

## SERVICE AGREEMENT

This Service Agreement ("Agreement") is dated May 23, 2023 and is between each contractor listed in Exhibit A to this Agreement (each referred to as "Contractor," or collectively, as "Contractors") and incorporated by reference, and the County of Fresno, a political subdivision of the State of California ("County").

### Recitals

A. The County has need for regular towing and roadside services.

B. The County desires to enter into an agreement with each Contractor listed on Exhibit A, in order to expeditiously provide for the County's needs for the towing and roadside services

C. On December 19, 2022, the County issued a Request for Statement of Qualifications (RFSQ) No. 23-015 for towing and roadside services, which closed on January 27, 2023.

D. Each Contractor submitted a responsive bid to the RFSQ ("Responses"), and each Contractor's pricing is set forth in Exhibit C.

E. The County and Contractors therefore agree as follows:

### Article 1

#### Contractor's Services

1.1 **Scope of Services.** The Contractors shall perform all of the services provided in Exhibit D to this Agreement, titled "Scope of Services," and in accordance with the specifications, requirements, terms and conditions of the RFSQ, and at the rates set forth in each Contractor's response to the RFSQ. No Contractor shall be obligated for another contractor's performance under this agreement.

1.2 **Non-exclusive Agreement.** This is a non-exclusive agreement. The Contractors agree that this Agreement does not constitute a guarantee or promise that any Contractor shall provide any certain amount of services to the County under this Agreement. The County reserves the right to engage any Contractor under this Agreement, and to engage any other contractor for the same or similar services under any other agreement, or hire its own forces. By executing a signature page hereto, each Contractor becomes a signatory to this Agreement, and agrees that is party to this Agreement only with the County and is bound by its terms. No

Contractor has any rights or obligations within respect to any other Contractor identified in this Agreement.

1.3 **Representation.** The Contractors represent that they are qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1.4 **Compliance with Laws.** The Contractors shall, at their own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

## **Article 2**

### **County's Responsibilities**

2.1 The County shall compensate the Contractors as provided in Article 3.

2.2 The County will contact a Contractor, listed in Exhibit A, via telephone when towing and/or emergency roadside services are needed. Selection of the Contractor will be based on the combination of overall cost and the response/timeframe estimate provided by each Contractor, which, in the sole opinion of the County, offers the best value for the County.

## **Article 3**

### **Compensation, Invoices, and Payments**

3.1 The County agrees to pay, and the Contractors agree to receive, compensation for the performance of services under this Agreement, as described in Exhibit E to this Agreement.

3.2 **Maximum Compensation.** The maximum compensation payable to the Contractors for the initial 3-year term is \$300,000. The maximum compensation will increase by \$100,000 if the first extension option is utilized. The maximum compensation will increase by an additional \$100,000 if the second extension option is utilized. The total maximum compensation payable to the Contractors under this Agreement is \$500,000 for the entire potential five-year term of this Agreement. The Contractors acknowledge that the County is a local government entity, and does so with notice that the County's powers are limited by the California Constitution and by State law, and with notice that the Contractors may receive compensation under this Agreement only for services performed according to the terms of this Agreement and while this Agreement

is in effect, and subject to the maximum amount payable under this section. The Contractors further acknowledge that County employees have no authority to pay the Contractors except as expressly provided in this Agreement.

3.3 **Invoices.** The Contractors shall submit separate monthly invoices for the County's Fleet Services vehicles, Sheriff's Department vehicles, and Public Works and Planning vehicles. Each Contractor shall submit Fleet Services invoices to Internal Services Department – Fleet Services (ISD-Fleet), 4551 E. Hamilton Ave., Fresno, CA 93702 or ISDAP-AR@fresnocountyca.gov. Each Contractor shall submit Sheriff's Department invoices to the Sheriff's Fleet Services Manager at 2200 Fresno St., Fresno, CA 93721 or sheriff.payables@fresnosheriff.org. Each Contractor shall submit Public Works and Planning invoices to 2220 Tulare St., Floor 6, Fresno, CA 93721. Each invoice must clearly identify the Contractor's name, remittance address, contact information, the department serviced, and the date on which such services were performed. The Contractors shall submit each invoice within 60 days after the month in which the Contractor performs services and in any case within 60 days after the end of the term or termination of this Agreement. Any invoices submitted with charge(s) not in accordance with this Agreement shall be corrected within the next billing period.

3.4 **Payment.** The County shall pay each correctly completed and timely submitted invoice within 45 days after receipt. The County shall remit any payment to the Contractor's address specified in the invoice.

3.5 **Incidental Expenses.** Each Contractor is solely responsible for all of its costs and expenses that are not specified as payable by the County under this Agreement.

## Article 4

## Term of Agreement

4.1 **Term.** This Agreement is effective as of the date listed above and terminates three-years after that date, except as provided in section 4.2, “Extension,” or Article 6, “Termination and Suspension,” below.

4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-year periods only upon written approval of County and each Contractor at least 30 days before

the first day of the next one-year extension period. The Director of Internal Services/Chief Information Officer or his or her designee is authorized to sign the written approval on behalf of the County based on the Contractor's satisfactory performance. The extension of this Agreement by the County is not a waiver or compromise of any default or breach of this Agreement by the Contractors existing at the time of the extension whether or not known to the County.

## **Article 5**

### **Notices**

5.1 **Contact Information.** The persons and their addresses having authority to give and receive notices provided for or permitted under this Agreement include the following:

**For the County:**

Director of Internal Services/CIO  
County of Fresno  
333 W Pontiac Way  
Clovis, CA 93612  
ISDContracts@fresnocountyca.gov

**For the Contractor:**

See Exhibit A

5.2 **Change of Contact Information.** Either party may change the information in section 5.1 by giving notice as provided in section 5.3.

5.3 **Method of Delivery.** Each notice between the County and Contractors provided for or permitted under this Agreement must be in writing, state that it is a notice provided under this Agreement, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by Portable Document Format (PDF) document attached to an email.

(A) A notice delivered by personal service is effective upon service to the recipient.

(B) A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient.

(C) A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service,

1 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to  
2 the recipient.

3 (D) A notice delivered by PDF document attached to an email is effective when  
4 transmission to the recipient is completed (but, if such transmission is completed outside  
5 of County business hours, then such delivery is deemed to be effective at the next  
6 beginning of a County business day), provided that the sender maintains a machine  
7 record of the completed transmission.

8 **5.4 Claims Presentation.** For all claims arising from or related to this Agreement,  
9 nothing in this Agreement establishes, waives, or modifies any claims presentation  
10 requirements or procedures provided by law, including the Government Claims Act (Division 3.6  
11 of Title 1 of the Government Code, beginning with section 810).

## 12 **Article 6**

### 13 **Termination and Suspension**

14 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are  
15 contingent on the approval of funds by the appropriating government agency. If sufficient funds  
16 are not allocated, then the County, upon at least 30 days' advance written notice to each  
17 Contractor, may:

18 (A) Modify the services provided by the Contractors under this Agreement; or

19 (B) Terminate this Agreement.

### 20 **6.2 Termination for Breach.**

21 (A) Upon determining that a breach (as defined in paragraph (C) below) has  
22 occurred, the County may give written notice of the breach to the breaching Contractor.  
23 The written notice may suspend performance under this Agreement, and must provide at  
24 least 30 days for the breaching Contractor to cure the breach.

25 (B) If the breaching Contractor fails to cure the breach to the County's satisfaction  
26 within the time stated in the written notice, the County may terminate this Agreement  
27 immediately.  
28

(C) For purposes of this section, a breach occurs when, in the determination of the County, the breaching Contractor has:

- (1) Obtained or used funds illegally or improperly;
- (2) Failed to comply with any part of this Agreement;
- (3) Submitted a substantially incorrect or incomplete report to the County; or
- (4) Improperly performed any of its obligations under this Agreement.

**6.3 Termination without Cause.** In circumstances other than those set forth above, the County may terminate this Agreement, or may terminate any Contractor from this Agreement without affecting this Agreement with respect to any other Contractor, by giving at least 30 days advance written notice to the Contractors, or to the affected Contractor, as applicable.

**6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County under this Article 6 is without penalty to or further obligation of the County.

**6.5 County's Rights upon Termination.** Upon termination for breach under this Article 6, the County may demand repayment by a Contractor under this Agreement of any monies disbursed to the Contractor under this Agreement, that, in the County's sole judgment, were not expended in compliance with this Agreement. The Contractor shall promptly refund all such monies upon demand. This section survives the termination of this Agreement.

## **Article 7**

### **Independent Contractor**

**7.1 Status.** In performing under this Agreement, each Contractor, including its officers, agents, employees, and volunteers, is at all times acting and performing as an independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the County.

**7.2 Verifying Performance.** The County has no right to control, supervise, or direct the manner or method of any Contractor's performance under this Agreement, but the County may verify that each Contractor is performing according to the terms of this Agreement.

**7.3 Benefits.** Because of its status as an independent contractor, a Contractor under this Agreement has no right to employment rights or benefits available to County employees.

Each Contractor is solely responsible for providing to its own employees all employee benefits required by law. Each Contractor shall save the County harmless from all matters relating to the payment of the Contractor's employees, including compliance with Social Security withholding and all related regulations.

7.4 **Services to Others.** The parties acknowledge that, during the term of this Agreement, each Contractor may provide services to others unrelated to the County.

## **Article 8**

### **Indemnity and Defense**

8.1 **Indemnity.** Each Contractor shall indemnify and hold harmless and defend the County (including its officers, agents, employees, and volunteers) against all claims, demands, injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to the performance or failure to perform by the Contractor (or any of its officers, agents, subcontractors, or employees) under this Agreement. The County may conduct or participate in its own defense without affecting the Contractor's obligation to indemnify and hold harmless or defend the County.

8.2 **Survival.** This Article 8 survives the termination of this Agreement.

## **Article 9**

### **Insurance**

9.1 The Contractors shall comply with all the insurance requirements in Exhibit G to this Agreement.

## **Article 10**

### **Inspections, Audits, and Public Records**

10.1 **Inspection of Documents.** The Contractors shall make available to the County, and the County may examine at any time during business hours and as often as the County deems necessary, all of the Contractor's records and data with respect to the matters covered by this Agreement, excluding attorney-client privileged communications. The Contractors shall, upon

request by the County, permit the County to audit and inspect all of such records and data to ensure the Contractor's compliance with the terms of this Agreement.

10.2 **State Audit Requirements.** If the compensation to be paid by the County under this Agreement exceeds \$10,000, each Contractor is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this Agreement. This section survives the termination of this Agreement.

10.3 **Public Records.** The County is not limited in any manner with respect to its public disclosure of this Agreement or any record or data that a Contractor under this Agreement may provide to the County. The County's public disclosure of this Agreement or any record or data that the Contractor may provide to the County may include but is not limited to the following:

(A) The County may voluntarily, or upon request by any member of the public or governmental agency, disclose this Agreement to the public or such governmental agency.

(B) The County may voluntarily, or upon request by any member of the public or governmental agency, disclose to the public or such governmental agency any record or data that the Contractor may provide to the County, unless such disclosure is prohibited by court order.

(C) This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure under the Ralph M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

(D) This Agreement, and any record or data that the Contractor may provide to the County, are subject to public disclosure as a public record under the California Public Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning with section 7920.200) ("CPRA").

(E) This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure as information concerning the conduct of the people's business of the State of California under California Constitution, Article 1, section 3, subdivision (b).

(F) Any marking of confidentiality or restricted access upon or otherwise made with respect to any record or data that the Contractor may provide to the County shall be disregarded and have no effect on the County's right or duty to disclose to the public or governmental agency any such record or data.

**10.4 Public Records Act Requests.** If the County receives a written or oral request under the CPRA to publicly disclose any record that is in a Contractor's possession or control, and which the County has a right, under any provision of this Agreement or applicable law, to possess or control, then the County may demand, in writing, that the Contractor deliver to the County, for purposes of public disclosure, the requested records that may be in the possession or control of the Contractor. Within five business days after the County's demand, the Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's possession or control, together with a written statement that the Contractor, after conducting a diligent search, has produced all requested records that are in the Contractor's possession or control, or (b) provide to the County a written statement that the Contractor, after conducting a diligent search, does not possess or control any of the requested records. The Contractor shall cooperate with the County with respect to any County demand for such records. If the Contractor wishes to assert that any specific record or data is exempt from disclosure under the CPRA or other applicable law, it must deliver the record or data to the County and assert the exemption by citation to specific legal authority within the written statement that it provides to the County under this section. The Contractor's assertion of any exemption from disclosure is not binding on the County, but the County will give at least 10 days' advance written notice to the Contractor before disclosing any record subject to the Contractor's assertion of exemption from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption, failure to produce any such records, or failure to cooperate with the County with respect to any County demand for any such records.

1 **Article 11**

2 **Disclosure of Self-Dealing Transactions**

3 11.1 **Applicability.** This Article 11 applies if a Contractor under the Agreement is  
4 operating as a corporation, or changes its status to operate as a corporation.

5 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a  
6 self-dealing transaction, he or she shall disclose the transaction by completing and signing a  
7 "Self-Dealing Transaction Disclosure Form" (Exhibit F to this Agreement) and submitting it to the  
8 County before commencing the transaction or immediately after.

9 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is  
10 a party and in which one or more of its directors, as an individual, has a material financial  
11 interest.

12 **Article 12**

13 **General Terms**

14 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this  
15 Agreement may not be modified, and no waiver is effective, except by written agreement signed  
16 by both the County and Contractors. The Contractors acknowledge that County employees  
17 have no authority to modify this Agreement except as expressly provided in this Agreement.

18 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations  
19 under this Agreement without the prior written consent of the other party.

20 12.3 **Governing Law.** The laws of the State of California govern all matters arising from  
21 or related to this Agreement.

22 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno  
23 County, California. The Contractors consent to California jurisdiction for actions arising from or  
24 related to this Agreement, and, subject to the Government Claims Act, all such actions must be  
25 brought and maintained in Fresno County.

26 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined  
27 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be  
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1 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement  
2 against either party.

3 12.6 **Days.** Unless otherwise specified, “days” means calendar days.

4 12.7 **Headings.** The headings and section titles in this Agreement are for convenience  
5 only and are not part of this Agreement.

6 12.8 **Severability.** If anything in this Agreement is found by a court of competent  
7 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in  
8 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of  
9 this Agreement with lawful and enforceable terms intended to accomplish the parties’ original  
10 intent.

11 12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractors  
12 shall not unlawfully discriminate against any employee or applicant for employment, or recipient  
13 of services, because of race, religious creed, color, national origin, ancestry, physical disability,  
14 mental disability, medical condition, genetic information, marital status, sex, gender, gender  
15 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to  
16 all applicable State of California and federal statutes and regulation.

17 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation  
18 of ad Contractor under this Agreement on any one or more occasions is not a waiver of  
19 performance of any continuing or other obligation of the Contractor and does not prohibit  
20 enforcement by the County of any obligation on any other occasion.

21 12.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
22 between the Contractors and the County with respect to the subject matter of this Agreement,  
23 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,  
24 publications, and understandings of any nature unless those things are expressly included in  
25 this Agreement. If there is any inconsistency between the terms of this Agreement without its  
26 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving  
27 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the  
28 exhibits.

1       12.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
2 create any rights or obligations for any person or entity except for the parties.

3       12.13 **Authorized Signature.** Each Contractor represents and warrants to the County that:

4           (A) The Contractor is duly authorized and empowered to sign and perform its  
5 obligations under this Agreement.

6           (B) The individual signing this Agreement on behalf of the Contractor is duly  
7 authorized to do so and his or her signature on this Agreement legally binds the  
8 Contractor to the terms of this Agreement.

9       12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by  
10 electronic signature as provided in this section.

11           (A) An “electronic signature” means any symbol or process intended by an individual  
12 signing this Agreement to represent their signature, including but not limited to (1) a  
13 digital signature; (2) a faxed version of an original handwritten signature; or (3) an  
14 electronically scanned and transmitted (for example by PDF document) version of an  
15 original handwritten signature.

16           (B) Each electronic signature affixed or attached to this Agreement (1) is deemed  
17 equivalent to a valid original handwritten signature of the person signing this Agreement  
18 for all purposes, including but not limited to evidentiary proof in any administrative or  
19 judicial proceeding, and (2) has the same force and effect as the valid original  
20 handwritten signature of that person.

21           (C) The provisions of this section satisfy the requirements of Civil Code section  
22 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,  
23 Part 2, Title 2.5, beginning with section 1633.1).

24           (D) Each party using a digital signature represents that it has undertaken and  
25 satisfied the requirements of Government Code section 16.5, subdivision (a),  
26 paragraphs (1) through (5), and agrees that each other party may rely upon that  
27 representation.  
28

1 (E) This Agreement is not conditioned upon the parties conducting the transactions  
2 under it by electronic means and either party may sign this Agreement with an original  
3 handwritten signature.

4 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
5 original, and all of which together constitute this Agreement.

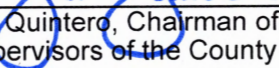
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1 The parties are signing this Agreement on the date stated in the introductory clause.

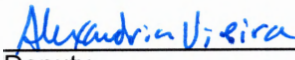
2 CONTRACTORS

COUNTY OF FRESNO

3  
4 See Exhibit A

  
Sal Quintero, Chairman of the Board of  
Supervisors of the County of Fresno

6  
7 **Attest:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

8  
9  
10 By:   
Deputy

11 For accounting use only:

12 Org No.: 8910, 31113229, 9026, 9140  
13 Account No.: 7205, 7295  
14 Fund No.: 1000, 0001, 0700, 0801  
15 Subclass No.: 10000, 15000, 16900  
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## Exhibit A

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
2 Effective Date.

### 3 4 CONTRACTOR

5 Action Towing Dive Team, Inc.

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8 (Authorized Signature)

9 Jessica DeCiccio Sec. of Corp.  
10 Print Name & Title

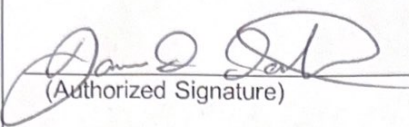
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13 Action Towing Dive Team, Inc.  
14 2822 E. California Ave.  
15 Fresno, CA 93721  
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Exhibit A

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the  
2 Effective Date.

3  
4 **CONTRACTOR**

5 Herndon Towing, Inc.

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8 (Authorized Signature)

9 JAMES D. Deakwase President  
10 Print Name & Title

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13 Herndon Towing, Inc.  
14 5030 E. Jensen Ave.  
15 Fresno, CA 93725  
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## Exhibit A

CONTRACTOR	PHONE NUMBER	BUSINESS ADDRESS	EMAIL ADDRESS
Action Towing Dive Team, Inc.	(559) 498- 9999	2822 E. California Ave., Fresno, CA 93721	actionoffice@aol.com
Herndon Towing, Inc.	(559) 431- 3334	5030 E. Jensen Ave., Fresno, CA 93725	herndontowing@hotmail.com

## Exhibit B

### Scope of Services

- 1
- 2
- 3 A. Basic Tow Service: Emergency tow service of vehicles that range in size from sub-
- 4 compact cars to heavy duty trucks, buses, and heavy equipment machinery (e.g., motor
- 5 grader, asphalt paver, etc.).
- 6 B. Emergency Roadside Service: Includes but is not limited to:
- 7 a. Lockout services
- 8 b. Tire servicing
- 9 c. Battery jump starts
- 10 d. Five (5) gallons of fuel delivery (actual fuel costs will be reimbursed by the
- 11 County at the prevailing market rate)
- 12 C. Rescue and Recovery: Difficult removal work, including but not limited to the following:
- 13 a. Removing vehicles from deep ditches or flood control channels
- 14 b. Pulling apart multiple entangled vehicles
- 15 c. Righting overturned vehicle
- 16 d. Removing vehicles that depart the roadway and are located off the normal
- 17 traveled route (recover and return to road)
- 18 e. Providing water recovery services for vehicles that are partially or fully
- 19 submerged
- 20 f. The County considers minimum time charge for rescue and recovery to be in
- 21 thirty (30) minute increments
- 22 D. Response Time: Confirmation with a positive or negative acceptance of the service
- 23 request within fifteen (15) minutes and enroute within thirty (30) minutes of acceptance
- 24 of the County's service request. For example: ISD-Fleet places a service request at
- 25 10:00 A.M. and by 10:15 A.M. the Contractor accepts the service request and is enroute
- 26 by 10:30 A.M.
- 27 E. Standby Time: The County considers standby time to commence if longer than fifteen
- 28 (15) minutes at location before receiving permission to remove vehicle.

## Exhibit B

- 1 F. There are two (2) different classes of tow trucks covered within this Agreement.
- 2 a. Light Duty: Tow trucks which have a gross vehicle weight rating (GVWR) of up to
- 3 16,000 pounds.
- 4 b. Heavy Duty: Includes medium, heavy, and super heavy duty
- 5 i. Medium Duty: Tow trucks with a GVWR of at least 33,000 pounds. Trucks
- 6 shall be equipped with air brakes and a tractor protection valve or device
- 7 and be capable of providing and maintaining continuous air to the towed
- 8 vehicle.
- 9 ii. Heavy Duty: Tow trucks with a GVWR of at least 52,000 pounds. Trucks
- 10 shall be equipped with air brakes and must be capable of providing and
- 11 maintaining continuous air to the towed vehicle.
- 12 iii. Super Heavy Duty: Three-axle tow trucks with a GVWR of at least 54,000
- 13 pounds. Trucks shall be equipped with air brakes and must be capable of
- 14 providing and maintaining continuous air to the towed vehicle. If this class
- 15 of tow truck is used exclusively for rescue and recovery operations, there
- 16 is no requirement for providing and maintaining continuous air to the
- 17 towed vehicle.
- 18 G. The Contractors will assume all responsibilities for the conduct and demeanor of its
- 19 employees.
- 20 H. All equipment shall be subject to inspection by the California Highway Patrol (CHP) at
- 21 any time. Additionally, the Contractors shall:
- 22 a. Provide proof of annual inspection from the CHP
- 23 b. Provide the County with access to inspections and approvals of towing
- 24 equipment prior to the award of any contract, and
- 25 c. Notify the County within three days of any failure/denial of CHP inspection of any
- 26 tow truck or equipment.
- 27
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## Exhibit B

### Response Requirements

- A. The Contractors must be able to respond to County service call requests twenty-four hours a day, seven days a week (24/7 service). County service call requests must be answered by a live person; answering machines are not acceptable.
- a. The Contractors shall notify the County of any changes in telephone numbers or method(s) of answering calls for service within twenty-four prior to the change.
  - b. The Contractors must equip all towing vehicles with cellular phones. The cellular number must be provided to the County Representative at the time of the service request.
- B. Response to County calls begin at the end of the initial phone call from the County. Acceptance must be made within fifteen (15) minutes of the initial call. Verbal response to the County's service request must include the following:
- a. Location of the tow truck
  - b. Estimated time before the tow truck is enroute
  - c. Estimated time of arrival at the service location
- C. A tow truck must be enroute within thirty (30) minutes of receiving a service call by an authorized County Representative. This IS NOT in addition to the fifteen (15) minutes allotted for the verbal response.
- a. For example: ISD-Fleet places a service request at 10:00am. The Contractor accepts the service request at 10:15am and must be enroute by 10:30am.
  - b. If for any reason the Contractor is unable to be enroute within the maximum response time of thirty (30) minutes, the Contractor will verbally respond to the County's service call during the fifteen (15) minute response timeframe and indicate when they will be able to dispatch staff.

**NOTE:** The County reserves the right to call another Contractor listed in Exhibit A if the original Contractor's acceptance of the County's request is not made timely and/or if services are not provided timely. No payment will be made if services are cancelled for lack of performance.

## Exhibit B

### Service Requirements

- A. The Contractors shall secure all equipment in a manner for safe transportation, prevent any damage to the equipment being towed, and are responsible for the safekeeping of the vehicle, including any contents in the vehicle, until it has been released to the County Representative. Any damage sustained to any vehicle as a result of the tow shall be remedied by the Contractor to the County's satisfaction. All debris caused as a result of the tow or accident shall be removed from the roadway and properly disposed.
- B. Accommodation of up to two County employees shall be made to the tow destination.
- C. A "Vehicle Condition Report" (Attachment A) for each piece of equipment towed shall be completed.
- D. Each tow tag shall include the following information:
  - a. First and last name of the County Representative
  - b. Department name of the County Representative
  - c. Vehicle identification number or Case Number (case numbers will be provided by Sheriff's Dispatch or Officer on the scene).
- E. All of the Contractor's tow truck drivers must be qualified, personnel-compliant, and familiar with all terms and conditions of the contractual agreement between the County of Fresno and the Contractor for towing services. Additionally, all of the Contractor's tow truck drivers must possess current certification, inspection, and licensing to:
  - a. Competently operate the appropriate class of tow truck they are driving, and
  - b. Operate any special equipment required to safely perform the requested towing services.
  - c. Tow trucks and car carrier classifications must meet all applicable state and/or federal standards.
  - d. All towing equipment shall be in compliance with the California Vehicle Code, Title 13 of the California Code of Regulations, and be consistent with industry standards and practices.

## Exhibit B

e. Any changes or substitutions of equipment are subject to prior written approval from the County.

F. While multiple tows by a single vehicle is not mandatory, the Contractor shall indicate whether or not tow equipment has the ability to tow multiple (two or more) vehicles by a single tow vehicle.

## Exhibit C

### Compensation

Each Contractor will be compensated for performance of its services under this Agreement as provided in this Exhibit C. Each Contractor is not entitled to any compensation except as expressly provided in this Exhibit C.

Portal-to-portal is defined as follows: Starting from either the point of dispatch or upon departure from the place of business, whichever is closer to the location of the call, and ending at the estimated return to the place of business or completion of the call, if another call is pending, whichever is shorter.

### LIGHT DUTY RATES

SERVICE	ACTION TOWING DIVE TEAM, INC.	HERNDON TOWING, INC.
Basic Tow Service	\$80.00	\$75.00 (flat rate up to the first 15 miles)
Basic Tow Service	\$3.00 (portal-to-portal)	\$3.75 (for each mile in excess of the first 15 miles)
Emergency Roadside Service	\$125.00	\$75.00 (flat rate up to the first 15 miles)
Emergency Roadside Service	\$3.00 (portal-to-portal)	\$3.75 (for each mile in excess of the first 15 miles)
Minimum Rescue & Recovery Charge (flat rate per hour)	\$225.00	\$125.00
Standby Charge (per every 15-minute increment after the first 15 minutes of standby)	\$75.00	\$31.25
ADDITIONAL SERVICES	ACTION TOWING DIVE TEAM, INC.	HERNDON TOWING, INC.
Off Road 4x4 (per hour)	\$225.00	N/A
Bobcat Off Road (per hour)	\$550.00	N/A

### HEAVY DUTY RATES

## Exhibit C

SERVICE	ACTION TOWING DIVE TEAM, INC.	HERNDON TOWING, INC.
<b>Basic Tow Service</b>	\$250.00	N/A
<b>Basic Tow Service</b>	\$6.00 (portal-to-portal)	N/A
<b>Minimum Rescue &amp; Recovery Charge</b> (flat rate per hour)	\$375.00	N/A
<b>Standby Charge</b> (per every 15-minute increment after the first 15 minutes of standby)	\$125.00	N/A
ADDITIONAL SERVICES	ACTION TOWING DIVE TEAM, INC.	HERNDON TOWING, INC.
<b>Off Road 4x4</b> (per hour)	\$375.00	N/A
<b>Bobcat Off Road</b> (per hour)	\$550.00	N/A

## **Exhibit D**

### **Self-Dealing Transaction Disclosure Form**

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

#### **Instructions**

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

## Exhibit D

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	

# Exhibit E

## Insurance Requirements

### 1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.

### 2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or [HRRiskManagement@fresnocountyca.gov](mailto:HRRiskManagement@fresnocountyca.gov), and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.
  - (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
  - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and

## Exhibit E

volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.

- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.

(B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

(C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

(D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.

(E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.

(F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.

## Exhibit E

(G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.