

## LICENSED IMPOUND PROVIDER AGREEMENT

### Parties

This Licensed Impound Provider Agreement (“LIP Agreement”) is hereby made by and among Allied Gardens Towing, Inc. DBA: RoadOne (“Responder”) and the City of San Diego (“City”), collectively referred to as the “Parties,” to memorialize their acceptance of the terms of the contract resulting from the Responder’s qualified response to the City’s Request for Qualification (“RFQ”) No. 10004980-10-P. The term of this LIP Agreement shall be for a period two years from the effective date as defined below (“Effective Date”), with options to renew for three additional one-year periods.

### Recitals

WHEREAS, the Responder has submitted a response to the RFQ, and in doing so has agreed that, should the response be selected, Responder will be bound by the terms of the “Contract Documents” as defined in Section X.I of the RFQ: including the RFQ; the City of San Diego’s General Provisions for Proposals dated January 18, 2005 (“General Provisions”); the response submitted; the City’s award letter(s); any written clarifications between the City and the Responder regarding the response (if any); the City’s written acceptance of any exceptions or clarifications incorporated in the response (if any); any exhibits, attachments, or addenda to any of the aforementioned documents (including Attachment A to the RFQ, the SDPD Managed Towing Operations Manual); and any documents incorporated therein by reference;

WHEREAS, the City has selected Responder to provide towing, impound, storage, release, disposal and other services as set forth in the RFQ (“LIP services”) in the following geographic area(s): **Zones 6 and 7**;

THEREFORE, the Parties agree to the following:

### Agreement

The Parties mutually agree that, as a result of the City’s acceptance of the Responder’s qualified response to the RFQ, the Parties shall be mutually bound by the Contract Documents, as defined above. To the extent terms and conditions of the Contract Documents conflict with one another, the order of priority will be as follows: (1) this LIP Agreement takes precedence over conflicting terms in the RFQ; (2) the RFQ takes precedence over conflicting terms in the General Provisions; (3) the General Provisions take precedence over conflicting terms in the response; and (4) exceptions and clarifications noted in the response take precedence over conflicting terms in the RFQ and General Provisions only if expressly agreed to by the Parties in writing prior to execution of this LIP Agreement.

In addition, the Parties agree to the following:

1. **Term:** The Effective Date of this Agreement shall be September 6, 2011. This LIP Agreement shall commence on the Effective Date and continue for a period of two (2) years ending September 5, 2013.

The specific Effective Dates and Times of the Zones below shall be as follows:

ZONE	EFFECTIVE DATE	TIME
7	September 6, 2011	6:00 a.m. PT
6	September 15, 2011	6:00 a.m. PT

2. **Option to Renew:** Per Section X.D of the RFQ, the City reserves the option to renew this LIP Agreement for up to three additional one-year periods under the same terms and conditions. The renewal is contingent on mutual agreement between the Parties with such agreement to be confirmed in writing sixty days prior to the expiration of the immediately preceding term. In addition, the Parties acknowledge as follows:
  - a. No renewal of this LIP Agreement will be valid unless it is writing, executed by the Responder and an authorized signatory of the City, and approved as to form by the City Attorney in accordance with City Charter section 40.
  - b. Under no circumstances may this LIP Agreement be extended for a period beyond five years without City Council approval by ordinance by two-thirds' vote in accordance with City Charter section 99.
3. **Rates and Fees:** Any change in rates or fees as reflected in the RFQ, Attachment A, Appendix 2, is at the sole discretion of the City. No change in rates or fees will be valid unless it is in writing, executed by the Responder and an authorized signatory of the City, and approved as to form by the City Attorney in accordance with City Charter section 40.
4. **Zones:** Responder is selected to perform LIP services in the following Tow Zone(s), as described in the RFQ, Attachment C: **Zones 6 and 7.**
5. **Insurance:** Responder shall not begin any work under this LIP Agreement until it has complied with all insurance requirements, including submission of proof of insurance to City, as set forth Section X.E of the RFQ. Furthermore, the following changes to the RFQ are hereby made effective as though they were originally shown and/or written:
  - a. Section X, paragraph E, "Insurance, Indemnity, and Damages/Liability," Item 12, "Required Endorsements," sub-item b relating to "Primary and Non-Contributory Coverage" is hereby replaced with the following:

The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego **and TEGSCO LLC DBA: AutoReturn**, and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego **and TEGSCO LLC DBA: AutoReturn**, and their elected officials, officers, employees, agents and representatives shall be in excess of Tow Provider's insurance and shall not contribute to it.

- b. Section X, paragraph E, "Insurance, Indemnity, and Damages/Liability," Item 16, "Original certificates and any renewals thereof shall be mailed to the following addresses," sub-item b is hereby replaced with the following:

b. Attn: Mr. **Wes Alford**, (or his designee) **TEGSCO LLC DBA: AutoReturn, 9265 Aero Drive, San Diego, CA 92123.**

6. **Equal Benefits:** This Agreement is subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC].

In accordance with the EBO, Responders must certify they will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the Agreement [SDMC §22.4304(f)] (reference: Attachment titled "Equal Benefits Ordinance Certification of Compliance"). Failure to maintain equal benefits is a material breach of the Agreement [SDMC §22.4304(e)]. Responders must notify employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

"During the performance of an Agreement with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners."

Responders also must give the City access to documents and records sufficient for the City to verify the Responder is providing equal benefits and otherwise complying with EBO requirements.

Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at [www.sandiego.gov/purchasing/](http://www.sandiego.gov/purchasing/) or can be requested from the Equal Benefits Program at (619) 533-3948.

7. **Business Tax Certificate:** Responder shall not begin any work under this LIP Agreement until it has complied with the City's business tax requirements, including

submission of proof of a business tax certificate to City, as set forth Section X.J of the RFQ.

8. **Taxpayer Identification Number**: Responder shall not begin any work under this LIP Agreement until it has submitted its Form W-9, as set forth Section X.C.3.b of the RFQ.

The Parties further agree that the Contract Documents, as defined above and memorialized in this LIP Agreement, constitute the entire agreement between the Parties.

Accepted and Agreed,

City of San Diego

\_\_\_\_\_  
By: Hildred Pepper  
Director, Purchasing & Contracting

Date: \_\_\_\_\_

Responder

*Steve Bishop Res.*  
By: *Steve Bishop*  
Title: *Pres*

Date: *08/26/2011*

I HEREBY APPROVE the form of the foregoing agreement this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

JAN I. GOLDMSITH, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney