

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **FERKAM INC.**, a Colorado Corporation, with its principal place of business located at 18850 E. Smith Road, Aurora, Colorado 80011 (the “Contractor”), jointly “the parties”.

WHEREAS, the City desires to retain the Contractor to provide certain towing services as needed; and

The parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Executive Director of General Services, (“Executive Director”) or, the Executive Director’s Designee.

2. SERVICES TO BE PERFORMED:

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A**, the **Scope of Work**, to the City’s satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on September 1, 2022 and will expire on August 31, 2025 (the “Term”). The term of this Agreement may be extended on the same terms and conditions, for an additional two (2) one (1) year renewal terms, upon written amendment to this Agreement prior to the expiration of the current term. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

4. COMPENSATION AND PAYMENT:

a. **Fee:** The City shall pay, and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the amounts set out in Exhibit A, Item numbers 1-7.

b. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the line item amounts set forth in the budget contained in **Exhibit A**. Amounts billed may not exceed the budget set forth in **Exhibit A**.

c. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the rates in **Exhibit A**.

d. **Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

e. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ELEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS** (\$11,500,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

6. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **EXAMINATION OF RECORDS AND AUDITS:** 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 the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The 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 the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. INSURANCE:

a. General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the

Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. 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 Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Auto Liability and On-Hook Towing Insurance, Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Contractor's insurer shall waive subrogation rights against the City.

e. Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers' Compensation/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 of \$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. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

g. **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. **Professional Liability (Errors & Omissions):** Contractor shall maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

j. **Garagekeepers Liability:** Contractor shall maintain Garagekeepers Liability insurance with minimum limits of \$300,000 aggregate.

k. **On-Hook Towing Insurance:** Contractor shall maintain On-hook Towing Insurance with sufficient limits to cover vehicles in tow.

10. **DEFENSE AND INDEMNIFICATION**

a. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless 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 City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that 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 City and will pay on behalf of 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. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The 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.

11. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment

or subcontracting without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

13. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

16. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

17. CONFLICT OF INTEREST:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include

transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of General Services or Designee
201 West Colfax Avenue, Dept. 1110
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

19. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:

a. 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").

b. The Contractor certifies that:

(1) 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..

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

c. 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.

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure

established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this contract, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

24. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and the Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City and Contractor agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of Contractor made available, directly or indirectly, by Contractor to City as part of the Scope of Services, are the exclusive property of Contractor or the third parties from whom Contractor has secured the rights to use such product. The Contractor Materials, processes, methods and services shall at all times remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use the Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City.

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

29. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION:

a. City Information: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

b. Use and Protection of Proprietary Data or Confidential Information:

(1) Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Executive Director and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

(2) The Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(3) The Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

c. **Employees and Subcontractor**: The Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose Proprietary Data or confidential information to

subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

d. Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. The Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

e. Contractor’s Confidential Information; Open Records: If the City is furnished with proprietary data or confidential information that may be owned or controlled by Contractor (“Contractor’s Confidential Information”), the City will endeavor, to the extent provided by law, to comply with the requirements provided by the Contractor concerning the Contractor’s Confidential Information. However, the Contractor understands that all the material provided or produced by the Contractor under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of such information, the City will advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of it’s the Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of the Contractor’s intervention to protect and assert its claim of privilege against disclosure under this section including, without limitation, prompt reimbursement to the City of all reasonable attorneys’ fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

31. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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 contract personnel being barred from City facilities and from participating in City operations.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City 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.

35. PAYMENT OF CITY MINIMUM WAGE: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., 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 foregoing D.R.M.C. Sections. 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.

Exhibits:

Exhibit A – Scope of Work

Exhibit B – Certificate of Insurance

Contract Control Number: GENRL-202263097-00
Contractor Name: FERKAM INC

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:

GENRL-202263097-00
FERKAM INC

By: DocuSigned by:
Fariborz Samimi
93761E265F4F496...

Name: Fariborz Samimi
(please print)

Title: Fariborz Samimi
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A SCOPE OF WORK

The purpose of this Agreement is to provide comprehensive towing services as ordered by the Denver Police Department, Denver Sheriff Department and Denver Right Of Way Enforcement in their enforcement of the law and for the protection of the safety of the citizens of Denver, and for towing and specified servicing of City-owned vehicles as ordered by Fleet Maintenance Divisions or other City agencies.

1. DEFINITIONS:

- 1. ROWE – Department of Transportation and Infrastructure Right of Way Enforcement**
- 2. DPD – Denver Police Department**
- 3. DFD – Denver Fire Department**
- 4. DSD – Denver Sheriff's Department**
- 5. DEN – Denver International Airport**

2. SCOPE OF WORK:

Services required under this Contract include, but are not limited to, the following:

- a. **IMPOUND TOWS:** Contractor shall be responsible for all tows (standard and heavy) ordered to the Vehicle Impound Facility at 5160 York Street.
Contractor must be able to respond within three business days once contacted by the City to remove any oversized vehicles from the primary and/or any satellite impounds lots being operated by the City to be moved to the City's Recycling vendor. Current average is five (5) oversized vehicles per week.
- b. **CITY-OWNED VEHICLE TOWS:** Contractor shall be responsible for the towing of damaged or disabled City vehicles (standard and heavy tows) to various City maintenance facilities or to other locations throughout the City as ordered by authorized City personnel. This includes difficult, heavy tows, such as large DFD apparatus. The largest of these vehicles is a 100' aerial platform ladder truck. Proposers may refer to Attachment A for a detailed drawing of this vehicle. Other vehicles may include but are not limited to garbage trucks, street sweepers, pickup trucks, and snowplows (plows will be removed by DOTI Fleet Operations prior to towing).
- c. **RIGHT OF WAY ENFORCEMENT TOWS:** Contractor shall be responsible to work with ROWE on a daily basis to assist this agency in their ongoing mission, including, but not limited to clearing traffic lanes, towing booted vehicles, moving vehicles from permitted meter areas to the closest legal space, etc. Contractor will be required to provide, at a minimum, two tow trucks throughout each day to sites designated by ROWE to clear traffic lanes. Contractor shall arrive at designated sites at the time specified by ROWE.
- d. **DPD AUTO THEFT TOWS:** Contractor will provide DPD auto theft the identifying vehicle including full VIN, license plate number and state, vehicle make, model, year and color, prior to removal of the vehicle, via phone or an approved dispatching software system application. In situations where it is not feasible to provide DPD auto theft with the identifying vehicle information due to safety reasons, it must be provided within 30 minutes from pick up. Contractor must not leave vehicle until a response via the approved dispatching software application or by DPD personnel indicate the vehicle is not stolen or wanted by law enforcement.
- e. **SPECIAL EVENTS TOWS:** Contractor shall be responsible to work with ROWE, the DSD and the DPD to assist with controlling parking during home Bronco games and special events such as, but not limited to, concerts and public venues. Contractor will be required to provide, at a minimum, fifteen tow trucks

to be assembled at least two hours prior to game time at locations designated by authorized City personnel. Contractor will be responsible to provide an on-site dispatcher to handle claims and provide DPD auto theft and ROWE a detailed log of all tows to a designated temporary impound facility every thirty minutes. Contractor will be required to tow all vehicles remaining after the game or event when the temporary impound facility is utilized to the 5160 York St. impound facility. Contractor will be required to meet with ROWE and the DSD each fall before the start of the Bronco season to establish processes and procedures as requirements may change.

Contractor shall work, as required, with ROWE, the DPD and the DSD to move vehicles at any location within the City and County of Denver limits during parades, special events, police operations or emergency situations (e.g., sporting events, demonstrations, civil disturbances, law enforcement operations). City agencies will make every effort to provide 24 – 48 hours' notice for special events.

- f. **MOUNTAIN PARKS TOWS:** Denver Mountain Parks has 22 developed parks and 24 conservation tracts located within four different counties: Jefferson, Clear Creek, Douglas, and Grand County. Contractor shall be responsible for towing vehicles and/or equipment from various Mountain Parks locations and park parking lots to other Mountain Parks locations designated service repair shops, and/or the Denver impound lot. Contractor shall have the capacity to transport recreational vehicles (typically from Chief Hosa Campground).
- g. **ADDITIONAL SERVICES:** The contractor shall provide all other towing services associated with this agreement, such as nonconsensual tows and/or district tows, as needed, including the services listed below:
- Contractor shall provide jump starts, assistance with tire changes, service lock outs and attach and remove snow chains to City-owned vehicles, as requested.
 - Contractor shall, as requested by the DPD, ROWE or authorized City personnel, move any vehicle approximately one City block to clear a traffic lane.
 - Contractor shall clean up debris at accident sites where Contractor provides tows (all prices quoted shall include the sweeping, cleaning and removal of debris caused by accidents from the public right-of-way prior to the tow operator's departure from the accident scene). Contractor shall provide street clean-up services, as needed, exclusive of towing, if ordered by DPD police officer or authorized City personnel.
 - Contractor shall transport "junker" vehicles, as requested, to be utilized in police or fire training exercises, and will subsequently tow such vehicles to the facility operated by the City's provider for the disposal of "junkers".

When an emergency or extraordinary situation exists as declared by the Mayor, Executive Director of the Department of Transportation and Infrastructure, CEO of Aviation, Executive Director of Safety, Chief of Police or Office of Emergency Management, the Contractor will give the City priority service.

If the Contractor is deploying all 30 tow vehicles for City towing services (as required), and the City requires additional units beyond the 30 units, the City shall be responsible for obtaining those additional units at the City's expense. However, if the Contractor deploys fewer than the 30 required tow vehicles for City towing and the City requires more vehicles, then the Contractor will be charged the difference between the actual number of vehicles deployed and the number of vehicles needed by the City, up to 30 vehicles ("Cover"). The Cover shall be recovered by deduction from the Contractor's next invoice(s) for services rendered.

Vehicles towed or serviced under the terms of this Agreement (either impoundments or City vehicles) may be located at any point within or adjacent to the geographical boundaries of the City and County of Denver, including highways; or a disabled City vehicle may be located well outside the boundaries (e.g.,

a Sheriff Dept. vehicle stalled while in transit between Denver and Canon City). Further, vehicles towed under the terms of this Agreement may be transported to any number of sites, including, but not limited to, the following:

- Vehicle Impound Facility (Car Pound), 5160 York St.
- Denver Police Garage - 5440 Roslyn Street
- Denver Department of Transportation and Infrastructure Fleet Maintenance - 5440 Roslyn Street
- Denver Fire Department Fleet Maintenance and Training Academy - 5440 Roslyn Street
- Denver Police Service Center, 1930 35th Street
- Denver International Airport (DEN) Fleet Maintenance (DIA Gate 5, accessible with security Clearance and permission from authorized DEN personnel from 27500 E. 80th Ave.)
- Denver Department of Transportation and Infrastructure Solid Waste Facility, 1271 W Bayaud
- Denver Police Training Academy, 8895 Montview Blvd., Bldg. 58
- Denver Parks & Recreation, 945 S Huron
- Denver Traffic Operations, 3381 Park Ave West
- Denver Department of Transportation and Infrastructure Central Platte Campus, 1271 W Bayaud
- Denver City Fleet Shops, 2013 S Osage
- Cherry Creek Transfer Station, 7301 E Jewell

New or revised regulations approved by the Denver City Council and/ or the Colorado Public Utilities Commission, 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 bid 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 RFP for the services required.

City agencies are to be quoted an "ETA" (estimated time of arrival) each time they request a tow for a vehicle belonging to their respective fleets.

3. RESPONSE TIME:

Response time of forty-five (45) minutes is required for the Interstate Systems, inclusive of 6th Avenue; forty-five (45) minutes for all other roads, and forty-five (45) minutes for heavy tows. Response time of sixty (60) to seventy-five (75) minutes for the Vehicle Impound Facility to retrieve tow-outs (including heavy vehicles). This time shall start once City Police Dispatchers or authorized City personnel relay the necessary details to the Contractor's dispatch personnel. Contractor MUST provide 24-hour dispatch services.

Tow driver(s) servicing this Contract shall give priority response to dispatch request orders from company dispatchers, approved vendor providing dispatching software platform dispatchers, City 911 dispatchers or other authorized City personnel. The approved vendor responsible for the management of the dispatching software platform will be the prime dispatch method for all tows listed above with the exception of ***B.3.b City-owned Vehicle Tows***. City-vehicle tows will be dispatched through 911 or direct contact from authorized City personnel.

4. OPERATIONAL REQUIREMENTS:

Contractor is to be in compliance with the following requirements:

- a. Be in operation twenty-four (24) hours per day, seven (7) 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. 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 and the PUC license

number in clearly defined, legible lettering.

- c. Contractor shall make business records and facilities available for inspection by law enforcement officers and the Director of Excise and Licenses and the Auditor or his/her designee(s) at any time during business hours.
- d. 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.
- e. 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; these stop, brake and tail lights shall operate when those of the tow truck are activated.
- f. 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 shall contain all necessary equipment required for services container herein. 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.
- g. The Contractor shall exercise due care at all times in the removal of vehicles from streets and highways and shall follow the lawful direction of any law enforcement officer. This shall include the determination by the law enforcement officer that the tow equipment provided by the contractor is inadequate. The law enforcement officer shall have the authority to require the City Towing Services contractor to provide different or additional equipment to provide the services required in a safe and responsible manner.
- h. Contractor must tow vehicles that are "full time" four-wheel drive or all-wheel drive (AWD) using a flatbed tow truck only. Wheel lifts shall not be used when towing "full time" four-wheel drive or all-wheel drive (AWD) vehicles.
- i. When required, contractor must remove drive axles from housing before towing if equipment is equipped with an Automatic Transmission and/or Hydraulic Launch system. Contractor must also install caps on axle housing to minimize oil leakage from rear differentials while in tow.

5. VENDOR DEFICIENCY REPORT:

The Contractor shall respond in full with a corrective action plan to Vendor Deficiency/Deviation Reports sent by the City and County of Denver within three (3) working days.

6. SPECIFIC EXCLUSIONS:

It shall be a specific provision of this contract that the scope of services to be provided shall NOT include the following, which are provided by separate contracts:

- 1) Towing of vehicles on-site at DEN or emergency towing services ordered for Pena Blvd. by DEN Parking Management. This includes the towing of abandoned vehicles left at DEN parking lots that are subsequently towed to the Sheriff Vehicle Impound Facility per the direction of DEN Parking Management.
 - DEN will utilize this contract for the towing/transfer of DEN fleet (City) vehicles or for impounds

ordered by the DPD to the Denver Sheriff Vehicle Impound Facility or to transport DEN vehicles and equipment to auction sites.

- 2) Towing of vehicles that are not City-owned as requested by any owner or operator of a damaged/disabled vehicle requiring removal or relocation, but not impoundment. These vehicles are serviced under a separate contract that is in support of Denver RMC §54-241(a)(b) prohibiting the practice of “tow chasing” within the City and County of Denver.

The resulting Contractual Agreement for “Citywide Towing Services” is separate from contracts for “Towing Services – Denver Int’l Airport” and “On-Call Towing Services”.

The City and County of Denver has no association with or control over the Colorado Department of Transportation in their efforts to provide a Courtesy Patrol for motorists on I-25 from County Line road to 84th Avenue and on I-70 from Washington to Federal Boulevard. This State program is designed to provide assistance to motorists and reduce traffic congestion caused by vehicle breakdowns. The City Towing Services contract for the City and County of Denver is not a Courtesy Patrol program.

With the exception of the DPD, the DFD., the DSD (including the Vehicle Impound Facility), ROWE and Fleet Maintenance Divisions of the Department of Transportation and Infrastructure, Denver Parks and Recreation, Denver Mountain Parks, and Denver International Airport, other agencies of the City may be served by separate towing arrangements which may have been established by independent agreements/contracts with events staff contractors at City facilities (e.g., Argus Event Staffing servicing Arts & Venues facilities such as the Denver Coliseum, Red Rocks Amphitheatre, etc.). If such agencies are being served by towing arrangements other than this contract, in no case shall that agency/facility or whichever towing entity is serving that agency/facility interfere with the performance of the Contractor servicing this contract if in response to a request for service from the authorized contract dispatch service.

Contractor should be aware that the DPD Operations Manual contains an “Any Tow” provision whereby the City Towing Service may be bypassed. Specifically, this provision reads: “Officers may request ‘any tow’ via the police radio for any hazards on the interstate highway system. This procedure applies to the interstate highway system only. Under no circumstances will this be permitted anywhere else in the city.”

Contractor shall be the preferred provider of towing services for the DPD, the DFD., the DSD (including the Vehicle Impound Facility), ROWE and Fleet Maintenance Divisions of the Department of Transportation and Infrastructure, Denver Mountain Parks and DEN; however, Contractor should be aware that other procurements for towing services which do not interfere with the purpose and intent of the City Towing Services contract may be made in the best interests of the City and County of Denver.

7. EQUIPMENT LIST:

Contractor shall be able to provide a minimum of thirty (30) power-operated wreckers in good and serviceable condition, plus a tractor and trailer, as specified. Each wrecker 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 wrecker 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 723-9-13 of the PUC Rules, Regulations, and Civil Penalties Governing Towing Carriers by Motor Vehicle relating to required equipment and accessories for tow vehicles. In addition, all CDL trucks shall carry, at a minimum, a 5 lb. bag/bucket of floor dry to be used to help control hazardous spills from entering storm drains and sewers.

The fleet of wreckers shall include at a minimum:

- One (1) tri-axle with a retracted rating of 60 tons (specifications for this unit also include: 20,000 lbs front axle, two (2) 50,000 lb. hydraulic winches, a wheelbase minimum of 320" from center bogies to centerline of front axle, 17,600 lbs. minimum lifting rating fully extended at 181" of reach and a minimum of 56,500 lbs. of retracted underreach, wheel lift grids must be a minimum capacity rating of 25,000 lbs)
- One (1) tandem axle with a manufacturer boom rating of 30 tons

- One (1) tandem-axle tractor unit
- One (1) self-loading tri-axle trailer, minimum of 48 ft. in length.
- Twenty (20) flatbed tow trucks with wheel-lifts
- Six (6) 4x4 tow trucks (any 4x4 tow truck can serve for this requirement, but Contractor must have, at a minimum, 30 wreckers in good condition, plus a tractor and trailer)
- One (1) medium duty sling/wheel-lift tow truck with 16-ton lifting capacity with bus bar and tow eye bus forks with 7” – 9” extensions
- Two (2) medium duty sling tow trucks with 10-ton lifting capacity
- Two (2) low clearance tow trucks (maximum height: 6'4") to accommodate Levels B1 and B2 in the DPD Administration Building at 13th & Cherokee St., and parking garages, as needed. Low clearance truck is to be equipped with "go-jacks" in addition to the proper complement of equipment indicated in the preceding paragraph.
- Load King 503DFP/DFM Folding Gooseneck Trailer (or an approved equal) Lowboy equipment trailer, 60-ton capacity, with hydraulic folding gooseneck, three (3) axles, a 26-ft flat-deck and an 8'-6" trailer width. Trailer shall be capable of transporting 3 items of equipment: 1) large main item on main deck, 1) smaller item on rear deck and 1) small item up to 15,000lbs on folding gooseneck.

Each vehicle shall be equipped with a 2-way radio in a working condition with constant contact to a 24-hour dispatch office from 911 and the approved vendor of the dispatching software platform.

The Contractor shall indicate company name and phone number in prominent lettering on either door of 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.

The Contractor shall be responsible for any inventoried items inside the vehicle while in Contractor’s possession (e.g., small tools, spare wheels, radios, personal property and other items of intrinsic value).

8. VEHICLE INSPECTIONS:

The Director of Excise and Licenses, any peace officer or the Manager of Safety or their designee(s) may conduct an inspection of any tow truck being utilized under the contract 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 contract 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.

9. PERSONNEL:

The Contractor shall have available sufficient qualified personnel to operate all specified wreckers at all times. The Contractor may be required to provide two qualified personnel at one time in response to situations requiring heavy wreckers or two varied tow trucks. Each driver/operator shall have a valid Colorado Driver's License.

All drivers shall operate the wreckers in a safe and prudent manner and shall refrain from using profane or vulgar language or being under the influence of alcohol or drugs in a public area 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 bidder's 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. Sub-contracting of tow services is not allowed under this agreement.

10. CONTRACTUAL DEFICIENCIES:

Specific operational standards subject to classification as contractual deficiencies are as follows, and failure to comply with these standards may be determined by authorized City personnel:

- a. If the contractor fails to comply with the ETA (estimated time of arrival) requirements or otherwise fails to provide tow services as needed.
- b. Failure to maintain accurate, precise records of specific towing services provided per this Agreement.
- c. Failure to provide a sufficient number of tow vehicles to service the City's needs.
- d. Failure to provide adequate and sufficient equipment on the tow vehicles, i.e., brooms, shovels, dollies, chains, lights and other equipment necessary to perform a tow, prevent damage to towed vehicles or provide clean-up at tow sites.
- e. Failure to provide sufficient, qualified personnel to operate towing services as required.
- f. Failure to sweep and clear tow site of debris, as required.
- g. Failure to maintain each tow vehicle in operating condition.

Failure to safely remove vehicles from the Vehicle Impound Facility within 90 minutes from arrival onsite.

11. ACCEPTANCE AND BILLING

A.11.a REPORTING

All tow slips must include the following information:

- 1) Name, including signature, of requesting Denver police officer or authorized City employee, including badge number or employee ID number.
- 2) City agency requesting tow and who will be responsible for payment.
- 3) Specific service and charge(s) totaled (see Proposal Pricing Items, Section C). If hourly rate applies, record exact hours rounded off to ¼ hour.
- 4) Complete vehicle/unit description (i.e., year, make, model, unit no., license plate and VIN).
- 5) Date, time and location from which vehicle/unit is towed or location of service.
- 6) Address/facility destination of vehicle/unit towed.
- 7) Describe any observed damage to vehicle prior to tow (impoundments and City-owned units).

Contractor is to maintain orderly and accessible records of tows and services performed under the Contract. The City reserves the right to request various reports as necessary.

INVOICING REQUIREMENTS:

Vendor must be capable of providing invoices that include the following details:

- Invoice number
- Invoice date
- Service date(s) or service period
- Purchase Order (PO) number (will be provided to vendor when assigned)
- Service location (Building name and / or address)
- Facility Code (list will be provided to the vendor)
- Itemized charges, including unit of measurement
- Total charge

Vendor shall also provide monthly statement billing (as required).

Invoices are to be remitted as follows, the exact contact person for each agency will be identified upon contract award:

- Denver Police Department
Denver Police Department, Finance
1331 Cherokee St, Room 422
Denver CO 80202
 - All tows, no/go's, mileage charges, hourly charges and services for Denver Police and Denver Sheriff Department City-owned vehicles as ordered by the Denver Police or Denver Sheriff Department.
 - All impounds, no/go's, mileage charges, short tows and hourly charges to citizen-owned vehicles as ordered by the Denver Police Department or the Denver Sheriff Department.
- Department of Transportation and Infrastructure
DOTI Finance and Administration
201 W Colfax Ave., Dept. 611
Denver CO 80202
 - All tows, no/go's, mileage charges, hourly charges and services for City-owned vehicles, exclusive of vehicles managed by the Denver Police Department, the Denver Sheriff Department, the Denver Fire Department and Denver International Airport.
- Right of Way Enforcement
DPW Right of Way Enforcement, Accounts Payable
201 W Colfax Ave, Dept. 706 (5th Floor)
Denver CO 80202
 - All tows, short tows, impounds, no/go's, hourly charges and services to citizen-owned vehicles as ordered by Right of Way Enforcement employees.
- Denver Fire Department
Denver Fire Department Fleet Management
5440 Roslyn St., Building B
Denver CO 80216
 - All tows, no/go's, mileage charges, hourly charges and services for DFD City-owned vehicles as ordered by the Denver Fire Department.

- Denver Fire Academy
Denver Fire Department
5440 Roslyn St., Building 5, Suite #200
Denver CO 80216
 - All tows for abandoned/confiscated vehicles used in Denver Fire Academy training exercises as ordered by the Denver Fire Department.

- Denver International Airport
Denver International Airport, Accounts Payable
8500 Pena Blvd., AOB 8th Floor
Denver CO 80249
 - All tows, no/go's, mileage charges, hourly charges and services for DIA City-owned vehicles as ordered by the Denver International Airport.

- Denver Parks & Recreation
Denver Parks and Recreation, Finance
201 W Colfax Ave, Dept. 602
Denver CO 80202
 - All tows, no/go's, mileage charges, hourly charges and services for DPR City-owned vehicles not maintained by DPW Fleet Maintenance as ordered by the Denver Parks and Recreation Department.

12. BACKGROUND CHECKS

Contractor, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the City. The term “employee” for the purpose of this requirement, includes anyone who is providing services for the City under this Contract. Background checks are to be conducted through an independent background check vendor and must include the following:

- Social Security Number Trace;
- Federal Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Colorado Criminal Records (includes wants, warrants, arrests, convictions, and incarcerations);
- Criminal Records from other States if the employee disclosed, or the background check identifies, that the employee lived in another state in the last seven years (includes wants, warrants, arrests, convictions, and incarcerations); and
- National Sexual Offender Registry Search.

The background check shall include all convictions for the last seven years and may include additional convictions beyond seven years when permitted and/or required by law.

In addition to the foregoing background check, certain City locations require employees to pass a NCIC background check. These background checks will be administered by the City and will be at no cost to the Contractor. Contractor employees will be required to provide their social security numbers to the City. Contractors will be provided entrance cards for each facility. Contractors are not allowed to share cards to provide services. The following locations require NCIC background checks:

- Police Academy
- Denver Animal Shelter

- Traffic Operations
- DPD Police Precincts

The background check(s) must be conducted successfully prior to initial access and/or involvement by employees. Employees who separate from the Contractor's employment must undergo another background check prior to renewed access and/or involvement in providing services to the City. The City also has the ability to audit the Contractor's background check process, to ensure compliance with City standards, at any time. Additionally, all employees are required to self-disclose to the Contractor any criminal charges and convictions and nolo contendere pleas (not contest pleas) that occur while providing services to the City within three business days of the conviction, charge, or plea. Contractor is required to inform the City of any criminal charges or convictions or nolo contendere pleas (no contest pleas) that arise while an employee is on assignment with the City. Contractor must inform the City within one business day of the Contractor having knowledge of the charge, conviction, or plea. The City will determine, in its sole discretion, whether the employee will remain on a City assignment. Failure by the Contractor to comply with the terms of this Section may result in the termination of its contract with the City.

13. TOWING DISPATCHING MANAGEMENT SYSTEM:

Contractor, at its own expense, will provide the City and County of Denver a dispatching software application system of record for all dispatching services that are requested by the City and County of Denver. The selected dispatching software application system of record must comply with all City and County of Denver technological requirements prior to the implementation and roll-out of the towing dispatching management system.

Contractor, at its own expense, will conduct initial training of the selected dispatching software application, functionality and reporting capabilities. Contractor will provide the City and County of Denver with additional training on dispatching software system when software updates occur, if needed.

14. F.O.B. POINT:

All prices quoted must be quoted at a firm price F.O.B. Denver, Colorado, services delivered to various locations throughout the City and County of Denver.

15. AIRPORT SECURITY:

It is a material requirement of this Contract that the Vendor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. The Vendor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. Violation by the Vendor or any of its employees, subcontractors, and vendors of any rule, regulation, or authorized directive from the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination by the City of this Contract for cause.

The Vendor shall promptly upon notice of award of this Contract, meet with the Airport's Assistant Security Manager to establish badging and vehicle permit requirements for Vendor's operations under this Contract. The Vendor shall obtain the proper access authorizations for all of its employees, subcontractors, and vendors 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 such rules may be subject to revocation of his/her access authorization. The failure of the Vendor 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.

The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the term of this Contract, the Vendor shall take immediate steps to comply with security modifications which occur as a result of the changed status. The Vendor may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Vendor's operations at the Airport.

The Vendor shall return to the City at the expiration or termination of this Contract, or upon demand by the City, all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If the Vendor fails to do so, the Consultant 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 Vendor under this Contract.

LAWS, REGULATIONS, TAXES AND PERMITS

The Vendor shall procure all permits and licenses, pay all charges, taxes and fees and give all notices necessary and incidental to the due and lawful prosecution of the work. All costs thereof shall be deemed to be included in the prices proposed for the work.

The Vendor, at all times, shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules and regulations in any manner affecting the conduct of the work.

Without limiting the foregoing, the Vendor shall establish appropriate procedures and controls so that services under this Contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration laws. Failure to comply with this condition satisfactorily may cause the City to terminate this Contract.

16. EMERGENCY PURCHASES:

The City and County of Denver reserves the right to purchase services from other sources those items which are required on an emergency basis and cannot be supplied immediately by the vendor.

17. VENDOR PERFORMANCE MANAGEMENT:

Awarded contractors are required to furnish a performance report to the analyst on an annual basis, no later than the anniversary date of the applicable City Contract, providing at a minimum the following information:

FOR SERVICES

- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency
- Average response time after receipt of call from the City
- Average time for job completion

Contractor may also be required to provide additional specific reporting/data as required.

18. COOPERATIVE PURCHASING:

The City and County of Denver encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City and County of Denver supports such cooperative activities. Further, it is a specific requirement of this proposal or Request for Proposal that pricing offered herein to the City and County of Denver may be offered by the vendor to any other governmental jurisdiction purchasing the same products.

Vendor(s) must contract directly with any interested governmental agency concerning the matters within this IFB.

19. PRICING:

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

EXHIBIT AIFB No. 0302A
Citywide Towing Services**C.5 BID ITEMS:****ITEM NO. 1:**

Unit price per tow of vehicle within forty-five (45) minutes on Interstate System, inclusive of 6th Avenue; forty-five (45) minutes on all other roads, and forty-five (45) minutes for heavy tows regardless of conditions or location within the City limits to the Vehicle Impound Facility (Car Pound), as directed

Item No.	Weight	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
1A.	Under 11,000 lbs.	6800	\$ 190.00	\$1,292,000.00
1B.	Over 11,000 lbs.	60	\$ 225.00	\$ 13,500.00

ITEM NO. 2:

Unit price for tow called for and subsequently canceled: a "no-go".

NOTE: A "no-go" where the tow operator does not show up within the specified response time (refer to Section B.4) shall not be charged to the City.

Item No.	Weight	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
2A.	Under 11,000 lbs.	264	\$50.00	\$13,200.00
2B.	Over 11,000 lbs.	24	\$75.00	\$1,800.00

ITEM NO. 3:

Unit price per tow within forty-five (45) minutes on the Interstate System, inclusive of 6th Avenue; forty-five (45) minutes on all other roads, and forty-five (45) minutes for heavy tows regardless of conditions to tow City-owned vehicles to requested area within the City limits.

Item No.	Weight	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
3A.	Under 11,000 lbs.	60	\$60.00	\$3,600.00
3B.	Over 11,000 lbs.	24	\$225.00	\$5,400.00

ITEM NO. 4:

Mileage charge for towing any type of vehicle retrieved from or towed to a location outside the City and County of Denver limits; mileage shall be from hook-up point to nearest point of City boundary plus tow charge for Pricing Items 1 and 3.

Item No.	Mileage	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
4A.	N/A	N/A	\$3.00	\$3.00

EXHIBIT A

IFB No. 0302A
Citywide Towing Services**ITEM NO. 5:**

Unit price to move a vehicle approximately one (1) city block to clear traffic lanes. If more than one unit must be moved to clear a traffic lane, the hourly rate provided as in Pricing Item No. 6 will be paid. This includes the Interstate System and 6th Avenue. (This is also termed a "short tow".)

Item No.	Mileage	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
5A.	N/A	756	\$ 60.00	\$ 45,360.00

ITEM NO. 6:

Hourly rate for the following services:

1) Per tow within twenty (20) minutes on the Interstate System, inclusive of 6th Avenue, forty-five (45) minutes on all other roads and forty-five (45) minutes for heavy tows of City-owned vehicles that are stuck in mud, snow, etc., that do not need tow or additional services (to be rounded off to the nearest 1/4 hour, as necessary)--heavy tow may apply;

2) For moving cars or trucks at any location within the City limits during parades, special events or emergency situations (e.g., sporting events, demonstrations, civil disturbances, police stings). Each unit moved is not a separate tow or one-hour charge; Contractor will move all vehicles requested and will be paid for each hour or fraction, rounded off to the nearest 1/4 hour, as necessary, as incurred by each tow vehicle utilized. If tow(s) trucks are requested on a standby basis, the hourly rate will be paid, but towing assignments may not be accepted at other locations until release from standby status by police officer or authorized City employee. A minimum of one (1) hour will be guaranteed--heavy tow may apply;

3) For performing unusual or extraordinary towing, winching or hoisting of vehicles or articles (e.g., from lakes, ponds, creeks, guardrails, embankments, etc.) at the direction of a Police officer or authorized City employee. City to pay for only time used, rounded off to the nearest 1/4 hour. A minimum of one (1) hour will be guaranteed--heavy tow may apply;

4) When tow truck remains at scene more than thirty (30) minutes for an officer to complete investigation or otherwise give permission to tow vehicle(s) from accident site. (Hourly rate to be rounded off to the nearest 1/4 hour--6A applies);

5) For relocating vehicles at City Car Pound, as needed--heavy tow may apply;

6) For clean-up services exclusive of towing, as ordered by a police officer or authorized City employee--6A ONLY.

Item No.	Weight	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
6A.	Under 11,000 lbs.	1400	\$ 190.00	\$ 266,000.00
6B.	Over 11,000 lbs.	72	\$ 225.00	\$ 16,200.00

ITEM NO. 7:

Unit price for the following services to City-owned vehicles, as requested:

- 1) Per jump start (no tow);
- 2) Per tire change (no tow);

EXHIBIT A

IFB No. 0302A
Citywide Towing Services

- 3) To service a "lock-out";
- 4) To attach snow chains to police vehicles (2 chains per vehicle).
- 5) To remove snow chains from police vehicles (2 chains per vehicle)

Item No.	Weight	City Estimated Avg	Proposed Cost Each	Total Cost (Yrly Avg x Cost)
7A.	Under 11,000 lbs.	360	\$ 50.00	\$ 18,000.00
7B.	Over 11,000 lbs.	24	\$ 100.00	\$ 2,400.00

Additional Proposed Services – Are there any additional services that the City should consider? Suggested services are not guaranteed to be accepted.		Total Cost
*		\$
*		\$
*		\$
*		\$

Vendor Name:	Ferkam Inc. d.b.a Extreme Towing and Recovery
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