



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

33

2. Council Meeting Date:
May 24, 2012

TO: **MAYOR & COUNCIL**

3. Date Prepared: May 1, 2012

THROUGH: **CITY MANAGER**

4. Requesting Department: Police

5. **SUBJECT:** Agreement PD2-968-3095 for Police Towing Service to Thompson Diversified LLC dba Valley Express Towing.

6. **RECOMMENDATION:** Recommend award of agreement PD2-968-3095 for Police Towing Service to Thompson Diversified LLC dba Valley Express Towing.

7. **HISTORICAL BACKGROUND/DISCUSSION:** In December of 1995 the City began utilizing a contract for towing service. Contract towing service has proven to be a successful alternative to the previous rotation program. Some of the benefits provided by contract service include lower cost to the citizens, fewer customer complaints, and a streamlined workload for the Police Department. The Police Department utilizes the contract for vehicle towing, storage and impounding services including removal of wrecked vehicles, vehicles abandoned on city streets, vehicles left unattended in a traffic way, vehicles towed for evidentiary purposes, vehicles impounded, and vehicles towed due to an arrested driver. The requested agreement will have a one year term with provisions to extend for up to four additional one year periods.

8. **EVALUATION PROCESS:** On February 1, 2012, the City issued Invitation For Bid (IFB) PD2-968-3095 for Police Towing Service. The bid was advertised and all registered vendors were notified. Bids were due March 21, 2012. The City received four responses that are summarized on the attached spreadsheet. Staff is recommending award to Thompson Diversified LLC dba Valley Express Towing who submitted the low responsive and responsible bid.

9. **FINANCIAL IMPLICATIONS:** The vehicle owner will be responsible for payment of all fees with the exception of City owned vehicles and vehicles towed for evidentiary purposes.

10. **PROPOSED MOTION:** Move to award agreement PD2-968-3095 for Police Towing Service to Thompson Diversified LLC dba Valley Express Towing for one year with provisions to extend up to four additional one year periods.

APPROVALS

11. **Requesting Department**

Gregg Jacquin

Police Commander

12. **Department Head**

Sherry Kiyler

Police Chief

13. **Buyer/Contract Admin.**

Mike Mandt

Procurement Officer

14. **City Manager**

Rich Dlugas

City Manager

Bid Tab
 Police Towing
 PD1-968-2938

Description	Unit	Estimated Quantity Per Year	Thompson Diversified dba Valley Express Towing		All City Towing		Apache Sands Towing		URS Southwest dba Shamrock Towing and Fast Towing		Current Contract	
			Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
Flat rate per tow	Each	4312	\$0.00	\$0.00	\$ 39.00	\$ 168,168.00	\$49.00	\$211,288.00	\$13.00	\$56,056.00	\$ 10.00	\$ 43,120.00
Storage	Day	33647	\$0.00	\$0.00	\$ -	\$ -	\$0.00	\$0.00	\$8.00	\$269,176.00	\$ 7.50	\$ 252,352.50
Extraordinary Recovery	Hour	10	\$0.00	\$0.00	\$ -	\$ -	\$0.00	\$0.00	\$200.00	\$2,000.00	\$	\$ -
After hours opening	Each	24	\$0.00	\$0.00	\$ 40.00	\$ 960.00	\$45.00	\$1,080.00	\$25.00	\$600.00	\$ 40.00	\$ 960.00
Mileage	Mile	1224	\$0.00	\$0.00	\$ 3.00	\$ 3,672.00	\$5.00	\$6,120.00	\$3.00	\$3,672.00	\$ 5.00	\$ 6,120.00
Total				<u>\$0.00</u>		<u>\$ 172,800.00</u>		<u>\$218,488.00</u>		<u>\$331,504.00</u>		<u>\$ 302,552.50</u>

CITY OF CHANDLER SERVICES AGREEMENT

Police Towing

PD2-968-3095

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Thompson Diversified, LLC dba Valley Express Towing, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

WHEREAS, CONTRACTOR hereby certifies that, based on its thorough review to the terms of this Contract, it can provide towing and storage services pursuant to the terms of this Contract without violation of any applicable law, including any applicable order, decision, statute, or regulation of the State of Arizona.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR

1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Police Commander, Field Operations/designee (Contract Administrator), to provide the services required by this Agreement.

1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

2. **SCOPE OF WORK.** CONTRACTOR shall provide vehicle towing, storage and impounding services for all vehicles when so requested by the City of Chandler. Many of the vehicles to be towed will have become disabled due to motor vehicle accidents. There will also be a number of service calls relating to stolen vehicle recoveries, the arrest of the vehicle driver, abandoned vehicles, vehicles required for evidentiary purposes and others. The CONTRACTOR shall be available twenty-four (24) hours a day every day of the year to provide service pursuant to this AGREEMENT.

2.1. **No guarantee of volume of work.** Estimated volume based on historical information ranges from approximately 300 to 400 vehicles per month. This figure is an estimate only. CITY makes no guarantees regarding actual volume to be expected under the Contract.

2.2. Response Time. Except for off road or out of City vehicle recoveries CONTRACTOR shall respond, with the proper equipment to the subject location within 30 minutes after receiving CITY'S request for service. The CONTRACTOR must be able to respond to a minimum of 95 percent of the calls referred within the 30-minute period.

2.3. Site Cleanup. The CONTRACTOR shall promptly and thoroughly clean up debris at the scene of accidents, including all vehicle parts and any other matter left in the roadway as a result of the accident. All clean up shall be to the satisfaction of any officer on scene.

2.4. Release of Vehicles. Prior to releasing any vehicle, CONTRACTOR shall require the person or company requesting possession to present a copy of a picture identification verifying ownership of the vehicle as indicated on the police report. An agent of the owner must also present a written statement authorizing the release, with a notarized signature of the vehicle owner and picture ID of the agent. If the owner is incapacitated, the written authorization from the owner's adult next of kin may be substituted for the notarized signature of the vehicle owner. The contractor will accept release documentation by Fax, mail or hand delivery. If requested by CITY, CONTRACTOR shall verify the presence of an ignition interlock or other device. ~~Release of vehicles to insurance companies shall be in accordance with ARS 28-4847 Insurance Companies; release; fees and definition.~~

2.5. Early Release of Impounded Vehicles. For vehicles ordered impounded by the City Police Officer at the scene, in accordance with ARS 28-3511 et seq, CONTRACTOR shall not release the vehicle prior to the expiration of the 30-day impound period without permission from the Chandler Police Legal Unit. If requested by CITY, CONTRACTOR shall verify the presence of an ignition interlock or other device.

2.6. Release of Personal Property. Upon presentation of a picture identification verifying ownership of the vehicle or written notarized authorization from the owner and picture identification of the agent if the property is being sought by an agent of the owner, CONTRACTOR shall allow vehicle owners or their agents access to the vehicle to recover personal property from the vehicle (allow them to enter the yard, walk to their vehicle and physically remove items themselves) at any time during normal business hours and shall not require payment of any fee or charge prior to or as a condition of such release. If the owner is incapacitated, the written authorization from the owner's adult next of kin may be substituted for the notarized signature of the vehicle owner.

2.7. Timely Release Of Vehicles. CONTRACTOR shall make vehicle available to owner or owners agent within a reasonable time (not more than 30 minutes) from the time the owner or owner's agent arrives at storage facility during the time specified in section 3.3.7 Storage Lot Availability.

2.8. No Other Conditions of Release. Except as listed herein or as required by law, CONTRACTOR shall not require any other documentation as a condition of or prior to release of vehicles or personal property nor impose any other requirements to prevent owners or their agents from obtaining possession of their vehicle or personal property.

2.9. Non-Discrimination. CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.10. Licenses. CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

2.11. Use of Another Tow Service. CONTRACTOR agrees and understands that requests by motorists for another tow service will be honored if the officer determines that the request is reasonable. The purpose of this contract is to provide towing service for those motorists who do not have a specific request for another tow service, or are incapable of making such a request due to injuries or for other reasons.

2.12. Expansion of Boundaries. City boundaries may expand during the period of the contract due to annexations by the City of Chandler. If annexations occur CONTRACTOR shall provide tow services to the annexed area for the term of the contract under the same terms and conditions as set forth in the Agreement. CITY may occasionally request service outside the City limits for stolen vehicle recoveries or other reasons. When such service is requested, CONTRACTOR is permitted to add the "per mile" rate for the distance from the recovery site and back to the City limits.

2.13. Advertising, Publishing and Promotion of Contract. CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of CITY.

2.14. Compliance with Applicable Laws. CONTRACTOR shall comply with all applicable Federal, State and local laws, and with all applicable license and permit requirements.

2.14.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

2.14.2 A breach of the Contractor Immigration Warranty (Exhibit B) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

2.14.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

2.14.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

2.14.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

2.14.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Iran.

2.14.7 In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

2.15. Acceptable Performance. CONTRACTOR'S performance is subject to review and approval by the Contract Administrator

3. REQUIRED EQUIPMENT, PERSONNEL AND FACILITIES

3.1. Equipment. The tow trucks shall have current inspection and certification by the Arizona Department of Public Safety and shall maintain the certification throughout the term of the Contract. CONTRACTOR must be capable of responding and providing service for any vehicle up to a maximum gross vehicle weight of 25,000 pounds.

3.1.1 Minimum Equipment Requirements. CONTRACTOR will be required to have a minimum of six (6) tow vehicles, one of which must be capable of towing a vehicle up to 25,000 GVW. The tow trucks shall be equipped with the proper complement of dollies, chains, slings, bumpers and other equipment necessary to prevent damage to towed vehicles. Tow trucks shall also be equipped with brooms, shovels, oil absorbent material, and other necessary equipment to clean up the site after removal of the vehicles. CONTRACTOR will be required to add equipment if necessary to meet the terms of the AGREEMENT.

3.1.2 Substitute Equipment Requirements. If any of CONTRACTOR'S equipment is out of service, CONTRACTOR shall be responsible for acquiring substitute equipment sufficient to provide timely service on demand under this Contract. Such substitute equipment shall be considered CONTRACTOR'S equipment for the purposes of this Agreement and be operated by personnel of CONTRACTOR.

3.1.3 Truck Identification. Tow trucks shall have CONTRACTOR's name and telephone number and comply with applicable law regarding truck identification as the law may be amended.

3.1.4 Communications Equipment Requirements. CONTRACTOR shall have the ability to communicate with drivers via radio, mobile telephone, or other like equipment, so that the City of Chandler Police Department Communications Section will have the ability to pass on information to the driver through CONTRACTOR'S dispatch center as the driver responds to a call. CONTRACTOR must be available by phone to the police department 24 hours a day, 7 days a week. CONTRACTOR shall have a telephone answering machine, or voice mail, to receive customer phone calls when the business office is vacant and for calls received outside of normal business hours.

3.1.5 CONTRACTOR shall be responsible for and is liable for the safekeeping of vehicles towed and/or stored and for items left in stored vehicles.

3.2 Personnel Minimum Requirements. CONTRACTOR shall have available at all times sufficient qualified personnel to operate the number of tow trucks necessary to provide timely service. Such personnel shall be employees of CONTRACTOR. Each driver shall be properly licensed with correct class license as required by the Motor Vehicle Division of the State of Arizona. It shall be CONTRACTOR's responsibility to ensure that all drivers maintain current Arizona licenses during the contract term. Contractor shall hire, train and supervise all drivers in accordance with the laws of the State of Arizona and rules and regulations of the Department of Public safety of the State of Arizona, pursuant to A.R.S. 28-1108.

3.2.1 Driver Conduct. All drivers shall operate the tow trucks in a safe and prudent manner and shall refrain from using profane or vulgar language in a public area while performing work under this agreement. CONTRACTOR will agree to prohibit the use of intoxicating substances by all tow truck drivers and ensure that they do not either use or possess illegal drugs while in the course of performing their duties under this contract. ~~Employees of CONTRACTOR who normally and regularly come into direct contact with the public shall be in a reasonably clean uniform that at a minimum identifies the name of the tow company and the individual.~~ CONTRACTOR shall be fully responsible for drivers' actions.

3.3.Storage Facilities

3.3.1 Lot Location. Storage facility shall be located at 229 West Vine, Mesa, AZ 85210 within a 8.5-mile radius of the intersection of Arizona Ave. and Chandler Blvd. The storage facility must meet all applicable zoning and other requirements of the City, County, State and Federal Government. Vehicles shall be stored in the storage facility offered until released to the owner or other authorized agent.

3.3.2 Location Prohibition. The storage facility shall not be located within a wrecking yard that is in the business of dismantling vehicles.

3.3.3 Fencing. A fence of a minimum of six (6) feet in height is required. The fence may be constructed from chain link, masonry, wood or equivalent as permitted by the appropriate building and zoning regulations. Barbed wire or razor wire may be provided at the top of the fence if permitted by law.

3.3.4 Lighting. The storage area shall be sufficiently lit with overhead lighting that illuminates the entire storage facility.

3.3.5 Security. The fenced storage facility shall be locked when unattended. The CONTRACTOR shall be responsible for the safe keeping of vehicles towed and for items left in stored vehicles. All vehicles shall be kept within the fenced storage area until released to the owner or authorized agent. Access to the storage facility shall be limited to the CONTRACTOR'S employees or individuals with a legitimate interest in vehicles being stored. All individuals must be

accompanied by an employee of CONTRACTOR. The storage lot shall be dedicated to the storage of vehicles towed and stored by CONTRACTOR.

3.3.6 Size. The minimum storage space required will be 45,000 square feet dedicated to vehicles stored pursuant to the Contract. Vehicles towed under the resultant Contract shall be stored in one location. If additional space is required during the term of the contract, the contractor will be required to provide such additional space.

3.3.7 Storage Lot Availability. CONTRACTOR shall staff its vehicle storage facility between the hours of 7 a.m. and 7 p.m. Monday through Friday and from 8 a.m. to noon Saturday except the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. CONTRACTOR shall have a telephone number and company name prominently posted at the storage location for after-hour release of vehicles.

3.3.8 Zoning. Storage facilities must meet the appropriate zoning/permit requirements of the appropriate government entity where the facility is located.

3.3.9 Overflow Storage Lot. CONTRACTOR may use an overflow storage lot to store vehicles that have been stored in the primary storage facility for over 35 days. CONTRACTOR shall make provision for release of vehicles from overflow storage lot at no additional charge and without any additional delay. Overflow storage lot shall be within a 15 mile radius of Arizona Avenue and Chandler Blvd. The overflow storage lot shall meet requirements set forth in sections 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.7 and 3.3.8.

4. DOCUMENTATION

4.1. Retention of Records. CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

4.2. Audit. At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to and open for inspection and audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

4.3. Reports to Department of Transportation. CONTRACTOR shall submit all necessary reports to the Arizona Department of Transportation in accordance with A.R.S. Sections 28-1401 through 28-1411 and subsequent amendments thereto, when the statutes are applicable to vehicles towed and stored under this contract.

4.4. Required Records. CONTRACTOR shall maintain adequate records of every vehicle towed at the request of the City of Chandler under the contract showing the following:

- a) Location of vehicle pick up.
- b) Location where vehicle taken.
- c) Date and time of the tow.

- d) Make, model and year of the vehicle.
- e) License number and state.
- f) Vehicle identification number.
- g) Name of person or business to whom vehicle released.
- h) Itemized tow and storage billing statements.

CONTRACTOR shall maintain a record, either electronically or manually, that is easily separated from all other records CONTRACTOR may keep, of each vehicle towed under this Agreement. The customer record file is to include the master log, signed invoice and service fee listing and must be maintained alphabetically by the last name of the customer or the Vehicle Identification Number. The invoice shall be presented to the customer upon the customer's request for the invoice.

4.5. Inspection of Facility and Equipment. CONTRACTOR shall permit and make available for inspection all of its facilities and equipment by CITY upon reasonable notice and during normal business hours.

~~4.6. Required Reports.~~ On or before the fifteenth of each month, CONTRACTOR shall provide a report for all vehicles towed and released pursuant to the contract. The report shall be in Excel format unlocked, in the form shown in Exhibit C. The report shall be provided in electronic and hard copy.

4.7. Confidentiality of Records. CONTRACTOR shall establish and maintain procedures and controls that are acceptable to CITY to assure that no information contained in CONTRACTOR'S records or obtained from CITY or from others in carrying out CONTRACTOR'S functions under this Contract is used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information shall be referred to CITY. CONTRACTOR also agrees that any such information shall not be divulged other than to employees or officers of CONTRACTOR as needed for the performance of duties under the contract, unless otherwise agreed to in writing by CITY.

6. ALLOWED CHARGES. For all services provided under this Agreement, CONTRACTOR may charge vehicle owners only those fees set forth herein at the rates and in the amounts listed in the Price Sheet attached hereto as Exhibit A and incorporated herein by reference.

5.1. Flat Rate Per Tow Fee. CONTRACTOR shall charge vehicle owners the Flat Rate Per Tow Fee listed in Exhibit A. This fee covers all towing services 24 hours per day including weekdays, weekends and holidays. The flat rate per tow fee includes all costs for hookups, winching, preparation to tow, cleanup of debris, stand by time, use of dollies when necessary, drive line dropping, all labor incurred, mileage, sealing of windows if necessary, and delivery to the public roadway for subsequent tow if necessary. The allowable flat rate per tow fee is listed in Exhibit A and is a flat rate for vehicles up to and including 25,000 lb. GVW.

5.2. Unit Price for Storage. CONTRACTOR may charge the full daily storage charge shown on Exhibit A for any part of a 24-hour period. The Rate set forth in exhibit A shall apply to all vehicles stored pursuant to this contract including those vehicles impounded pursuant to A.R.S. 28-3511 et. seq. The time period for billing for storage shall commence from the time the vehicle arrives at the storage lot. The unit price for storage is for vehicles up to and including 25,000 lb. GVW.

5.3. Extraordinary Recoveries. With prior written approval from the officer on the scene, CONTRACTOR may charge an additional hourly fee for extraordinary recoveries, i.e. lake recoveries, recoveries from canals with water in them, recoveries from swimming pools, etc. This fee will be in addition to the flat rate per tow fee.

5.4. After Hours Opening. CONTRACTOR may charge the fee shown on Exhibit A to open the lot after normal business hours, as defined in Paragraph 3.3.7 Storage Lot Availability. Contractor shall make vehicle available within 60 minutes from the time owner or owner's agent notifies the contractor of request for after hours opening.

5.5. Mileage. CONTRACTOR shall not charge a "cost per mile" charge when the tow is made to the CONTRACTOR'S storage facility or any location within the City of Chandler. CONTRACTOR may charge the Mileage charge shown on Exhibit A only when (1) the owner or agent requests that the vehicle be towed to a location other than CONTRACTOR'S storage facility or a location outside the City of Chandler and then only for the additional actual mileage beyond the mileage to the nearest City of Chandler border based on the most direct route or (2) when a vehicle is towed from outside the City limits and then only for the actual mileage from the point of pick up to the nearest City or Chandler border based on the most direct route.

5.6. Device Verification. When requested by CITY to verify installation of an interlock or other device, CONTRACTOR shall not charge any fee for such verification.

5.7. Incidental Services. CONTRACTOR shall perform related services such as inflating tires, jump starting, opening of locked vehicles and other incidental services requested by the owner of a towed vehicle without charge from the time the contractor is dispatched to the time vehicle is released.

5.8. Filing Fee. CONTRACTOR may charge a filing fee at the rate set forth by state law for reimbursement of any filing fee paid by CONTRACTOR pursuant to state law.

5.9. Re-tows. CONTRACTOR shall provide vehicle owners or their agents a choice to use CONTRACTOR or another source for re-towing. CONTRACTOR may not charge any re-tow fee nor any other fee to allow the vehicle owner or agent to use another source for re-towing.

5.10. Outside Contracted Services. With approval from the officer on scene, CONTRACTOR may charge actual expenses in cases where it is necessary to hire outside services or lease additional equipment for vehicle recoveries, i.e. hiring divers, crane rental, etc.

5.11. Business Card and Rate Sheet. CONTRACTOR shall provide a business card and Contract Rate Sheet to the owner or agent of each vehicle towed. If unable to do so because the owner or agent has been transported to a hospital or otherwise left the scene, CONTRACTOR will provide the business card and rate sheet to the officer investigating the accident. The Contract Rate Sheet will be provided to CONTRACTOR by CITY. CONTRACTOR shall notify CITY if additional rate sheets are needed.

5.12. Additional Fees. Under no circumstances shall CONTRACTOR charge any fees not authorized herein and listed in the Price Sheet, Exhibit A, for services by reason of this Contract. This

Contract covers all services, charges and fees from the time CONTRACTOR receives a request from the City of Chandler to respond until possession of the vehicle is released from CONTRACTOR and passes to the vehicle's owner or owner's agent.

5.13. Compensation, Taxes and Workman's Compensation. CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Agreement. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. CONTRACTOR shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, Workmen's Compensation and occupational disease compensation insurance, all unemployment compensation, other benefits and all taxes and premiums pertinent thereto concerning any persons(s) supplied by the CONTRACTOR in the performance of this Agreement and CONTRACTOR shall indemnify and hold harmless with respect thereto.

6. RESPONSIBILITY FOR PAYMENT

6.1. Payment by Vehicle Owners. All payments, except for vehicles towed for evidentiary purposes and City owned vehicles will be the responsibility of the vehicle owner and not CITY. For vehicles owned by the City or vehicles towed or stored for evidentiary purposes, CITY shall pay CONTRACTOR at the rates shown on Exhibit A.

6.2. Method of Payment. CONTRACTOR shall and hereby agrees to accept all reasonable forms of payment from vehicle owners, including but not limited to, cash, credit cards, and debit cards.

7. TERM: The term of this Contract commences on July 1, 2012 and terminates on June 30, 2013 which is approximately one year and may be extended by mutual agreement of the parties for up to four additional successive terms of one year each. All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the service concerned.

8. USE OF THIS CONTRACT

8.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.

8.2. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted vendor, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

8.3. Solicitation of Business Prohibited. In connection with any vehicle towed pursuant to this agreement, CONTRACTOR may not solicit business for, or contact the vehicle owner or owner's agent on behalf of, any body shop, towing company, wrecking yard, health care provider, lawyer, or

other person or business of any description. This prohibition does not prohibit the contractor's employees from answering questions from a vehicle owner or owner's agent. In addition, CONTRACTOR shall not accept any referral fees or commission from any body shop, towing company, wrecking yard, health care provider, lawyer, or other person or business in connection with this contract. In addition, CONTRACTOR is prohibited from receiving a commission, referral fee or other compensation from any body shop, insurance company, legal firm, attorney or others in exchange for referring business from this contract to said parties.

9. CITY'S CONTRACTUAL REMEDIES

9.1. Right to Assurance. If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of days specified in the demand may, at CITY's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.

9.2. Assessment for failure to provide Required Reports. In addition to other remedies available to CITY for a violation of any term of this contract, CITY may assess, and CONTRACTOR agrees to pay to CITY, fifty dollars (\$50) per day that any report is late.

9.3. Assessment for Failure to Meet Response Time. In addition to other remedies available to CITY for a violation of any term of this contract, CITY may assess, and CONTRACTOR agrees to pay to CITY, for violation of the response time requirements herein, one thousand dollars (\$1,000) per percentage point below 95 percent that CONTRACTOR fails to respond within the time required during each calendar month.

Compliance Rate	Assessment
94%	\$1,000
93%	\$2,000
92%	\$3,000
91%	\$4,000
90%	\$5,000
89%	\$6,000
88%	\$7,000
87%	\$8,000
86%	\$9,000
85%	\$10,000

9.4. Non-exclusive Remedies. The rights and the remedies of CITY under this Contract are not exclusive.

9.5. Right of Offset. CITY shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR'S

non-conforming performance or failure to perform the Contract, including expenses, costs and damages incurred by CITY.

10. TERMINATION

10.1. Termination for Convenience. CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall continue to provide storage services for those vehicles already in their possession at the rates and for the allowable charges listed in Exhibit A but CITY will not request towing, storage or other services for any additional vehicles.

10.2. Cancellation/Termination for Cause. The City reserves the right, upon written notice, to cancel and/or terminate the whole or any part of this Contract due to failure of the Contractor to comply with any term, promise, or condition of this Contract, including, but not limited to, in any of the following situations:

- A. In the opinion of the City, the Contractor fails to perform adequately the services required in the contract.
- B. The Contractor fails to respond within the time required in the contract.
- C. The City determines that the Contractor has charges fees in excess of those permitted by this Contract.
- D. The City determines that the Contractor has violated any City, State or Federal law, regulation or requirement.
- E. The City determines that the Contractor has committed a criminal act or defrauded any citizen. CONTRACTOR need not be convicted of a criminal act for the City Council to terminate this Contract for cause.
- F. In the opinion of the City, CITY has received an unreasonable number of complaints about CONTRACTOR'S services or charges.
- G. The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the contract.
- H. Failure to provide adequate insurance coverage.

10.2.1 Upon receipt of a termination notice, the Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and promptly forward to the City final reports required by this Contract.

10.2.2 The rights and remedies of the City and the Contractor provided in this clause are in addition to any other rights and remedies provided by law or under the contract.

10.3. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

10.4. Gratuities. CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.

10.5. Suspension or Debarment. CITY may, by written notice to CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Execution of this Contract shall attest that CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

10.6. Continuation of Performance Through Termination; Continuation During Disputes. CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice. Notwithstanding the existence of any dispute between the parties or any other provisions of this Agreement and insofar as is possible under the terms of the Agreement, CONTRACTOR and CITY shall continue to perform the obligations imposed on it under this Agreement during the continuation of any such dispute unless enjoined or prohibited by any court of competent jurisdiction.

10.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

11. FORCE MAJEURE: Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

12. ALTERNATE DISPUTE RESOLUTION

12.1 Alternative Dispute Resolution. The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

12.2 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

12.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

12.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

13. INDEMNIFICATION To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

14. INSURANCE

14.1. Insurance Representations and Requirements:

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A - 6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met, or at the option of the CITY, CITY may pay the Renewal Premium and withhold such payments from any monies due CONTRACTOR.
-
- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.

- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by CONTRACTOR with reasonable promptness in accordance with CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as CONTRACTOR shall furnish such additional security covering such claims as may be determined by CITY.

14.2. Proof of Insurance -- Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

14.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by CONTRACTOR or by a SUBCONTRACTOR, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed;

C. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees;

D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR'S employees;

E. Claims for damages insured by usual personal injury liability coverage;

F. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., Coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.

H. Claims for bodily injury or property damage arising out of completed operations;

I. Claims involving contractual liability insurance applicable to CONTRACTOR'S obligations under the Indemnification Agreement;

J. Claims for injury or damages in connection with one's professional services;

K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

14.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc.'s (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

14.5. General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent CONTRACTORS, and Personal

Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

14.6. Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of CONTRACTOR'S work. Coverage shall be at least as broad as Coverage Code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

14.7. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

15. NOTICES. All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY
Contract Administrator: Police Commander

Contact: Gregg Jacquin
Mailing Address: PO Box 4008 MS 303W

Physical Address: 251 N Desert Breeze Blvd.
City, State, Zip Chandler, AZ 85244
Phone: 480-782-4840
FAX: 480-782-4880

In the case of the CONTRACTOR
Firm Name: Thompson Diversified, LLC

Contact: Richard Thompson
Address: 661 West Broadway Rd.
City, State, Zip Mesa, AZ 85210

Phone: 480-899-4621
FAX: 480-615-2914

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

16. CONFLICT OF INTEREST

16.1. No Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

16.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

16.3. No Conflict. CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

17. GENERAL TERMS

17.1. Entire Agreement. This Agreement, including Exhibits A, B, C1, C2, and C3 attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

17.2. Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

17.3. Assignment: Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of CITY.

17.4. Amendments. The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.

17.5. Independent Contractor. CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

17.6. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

17.7. **Authority.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

18. Performance Letter of Credit or Certificate of Deposit.

Contractor will deposit with the City, an annually renewable irrevocable performance Letter of Credit or Certificate of Deposit in a form acceptable to the City. The amount of the Performance Letter of Credit or Certificate of Deposit shall be Ten Thousand dollars (\$10,000). Because it will be impracticable to determine the actual damages in the event of Contractor's failure to perform and the establishment of major breach or default, the parties shall contract that this amount is a reasonable amount for total liquidated damages. It is expressly understood that the total liquidated damages amount is not considered a penalty, but shall be deemed, taken and treated as reasonable liquidated damages. The Performance Letter of Credit or Certificate of Deposit must be issued by a federally insured (FDIC) banking institution, acceptable to the City, with a debt rating of A or higher by Standard and Poor's; A or higher by Moody's investors; or, have a comparable rating by another rating system acceptable to the City. Should a bidder initially prevail in this procurement and then fail to provide the required Performance Letter of Credit or Certificate of Deposit account specified herein, the City will not execute the contract, and the bidder will be disqualified. The Performance Letter of Credit or Certificate of Deposit will be used to assure the operation of the Police Towing Service, including, but not limited to the conduct of a replacement procurement process, or related administrative expenses, should the City terminate the contract because of default.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____ 2012.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: Richard Thompson
Signature

ATTEST:

ATTEST: If Corporation

City Clerk
Approved as to Form

Secretary

City Attorney

SEAL



**EXHIBIT A
PRICE SHEET**

Description	Unit	Unit Price
Flat rate per tow	Each	<u>\$ 0.00</u>
Storage	Day	<u>\$ 0.00</u>
Extraordinary Recovery	Hour	<u>\$ 0.00</u>
After hours opening	Each	<u>\$ 0.00</u>
Mileage	Mile	<u>\$ 0.00</u>
Total*		

Outside Contracted Services at actual cost may also be charged upon written approval from the officer at the scene.

A listing of all towing and service prices as contracted shall be issued to the owner, agent of the owner, or the owner's insurance representative at pick-up and a copy shall be issued when invoiced at the time of vehicle release.

EXHIBIT B

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal Immigration laws and regulations, and A.R.S. § 23-214 related to the Immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal Immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Richard Thompson

Printed Name: Richard Thompson

Title: owner

Date (month/day/year): 5/3/12

**EXHIBIT C1
OPENING REPORT
(all vehicles towed)**

Registered Owner	OR Number	Tow Date	Time Called	Time Arrived	Response Time

**EXHIBIT C2
Closing Report
(all vehicles released)**

Invoice	Registered Owner	Impound yes/no	Tow Date	OR Number	Tow Fee	Storage Fee	Extraordinary Recovery	After Hours Opening	Mileage	Filing Fee	Total	Released To	Release Date

EXHIBIT C3
30 Day Holds Titles Received

Invoice	Impound Yes/No	Tow Date	OR Number	Tow Fee	Storage Fee	Extraordinary Recovery	After Hours Opening	Mileage	Filing Fee	Total	Release To	Release Date

UDALL
SHUMWAY
& LYONS COUNSELORS AT
LAW SINCE 1965

A PROFESSIONAL LIMITED LIABILITY COMPANY

WRITER'S DIRECT LINE: 480-461-5325

EMAIL: das@udallshumway.com

May 14, 2012

VIA HAND DELIVERY

City of Chandler Purchasing Division
Attn: Mike Mandt
175 S. Arizona Ave., 3rd Floor
Chandler, AZ 85225

Re: Solicitation No. PD2-968-3095, Police Towing Service
Protest by ACT Towing, LLC dba All City Towing

Dear Mr. Mandt:

ACT Towing, LLC ("ACT"), doing business as All City Towing, hereby protests the recommended award of Solicitation No. PD2-968-3095 for Police Towing Services to Thompson Diversified, LLC ("Thompson"), doing business as Valley Express Towing. This protest is lodged because of the bizarre and unreasonable zero dollar bid, not just for some of the proposed services but for all towing and related services under the proposed contract.

I. PROTESTER

ACT Towing, LLC, dba All City Towing
2031 W. First St.
Tempe, AZ 85281
(480) 833-3200

II. SIGNATURE OF PROTESTER

Protester's legal representative for purposes of this protest is:

David Schwartz
Udall, Shumway & Lyons, PLC
30 W. First Street
Mesa, Arizona 85201

www.udallshumway.com

30 West First Street • Mesa, Arizona 85201-6654 • 480.461.5300 FAX: 480.833.9392

For signature of Protester's representative, see below.

III. IDENTIFICATION OF SOLICITATION NUMBER AND SERVICES

Solicitation No. PD2-968-3095 for Police Towing Service.

IV. LEGAL AND FACTUAL GROUNDS FOR PROTEST

On May 13, 2011, Chandler issued Solicitation No. PD1-968-2938 for Police Towing Service. In response to the 2011 solicitation, the City received four bids. The total projected cost under that solicitation of each of the bids received was:

Auto Citi	\$240,680
Apache Sands	\$327,530
ACT	\$323,520
Thompson	\$424,515

The City determined that the 2011 solicitation failed to include critical requirements, and so it decided to reject all bids and issue a new solicitation.

Solicitation No. PD2-968-3095 ("Solicitation") for Police Towing Services was that new solicitation. On March 21, 2012 bids were opened for the Solicitation. (Exhibit 2¹) As reflected in the bid tabulation attached as Exhibit 2, the total projected cost of each of the bids received was:

URS Southwest	\$331,504
Apache Sands	\$218,488
ACT	\$172,800
Thompson	\$0

¹ The bid tabulation sheet contains minor immaterial errors as to the storage and extraordinary recovery prices proposed by ACT. The sheet reflects for both unit price and extended price with a "-", when it should show "\$0.00". (Exhibit 2) The City correctly treated ACT's bid as containing zero dollar and cents for these categories when totaling ACT's bid.

Since the prior solicitation's results were made public, it was not surprising that for the new Solicitation the projected costs decreased. However, what was bizarre and unprecedented was Thompson bid zero dollars and cents for all services to be provided under the proposed contract. (Exhibit 3) Thompson's bid also reflected that vehicles towed under the proposed contract would be stored at 229 W. Vine St., Mesa, but that payments and office services were to be located at 661 W. Broadway Rd., Mesa. (Exhibit 4) The storage lot is 0.7 miles from the office. (Exhibit 5)

On May 8, 2012, the City's Purchasing Division published its proposed award recommendation that the contract under the Solicitation be awarded to Thompson. (Exhibit 6)

A. Thompson's Bid Should Be Rejected As Unreasonable

In the Solicitation's Information and Instructions, under § 7.3. the City reserved "the right to reject any Bid that, in its sole discretion, is considered to be unreasonable as to the amount bid for any lump sum or unit price item." This was a reflection of the power and duty to prevent potential fraud or subversion of competitive bidding. This is not a typical situation, where as part of the overall total cost evaluation, a bidder might put a nominal price (including below cost, a penny, or even zero) for one service or type of goods and then have higher pricing (including above market cost) for other services or goods. That type of situation is called an unbalanced bid. Unbalanced bidding is not uncommon and ACT's own bid reflects unbalanced bidding for two of the five services to be provided. (Exhibit 2).

In *Nelson v. Mayor of New York*, 131 N.Y. 4, the Court explained the problems and concerns with an unbalanced bid where the contract allowed discretion to pick and choose between goods with below cost pricing and goods with above market pricing after the contract was let:

No one not in fraudulent complicity with the city officials could, with this clause in operation, safely put in an unbalanced bid. If he bid a very low price for some of the pipes and a very high price for others, the city officials might require him to furnish a large quantity of the pipes which he had offered to furnish for much less than their value, and very little or none of those which he had offered to furnish for more than their value, and thus he might be financially ruined, unless his pecuniary resources were very great. But by increasing the quantity of pipes which the bidder had agreed to furnish for a price largely in excess of their value, the city officials could make the fortune of the bidder. It is

thus clear that no man of prudence could, under such circumstances, dare to put in an unbalanced bid, and thus place his fortune at the mercy of the city officials. If this clause had simply permitted the city officials to increase or diminish any kind of pipe only 30 per cent. the facilities for fraud would not have been so great, but with rare cunning it was so framed that any one kind of pipe could be increased by 30 per cent. of the gross amount of the whole contract, and thus an enormous increase of the kind of pipe most profitable to the contractor was made possible.

ACT is not accusing the City or its staff of fraud or collusion, but the point of this opinion is the dangers associated with price manipulation of one of many items included in an overall bid total.

The law has progressed to recognize that an unbalanced bid can be valid, but here all prices listed are zero. This is not merely unbalanced, it is crazy! So Thompson is proposing to provide free towing. Thompson is agreeing to tow a disabled vehicle anywhere in the United States for no charge, since under ¶ 5 and 5.5 of the proposed contract the only charge for towing outside of Chandler is mileage and it is listed as zero dollars and cents. Thompson is agreeing under ¶ 5 and 5.2 of the proposed contract to store vehicles indefinitely (subject to a claim of abandonment) at no charge. Providing equipment, labor, storage space, insurance, gas, etc. for a tow company is not free. With a zero bid for all services there is no mechanism for Thompson to pay its expenses, let alone make a profit. This is the epitome of unreasonable as to amount under § 7.3 because “no man of prudence” would intentionally place his fortune at such risk. The constant loss of money unreasonably encourages Thompson to engage in sharp practices.

The zero dollar bid for all services raises the issue of whether Thompson is also a “responsible bidder” required under § 8.1 of the Solicitation’s Information and Instructions (“If a Contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder who has neither been disqualified or rejected.”). As pointed out above, this contract only calls for Thompson to hemorrhage money and has no provision for it to make any money to make up for such substantial and significant on going expenses.

B. Thompson Lacks Legal Authority To Enter Into Contract

Since April 23, 2012 and including at that time of the award recommendation which is being protested, Thompson was administratively dissolved by the Arizona Corporation Commission. (Exhibit 8) Pursuant to A.R.S. § 10-1421(C) an administratively dissolved corporation “continues its corporate existence but may not carry on any business except that

necessary to wind up and liquidate its business and affairs under section 10-1405 and notify claimants under sections 10-1406 and 10-1407.” So Thompson currently cannot lawfully carry on its business nor enter into a new contract, since that is inconsistent with winding up and liquidating its business.

C. Thompson Is Not Properly Qualified

Under § 6.1 of the Solicitation’s Information and Instructions, a bid will be rejected if a bidder fails to demonstrate they can comply with all contract requirements. The proposed contract in ¶ 2.14 requires compliance with all Federal, State and local laws. Pursuant to Federal law enacted in 2009, entities meeting the definition of a junk yard or salvage yard must report under the National Motor Vehicle Title Information System (“NMVTIS”). (Exhibit 8) Towing companies frequently obtain title to abandoned, junk and salvage vehicles and so they are often subject to NMVTIS reporting requirements. (Exhibit 8, p. 2) However, Thompson is not providing the NMVTIS monthly reporting according to the government website. (Exhibit 9) ACT does comply with NMVTIS. (Exhibit 10)

D. Structural Problems With Solicitation

Thompson’s bid also reflects structural problems with the Solicitation. The proposed contract in ¶ 1.3 of the proposed contract allows use of subcontractors, but the contractor still is responsible for fulfilling the terms of the contract. The proposed contract does not address the cost of outside contracted services. But the price sheet used as part of the Solicitation has an asterisk next to the total and just below it are the words: “Outside Contracted Services at actual cost may also be charged upon written approval from the officer at the scene.” See Exhibit 3. In light of Thompson’s zero charge for any services, Thompson can simply contract with another tower to perform the services and the “actual cost” can be substituted for the zero dollar bid.

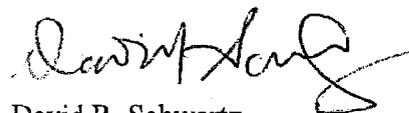
Thompson’s office is separate from its storage location. So a vehicle owner or their representative must go to the office to provide documentation to get their personal property or the vehicle, and then trek to another location to get to the car itself. Some of the owners can be arriving by bus, so they would be forced to walk the 0.7 miles from the office to the lot. The City should have made clear that it intended and desired a one stop location of both office and storage lot.

V. RELIEF REQUESTED

Protester requests that the City should reject all bids and put the proposed contract for Police Towing Services out under a corrected new solicitation. Protester would suggest that such new solicitation should be in the form of a request for proposals with the City setting the imputed price for each type of service covered by the contract. Once upon a time, governmental entities routinely awarded towing contracts based upon IFB, but now the more common practice in the Valley is to use a request for proposal solicitation. The request for proposal process looks at factors other than mere price to determine what is in the best interests of the City. A request for proposal process is utilized by Phoenix, Scottsdale, Tempe, Mesa (for pending solicitation), Glendale, Peoria, Goodyear, Surprise, Tucson, Maricopa County Sheriff's Office (multiple contracts), and Department of Public Safety (multiple contracts). To avoid constant fighting over bidding and price manipulation, a number of governmental entities have begun to set imputed pricing for all towing related services based upon reasonable market pricing for similar services. Imputed pricing has been adopted by Phoenix, Tempe, Mesa (for pending solicitation), Maricopa County Sheriff's Office (multiple contracts), and Department of Public Safety (multiple contracts).

Alternatively, Protester requests that the bid of Thompson be rejected as unreasonable and reflecting that such bidder is not a responsible bidder, so that the proposed contract should be issued to the lowest responsive and responsible bidder. ACT, which is the current provider for Chandler, is clearly a responsive and responsible bidder and it has the lowest legitimate bid. (Exhibit 2) Therefore, with the rejection of the zero dollar bid by Thompson, the City should award the proposed contract to ACT.

Very truly yours,



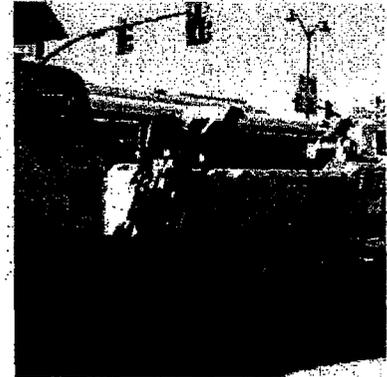
David R. Schwartz

cc: All City Towing (via e-mail jdunn@allcitytowing.com)

Bid Tab
 Police Towing
 PD2-968-3095

Description	Unit	Estimated Quantity Per Year	Thompson Diversified dba Valley Express		All City Towing		Apache Sands Towing		URS Southwest dba Shamrock Towing and Fast Towing	
			Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
Flat rate per tow	Each	4312	\$0.00	\$0.00	\$ 39.00	\$ 168,168.00	\$49.00	\$211,288.00	\$13.00	\$56,056.00
Storage	Day	33647	\$0.00	\$0.00	\$ -	\$ -	\$0.00	\$0.00	\$8.00	\$269,176.00
Extraordinary Recovery	Hour	10	\$0.00	\$0.00	\$ -	\$ -	\$0.00	\$0.00	\$200.00	\$2,000.00
After hours opening	Each	24	\$0.00	\$0.00	\$ 40.00	\$ 960.00	\$45.00	\$1,080.00	\$25.00	\$600.00
Mileage	Mile	1224	\$0.00	\$0.00	\$ 3.00	\$ 3,672.00	\$5.00	\$6,120.00	\$3.00	\$3,672.00
Total				\$0.00		\$ 172,800.00		\$218,488.00		\$331,504.00

City Of Chandler
Invitation for Bid
Solicitation # PD2-968-3095



Prepared By:
ACT Towing, LLC dba All City Towing
P.O. Box 25620
Tempe, Arizona 85285



Chandler • Arizona

**EXHIBIT A (REVISION 1)
PRICE SHEET**

Description	Unit	Estimated Quantity Per Year	Unit Price	Extended Price
Flat rate per tow	Each	4312	\$ 39.00	\$ 168,168.00
Storage	Day	33647	\$ 0.00	\$ 0.00
Extraordinary Recovery	Hour	10	\$ 0.00	\$ 0.00
After hours opening	Each	24	\$ 40.00	\$ 960.00
Mileage	Mile	1224	\$ 3.00	\$ 3,672.00
Total*				\$ 172,800.00

Outside Contracted Services at actual cost may also be charged upon written approval from the officer at the scene.

A listing of all towing and service prices as contracted shall be issued to the owner, agent of the owner, or the owner's insurance representative at pick-up and a copy shall be issued when invoiced at the time of vehicle release.



Thompson Diversified

dba

Valley Express Towing



Price Sheet

EXHIBIT A (REVISION 1)
PRICE SHEET

Description	Unit	Estimated Quantity Per Year	Unit Price	Extended Price
Flat rate per tow	Each	4312	\$ 0	\$ 0
Storage	Day	33647	\$ 0	\$ 0
Extraordinary Recovery	Hour	10	\$ 0	\$ 0
After hours opening	Each	24	\$ 0	\$ 0
Mileage	Mile	1224	\$ 0	\$ 0
Total*				0

Outside Contracted Services at actual cost may also be charged upon written approval from the officer at the scene.

A listing of all towing and service prices as contracted shall be issued to the owner, agent of the owner, or the owner's insurance representative at pick-up and a copy shall be issued when invoiced at the time of vehicle release.



Thompson Diversified

dba

Valley Express Towing



Exhibit D – Storage Lot Location and Size

The proposed storage lot for this contract is located at 229 West Vine, Mesa, AZ 85210. This facility is owned by Richard Thompson (the sole member of Thompson Diversified, LLC dba Valley Express Towing.)

This storage facility boasts over 80,000sf of lit and secured storage space which are not dedicated to any of our other municipal contractual obligations whatsoever. The facility is in place at this time and is prepared for immediate service.

R.T.

Exhibit E – Office Location

Thompson Diversified, LLC dba Valley Express Towing's primary offices are located at 661 West Broadway Road, Mesa, AZ 85210. This facility is owned by Richard Thompson (the sole member of Thompson Diversified, LLC dba Valley Express Towing.)

The offices are in place at this time and are prepared for immediate service.

RT



Trip to:

661 W Broadway Rd

Mesa, AZ 85210-1211

0.70 miles / 1 minute

Notes



229 W Vine Ave, Mesa, AZ 85210-2447



1. Start out going west on W Vine Ave toward S Lebaron. [Map](#)

0.05 Mi

0.05 Mi Total



2. Take the 1st right onto S Lebaron. [Map](#)

0.2 Mi

0.2 Mi Total



3. Turn left onto W Broadway Rd. [Map](#)

0.5 Mi

0.7 Mi Total

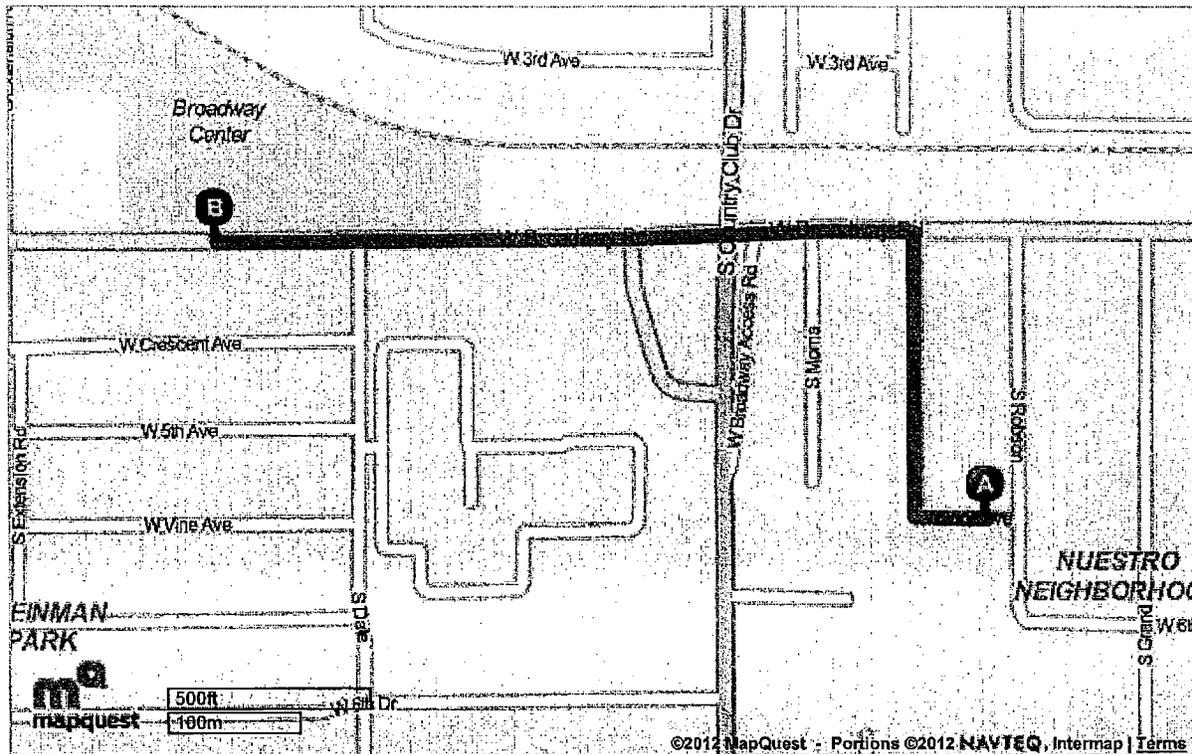


4. **661 W BROADWAY RD** is on the left. [Map](#)



661 W Broadway Rd, Mesa, AZ 85210-1211

Total Travel Estimate: 0.70 miles - about 1 minute



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Proposed Award Recommendation

Solicitation Number	Solicitation Title	Recommended Awardee	Posting Date
FA2-071-3105	Vehicles	Sands Chevrolet	4/24/2012
FA2-071-3105	Vehicles	Midway Chevrolet	4/24/2012
ST0717-401	Commonwealth Ave. Improvements	Blucor	4/25/2012
PD2-968-3095	Police Towing Service	Thompson Diversified dba Valley Express Towing	5/8/2012
ST2-760-3055	Purchase of a Landscape Loader	RDO Equipment Co.	5/8/2012
ST2-760-3054	Purchase of a Backhoe	RDO Equipment Co.	5/8/2012
ST2-988-3085	Revegetation of City Streets	Artistic Land Management	5/9/2012
ST2-745-3103	Asphalt & Concrete Crushing	Buesing Corp.	5/9/2012

ARIZONA CORPORATION COMMISSION
Corporations Division

1300 West Washington Street
Phoenix, Arizona 85007-2929

400 West Congress Street, Suite 221
Tucson, Arizona 85701-1347

CERTIFICATE OF DISSOLUTION

To: **RICHARD A THOMPSON**
970 E ROCKWELL DR
CHANDLER, AZ 85225

Effective Date: **04/23/**

Limited Liability
Company Name: **THOMPSON DIVERSIFIED, L.L.C.**
File Number: **L-1033720-4**

The Corporation Commission has determined that the following grounds continue to exist under A.R.S. §29-634.A or §29-786 and therefore has administratively dissolved your limited liability company pursuant to A.R.S. §29-786.C on the effective date of this notice.

AD-DISSOLVED-UNDELIVERABLE ADDRESS



Arizona Corporation Commission
Records Section
(602) 542-3026

Under A.R.S. §29-786.E, your limited liability company may apply to the commission for reinstatement *within six years* after the effective date of this dissolution.

Questions should be directed to our Call Center at (602) 542-3026.

Note: Helpful information can be found on the Commission web site www.azcc.gov.

05/11/2012

Arizona Corporation Commission
State of Arizona Public Access System

9:22 AM

Jump To...

Notices of Pending Administrative
Dissolution

Administrative Dissolutions and
Reinstatements

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Corporate Inquiry	
File Number: L-1033720-4 AD-DISSOLVED- UNDELIVERABLE ADDRESS 04/23/2012	Check Corporate Status
Corp. Name: THOMPSON DIVERSIFIED, L.L.C.	

Domestic Address

UNDELIVERABLE DOMESTIC ADDRESS
970 E ROCKWELL DR
CHANDLER, AZ 85225

Statutory Agent Information

Agent Name: RICHARD A THOMPSON
Agent Mailing/Physical Address:
UNDELIVERABLE AGENT ADDRESS
970 E ROCKWELL DR
CHANDLER, AZ 85225
Agent Status: APPOINTED 06/10/2002
Agent Last Updated: 07/26/2002

Additional Corporate Information

Corporation Type: DOMESTIC L.L.C.	Business Type:
Incorporation Date: 06/10/2002	Corporate Life Period: PERPETUAL
Domicile: ARIZONA	County: MARICOPA
Approval Date: 06/10/2002	Original Publish Date: 07/11/2002
Status: AD-DISSOLVED-UNDELIVERABLE ADDRESS	Status Date: 04/23/2012

Manager/Member Information

--

RICHARD A THOMPSON MANAGER 970 E ROCKWELL DR CHANDLER, AZ 85225 Date of Taking Office: 06/10/2002 Last Updated: 06/13/2002	RICHARD A THOMPSON MEMBER 970 E ROCKWELL DR CHANDLER, AZ 85225 Date of Taking Office: 06/10/2002 Last Updated: 06/13/2002
---	--

Notices of Pending Administrative Dissolution

(Click on gray button - if present - to view notice - will open in a new window)

Date	Reason
02/17/2012	DELINQUENT UNDELIVERABLE ADDRESS

[Back To Top](#)

Administrative Dissolutions and Reinstatements

(Click on gray button - if present - to view notice - will open in a new window)

Administrative Dissolution Date	Administrative Dissolution Reason	Reinstatement Date
04/23/2012	AD-DISSOLVED - UNDELIVERABLE ADDRESS	

[Back To Top](#)

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Location	Date Received	Description
11529015048	06/10/2002	ARTICLES OF ORGANIZATION
20307022020	07/11/2002	PUBLICATION OF ARTICLES OF ORGANIZATION
11920006001	10/21/2011	LEGAL DOCUMENT

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- [Arizona Corporation Commission Home Page](#)



Policy Clarification Regarding Tow Operators/Towing Companies Reporting Requirements to the National Motor Vehicle Title Information System (NMVTIS) Under the Anti Car Theft Acts
Date Issued: January 27, 2011

This policy clarification is a response to questions from tow operators, towing companies, and similar business entities, and their representatives, regarding application of certain provisions of the Anti Car Theft Acts and NMVTIS regulations.

Pursuant to the Anti Car Theft Act of 1992 (Public Law 102-519), the Anti-Car Theft Improvements Act of 1996 (Public Law 104-152) (collectively "the Anti Car Theft Acts"), a junk yard is defined as "*an individual or entity engaged in the business of acquiring or owning junk automobiles for— 1) Resale in their entirety or as spare parts; or 2) Rebuilding, restoration, or crushing.*" A salvage yard is defined as "*an individual or entity engaged in the business of acquiring or owning salvage automobiles for— 1) Resale in their entirety or as spare parts; or 2) Rebuilding, restoration, or crushing.*" The NMVTIS implementing regulations (28 CFR part 25, published January 30, 2009, 74 FR 5740) make clear that these definitions are understood to include businesses such as vehicle remarketers and vehicle recyclers, including scrap vehicle shredders and scrap metal processors as well as "pull- or pick-apart yards," salvage pools, salvage auctions, and other types of auctions handling salvage or junk vehicles (including vehicles declared by any insurance company to be a "total loss" regardless of any damage assessment).

An entity engaged in the business of acquiring or owning junk or salvage automobiles is one that is engaged in the business of owning, possessing, handling, directing, or controlling such automobiles. See 28 C.F.R. 25.52. Thus, if an entity is so engaged, for the purpose of reselling the junk or salvage automobiles (in their entirety or as spare parts), or for the purpose of rebuilding, restoring, or crushing the junk or salvage automobiles, then such entity is a junk yard or salvage yard for purposes of the Anti Car Theft Acts and the NMVTIS regulations. A junk or salvage yard that handles five or more junk or salvage vehicles per year is required to provide monthly reports to NMVTIS consistent with the Anti Car Theft Acts and NMVTIS regulations.

The NMVTIS regulations define a junk automobile as follows: "*an automobile that— 1) Is incapable of operating on public streets, roads, and highways; and 2) Has no value except as a source of parts or scrap.*" 28 C.F.R. 25.52. The NMVTIS regulations define a salvage automobile as follows: "*an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage. Salvage automobiles include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by an insurer under the terms of its policies, regardless of whether or not the ownership of the vehicle is transferred to the insurance carrier.*" 28 C.F.R. 25.52 (Please see ATTACHMENT A for additional information to determine if an automobile meets the NMVTIS salvage automobile definition). Vehicles determined to meet the above definitions of junk or salvage automobiles, including vehicles with non-salvage titles, must be reported to NMVTIS. The NMVTIS regulations state that reporting entities must report all junk or salvage automobiles they obtain, including vehicles from or on behalf of insurance carriers, which can be reasonably assumed are total loss vehicles. Such entities, however, are not required to report any automobile that is determined not to meet the NMVTIS definition of junk or salvage after a good-faith physical and value appraisal is conducted by qualified, independent appraisal personnel. 28 C.F.R. 25.56(g).

Tow operators and towing companies (and similar businesses) that meet these statutory and regulatory requirements must provide monthly reports to NMVTIS. That other entities, earlier or later in the automobile-dismantling supply chain, may also have reporting obligations provide no basis to exempt tow operators or towing companies from also reporting.

The monthly reporting to NMVTIS must contain:

1. The name, address, and contact information for the reporting entity.
2. Vehicle Identification Number (VIN) for each junk and salvage automobile.
3. The date the automobile was obtained by the reporting entity.
4. The name of the individual or entity from whom the automobile was obtained.
5. A statement of whether the automobile was crushed or disposed of, for sale or other purposes, to whom it was provided or transferred, and if the vehicle is intended for export out of the United States.

The Anti Car Theft Acts and the NMVTIS implementing regulations do not require towing companies to report automobiles that: 1) do not meet the NMVTIS definition for junk or salvage automobiles or 2) were only transported or stored by the towing company. *The NMVTIS reporting obligation for a towing company occurs when the towing company sells, rebuilds, restores, or crushes five or more junk or salvage automobiles per year.* The Department of Justice recognizes that there are circumstances in which it is not immediately apparent whether the owner of an automobile will re-claim a towed automobile. Therefore, when considering the junk or salvage automobiles that were obtained in a particular month and when reporting the date “the automobile was obtained,” the towing company should report the date, under the law of the applicable jurisdiction, that the towing company obtained the right to determine the disposition (i.e., sell (for parts or in whole), rebuild, restore, or crush) of the automobile (e.g., the date the towing company obtained a salvage certificate or certificate of destruction under the law of the applicable jurisdiction; the date the towing company purchased the vehicle from a private party either for a monetary amount or in lieu of towing and storage costs and the towing company seeks to sell, rebuild, restore, or crush the automobile).

Failure to report to NMVTIS as required is punishable by a civil penalty of \$1,000 **per violation**. Accordingly, for example, a failure to report 100 junk or salvage automobiles could result in a civil penalty of up to \$100,000. NMVTIS Reporting Entities are responsible for ensuring all required information has been reported to NMVTIS accurately and within the timelines required.

The accuracy of the data reported to NMVTIS is essential to the intent and purpose of the System. Law enforcement agencies, state titling agencies, and consumers rely on the accuracy of NMVTIS data. Incorrectly reporting automobiles to NMVTIS that do NOT meet the junk automobile or salvage automobile definitions may significantly diminish the value of those automobiles (particularly when such automobiles may be back on the road) and is not considered compliance. **Entities that acquire junk automobiles and salvage automobiles, in addition to other automobiles, are encouraged to use care so that they are reporting to NMVTIS those junk and salvage automobiles required to be reported, instead of all automobiles.**

The Department of Justice and the NMVTIS operator, the American Association of Motor Vehicle Administrators (AAMVA), partnered with the private sector to provide multiple reporting methods to meet the business needs of reporting entities. Currently, there are four reporting services available, offering individual VIN and batch reporting options. Three service providers offer a **no-cost** per-transaction program. More detailed information on these reporting options may be found at: www.vehiclehistory.gov/nmvtis_auto.html.

The Department of Justice respectfully requests that if any individual or organization disseminates this policy clarification to members and interested parties, then this entire policy clarification document be provided.

For more information on this clarification or NMVTIS, please e-mail nmvtis@usdoj.gov or visit www.vehiclehistory.gov.

ATTACHMENT A

Salvage Automobile Determination Sample Worksheet

NMVTIS Salvage Automobile Formula:

Fair Salvage Value + Cost of Repairing the Automobile for Legal Operation > Fair Market Value Immediately Before Damage

- A. Fair *Salvage* Value of Automobile (current condition): \$ _____
- B. Cost of Repairing the Automobile for Legal Operation: \$ _____
- C. Total of Line "A" and Line "B": \$ _____
- D. Fair Market Value of Automobile Immediately Before Damage: \$ _____

If the value on line "C" is greater than the value on line "D", then the vehicle meets the definition of "Salvage Automobile" and must be reported to NMVTIS as such.

If a vehicle has been declared a "total loss" by any insurance company or would be considered as such under the law of the applicable jurisdiction, then the above formula and assessment are not necessary, the vehicle meets the definition of "Salvage Automobile" and must be reported to NMVTIS as such.

National Motor Vehicle Title Information System

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Research Vehicle History

Check here to research vehicle history.
 Understanding an NMVTIS Vehicle History Report
 Used Car Buying Tips

For Reporting Entities Only (Auto Recyclers, Junk and Salvage Yards, and Insurance Carriers)

- Check here for a list of approved third party data consolidators AND how to report information to NMVTIS.

Junk, Salvage, Recycler, and Insurer Information—

- Check here to search for junk, salvage, recycler, and insurer information.

Information For—

- Consumers
- Law Enforcement
- States
- Insurance Carriers
- Auto Recyclers, Salvage Yards, and Junk Yards

Quick Facts

28.1 million is the number of salvage or total loss records received since April 30, 2009.

Over 9,000 is the number of insurance carriers, auto recyclers, junk yards and salvage yards in the U.S. reporting or registered to report to NMVTIS regularly.

87% of DMV data is in NMVTIS system.

1 is the number of states not participating (includes District of Columbia).

By January 2010 all states must be participating.

Who Reports to NMVTIS?

Several businesses and agencies are required to report entities include:

- State motor vehicle titling agencies.
- Insurance carriers (including some self-insuring).
- Auto recyclers and junk and salvage yards (including processors, as well as "pull- or pick-apart yards of auctions, businesses, and individuals that handle a "total loss").

These entities are required to report various types of information with limited exceptions to these reporting requirements (e.g., identifying VINs for reporting, junk or salvage yards handling exempt from reporting).

Check Reporting Status

Please select the unique NMVTIS identification (ID) number (recycler, or insurer) button and then enter the ID number search button to retrieve NMVTIS reporting information OR the business name.

SEARCH FOR

NMVTIS ID Number Business Name
 (Business Name search must contain a minimum

valley express towing

NOTE:

All insurance carriers are required to begin monthly reporting by March 31, 2009.

All auto recyclers, salvage yards, and junk yards are required to submit vehicle data to NMVTIS on March 31, 2009.

To review the specific reporting requirements by entity:

- [Insurance Carriers](#)
- [Auto Recyclers, Junk Yards, and Salvage Yards](#)
- [Summary by Reporting Entity: What Data is Reported](#)

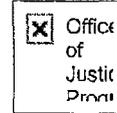
Learn more about [Participating States](#).

Since NMVTIS—

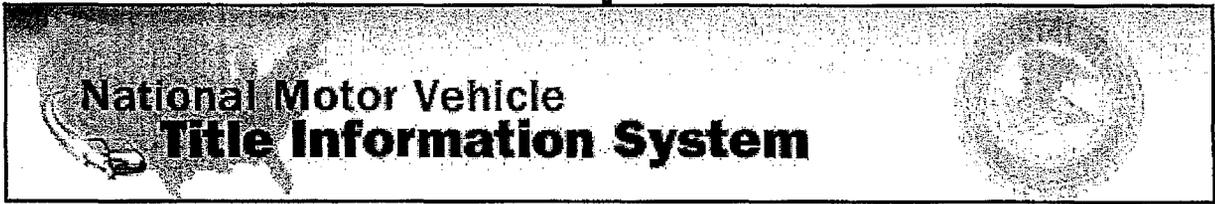
Arizona is experiencing a **99% recovery rate** on vehicles identified as stolen.

Virginia is seeing a **17% decrease** in motor vehicle thefts.

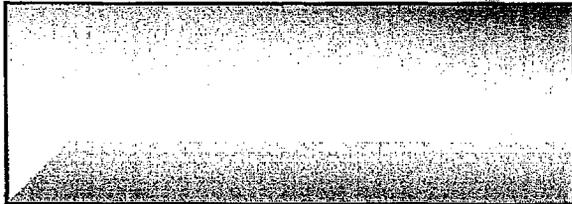
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Research Vehicle History

- [Check here to research vehicle history.](#)
- [Understanding an NMVTIS Vehicle History Report](#)
 - [Used Car Buying Tips](#)



For Reporting Entities Only (Auto Recyclers, Junk and Salvage Yards, and Insurance Carriers)

- [Check here for a list of approved third party data consolidators AND how to report information to NMVTIS.](#)



Junk, Salvage, Recycler, and Insurer Information—

- [Check here to search for junk, salvage, recycler, and insurer information.](#)



Information For—

- [Consumers](#)
- [Law Enforcement](#)
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87% of DMV data is in NMVTIS system.

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By January 2010 all states must be participating.

Learn more about [Participating States](#).

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Please select the unique NMVTIS identification (ID) number (recycler, or insurer) button and then enter the ID number search button to retrieve NMVTIS reporting information OR the business name.

SEARCH FOR

NMVTIS ID Number Business Name
 (Business Name search must contain a minimum

thompson diversified

Search

NOTE:

All insurance carriers are required to begin monthly reporting March 31, 2009.

All auto recyclers, salvage yards, and junk yards are required to submit vehicle data to NMVTIS on March 31, 2009.

To review the specific reporting requirements by entity:

- [Insurance Carriers](#)
- [Auto Recyclers, Junk Yards, and Salvage Yards](#)
- [Summary by Reporting Entity: What Data is Reported](#)

Learn more about [Participating States](#).

Since NMVTIS—

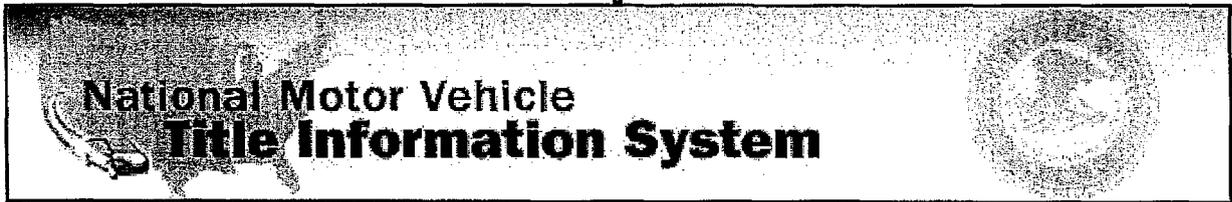
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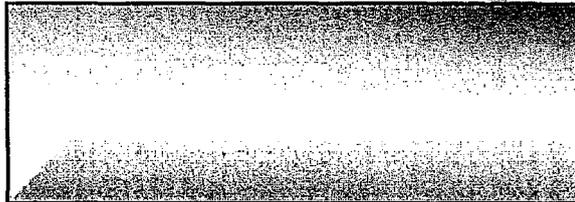
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Learn more about [Participating States](#).

Since NMVTIS—

Arizona is experiencing a **99% recovery rate** on vehicles identified as stolen.
 Virginia is seeing a **17% decrease** in motor vehicle thefts.

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National Motor Vehicle Title Information System

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For Reporting Entities Only (Auto Recyclers, Junk and Salvage Yards, and Insurance Carriers)

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Auto Recyclers, Salvage Yards, and Junk Yards



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Quick Facts

28.1 million is the number of salvage or total loss records received since April 30, 2009.

Over 9,000 is the number of insurance carriers, auto recyclers, junk yards and salvage yards in the U.S. reporting or registered to report to NMVTIS regularly.

87% of DMV data is in NMVTIS system.

1 is the number of states not participating (includes District of Columbia).

By January 2010 all states must be participating.

Learn more about [Participating States](#).

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LAW OFFICES OF JAMES H. HAYS, PLC

May 16, 2012

Mr. David R. Schwartz
Udall Shumway & Lyons
30 W. 1st Street
Mesa, AZ 85201

Re: Your Protest Letter of May 14, 2012 on behalf of ACT Towing; Invitation for Bid No. PD2-968-3095 (Towing Services).

Dear Mr. Schwartz:

I have been retained by the City of Chandler to represent the City in connection with its procurement of tow services. Your protest letter has been carefully reviewed by City staff and found to be without merit. Pursuant to Paragraph 9.3 of the *Notice of Invitation for Bid*, this letter constitutes the City's written response.

Your protest is denied, for the reasons that follow.

Thompson's Bid

You allege that Thompson's zero bid is unreasonable because "[...] there is no mechanism for Thompson to pay its expenses, let alone make a profit." Your allegation that there is no way for a tow company to make money under this contract with a zero bid is not correct. There are at least two ways, both completely legal, for a tow company to make a significant amount of money under this contract. First, the owner or other person responsible for the towed vehicle may use the contractor to re-tow the vehicle, due to the convenience that this contractor would be in a position to offer, or otherwise. Second, many of the towed vehicles are abandoned by their owners. After the tow company completes the abandoned vehicle paperwork, which is not costly, the tow company is able to sell the vehicle and keep all of the proceeds.

Also, the determination as to the overall revenues and expenses to be expected in any contract let out for bid is a judgment to be made by each individual bidder after carefully reviewing its own operation, personnel, experience, other contractual obligations, and resources. This is not something that the City, or any other bidder, is in a good position to second-guess.

Thompson's Legal Capacity

You have identified here what appears to be a technical defect with Thompson Diversified's record with the Arizona Corporation Commission. This defect is minor and easily corrected. Also, once corrected, the law provides that the company may resume business "as if the administrative dissolution had never occurred." A.R.S. § 29-786(G).

Mr. David R. Schwartz
May 16, 2012
Page 2 of 2

This error, if corrected, could not possibly justify rejecting all bids or awarding the contract to your client.

Contract Requirements

You allege here that Thompson has failed to demonstrate the ability to comply with contract requirements. You offer no evidence in support, however. Should the law creating the National Motor Vehicle Title Information System apply to Thompson, the City has no evidence, and you offer none, that Thompson is *unable* to comply with this law.

The Solicitation Itself

You allege here that Thompson has the ability to override its zero bid by hiring a subcontractor. This is not correct. Thompson has the ability to pass through the *actual* expenses for outside contracted services if a Chandler police office approves the utilization of those other services. Consequently, there is no way for Thompson to reverse, nullify or lessen the effect of its zero bid through the use of subcontractors.

You next allege that the solicitation document should have made it clear that the storage lot and its office had to be at the same location. The fact that the solicitation document does not do this is not a "structural problem" with the bid. In fact, by permitting the storage lot/office situation you identify, the City is making it easier to meet contract requirements and to keep tow company costs low, the benefit of which is passed on to all citizens in the form of lower prices for the entire life of the contract.

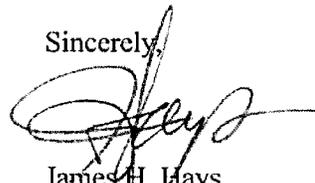
IFB v. Imputed Pricing

The City's IFB falls squarely within statutory requirements, while imputed pricing does not. A.R.S. § 28-1108(E) (requiring the City to obtain this work through "competitive bidding."). Consequently, your letter asks the City to forsake the clearly-legal process it has adopted for this contract for one of questionable legality and with no corresponding benefit.

Conclusion

For the above-stated reasons, the City will not be rejecting all bids and will not be awarding the contract to ACT Towing. Thank you for taking the time to express your concerns with the City's towing solicitation. If you would like to discuss this matter further, please feel free to give me a call.

Sincerely,



James H. Hays
Attorney at Law

cc: Mary Wade, City Attorney
Mike Mandt, CPPB, Purchasing