondence related to Contractor's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

iii. In the event the City receives federal funds to be used toward the services performed under this Agreement, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Contractor further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

F. Use, Possession or Sale of Alcohol or Drugs. Contractor shall cooperate and comply with the provisions of Denver Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.

G. City Smoking Policy. Contractor and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict of Interest.

i. Contractor and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

ii. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Contractor written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Contractor shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

iii. Contractor has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Contractor is performing or anticipates performing for other entities on the same or interrelated project or tasks. Contractor must disclose, in writing, any corporate transactions involving other companies that Contractor knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Contractor fails to disclose in writing actual or potential conflicts, the CEO in their sole discretion, may terminate the Agreement for cause or for its convenience.

I. No Employment of A Worker Without Authorization to Perform Work Under The Agreement.

i. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

ii. The Contractor certifies that:

a. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

d. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

f. It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

iii. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

13. SENSITIVE SECURITY INFORMATION:

Contractor acknowledges that, in the course of performing its work under this Agreement, Contractor may be given access to Sensitive Security Information (“**SSI**”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Contractor specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Contractor understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN’s Security Office.

14. DEN SECURITY:

A. Contractor, its officers, authorized officials, employees, agents, subcontractors, and

those under its control, shall comply with safety, operational, or security measures required of Contractor or the City by the FAA or TSA. If Contractor, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Contractor shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Contractor must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Contractor and/or its agents will be deducted directly from the invoice for that billing period.

B. Contractor is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Contractor. The fee/fine will be deducted from the invoice at time of billing.

15. FEDERAL RIGHTS:

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport System. As applicable, Contractor shall comply with the Standard Federal Assurances identified in Appendix.

16. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:

A. Attachments. This Agreement consists of Section 1 through 17 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix: Standard Federal Assurances
- Exhibit A: Scope of Work and Rates
- Exhibit B: Standard Operating Procedures
- Exhibit C: Insurance Requirements
- Exhibit D: Performance and Payment Bond

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Section 1 through 17 and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix
- Section 1 through 16 hereof
- Exhibit A
- Exhibit B

Exhibit C
Exhibit D

17. CITY EXECUTION OF AGREEMENT:

A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Contractor in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-202157902-00
Contractor Name: BIG TOE TOWING LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202157902-00
BIG TOE TOWING LLC

By:  _____

Name: Jason Hendley
(please print)

Title: owner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Appendix

Standard Federal Assurances and Nondiscrimination Non-Federal Contract Provision

A5 CIVIL RIGHTS - GENERAL

A5.3.1 Clause that is used for Contracts

GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The (**Name of Sponsor**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

A6.4 CONTRACT CLAUSES

A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.2 Title VI Clauses for Deeds Transferring United States Property

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project

constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

A6.4.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.4 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or

national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of

the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A17.3 SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [***Contractor*** | ***Consultant***] has full responsibility to monitor compliance to the referenced statute or regulation. The [***Contractor*** | ***Consultant***] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.3 CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of

the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

EXHIBIT A SCOPE OF WORK

SECTION B

B.1 SCOPE OF WORK:

This Agreement is for Landside standby and contingency towing services, on an as needed basis at Denver International Airport (DEN), and for emergency towing services, on an as needed basis along Pena Boulevard and on DEN property.

B.2 REQUIRED SERVICES:

- 1) Standby Services: Contractor shall provide one (1) standby, light-duty tow vehicle and a qualified driver on-site at DEN twenty-four (24) hours per day, seven days per week, though hours may be subject to adjustment by DEN Parking and Transportation.
- 2) Contingency Services: Contractor shall provide additional tow vehicles and qualified drivers, if required, on-site at DEN, with the hours assigned at the sole discretion of DEN Parking and Transportation, that includes any and all events of intensified airport security levels, construction-related needs, snow events, or as otherwise mandated.
 - o If a substantial number of vehicles require towing, additional Contractor tow vehicles and qualified drivers may be requested for service, within the hours assigned by DEN Parking and Transportation.
 - o The need for a second tow vehicle and qualified driver or for additional tow vehicles and qualified drivers is on a contingency basis, and may require towing services sporadically, for short periods or up to twenty-four (24) hours per day. Any and all contingency required service timeframes shall be at the sole discretion of the DEN Parking and Transportation.
 - o Contractor shall also provide, as required, a medium-duty 10-ton tow truck equipped with a 6,500 lb. wheel-lift and which can accommodate and clear height restrictions of 8' in order to safely and efficiently tow shuttle buses, very large SUVs, oversized pick-up trucks or similar vehicles located within DEN parking structures.
- 3) Emergency Services: Contractor shall, at the direction of DEN Parking and Transportation, provide emergency towing services on an as needed basis along Pena Boulevard and on DEN property (e.g., resulting from weather conditions, accidents, security or civil emergencies, etc.). When required to provide emergency towing services, Contractor may be required to station up to six (6) tow vehicles (flatbeds or 10-tons), one (1) 30-ton heavy wrecker tow truck, and one (1) 50-ton heavy wrecker tow truck and/or any other units as requested by DEN, along Pena Blvd. with hours assigned by DEN Parking and Transportation.

- 4) Contractor shall provide services that include, but are not limited to, tows (e.g. accidents, relocations, abandoned vehicles, etc.) and services (e.g. tire inflations, tire changes, jumpstarts, lockouts, fuel service, etc.) at the request of the Denver Police Department and/or DEN Parking and Transportation.
- 5) Contractor shall clean up debris at accident sites where Contractor provides tows (all prices entered shall include the sweeping, cleaning and removal of debris and spilled fluids caused by accidents prior to the tow operator's departure from the accident scene).
- 6) Contractor tow vehicles shall be positioned on-site at DEN at the discretion and direction of DEN Parking and Transportation.
 - At no time while servicing this Agreement shall Contractor tow operator(s) stationed at DEN be engaged in any additional or alternate tow operations other than as directed by DEN Parking and Transportation.
- 7) Contractor shall tow to the designated airport impound facility or to the 5160 York Street, Denver Sheriff Vehicle Impound Facility or as directed by the Denver Police Department and/or DEN Parking & Transportation.
 - o Reasons include, but may not be limited to: vehicles parked illegally, vehicles left unattended in the "curbside" levels of terminal, vehicles exceeding the time limit in abbreviated parking time zones, abandoned vehicles, tows for safety considerations, construction relocations, etc.
- 8) Contractor's standby and contingency tow operators shall be required to adhere to the agreed upon timekeeping process at the beginning and end of shift.
- 9) Contractor shall immediately acknowledge requests for emergency services AND have requested vehicles stationed appropriately along Pena Blvd. within sixty (60) minutes from time of request by DEN Parking and Transportation.
 - o When possible, Contractor will be advised in advance if emergency services will be anticipated along Pena Blvd. (e.g., when a weather bulletin is issued regarding the likelihood of a severe snowstorm on a specific date), and a specific time for tow trucks to be in place will be indicated.
 - o If emergency services are requested, one employee of the Contractor shall be required to sign in/sign out all drivers following the timekeeping process.
 - o If emergency services are requested, one employee of the Contractor shall be required to obtain radios for all other drivers. Emergency radios and additional batteries are located in the Parking Contractor's Office, West Garage Level 1, Door 104/106 (NOTE: Radios are to be returned to Parking Contractor's Office upon completion of emergency services. Contractor shall be liable for cost of replacement of lost or broken radio units while in their possession).

10) Contractor shall complete a tow receipt for each tow or service, including during emergency services.

11) In the event that a motor vehicle accident or mishap occurs near airport toll booths or in any area adjacent to DEN property that poses an immediate safety hazard or otherwise impedes traffic flow, Contractor may be requested to tow vehicle or vehicles involved.

Contractor is advised that hours for standby and contingency vehicles, the 10-ton unit, and emergency vehicles along Pena Blvd. are assigned at the discretion of DEN Parking and Transportation. While DEN Parking and Transportation endeavors to anticipate needs and to communicate this information to the Contractor, the Contractor should be aware that assigned hours may vary widely from several hours per day per unit up to twenty-four (24) hours per day per unit.

New or revised regulations approved by the Denver City Council acting by ordinance with relation to Wrecker or Towing Services within the City and County of Denver shall be applicable upon their enactment or a date certain as indicated in the ordinance. Said new or revised regulations shall not be cause for the City to approve nor shall the Contractor request adjustments to proposal pricing offered herein as a result of same. New or revised regulations approved by the Denver City Council which materially affect the services to be provided hereunder and that materially enlarge or decrease the scope of the services to be provided herein shall be cause for the City to issue a new Proposal for the services required. If a new Proposal is, therefore, necessary at any time during the course of this Agreement, the Contractor shall be given no less than sixty (60) days' notice that a new Proposal is required.

B3. RESPONSE:

Contractor tow driver(s) on standby, contingency or emergency duty at DEN shall respond immediately to orders from DEN dispatcher(s). If the tow driver is occupied with a tow or other service, he/she shall communicate this information to the dispatcher and provide the dispatcher with an estimated time of response to the pending tow or service request.

B.4 OPERATIONAL REQUIREMENTS:

- a. Contractor shall be in operation twenty-four (24) hours per day, seven days per week. Contractor shall provide a single telephone number to the City which shall require staffing twenty-four (24) hours per day, seven (7) days per week. The use of answering machines or answering services shall not be permitted.

- b. Contractor shall ensure that tow drivers respond immediately to radio calls. Tow drivers shall inform DEN personnel of their whereabouts and operations, as requested, and are to notify the Dispatch Office if they are going “off-line” to fuel.
- c. Each vehicle to be used under this Agreement is to be equipped with signage permanently affixed and displayed on each door or side panel listing the trade name of the tow company, phone number and the PUC license number in clearly defined, legible lettering.
- d. Contractor shall furnish all necessary labor, tools, equipment and supplies to perform the required towing services at DEN.
- e. Contractor shall carry in each truck, at all times, vehicle registration documents and proof of all required insurances.
- f. Contractor shall carry in each truck, at all times, sufficient clean-up equipment and supplies (e.g. broom, shovel, 5-gallon bucket or secure container of floor dry, fire extinguisher, etc.) necessary to remove debris and spills from accident sites.
- g. Contractor shall obey all lawful orders given by any law enforcement officer from the Airport Security Office, Transportation Security Administration, Federal law enforcement officer, and by authorized DEN Parking and Transportation personnel.
- h. Contractor shall be responsible for the contents of the vehicle while unit is in the Contractor’s possession (e.g., tools, spare tires, personal items, electronics and other items of intrinsic value).
- i. Contractor shall ensure that tow drivers do not examine or unnecessarily disturb the contents (property, valuables, documents, etc.), of any serviced vehicles or allow any unauthorized persons into serviced vehicles unless directed to do so and accompanied by authorized DEN personnel.
- j. Contractor shall not attach to a vehicle which, by its size and/or weight, would make towing the vehicle an unsafe movement. A tow truck and its load should never exceed the capabilities of the towing vehicle to safely accelerate, stop or maneuver. The manufacturer's gross vehicle weight rating or the manufacturer's rated capacity shall not be exceeded at any time.
- k. All lighting equipment (headlights, brake lights, lightbars, flashlights or lanterns and any flares or reflectors) installed on the tow truck shall be in

good working condition. The vehicle towed must have affixed on each side near the rear all necessary stop, brake and taillights; the stop, brake and taillights shall operate when those of the tow truck are activated.

l. All components such as winches, cables, clamps, thimbles, sheaves, guides, controls, blocks, slings, dolly wheels, chocks, chains, fire extinguishers, hooks and hydraulic components are to be assembled in accordance with factory recommendations and specifications for vehicle sizes, and all components are to be in good and operable conditions and the tow truck contains all necessary equipment. Features and equipment appropriate to manufacturer's specifications and recommendations and for the safe operation of light duty, rollback, heavy trucks, tractor and trailer are required.

m. Contractor shall not perform any additional services unrelated to the requirements of this Agreement and for which payment is expected without specific approval of the Denver Police Department or DEN Parking and Transportation.

B.5 SPECIFIC EXCLUSIONS:

a. Services to be provided under this proposal are limited to DEN and emergency towing services along Pena Blvd. and DEN property unless otherwise directed by DEN Parking and Transportation or other authorized DEN personnel.

b. Tows and services are requested solely by the Denver Police Department and DEN Parking and Transportation, and involve privately-owned vehicles being towed to a designated storage area on-site at DEN (generally the Denver Sheriff Vehicle Impound Facility (5160 York St.) or as directed, only.

c. This DEN standby/contingency/emergency towing service Agreement is separate from the "City Towing Services" and "On-Call Towing Services" Agreements.

d. This DEN standby/contingency/emergency towing service Agreement is not applicable to City owned vehicles.

e. This DEN standby/contingency towing service Agreement is not applicable to vehicular accidents at areas not on DEN property unless otherwise dictated as stated in Section B.2.11 or B.5 a.

f. DEN shall ***NOT*** consider any joint ventures for the term of this towing service agreement.

B.6 EQUIPMENT LIST:

Contractor shall have the capability to provide a minimum of four (4) light-duty tow trucks (equipped with go-jacks) which can accommodate tows in DEN parking garages with height restrictions of 8', six (6) flatbed tow trucks with wheel-lifts, three (3) medium-duty 10-ton tow truck equipped with a 6,500 lb. wheel-lift which can accommodate and clear height restrictions of 8', one (1) 30-ton heavy wrecker tow truck, and one (1) 50-ton heavy wrecker tow truck..

Each tow truck shall be fully equipped with the proper complement of dollies, chains, slings and bumpers necessary to prevent damage to vehicles (i.e., cars, trucks, motorcycles, scooters or any other vehicle or parts thereof). Each tow truck will have sufficient brooms, shovels and equipment to clear a site of debris caused by an accident. Contractor shall comply with Section 55-177 of Article VI of the City and County of Denver Revised Municipal Code and Rule 4 CCR 723-6 of the Colorado PUC Rules, Regulations, and Civil Penalties Governing Towing Carriers by Motor Vehicle relating to required equipment and accessories for tow vehicles, and any other applicable PUC Rules and Regulations.

Each vehicle shall be equipped with a 2-way radio in a working condition with constant contact to the Contractor's 24-hour dispatch office.

The Contractor shall indicate company name and phone number in prominent lettering on each tow truck.

Under no circumstances will the Contractor be allowed to "piggy-back" or tow more than one vehicle at a time. Roll-backs and flatbeds are excepted.

Contractor shall not have equipment that is dual-branded. Firm brand name shall be clearly marked on each vehicle with no obstruction.

B.7 VEHICLE INSPECTIONS:

The Director of Excise and Licenses or the Manager of Safety or their designee(s) or State of Colorado PUC Authorized personnel may conduct an inspection of any tow truck being utilized under the Agreement without notice to determine compliance with the requirements set out herein.

If, at any time, a tow truck (or any equipment attached to or carried by same) being utilized to provide services required under this Agreement is found by the aforementioned officials or their designee(s) to be in need of repair or does not meet the minimum requirements set out herein, the Contractor shall be required to cease use of and replace that tow truck until such repairs are completed.

B.8 PERSONNEL:

The Contractor shall have available sufficient qualified personnel to operate all specified tow trucks at all times. Each driver/operator shall have a valid Colorado

Driver's License with appropriate endorsements.

All drivers shall operate the tow trucks in a safe and prudent manner and shall refrain from using profane or vulgar language or being under the influence of alcohol or drugs while performing work under this Agreement. Executive Order No. 94, which deals with the use of drugs or alcohol, shall be applicable to every Contractor providing services pursuant to this proposal.

Tow drivers shall not, under any circumstances, carry upon their person or within or upon the tow vehicle any dangerous or deadly weapon as defined in the Denver Revised Municipal Code.

Tow vehicle drivers shall be employees of the Contractor(s); therefore, Workers' Compensation Insurance must be carried on all tow vehicle drivers by the Contractor.

Tow vehicle drivers are to be clean, neat and professional in appearance, wear a name tag, wear a company uniform shirt with logo (when possible) and communicate courteously with the public and DEN personnel.

B.9 DEN SECURITY PROVISIONS:

B.9.a AIRPORT RULES AND REGULATIONS:

The Contractor and its officers, employees, guests, invitees, and those doing business with the Contractor shall observe and obey all rules and regulations of the City and County of Denver as may be promulgated from time to time, including the Airport Rules and Regulations and Contingency Plans. The Contractor will not use or permit Airport property or facilities to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the Charter and Ordinances of the City and County of Denver. The Contractor will use the roadways and other areas of DEN in accordance with all City rules and regulations.

B.9.b AIRPORT SECURITY:

- A. Contractor, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Contractor or the City by the FAA or TSA. If Contractor, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Contractor shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Contractor must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Contractor and/or its agents will be deducted directly from the invoice for that billing period.

- B. Contractor is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Contractor. The fee/fine will be deducted from the invoice at time of billing.

- C. The Contractor shall obtain the proper access authorizations for all of its employees, subcontractors, and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates Airport rules and regulations may be subject to revocation of his access authorization. The failure of the Contractor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

- D. The Contractor shall return to the City at the expiration or termination of the Agreement, or upon demand by the City, all access keys issued to it for any area of the Airport, whether or not restricted and all badges issued to its employees, subcontractors and suppliers. If the Contractor fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Contractor under the Agreement.

B.10 CONTRACTUAL DEFICIENCIES:

If the contractor(s) fails to perform the services within the time specified in his/her Contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the contractor(s) shall pay to the City as a deduction from unpaid billings, and as fixed, agreed and liquidated damages and not as a penalty for each deficiency listed below. The City may terminate this Contract in whole or in part as provided in the "Default" provision. In that event, the contractor(s) shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The contractor(s) shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor(s).

Specific operational standards subject to classification as contractual deficiencies are as follows, and failure to comply with these standards may be determined by DEN Parking and Transportation:

DEDUCTIONS FOR NON-PERFORMANCE

	INCIDENT	LIQUIDATED DAMAGES
1.	For failure to provide standby towing services, as required.	\$300.00 for each occasion service is not provided
2.	For failure to have required contingency and emergency vehicles stationed on Peña Blvd. within 60 minutes of request by DEN Parking and Transportation with hours to be assigned by DEN Parking and Transportation.	\$200.00 per occurrence
3.	For failure to provide sufficient, qualified personnel to operate towing services as specified; for failure to ensure each driver has an appropriate driver's license issued by the State of Colorado relative to the class of vehicle he/she is to operate, and the Identification Card described herein.	\$300.00 per occurrence
4.	For failure to maintain vehicles in operating condition as required to adequately and safely perform required services.	\$200.00 per occurrence
5.	For failure to obtain and maintain all licenses, insurances, and permit requirements.	\$100.00 per occurrence
6.	For failure to provide adequate and sufficient equipment, i.e., go-jacks, brooms, shovels, dollies, chains, slings, bumpers and other equipment necessary to prevent damage to towed vehicles.	\$50.00 for each occasion as deficiency is reported
7.	For failure to record accurate and complete information on tow slips, as required by provisions herein.	\$25.00 per occurrence
8.	Incidents of overcharging as may be determined by authorized City personnel.	\$25 per occurrence plus repayment of overcharged amount
9.	Failure to sweep and clear tow site of debris, as required.	\$50 per occurrence
10.	Failure to comply with DEN rules and regulations	\$100 per occurrence

Any instance of an imposition of liquidated damages for non-performance or unacceptable performance or delayed performance, as above, shall be prima facie evidence of a deficiency in the Contractor's performance and authorized personnel of the Denver Police Department and/or DEN Parking and Transportation shall document the incidents of non-performance or unacceptable performance or delayed performance and shall be forwarded to the DEN Parking Airport Commercial Manager.

B.11 INCENTIVES FOR EXCEPTIONAL PERFORMANCE

- A. In order to promote the goals of safety and customer service in the operation at DEN, the Contractor will establish an incentive program, approved by the City, for the performance of services under this contract. The program will include a plan to allocate at least 10% of the awarded incentive payment to the Contractor's DEN assigned employees on a monthly basis. The documentation will be required and confirmed as accurate by DEN. The City's selection of the Contractor for award of this Contract does not constitute the City's approval of the Incentive Plan submitted with the Contractor's Proposal. The Contractor shall revise the Incentive Plan included in its Proposal as necessary for City approval of the plan.
- B. The City will allocate for expenditure, and the Contractor will be eligible to earn, a maximum of \$15,000 quarterly under the incentive plan. Incentive program awards shall

be in addition to all other compensation received by the Contractor under this contract. The Contractor shall not be entitled to receive any sums under the incentive program unless it earns such amounts pursuant to the terms of the program.

- C. The incentive program will be administered by the Airport Commercial Manager, or such successor representative designated by the Senior Vice President of Parking and Transportation Systems. The Airport Commercial Manager will, in consultation with the Contractor and incorporating written evaluation criteria and methodology provided by the Contractor, from time to time review and revise the incentive program, including the allocations of incentive funds among the performance categories.
- D. Revisions shall be provided to the Contractor in writing. Notwithstanding the foregoing, the criteria for the employee incentive awards shall be provided to the City by the Contractor in writing. Airport Commercial Manager will review the Contractor's performance, determine the Contractor's eligibility for awards under the program, and recommend to the Senior Vice President of Parking and Transportation Systems the amount of each quarterly incentive award to the Contractor. No incentive award shall be payable to the Contractor until approved by the Senior Vice President of Parking and Transportation Systems or designee.
- E. Until a written notice of revisions is issued by the Airport Commercial Manager to the Contractor, the quarterly incentive awards shall be allocated among the categories, and awarded according to the criteria, set forth in the incentive plan submitted by the Contractor and approved by the City.

B.12 NON-EXCLUSIVE CONTRACT:

This is a non-exclusive Contractual Agreement. In the City's best interests, the City reserves the right to solicit and purchase third party logistics and towing management services at a future date. This solicitation would be designed to coincide with the end of the term of any contract resulting from this procurement.

SECTION C

C.1 PRICING:

All prices quoted shall be firm and fixed for the specified contract period.

C.2 PROPOSAL ITEMS:

PRICING ITEM	HOURLY RATE
PRICING ITEM 1: Rate for single, standby, light-duty tow vehicle and operator (up to 24 hours per day, as assigned)	_____/Hr.
PRICING ITEM 2: Rate for each additional light-duty vehicle and operator (up to 24 hours per day, as assigned)	_____/Hr.
PRICING ITEM 3: Rate for each medium-duty, 10-ton tow vehicle w/ 6,500 lb. wheel-lift and operator (up to 24 hours per day, as assigned)	_____/Hr.
PRICING ITEM 4: Rate for each flatbed vehicle and operator (up to 24 hours per day, as assigned)	_____/Hr.
PRICING ITEM 5: Rate for each 30-ton heavy wrecker tow vehicle and operator (up to 24 hours per day, as assigned)	_____/Hr.
PRICING ITEM 6: Rate for each 50-ton heavy wrecker tow vehicle and operator (up to 24 hours per day, as assigned)	_____/Hr.

C.2 PRICING

Pricing is firm and fixed for the first contract year (November 1, 2021 through and including October 31, 2022).

Effective November 1, 2022, the original hourly rate paid to Contractor hereunder shall be increased annually for each Contract Year during the term of this Agreement by application of the following formulae, where "Index" shall mean the HALF1 Consumer Price Index (CPI-U) for All Items and All Consumers for the Denver-Aurora-Lakewood, Colorado Metropolitan Area as maintained by the U.S. Bureau of Labor Statistics (1982-1984 = 100), based upon the half calendar year. If the United States Bureau of Labor Statistics shall discontinue issuing the Index for the Denver-Aurora-Lakewood Metropolitan, then the wage adjustments provided for in this Agreement using the Index shall be made on the basis of changes in the U.S. national city average CPI-U for all items and all consumers, if available, or if not, using the most comparable and recognized cost-of-living index then issued and available which is published by the United States Government. Under no circumstances shall

the increase in costs rise more than 3% per annum.

Each “Original Hourly Rate” is the number stated by the proposer as the hourly rate per vehicle classification in their proposal:

$$\text{Hourly Rate for 11/01/2022} = \text{Original Hourly Rate} \times \frac{\text{Index for 2021}}{\text{Index for 2020}} = \text{2022 Hourly Rate}$$

$$\text{Hourly Rate for 11/01/2023} = \text{2022 Hourly Rate} \times \frac{\text{Index for 2022}}{\text{Index for 2021}} = \text{2023 Hourly Rate}$$

$$\text{Hourly Rate for 11/01/2024} = \text{2023 Hourly Rate} \times \frac{\text{Index for 2023}}{\text{Index for 2022}} = \text{2024 Hourly Rate}$$

Optional 1st Year:

$$\text{Hourly Rate for 11/01/2025} = \text{2024 Hourly Rate} \times \frac{\text{Index for 2024}}{\text{Index for 2023}} = \text{2025 Hourly Rate}$$

Optional 2nd Year:

$$\text{Hourly Rate for 11/01/2026} = \text{2025 Hourly Rate} \times \frac{\text{Index for 2025}}{\text{Index for 2024}} = \text{2026 Hourly Rate}$$

Due Dates for Pricing Updates:

PRICING UPDATE DUE DATE
September 15th
October 1st City Review and Approval

PRICING PERIOD
November 1st through October 31st

If the 15th of the month falls on a Holiday or Weekend, pricing update is due the next business day.

If the pricing update is not submitted by September 15th, pricing will remain unchanged for the following year. However, if the CPI calculation shows a decrease, there will be no adjustment to the pricing.

EXHIBIT B

DENVER INTERNATIONAL AIRPORT
TOWING SERVICE AGREEMENT
STANDARD OPERATING PROCEDURES

Contents

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Hours of Operation and Staffing

1. Contractor will provide one light-duty curbside tow truck twenty-four (24) hours a day seven (7) days per week.
2. Requestors (DEN) of service may include the Denver Police Department (DPD) via DEN Comm Center and DEN Parking and Transportation.
3. Time keeping will be maintained utilizing the agreed upon manner and is subject to compliance review at any time.
4. All tow operators will present themselves in a professional manner, with clean and appropriate City approved uniforms, to include name tags, company logo, safety vests and personal protective equipment.
5. The curbside tow unit will be staged at the Commercial Transportation Holding Lot, while not performing duties.
6. If the tow needs to go out of service, fuel, break, etc., it will be reported to the DEN Communication Center (Comm Center), along with the estimated time of return to service and a confirmation with the Comm Center that the tow is back in service.
7. A tow service provider representative will be required to attend the contractor meeting at least once a month. The meetings are held bi-weekly.

Snow Events- Requests for Additional Equipment

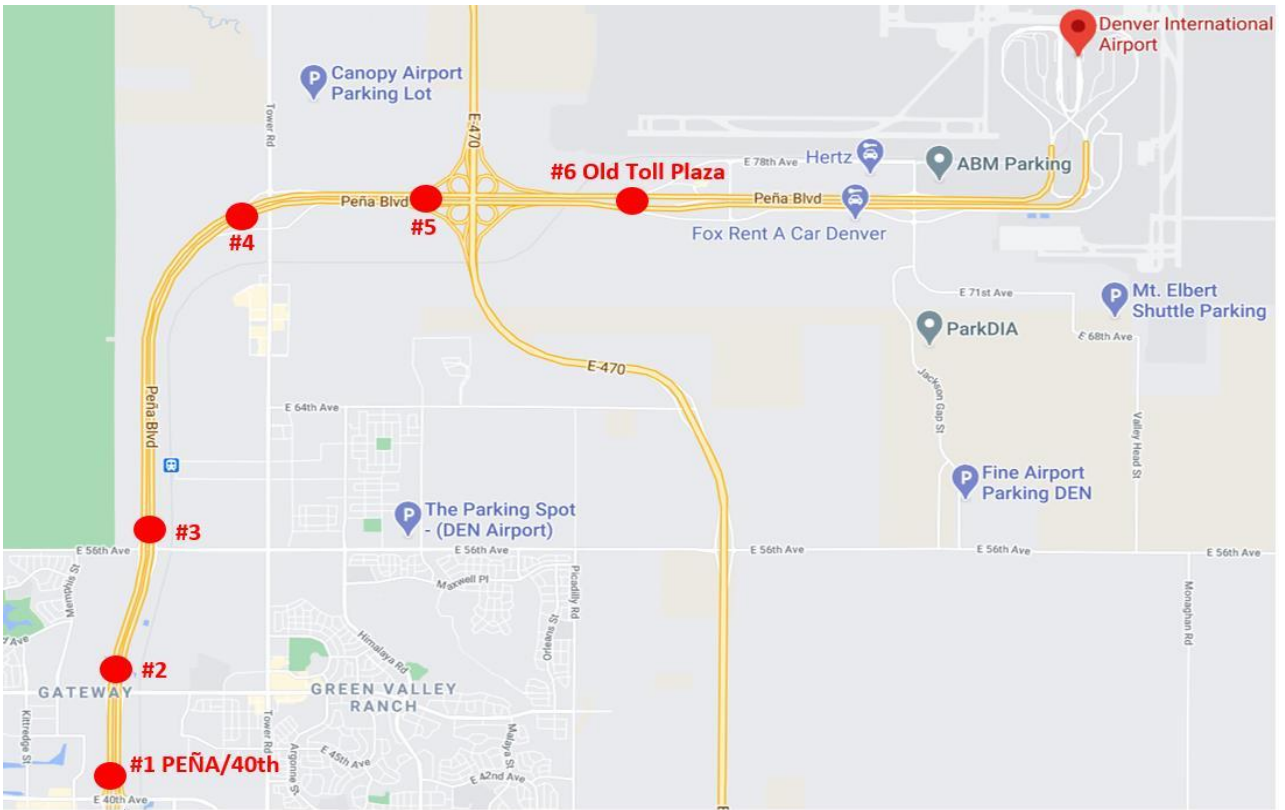
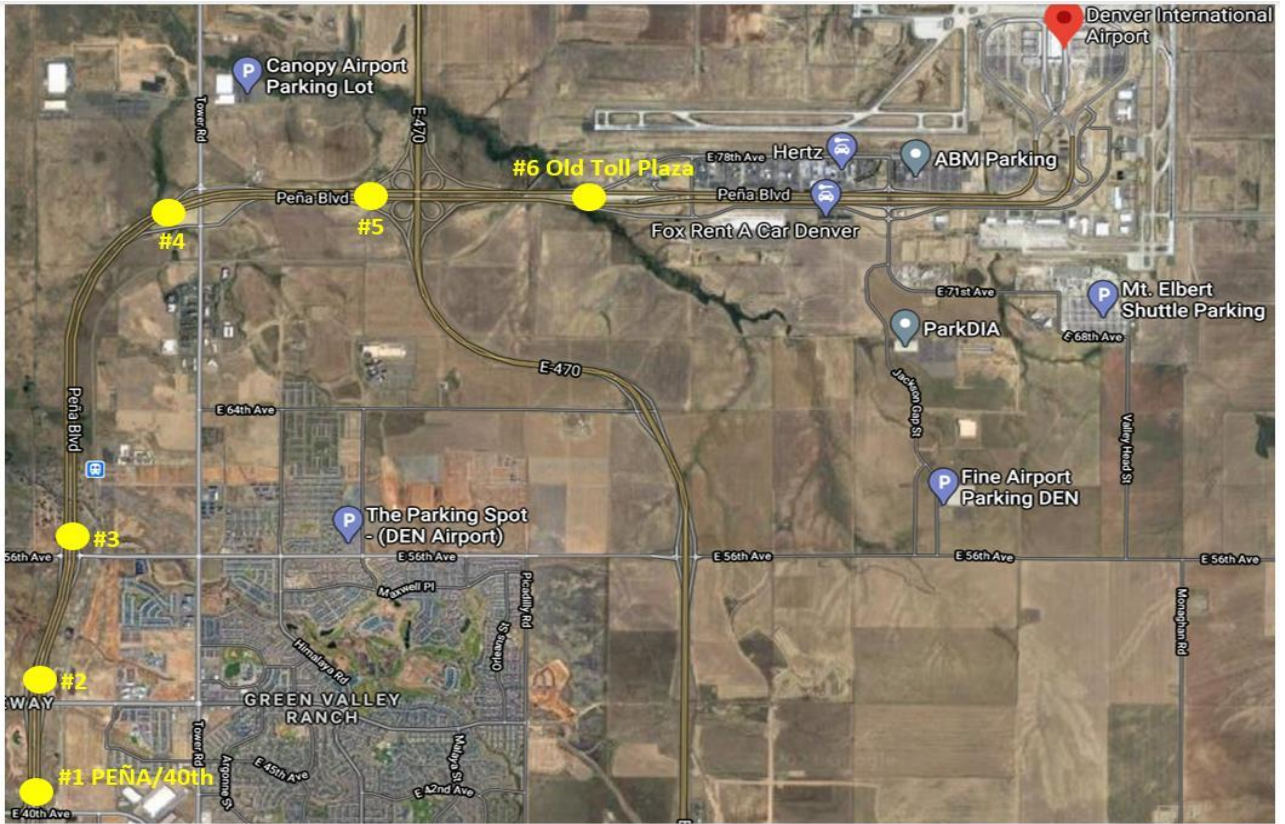
1. At the request of the City, the following number of additional tow trucks may be required:

a. Snow Events:

Cautionary Snow Alert	No additional request
Level A	1 Flatbed vehicle
Level B	1 Flatbed vehicle and 1 10-ton vehicle
Snow Emergency	6 Flatbed tow trucks (this allocation may include 10-ton vehicles) and one 30-ton heavy wrecker vehicle or one 50-ton heavy wrecker vehicle.

b. Other Emergency Events as dictated by the Contract, DPD via DEN Comm Center and/or DEN Parking and Transportation.

2. At the request of the City, additional tow equipment may be requested at any time, not related to a weather event.
3. The staging/location of additional vehicles will be at the discretion of DPD via DEN Comm Center or DEN Parking and Transportation.
4. All tow operators on duty will be required to have a hand-held radio provided by DEN and must be available via radio for the entirety of the shift.
5. All tow operators on duty are required to adhere to the agreed upon time keeping process. If unable to do so, contact the Airport Commercial Manager within 24 hours.
6. During a snow event, all tow trucks shall stage in the designated staging positions below unless otherwise directed by DPD via DEN Comm Center or DEN Parking and Transportation.



Services Provided

1. Services provided as outlined in the Contract are as follows:
 - a. **Standby Services**
 - b. **Contingency Services**
 - c. **Emergency Services**
2. Additional services include, tire inflation, tire changes, jumps start, lockouts, relocations, fuel service, etc., or as requested by DPD via DEN Comm Center, DEN Parking and Transportation.

NOTE: (Fuel service is a courtesy and will encompass taking customer to Final Approach gas station and taking customer back to vehicle. The purchase of fuel is at the customer's expense).

3. Services requested may come from DPD via the DEN Comm Center and DEN Parking and Transportation.
4. Once task is completed, the tow operator will inform the DEN Comm Center they are "cleared" to respond to future calls.
5. There may be situations, where the tow operator is assisting customers **without being notified** by DPD via the DEN Comm Center or DEN Parking and Transportation. It is the responsibility of the tow operator to contact the DEN Comm Center to inform of the task being performed, with the understanding that if DPD via the DEN Comm Center or DEN Parking and Transportation require services per the Contract, they may need to interrupt the service being provided and to respond to that call.

Removal of Vehicles from Revenue Area

1. Anytime a vehicle is removed or relocated, a Parking and Transportation LSA's presence shall be requested.
2. At the request of DPD via DEN Comm Center or approval of DEN Parking and Transportation, the curbside tow may assist with taking a vehicle out of the parking garage structure, due to clearance issues. The curbside tow must unload the vehicle prior to the exit area giving the private tow company the opportunity to load, proceed to the exit and pay all applicable parking fees.
3. All parking fees for a towed vehicle are due at exit from the revenue area, unless directed by DPD via DEN Comm Center or DEN Parking and Transportation.
4. Relocated vehicles shall be placed in the same revenue area, unless directed otherwise by DPD via DEN Comm Center or DEN Parking and Transportation.

Equipment

1. Vehicles will have adequate and enough equipment, as outlined in the Contract, Scope of Work Section B.4, Operational Requirements, to perform duties safely and successfully. Replacement equipment must be provided within sixty (60) minutes.
2. The Company name and phone number must be visible and permanent on all equipment providing service as DEN.
3. All equipment and operators are subject to inspections at any time. Tow operators and Contractors vehicles are subject to inspection or a compliance review by DEN Parking and Transportation at any time- Refer to Section B.6 of Exhibit A contained in the Towing Service Agreement.
4. Handheld Radios are provided by the DEN, and all Tow Operators are required to have the DEN provided radio while on duty with the appropriate channel to communicate with DPD via DEN Comm Center and DEN Parking and Transportation.
 - a. Handheld radios and extra batteries for the standby light-duty tow truck will be checked out and checked in at the Commercial Transportation Holding lot.
 - b. For emergency services, additional radios and batteries will be located at the Parking contractor's offices, for 24-hour access. The Parking contractor's offices are located on Level 1, West Garage by doors 104-106.
 - c. The tow operator is responsible for continuous radio monitoring and response.
5. Handheld radios will also be checked out and checked in. During an emergency, one tow operator may check out and in radios for all tow operators on site.
6. It is the responsibility of the tow operator to notify the Airport Commercial Manager or designee when DEN provided equipment is faulty or not working.
7. Contractor may be responsible for cost of repairs or replacement due to damage to DEN equipment caused by carelessness or negligence.

Safety and Security

1. Operators are not permitted to operate equipment for more than twelve (12) consecutive hours without a six (6) hour rest period between shifts, unless approved by the Airport Commercial Manager.
2. Operators are required to wear safety vest or uniforms with reflective material and other safety personal protective equipment while on duty providing services at DEN.
3. All Tow Truck equipment shall have the required tools/equipment to safely perform the duties as stated in the Tow Service Contract. Refer to Section B.6 of Exhibit A contained in the Towing Service Agreement
4. Contractors staff will inspect the curbside vehicle before and after shift, using the Contractor's provided checklist. These inspection sheets can be requested at any time by Parking and Transportation.

Access

1. All tow trucks providing service at DEN will be equipped with a DEN approved Automatic Vehicle Identification device (AVI tag) and the AVI tag is to be registered with DEN Commercial Transportation. This device is used to access the revenue control area in the parking facilities and other areas within DEN. It is not permissible to use the AVI tag to gain personal (non-work related) access to the revenue control area.
2. AVI access to the revenue areas are used ONLY to provide service at the requests of DPD via DEN Comm Center or DEN Parking and Transportation.

Time Keeping

1. All Operators will be required to adhere to the agreed upon timekeeping process at the beginning of shift and at the end of their shift.
2. It is the individual operator's responsibility to ensure compliance with time keeping procedures.
3. All exceptions for time keeping must be reported to the Airport Commercial Manager within 24 hours.

Tow Tickets

1. There are two types of Tow Tickets: Tickets used by the Curb Side Drivers, and Tickets used by the City Tow Truck drivers (used to transport vehicles from DEN to the Vehicle Impound Facility).
2. Some tow/service tickets completed by the curbside drivers may not have all the information. If there is missing information, the notation of why must be noted, i.e. no visible VIN number, unable to read, etc. The tow ticket must be written legibly.
3. City Tow drivers are also required to fill in the tow ticket in its entirety as stated above.
 - Note: If a Tow ticket is a “billable service” it must be filled out in its entirety as stated below, or it is subject to a deduction, per the Contract, off the monthly invoice.
4. Tow/service tickets are turned into the Commercial Transportation Holding lot (folder located in the copy room) at the end of shift. Monthly, a DEN Parking and Transportation staff member will deliver to the Parking and Transportation office.

EXHIBIT C

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
GOODS AND SERVICES AGREEMENT**

A. Certificate Holder

The certificate shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

B. Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) certificate is required.
- SUBMIT via emailed in pdf format to: contractadmininvoices@flydenver.com
- ELECTRONIC CERTIFICATES are required, hard copy documents will not be accepted.
- THIRD PARTY SOFTWARE may be implemented during the term of this Agreement to manage insurance compliance and documents with required use by Vendor of such system.
- REFERENCE on the certificate must include the DEN assigned Contract Number.

C. Coverages and Limits

1. Commercial General Liability:

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual policy aggregate must be maintained.

- a. Coverage shall include contractual liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and unescorted airside driving privileges are required, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

- e. If Contractor is an individual or represents that Contractor does not own any motor vehicles and Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
3. **Workers' Compensation and Employer's Liability Insurance:**
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
 - a. If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage and executing all required documentation with the State of Colorado.
 4. **On-Hook Towing Insurance:**
Contractor shall maintain a prudent per occurrence limit to cover damage to vehicles while being towed.
 5. **Garagekeepers Legal Liability Insurance:**
Contractor shall maintain prudent limits per vehicle and per location for the average value and average number of vehicles in its care at any given time, including comprehensive and collision coverage.
 6. **Property Insurance:**
Contractor is solely responsible for any loss or damage to their real or personal property including, without limitation, property, materials, tools, equipment, and structures. If Lessee carries property insurance on its personal property located on DEN premises, a waiver of subrogation as outlined in Section E will be required from its insurer.
 7. **Unmanned Aerial Vehicle (UAV) Liability:**
If Lessee desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
 - a. Express written permission must be granted by DEN.
 - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
 - c. Drone equipment must be properly registered with the FAA.
 - d. Drone operator(s) must be properly licensed by the FAA.
 - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage.
 8. **Excess/Umbrella Liability:**
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers by policy endorsement.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

H. Additional Provisions

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
5. The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Lessee. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.

10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage required under this Agreement shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Contractor's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.

EXHIBIT D

BOND#: 1091335

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Big Toe Towing, LLC, a corporation organized under the laws of the State of Colorado, hereinafter referred to as the "Contractor" and The Hanover Insurance Company, a corporation organized under the laws of the State of New Hampshire, and authorized to transact business in the State of Colorado, hereinafter referred to as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "CITY", in the penal sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00), lawful money of the United States of America, for the payment of which sum the Contractor and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

WHEREAS, the above Contractor has, as of the date of execution listed on the contract signature page, entered into a written contract with the City for furnishing all labor, materials, equipment, tools, superintendence, and other facilities and accessories for the construction of 202157902, DEN Towing Services, Denver International Airport, in accordance with the Technical Specifications, Contract Drawings and all other contract documents therefore which are incorporated herein by reference and made a part hereof, and are herein referred to as the Contract.

NOW, THEREFORE, the condition of this Performance and Payment Bond is such that if the Contractor:

1. Promptly and faithfully observes, abides by and performs each and every covenant, condition and part of said Contract, including, but not limited to, its warranty provisions, in the time and manner prescribed in the Contract, and
2. At all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools, or equipment, used or performed in the prosecution of work provided for in the above Contract and shall indemnify and save harmless the City to the extent of any and all payments in connection with the carrying out of such Contract which the City may be required to make under the law, and
3. Pays the City all losses, damages (liquidated or actual, including, but not limited to, damages caused by delays in the performance of the Contract), expenses, costs and attorneys' fees, that the City sustains resulting from any breach or default by the Contractor under the Contract, then this bond is void; otherwise, it shall remain in full force and effect.

IN ADDITION, if said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or any other supplies used or consumed by said Contractor or its subcontractors in its performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment, all amounts due as the result of the use of such machinery, tools, or equipment in the prosecution of the work, the Surety shall pay the same in an amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contract or compliance or noncompliance with the formalities in the Contract for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes.

(End of Page)

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this _____ day of _____, _____.

Big Toe Towing, LLC

CONTRACTOR

By: *Jason Hendley*
President Jason Hendley

The Hanover Insurance Company

SURETY

By: *Steve Shike*
Attorney-in-Fact Steve Shike

Signed and Sealed Date: 09/20/2021

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond.)

CITY AND COUNTY OF DENVER

By: _____
MAYOR

Signatures by CAO and the Mayor will be provided later and shall be fully incorporated herein.

By: _____
Chief Executive Officer
Denver International Airport

APPROVED AS TO FORM:

KRISTIN M. BRONSON, Attorney for the
City and County of Denver

By: _____
Assistant City Attorney

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,
Steve Shiike

Of Arthur J Gallagher Risk Management Services, Inc. of Salem, OR each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Fifty Thousand (50,000.00)

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 3rd day of February, 2020.

The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

John C. Roche

John C. Roche, EVP and President



The Hanover Insurance Company
Massachusetts Bay Insurance Company
Citizens Insurance Company of America

James H. Kawiecki

James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 3rd day of February, 2020 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Diane J. Marino
Diane J. Marino, Notary Public
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 20th day of September, 2021

CERTIFIED COPY

Theodore G. Martinez
Theodore G. Martinez, Vice President