



---

DATE: June 20, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **PROPERTY LEASE AGREEMENT WITH ALLIED GARDENS TOWING, INC., FOR CITY-OWNED PROPERTY LOCATED SOUTH OF NORTH RIVER ROAD, AND ADOPTION OF A RESOLUTION REQUIRING ALL VEHICLES IMPOUNDED THROUGH THE OCEANSIDE POLICE DEPARTMENT TOWING OPERATORS REGULATIONS AND/OR THE MASTER TOWING CONTRACTORS AGREEMENT BE STORED AND IMPOUNDED AT THE CITY-OWNED PROPERTY**

**SYNOPSIS**

Staff recommends that City Council approve a five-year Property Lease Agreement with Allied Gardens Towing, Inc., dba Road One, of San Diego for their use of City-owned property located south of North River Road to be used primarily as a towing and impound facility, with revenue to the City in the minimum amount of \$390,000 annually; staff also recommends that the City Council adopt a resolution changing the Oceanside Police Department Towing Operator Regulations and the Master Towing Contractors Agreement mandating that all vehicles impounded at the request of the Oceanside Police Department be stored and impounded at the City-owned property; and authorize the City Manager to execute the agreement.

**BACKGROUND**

The City owns an approximate 5.7-acre parcel of real property located south of North River Road between Calle Montecito and Redondo Drive in Oceanside ("Property"). The Property is part of a parcel of land currently being leased by Manheim Investments, Inc., doing business as the San Diego Auto Auction ("Manheim") located at 4691 Calle Joven in Oceanside ("Manheim Property"). The City and Manheim are in the process of amending the lease which reduces the Manheim Property by 5.7 acres.

In October 2011, a Request for Proposals ("RFP") was issued to identify parties interested in leasing the Property for the purpose of operating a storage and/or vehicle impound facility. The RFP was posted on the City's website and notice of the solicitation was published in *The North County Times*.

Four (4) proposals were received and a rating panel was convened to review and evaluate them. The companies responding to the RFP were:

Jeffrey Bartlett, of Oceanside, California  
PRP Storage, of Irvine, California  
NK Towing, Inc., of Escondido, California  
Allied Garden's Towing, Inc. of San Diego, California

Allied Gardens Towing, Inc., dba Road One ("Road One") subsequently was selected in March 2012 to negotiate a property lease agreement.

## **ANALYSIS**

Road One will lease the Property to operate a wrecking, towing, impound and storage facility for all vehicles Road One tows, including vehicles towed relating to the Master Towing Contractors Agreement ("Agreement") through the Oceanside Police Department ("OPD"), and to also utilize the Property as an auto-auction location related to the vehicles impounded. The proposed Property Lease Agreement ("Lease") is for a five-year term and provides for one successive five-year renewal option period. The Lease, as a condition of occupancy, gives Road One up to three months from the date the Lease is approved to complete the improvements to ready the Property for its intended use.

Road One's proposal is based on all OPD-related tows being impounded and stored at the Property. The OPD Towing Operators Regulations ("Regulations") currently allow towing contractors to tow, impound and store vehicles at their own tow-yards as long as the storage yards are located within the City of Oceanside, with an area of at least 5,000 square feet, and which are screened from street view by a six-foot-high solid fence where needed. Adoption of a Resolution revising language in the Regulations and Agreement will require all future Agreement-related tows to be towed to the Property and be impounded and stored under Road One's authority.

## **FISCAL IMPACT**

Road One will pay the City an annual lease payment of \$390,000 at \$32,500 per month to be deposited in General Fund account no. 1101.4351.0009. Road One will also pay its own utilities. However, in the first year of the Agreement, Road One will only be required to pay nine-months rent, with the first three-months abated in order offset the cost to construct improvements on the Property. The City will lose \$3,149 per month for the 3 months between the time when Manheim reduces the amount of space they lease from the City and Road One starts paying rent on the Property.

The lease payment is adjusted annually based on the semi-annual Consumer Price Index (CPI) for All Urban Consumers for San Diego; however, in no event is the adjustment less than two percent (2%) or greater than five percent (8%). The agreement will result in a minimum total revenue for the Property over the five-year term of \$2,029,576.

**INSURANCE REQUIREMENTS**

Road One will be required to maintain the City's standard insurance requirement over the term of the lease.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

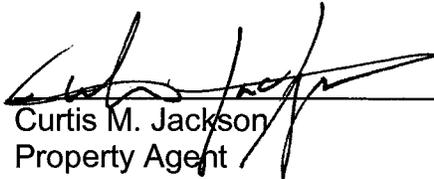
**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

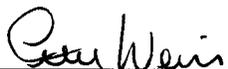
**RECOMMENDATION**

Staff recommends that City Council approve a five-year Property Lease Agreement with Allied Gardens Towing, Inc., dba Road One, of San Diego for their use of City-owned property located south of North River Road to be used primarily as a towing and impound facility, with revenue to the City in the minimum amount of \$390,000 annually; staff also recommends that the City Council adopt a resolution changing the Oceanside Police Department Towing Operator Regulations and the Master Towing Contractors Agreement mandating that all vehicles impounded at the request of the Oceanside Police Department be stored and impounded at the City-owned property; and authorize the City Manager to execute the agreement.

PREPARED BY:

  
Curtis M. Jackson  
Property Agent

SUBMITTED BY:

  
Peter A. Weiss  
City Manager

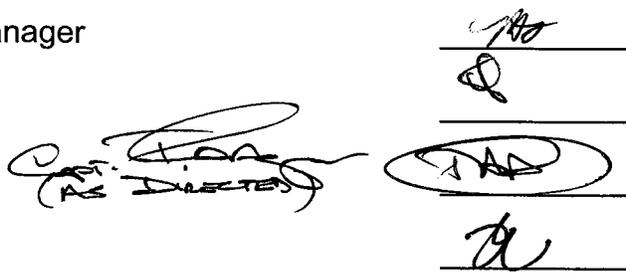
REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director

Frank McCoy, Oceanside Police Chief

Douglas Eddow, Real Property Manager





**CPI PROPERTY LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**ALLIED GARDENS TOWING, INC.  
dba ROAD ONE**

**FOR THE LEASE OF CITY-OWNED REAL PROPERTY**

**LOCATED AT**

**VACANT LAND SOUTH OF NORTH RIVER ROAD**

**DATED**

**JUNE 20, 2012**

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1: PROPERTY AND LEASE IMPROVEMENTS.....	1
1.01 Property.....	1
1.02 Uses.....	1
1.03 Related Discretionary Actions.....	2
1.04 Quiet Possession	
1.05 Reservation of Rights .....	2
SECTION 2: TERM .....	3
2.01 Commencement .....	3
2.02 Renewal Options .....	3
2.03 Termination Provisions .....	4
2.04 Holdover.....	4
2.05 Abandonment by Lessee.....	4
2.06 Quitclaim of Lessee's Interest.....	4
2.07 Surrender of Property .....	4
2.08 Time is of Essence .....	4
SECTION 3: RENT .....	4
3.01 Time and Place of Payment.....	4
3.02 Rent .....	4
3.03 Inspection of Records .....	6
3.04 Additional Rent.....	6
3.05 Delinquent Rent.....	6
3.06 Renewal Option Rent .....	7
SECTION 4: INDEMNITY AND INSURANCE .....	7
4.01 Indemnity.....	7
4.02 Insurance .....	7
4.03 Accident Reports .....	8
SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS .....	8
5.01 Acceptance of Property .....	8
5.02 Improvements .....	9
5.03 Lessee's Maintenance.....	9
5.04 Waste, Damage, or Destruction.....	9
5.05 Utilities .....	10
5.06 Taxes .....	10
5.07 Ownership of Improvements and Personal Property.....	10
5.08 Liens .....	11
5.09 Encumbrance .....	11
5.10 Signs .....	11
SECTION 6: CONDEMNATION .....	12
6.01 Eminent Domain.....	12
SECTION 7: DEFAULT BY LESSEE .....	12

7.01	Defaults and Termination .....	12
7.02	Bankruptcy .....	13
<b>SECTION 8: GENERAL PROVISIONS.....</b>		
8.01	Notices .....	13
8.02	City Approval .....	14
8.03	Nondiscrimination .....	14
8.04	Equal Opportunity .....	14
8.05	Entire Agreement .....	14
8.06	Interpretation of the Lease .....	15
8.07	Lease Modification .....	15
8.08	Waiver .....	15
8.09	Dispute Resolution, Attorney's Fees .....	15
8.10	Assignment and Subletting - No Encumbrance .....	15
8.11	Section Headings .....	16
8.12	Gender/Singular/Plural .....	16
<b>SECTION 9: SPECIAL PROVISIONS.....</b>		
9.01	Standards of Operation .....	16
9.02	Hours of Operation .....	16
9.03	Manner of Providing Service .....	16
9.04	Hazardous Substances .....	17
9.05	Lease Agreement Contingency .....	17
<b>SECTION 10: SIGNATURES .....</b>		
10.01	Signature Page.....	18

**EXHIBITS**

Exhibit "A" -	Legal Description
Exhibit "A-1" -	Property Site Plan
Exhibit "B" -	Lessee Improvements
Exhibit "C" -	Commencement Date Memorandum

THIS LEASE AGREEMENT, dated \_\_\_\_\_, 2012, hereinafter called "Lease," is executed between the **CITY OF OCEANSIDE**, a California charter city corporation, hereinafter called "City," and **ALLIED GARDENS TOWING, INC.**, a Delaware corporation, hereinafter called "Lessee."

## RECITALS

WHEREAS, City is the lawful owner of certain real property and improvements thereon, consisting of approximately 5.7 acres, whose Assessor Parcel number is 157-060-49-00, (the "Property"); and

WHEREAS, City is willing to lease the Property to Lessee for the term and upon the covenants, conditions and provisions hereinafter set forth.

## AGREEMENT

NOW THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the parties hereto do mutually agree as follows:

### SECTION 1: Property and Lessee Improvements

**1.01 Property.** City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, covenants, conditions and provisions of this Lease, the "Property," which shall consist of the exclusive use of 5.7 acres, as illustrated in **Exhibit "A"** ("Legal Description") and **Exhibit A-1** ("Property Site Plan"), including the parking lot, landscaped areas, and access roads.

**a. Property Condition.** The City shall deliver the Property to Lessee in an "as-is, where is" condition without any representation or warranties as to the suitability of the Property for Lessee's intended use. Lessee hereby accepts the Property in said "as-is, where is" condition and shall make any and all improvements to the Property thereto necessary for Lessee to occupy the Property for their intended use. It is expressly understood by the parties that Lessee, pursuant to section 5.01 herein, shall be responsible for all due diligence, planning, procurement of entitlements and improvements necessary to place the Property in a condition suitable for Lessee's uses permitted under this Lease. Lessee will be responsible for maintaining any improvements made to the Property, including, but not limited to any structures and installations made on Property.

**b. Lessee Improvement Obligations.** Lessee shall perform all of the work required to be performed by Lessee as described in the scope of work more specifically set forth in **Exhibit "B"** ("Lessee Improvements") attached hereto and by this reference made part of this Lease.

**1.02 Uses.** It is expressly agreed that the Property is leased to Lessee solely and exclusively for a vehicle storage, auto-auction location and towing services facility for impound vehicles. The Property may also be used for other related or incidental purposes as may be first approved in writing by the City and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Property for the above specified, limited and particular exclusive use and to diligently pursue said purposes

throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God including but not limited to fire, flood or other casualty. Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Property for said purposes, or uses the Property for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Property in any manner that disrupts other occupants or users of the Property and surrounding property owners or their tenants in the use and quiet enjoyment of their property.

**1.03 Related Discretionary Actions.** By the granting of this Lease, neither City nor the City Council is obligating itself or any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Property. Discretionary action includes, but is not limited to, issuance of building permits, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for development and operation on the Property.

**1.04 Quiet Possession.** Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Property. Lessee, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises. If during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom. Notwithstanding the foregoing, in the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City Manager a thirty (30) day written notice together with its justifications for such termination. The City Manager shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

**1.05 Reservation of Rights.** City shall not unreasonably or substantially interfere with Lessee's use of the Property while Lessee is in possession of the Property; however, the City specifically retains the following rights:

**a. Subsurface Rights.** City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Property.

**b. Easements.** City shall retain the right to establish access or utility easements through the Premises; provided, however, City shall not unduly interfere with Lessee's use of the Premises. Reasonable notice shall be provided to Lessee and such installation of utilities shall be coordinated with the Lessee. Within thirty (30) days after the completion of the installation, the City shall in a timely manner begin and complete the restoration of the Premises to the condition existing prior to the installation of the easements at City's sole expense. Relocation of any existing utilities by Lessee shall be coordinated with, and prior written approval obtained from City. Said relocation, if requested by Lessee, shall be at the expense of Lessee. As-built drawings of all utility installations by Lessee shall be furnished to City. As-built drawings of all utility installations by City shall be furnished to Lessee upon request.

**c. Right to Enter.** City has the right to enter upon the Property for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will not reimburse the Lessee for damages to the Property or to the

Lessee's personal property caused by the City resulting from the City's exercise of its rights herein. If City is required to make a repair caused by Lessee neglect, Lessee will be liable for costs associated for such repairs. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

## **SECTION 2: TERM**

**2.01 Commencement.** The term of this Lease ("Term") shall be for a period of **five (5) years**, commencing on the "Commencement Date," which is hereby defined as after the previous tenant vacates and clears the premises and Resolution \_\_\_\_\_ has been approved by City Council, and the earlier of (i) the date Lessee substantially completes Lessee Improvements, as evidenced by a notice of completion, or (ii) **ninety (90) days** the date City Council approves the Lease, hereinafter called the "Effective Date". City anticipates the Commencement Date to be on or before September 20, 2012. Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in **Exhibit "C"** ("Commencement Date Memorandum") attached hereto and by this reference made part of this Lease.

**a. Build Outs and Improvements by Lessee.** Lessee shall have **ninety (90) days** from the Effective Date to complete Lessee Improvements so that the Property is operational and suitable for use. If Lessee Improvements are not substantially completed within **ninety (90) days** from the Effective Date, Lessee may be in default of this Lease.

(i) Lessee shall be solely responsible to raise funds necessary for the design and construction of all Lessee Improvements.

(ii) Lessee agrees to pay all local and customary development permit processing and inspection fees necessary to entitle and construct the project. Lessee also agrees to pay all development impact fees associated with the construction of the facility on the Property (i.e. Building Permits, Grading Permits, Conditional Use Permits, EIR reports, etc.).

(iii) City shall not provide funding of any kind to Lessee.

**2.02 Renewal Options.** Lessee may request one (1) five (5) year extension of the Lease Term ("Extension Term") under the terms and conditions of this Lease at City's fair market rental rate of similar businesses, provided that the Lessee is not in default of any term, condition, covenant or provision of this Lease. The extension request must be in writing and approved by the Oceanside City Council (the "City Council") as set forth below:

Lessee may request an extension of the term of this Lease provided that Lessee provides written notice to the City no later than **one hundred eighty (180) days** prior to the expiration of the initial term of this Lease as extended by any extension term above. City designee shall notify the Lessee not later than **sixty (60) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City shall provide Lessee with the terms and conditions for Lessee's use and occupation of the Property during the extension term.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Lease. In the event the City Council is unable to consider the extension request in sufficient time as to provide Lessee with **thirty (30) days** notice of termination in the case of denial, the Lease shall

be extended for a period not to exceed **thirty (30) days**, to allow for such **thirty (30) day** notice of termination.

**2.03 Termination Provisions.** No Special termination options are available except those described elsewhere in this Lease.

**2.04 Holdover.** Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Property by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect.

**2.05 Abandonment by Lessee.** Even if Lessee breaches the Lease and abandons the Property, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

**2.06 Quitclaim of Lessee's Interest.** On termination of this Lease for any reason, City may provide Lessee with, and Lessee shall deliver to City, a quitclaim deed in recordable form quitclaiming all its rights in and to the Property. Lessee or its successor in interest shall deliver the same within **five (5) days** after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this Lease provision and the notice will be conclusive evidence of the termination of this Lease and all of Lessee's rights to the Property.

**2.07 Surrender of Property.** At the expiration or earlier termination of this Lease, Lessee shall surrender the Property to City free and clear of all liens and encumbrances created by Lessee, and as improved by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Property, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in good condition, absent except for normal wear and tear.

**2.08 Time is of Essence.** Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

### **SECTION 3: RENT**

**3.01 Time and Place of Payment.** The Lessee shall make all rental payments monthly in advance on or before the first day of each new month. Checks should be made payable to the City of Oceanside and delivered to the City of Oceanside at the address set forth in Section 8 of this Agreement. The place and time of payment may be changed at anytime by City upon thirty (30) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges.

#### **3.02 Rent.**

**A. Initial Rent Amount.** **Ninety (90) days** after the Commencement Date, hereby defined as "Rent Commencement Date", the first Annual rent amount for the first year of this Agreement shall be Three Hundred Ninety Thousand Dollars and No Cents (**\$ 390,000.00**) which shall be payable monthly in advance at the rate of Thirty-

Two Thousand Five Hundred Dollars and No Cents(\$ 32,500.00 ) on or before the first day of each new month.

**B. Rental Adjustment Date.** The rental adjustment date shall be each one year anniversary of said Commencement date (as defined in Section 2.01) of this Agreement. The annual rent amount, and the corresponding prorated monthly payments, under this Agreement shall be adjusted on each rental adjustment date as set forth below.

**C. Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of City and Lessee. If the parties cannot agree within **sixty (60) days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Lease to "CPI" or "index" shall mean the index used in accordance with this Subsection.

Regardless of the index publication dates, the minimum rent adjustment dates shall be on the dates defined by Subsection 3.02 B above. Until the minimum rent adjustment can be actually calculated in accordance with this Lease, Lessee shall continue to make payments at the existing rental rate. When the adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to City within **thirty (30) days** of written notice by the City. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

**D. Minimum Rent Adjustment Computation.** The annual minimum rent adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

**Initial Minimum Annual Rent:** The minimum annual rent at the commencement of this Lease as listed in Subsection 3.02.A above.

**Existing Minimum Annual Rent:** The existing minimum annual rent shall be the minimum annual rent amount in effect on the date preceding the rental adjustment date.

**Percent change in the CPI:** The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12 month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

**First Adjustment:** Initial minimum annual rent + (Initial minimum annual rent x the percent change in the CPI) = New minimum annual rent.

For example:  $\$100 + (\$100 \times 5\%) = \$105$

**Subsequent Adjustments:** Existing minimum annual rent + (Initial minimum annual rent x the percent change in the CPI) = New minimum annual rent.

For example:  $\$105 + (\$100 \times 7\%) = \$112$

However, in no event shall the adjusted rent increase be less than **two percent (2%)** nor more than **eight percent (8%)** per year.”

**3.03 Inspection of Records.** Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Property. Said books and records shall be maintained on an accrual basis in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to the City for inspection at all reasonable times, so that the City can determine Lessee’s compliance with this Lease. These records and accounts will be made available by Lessee at the Property or the City’s offices, at City’s sole discretion, and will be complete and accurate showing all income and receipts from Lessee’s use of the Property. Lessee’s failure to keep and maintain such records and make them available for inspection by the City is a default of this Lease. These records include but are not limited to federal quarterly and annual income tax statements, the California State Board of Equalization income statements, and all other generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

**3.04 Additional Rent.** If during the term of the Lease, Lessee generates additional revenue from non-tow yard activity, to include but not be limited to any and all revenue, without any set-off or deductions, from non-master Towing Contractor Agreement related storage, hereinafter called “Non-Tow Activities”, which exceed \$36,000 per year, Lessee shall pay City an amount equal to ten percent (10%) of all such revenue in excess of \$36,000 generated from the Non-Tow Activities. Lessee shall pay such Additional Rent within thirty (30) days of the end of each Lease year together with a detail report of such revenue generated from the Non-Tow Activities.

**3.05 Delinquent Rent.** If Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, **five percent (5%)** of the delinquent rent. If the rent is still unpaid at the end of **15 days**, Lessee shall pay an additional **five percent (5%)** [being a total of **ten percent (10%)**] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this lease.

**3.06 Renewal Option Rent.** The City shall calculate the fair market rental value of the premises based on similar businesses, and transmit it to the Lessee as required in Section 2.02 of this Lease.

**SECTION 4: INDEMNITY AND INSURANCE**

**4.01 Indemnity.** Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees or in connection with its use and occupation of the Property under this Lease, except only for those claims arising from the sole or active negligence or sole willful misconduct of the City, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

**4.02 Insurance.** Lessee shall, throughout the duration of this Lease maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of Lessee, its agents and employees, performed in connection with this Lease including but not limited to premises and automobile.

a. Lessee shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
---------------------------------------	--------------

\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of Lessee under this Lease.

b. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by the Lessee to restore the required limits. The Lessee shall also notify the City promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the Lessee resulting from any of the Lessee's work.

c. All insurance companies affording coverage to the Lessee for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Lease. Insurance coverage provided

to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

d. All insurance companies affording coverage to the Lessee pursuant to this Lease shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

e. Lessee shall provide **thirty (30) days** written notice to the City should any policy required by this Lease be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

f. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

g. Lessee shall provide a substitute Certificate of Insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a suspension or termination of work under the Lease.

f. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatsoever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

**4.03 Accident Reports.** Lessee shall, within **seventy-two (72) hours** after occurrence, report to City any accident causing property damage or any serious injury to persons on the Property. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

## **SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS**

**5.01 Acceptance of Property.** Lessee represents and warrants that it has independently inspected the Property and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Property, including but not limited to an environmental assessment. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Property is in the condition called for by this Lease and that Lessee does not hold City responsible for the Property.

**5.02 Improvements/Alterations.** The parties anticipate and expect that Lessee will complete improvements to the Property as described at Section 2.01a. Notwithstanding this

expectation, no major structural improvements, structures, or installations shall be constructed on the Property, and Lessee may not make any structural alterations to the Property without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Property without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Property in a decent, safe, healthy, and sanitary condition. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to, on or about the Property.

### **5.03 Lessee's Maintenance.**

a. Lessee agrees to assume full responsibility and cost for the operation, maintenance, and repair of the Property, throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Property in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Property free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

b. For the purpose of keeping the Property in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Property. In the event that City finds that the Property is not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within **thirty (30) days** after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Property in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than **ten (10) days** after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Property except as otherwise provided herein. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

### **5.04 Waste, Damage, or Destruction.**

a. Lessee shall give notice to City of any fire or other material damage that occurs on the Property within **seventy-two (72) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, Lessee agrees to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City.

b. Except as set forth below, if the Property shall be damaged by any cause which puts the Property into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Property to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Property all debris resulting from said

damage and rebuild the Property in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage to the extent that funds from insurance are available. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Property to the extent of insurance proceeds received by Lessee as a result of the event necessitating the repair or restoration or to the extent that the City agrees to pay for the repairs or restoration at a rate and on terms mutually acceptable to the parties. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if it determines in its sole judgment that it is not economically feasible to restore the Property by giving notice of termination within **thirty (30) days** after the event causing the destruction. Provided, however, should Lessee elect to terminate the Lease pursuant to this section 5.04b or section 2.03, Lessee shall not be entitled to reimbursement of its capital improvement investment.

c. If the Lease is not terminated under Section 5.04b above, the Lease shall continue in full force and effect, except that the payment to City by Lessee may, to the extent not covered by insurance, be abated and/or other relief afforded to the extent that Lessee can demonstrate, and that City may corroborate, that the damage and/or restoration interferes with Lessee's operations. The aforesaid provisions for abatement and/or the relief shall also be applicable to a total or partial destruction of the Property by the aforementioned causes.

d. In the event that the Property is damaged as a result of flooding and Lessee does not reasonably determine that the Property is not capable of repair, the parties agree that the repair thereof shall be undertaken by Lessee with the costs associated therewith to be paid by Lessee.

**5.05 Utilities.** Lessee agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Property. The City requires a separate meter, sub-meter or other device be installed at the Property, which shall be at Lessee's sole cost and expense.

**5.06 Taxes.** Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Property, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other activities of Lessee related to the Property, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes before they become delinquent.

**5.07 Ownership of Improvements and Personal Property.**

a. Any and all improvements, structures, and installations or additions to the Property constructed on the Property by Lessee consisting of buildings or other permanent improvements, shall at Lease expiration or termination be deemed to be part of the Property and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, structures and installations, City shall so notify Lessee in writing **thirty (30) days** prior to expiration

or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee-owned machines, appliances, equipment, trade fixtures (including any items removable by Lessee) and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Property, Lessee shall repair all such damage at Lessee's sole cost and expense.

**5.08 Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Property without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Property for which Lessee does not have the prior written consent of the City Manager.

**5.09 Encumbrance.** Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Property. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: offsite improvements for service of the Property; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Property or on any permanent improvements thereon, shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Property or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease. Within **sixty (60) days** of encumbering this Lease, Lessee shall give the City written notice of the name, address and contact person of any entity which has a lien on the Lease.

**5.10 Signs.** Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City, and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any unauthorized item is found on the Property, Lessee shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

**SECTION 6: CONDEMNATION**

**6.01 Eminent Domain.** If all or parts of the Property are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

**a. Total Taking.** In the event the entire Property are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

**b. Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Property is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and the City shall have the obligations to Lessee upon termination as set forth in this Lease including but not limited to the Termination Provisions set forth in Section 2.03.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Property is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.

**c. Award.** All monies awarded in any such taking of the Property shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the improvements of Lessee.

**d. Transfer.** City has the right to transfer City's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Property in accordance with this Lease.

**e. No Inverse Condemnation.** The exercise of any City right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

**SECTION 7: DEFAULT BY LESSEE**

**7.01 Defaults and Termination.** It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Property is leased as stated in this Lease, and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **ten (10) days** after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **thirty (30) days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Property and shall have no further right to claim

thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Property. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with the terms of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within **five (5) days**, if the default is for the failure to submit rent as required, or within **fifteen (15) days** following the expiration of the period within which Lessee may cure such default; provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of this Lease.

**7.02 Bankruptcy.** In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this Section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Property which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remain monies to be paid by Lessee to such beneficiary under the terms of such deed of trust, provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Property are continuously and actively used in accordance with Section 1.02 of this Lease.

## **SECTION 8: GENERAL PROVISIONS**

**8.01 Notices.** All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE  
Property Management  
300 North Coast Highway  
Oceanside, CA 92054

To Lessee:

Allied Gardens Towing, Inc.  
Attn: Brad Ramsey  
Vice President  
3821 Calle Fortunada, Suite A  
San Diego, CA 92123

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) **three (3) working days** following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

**8.02 City Approval.** The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the City's Supervising Property Agent.

**8.03 Nondiscrimination.** Lessee agrees not to discriminate in any manner against any person or persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age in Lessee's use of the Property.

**8.04 Equal Opportunity.** Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. Lessee hereby certifies to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

**8.05 Entire Agreement.** This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Property and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Property, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

**8.06 Interpretation of the Lease.** The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in

San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

**8.07 Lease Modification.** This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

**8.08 Waiver.** Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Property is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**8.09 Dispute Resolution, Attorney's Fees.** In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Lease shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

**8.10 Assignment and Subletting - No Encumbrance.** This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**8.11 Section Headings.** The table of Contents and the section headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision thereof.

**8.12 Gender/Singular/Plural.** The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

## **SECTION 9: SPECIAL PROVISIONS**

**9.01 Standards of Operation.** Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Property in a manner consistent with other similar operations.

**9.02 Hours of Operation.** At a minimum, Lessee shall staff its place of business for the release of impounded or stored vehicles between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday excluding the following state recognized holidays: New Year's Day, Martin Luther King Day, Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Cesar Chavez Day, Thanksgiving Day, day after Thanksgiving Day and Christmas Day.

**9.03 Manner of Providing Service.** Lessee shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Property. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Property as reasonably required relative to the public's health, safety, and welfare. All employees of Lessee shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to effectively operate, maintain and administer all services offered and facilities located on the Property.

Lessee is responsible for the security of all property inside "stored" and "impounded" vehicles possessed under the terms of this Lease. No waiver, hold harmless agreement, or other similar release and/or indemnification agreement shall be required as a condition to the release of a vehicle possessed under the terms of this Lease.

No property may be removed from "stored" or "impounded" vehicles unless secured in permanently mounted, lockable storage that is only accessible by the contractor and/or his/her designee. Property in stored or impounded vehicles may not be held "hostage" by the Lessee to leverage payment for towing or storage fees from vehicle owner or responsible party. Lessee must follow all available legal processes to obtain payment for monies owed. Failure to abide by this provision shall constitute a breach of the terms and conditions of this lease and may result in immediate termination of this Lease

Lessee shall notify the Oceanside Police Department ("OPD") when any OPD Evidence Hold reaches five calendar days of storage. If the fifth day falls on a weekend or holiday, the notification will be made on the next business day. Notifications under this section must be made by fax to (760) 722-7512 to the Traffic Services Senior Office Specialist, or other designated TSU staff.

Failure to notify will result in suspension of storage fees beyond the initial five days or up to eight days including holidays and weekends. Storage fees shall re-commence following compliance with the evidence hold notification requirement.

Prior to releasing a vehicle towed or stored at the direction of the City, the Lessee will verify payment of administrative fees with an authorized "Impound Payment Receipt" form or waiver of such fees on the "Update of Vehicle Status" form. Vehicles held on evidence hold shall only be removed from such hold with a "Notice of Vehicle Status" form.

**9.04 Hazardous Substances.** No goods, merchandise or material shall be kept, stored or sold in or on the Property which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Property, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other Property and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Property which will in any way injure the Property or improvements thereon, or adjacent or other Properties, or improvements thereon, or to persons; provided, however, that nothing contained in this Section shall preclude Lessee from bringing, keeping or using on or about the such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

**9.05 Lease Agreement Contingency.** This Lease is contingent upon the Oceanside City Council approving changes to the Oceanside Police Department Towing Operator Regulations and/or the master Tow Contractor Agreement to provide that all parties to the master Towing Contractor Agreement utilize the Property to impound all vehicles that are towed and/or impounded at the direction of the Oceanside Police Department. In the event that the City Council does not approve the changes to the Oceanside Police Department Towing Operator Regulations and/or the master Tow Contractor Agreement, either party shall have the right to terminate this Lease upon providing thirty (30) days prior written notice to the other party.

**SECTION 10: SIGNATURES**

**10.01 Signature Page.** The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

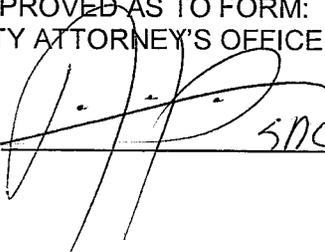
IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease to be executed on the day and year respectively written hereinbelow.

**"City"**

City of Oceanside, a municipal corporation

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Manager

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

**"Lessee"**

Allied Gardens Towing, Inc.  
a Delaware corporation

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Print Name: BRAD RAMSEY

Print Name: DAVID PUGOC

Title: VICE PRESIDENT

Title: SECRETARY

Dated: 6-11-12

Dated: 6/11/12

**NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED**

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On June 11, 2012 before me, Vanessa N Ramsey, Notary Public  
(here insert name and title of the officer)

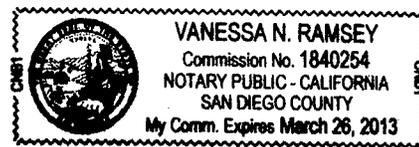
personally appeared BLAND RAMSEY + DAVID PUDORIK

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Vanessa N Ramsey  
Signature of Notary Public



(Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

PROPERTY LEASE AGREEMENT  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date 6-11-12

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

VICE PRESIDENT + SECRETARY  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

APN: 157-060-49

VESTING: CITY OF OCEANSIDE

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED IN EXHIBIT 'C' TO AGREEMENT TO LEASE, LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996 BETWEEN THE CITY OF OCEANSIDE, AS LESSOR AND ADT AUTOMOTIVE, INC., DOING BUSINESS AS SAN DIEGO AUTO AUCTION, INC., AS LESSEE, ON FILE WITH THE CITY OF OCEANSIDE DEPARTMENT OF PROPERTY MANAGEMENT, DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER NORTH  $00^{\circ}37'57''$  WEST 14.00 FEET TO A POINT ON THE CENTERLINE OF NORTH RIVER ROAD PER ROAD SURVEY NO. 935, SAID POINT BEING ON A NON-TANGENT 2000.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL FROM SAID POINT BEARS NORTH  $04^{\circ}56'13''$  WEST;

THENCE EASTERLY ALONG SAID CENTERLINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF  $12^{\circ}19'29''$  A DISTANCE OF 430.21 FEET;

THENCE LEAVING SAID CENTERLINE, RADIAL TO SAID CURVE, SOUTH  $17^{\circ}15'42''$  EAST 52.00 FEET TO A POINT ON A NON-TANGENT 2052.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL FROM SAID POINT BEARS NORTH  $17^{\circ}15'42''$  WEST, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $11^{\circ}10'32''$  A DISTANCE OF 400.24 FEET TO A LINE PARALLEL WITH AND DISTANT 52.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH  $61^{\circ}33'46''$  EAST 882.38 FEET;

THENCE LEAVING SAID PARALLEL LINE NORTH  $71^{\circ}06'38''$  EAST 19.44 FEET TO THE BEGINNING OF A 56.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $9^{\circ}32'52''$  A DISTANCE OF 9.33 FEET TO A LINE PARALLEL WITH AND DISTANT 56.00 FEET SOUTHEASTRLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH  $61^{\circ}33'46''$  EAST 281.22 FEET TO THE **TRUE POINT OF BEGINNING** AND A POINT ON A NON-TANGENT 42.00 FOOT RADIUS CURVE,

CONCAVE SOUTHWESTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 10°37'08" WEST;

THENCE LEAVING SAID PARALLEL LINE, SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 45°21'39" A DISTANCE OF 33.25 FEET;

THENCE SOUTH 34°01'13" EAST 47.99 FEET TO THE BEGINNING OF A 131.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°03'57" A DISTANCE OF 29.87 FEET;

THENCE SOUTH 47°05'10" EAST 429.37 FEET TO A LINE PARALLEL WITH AND DISTANT 26.50 FEET NORTHWESTERLY OF THE NORTHWESTERLY BOUNDARY OF RECORD OF SURVEY NO. 15161, RECORDED APRIL 12, 1996 AS FILE NO. 1996-182505 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE PARALLEL TO AND CONCENTRIC WITH AND 26.50 FEET NORTHWESTERLY OF SAID NORTHWESTERLY BOUNDARY THE FOLLOWING COURSES:

NORTH 27°09'22" EAST 84.59 FEET;

THENCE NORTH 26°54'25" EAST 315.11 FEET;

THENCE NORTH 26°35'09" EAST 210.75 FEET;

THENCE NORTH 21°25'50" EAST 48.74 FEET;

THENCE NORTH 11°01'55" EAST 39.12 FEET TO A POINT ON A NON-TANGENT 69.10 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 80°06'03" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°19'36" A DISTANCE OF 31.75 FEET TO THE BEGINNING OF A REVERSE 185.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°13'13" A DISTANCE OF 42.69 FEET TO THE NORTHEASTERLY LINE OF SAID LEASE AMENDMENT NO. 1 TO CPI LEASE DATED MAY 24, 1996;

THENCE LEAVING SAID 26.50 FOOT PARALLEL AND CONCENTRIC LINE, NON-TANGENT TO SAID CURVE, ALONG SAID NORTHEASTERLY LINE NORTH 61°04'04" WEST 187.10 FEET TO A POINT ON A NON-TANGENT 2052.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL FROM SAID POINT BEARS NORTH 45°44'20" WEST, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE OF NORTH RIVER ROAD;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTHWESTERLY ALONG SAID CONCENTRIC CURVE, THROUGH A CENTRAL ANGLE OF 8°59'34" A DISTANCE OF 322.07 FEET;

THENCE NON-TANGENT TO SAID CURVE SOUTH 44°01'27" WEST 19.20 FEET TO THE BEGINNING OF A 56.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10°01'48" A DISTANCE OF 9.80 FEET TO THE BEGINNING OF A COMPOUND 2056.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, SAID CURVE BEING CONCENTRIC TO SAID CENTERLINE OF NORTH RIVER ROAD;

THENCE SOUTHWESTERLY ALONG SAID CONCENTRIC CURVE THROUGH A CENTRAL ANGLE OF 7°30'31" A DISTANCE OF 269.44 FEET TO A LINE PARALLEL WITH AND DISTANT 56.00 FEET SOUTHEASTERLY OF SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE SOUTH 61°33'46" WEST 76.99 FEET TO THE **TRUE POINT OF BEGINNING.**

CONTAINING 5.709 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "B".

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

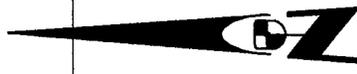
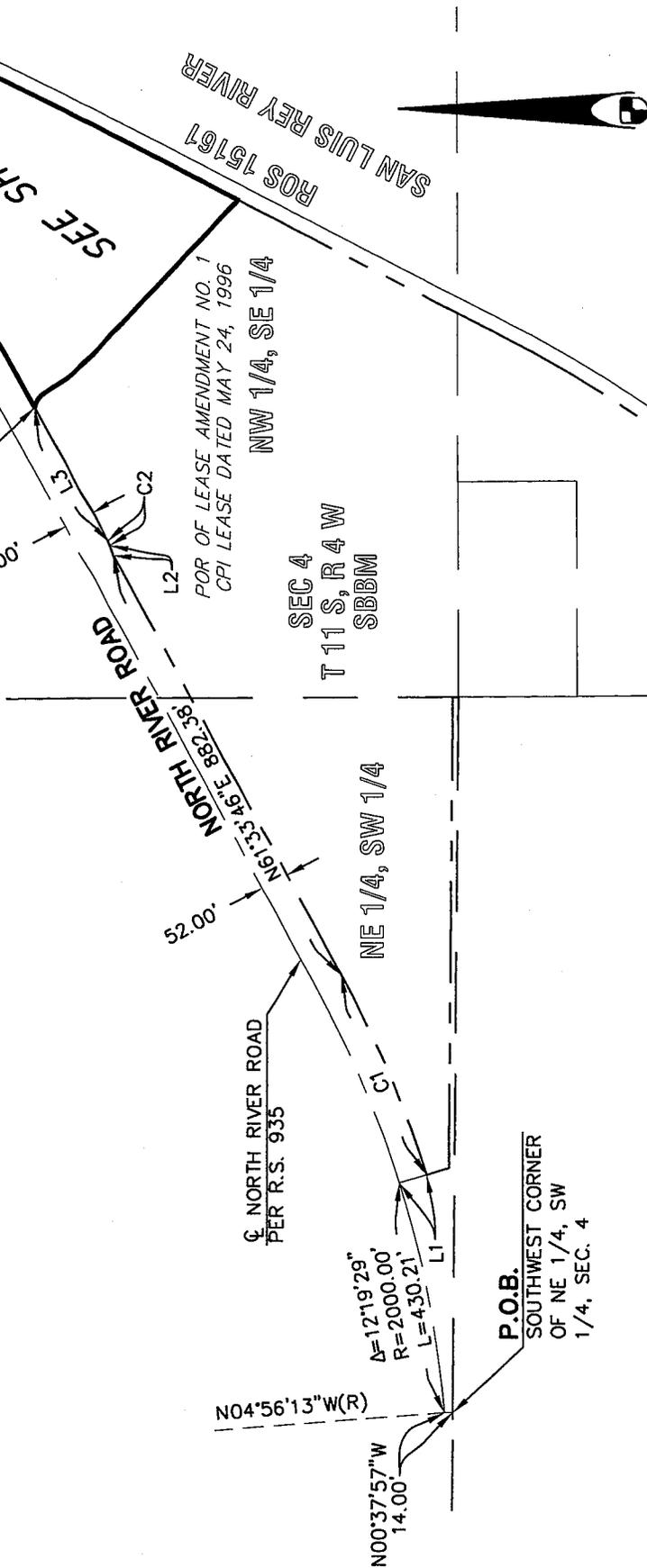
\_\_\_\_\_  
MICHAEL L. SCHLUMPBERGER, PLS 7790

\_\_\_\_\_  
DATE

# EXHIBIT "A-1"

**COURSE DATA**

- L1 S17°15'42"E(R) 52.00'
- L2 N71°06'38"E 19.44'
- L3 N61°33'46"E 281.22'
- C1 Δ=11°10'32" R=2052.00' L=400.24'
- C2 Δ=9°32'52" R=56.00' L=9.33'



SCALE: 1"=300'

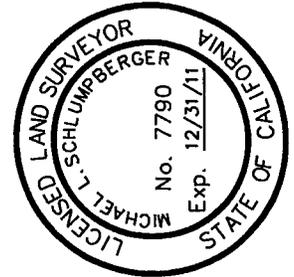
NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

MICHAEL L. SCHLUMBERGER, PLS 7790

**Right-of-Way Engineering Services, Inc.**

615 S. Tremont Street · Oceanside, CA 92054  
 (760) 637-2700 FAX (760) 637-2701  
 File Name: Auto Auction Lease.dwg  
 Job No. 1109-0047-01



**CITY OF OCEANSIDE**

LEASE PARCEL 1

JUNE 12, 2012

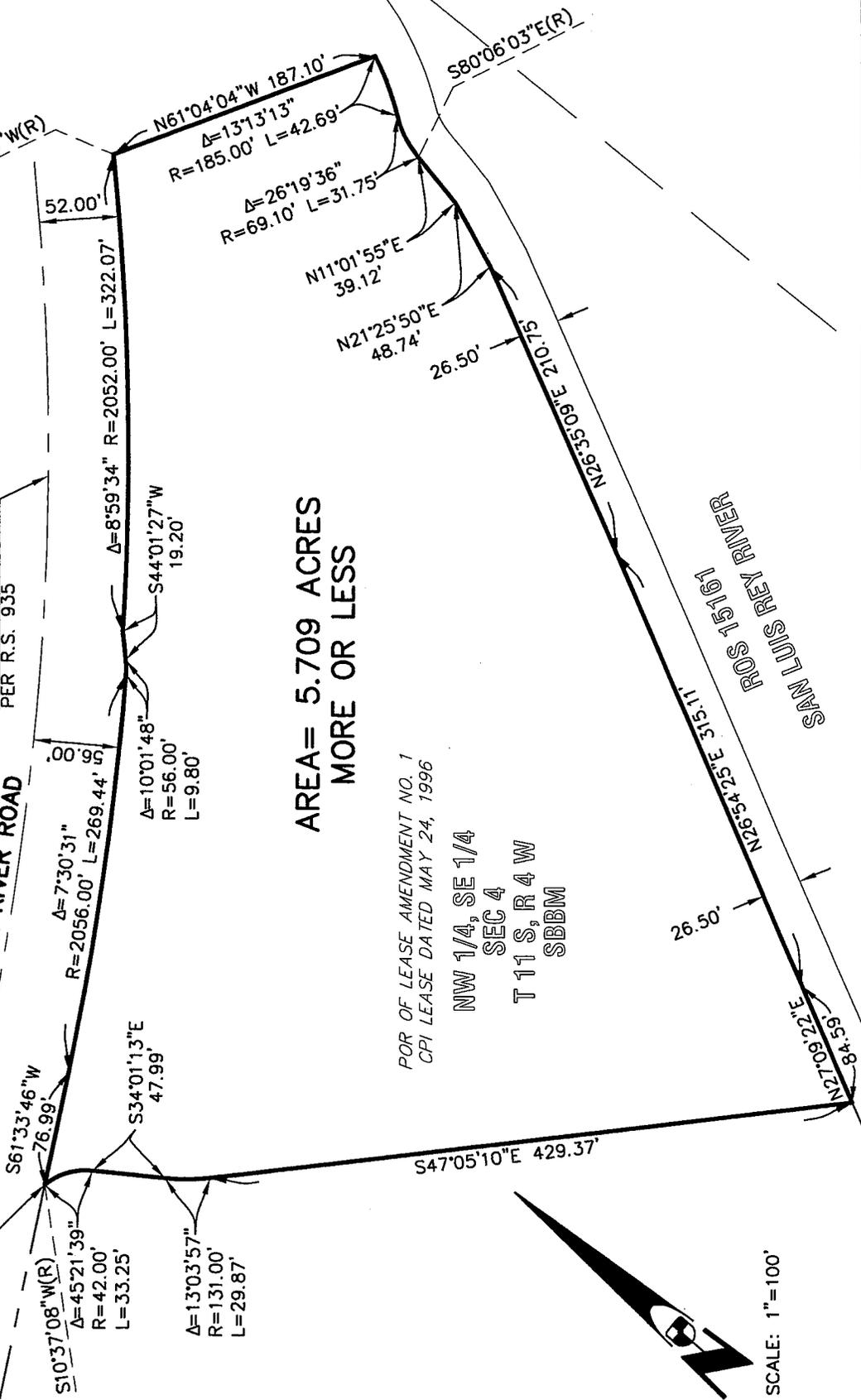
SHEET 1 OF 2

# EXHIBIT "A-1"

I.P.O.B.

NORTH RIVER ROAD

☉ NORTH RIVER ROAD  
PER R.S. 935



AREA= 5.709 ACRES  
MORE OR LESS

POR OF LEASE AMENDMENT NO. 1  
CPI LEASE DATED MAY 24, 1996

NW 1/4, SE 1/4  
SEC 4  
T 11 S, R 4 W  
SBBM

SAM LUIS REY RIVER  
POS 15161



SCALE: 1"=100'

CITY OF OCEANSIDE	
LEASE PARCEL 1	
JUNE 12, 2012	SHEET 2 OF 2

## Exhibit "B"

### DESCRIPTION OF LESSEE IMPROVEMENTS:

1. Installation and setup for a portable office space measuring approximately 600 square feet and associated improvements (stairs, ADA ramp, deck, electrical, water , etc.).
2. Installation to fencing to complete perimeter fencing of property and for 3 secured cages.
3. Parking and driveway improvements to the entrance of the property as needed.
4. Additional lighting and security cameras.
5. Signage.

**EXHIBIT "C"**

**COMMENCEMENT DATE MEMORANDUM**

This Commencement Date Memorandum, dated as of \_\_\_\_\_ is executed between the City of Oceanside, a municipal corporation ("City") and Allied Gardens Towing, Inc. a California corporation ("Lessee").

**RECITALS**

WHEREAS, City and Lessee have entered into that certain Property Lease Agreement ("Lease") dated June 20, 2012 for that portion of City-owned real property located at 157-060-49 in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease the parties are to execute a memorandum to confirm the commencement date of the Lease.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

1. The City and Lessee agree that the commencement date of the Lease is \_\_\_\_\_ and the termination date is \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"City"

City of Oceanside  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Lessee"

Allied Gardens Towing, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
3 OCEANSIDE APPROVING CITY TOWING OPERATOR  
4 REGULATIONS AND A MASTER TOW SERVICES  
5 AGREEMENT

6 WHEREAS, the Oceanside Police Department Towing Operator Regulations  
7 require that any towing contractor that impounds vehicles at the direction of the  
8 Oceanside Police Department must rent or own for its exclusive use a storage yard  
9 located within the City of Oceanside, with an area of at least 5,000 square feet, and  
10 which is screened from street view by a six (6') foot high solid fence where needed;

11 WHEREAS, this requirement is incorporated into the annual Towing Contractor  
12 Agreements between the City and various towing companies;

13 WHEREAS, it is the desire of the City Council to require that the Oceanside  
14 Police Department Towing Operator Regulations be amended to require that all  
15 vehicles be impounded and stored at the 5.7 acre City-owned lot (portion of APN#157-  
16 060-49) south of North River Road, between Calle Montecito and Redondo Drive;

17 WHEREAS, it is the desire of the City Council that the language of the Towing  
18 Contractor Agreements between the City and the various towing companies be  
19 amended to include a provision requiring that all vehicles that are towed under the  
20 Towing Contractor Agreements be impounded and stored at the 5.7 acre City-owned lot  
21 (portion of APN#157-060-49) south of North River Road, between Calle Montecito and  
22 Redondo Drive.

23 WHEREAS, it is the desire of the City Council that these changes to the Towing  
24 Operator Regulations and the Towing Contractor Agreements shall become effective  
25 when the 5.7 acre City-owned lot (portion of APN#157-060-49) south of North River  
26 Road, between Calle Montecito and Redondo Drive, has been improved as a impound  
27 yard to the satisfaction of the City Manager or his designee, pursuant to the provisions  
28 of the Lease between the City of Oceanside and Allied Garden's Towing, Inc.

29 NOW, THEREFORE, BE IT RESOLVED that the Towing Operator Regulations  
are hereby amended to require that all towing and storage operations conducted

1 thereunder take place at the 5.7 acre City-owned lot (portion of APN#157-060-49) south  
2 of North River Road, between Calle Montecito and Redondo Drive, once that lot has  
3 been improved as an impound yard pursuant to the provisions of the Lease between  
4 the City of Oceanside and Allied Garden's Towing, Inc., and that the Tow Contractors  
5 Agreement be amended to incorporate this change, as stated in the attached Exhibit "A".

6 PASSED AND ADOPTED by the City Council of the City of Oceanside,  
7 California this \_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

8 AYES:

9 NAYS:

10 ABSENT:

11 ABSTAIN:

12 \_\_\_\_\_  
Mayor of the City of Oceanside

13 ATTEST:

14 APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

15 \_\_\_\_\_  
16 City Clerk

17 \_\_\_\_\_  
18 City Attorney

## TOWING CONTRACTOR AGREEMENT

This agreement, hereinafter referred to as the "AGREEMENT", dated \_\_\_\_\_, 2013 for identification purposes, is made and entered into by and between \_\_\_\_\_ hereinafter referred to as "CONTRACTOR", and the City of Oceanside, a municipal corporation, hereinafter referred to as "CITY". CITY and CONTRACTOR are sometimes referred to herein as PARTIES.

### I. SERVICES

#### A. General

Upon request of the Oceanside Police Department (hereinafter referred to as "OPD"), CONTRACTOR shall tow vehicles taken into custody by OPD pursuant to the City of Oceanside Council resolution granted under Section 22850.5 CVC, and perform any work that may be necessary preliminary to towing within the CITY or any place as directed by the OPD. Calls originating from the Rotation List will include, but are not limited to; stored vehicles, disabled vehicles, traffic hazards, traffic collisions, vehicles parked over 72 hours, vehicle lockouts, abandoned vehicles, junk vehicles, and vehicles impounded and stored under the Authority of CVC 14602.6 or 14607.6, tow services for OPD and CITY vehicles or vehicles being impounded for evidence or criminal investigation. Tow services for OPD and City vehicles will include, but are not limited to; towing, jump starts, and flat tire repair. These requests will be made by either an officer or private citizen, where the citizen is in need of a tow but does not have a preference for a tow vendor. Maximum response time: 30 minutes, 24 hours a day, seven days a week. The time starts upon receiving the call from Dispatch.

#### B. Rotation List and Response to Calls

Because the CITY contracts with more than one Tow contractor, the Chief of Police, or his designee, will implement a rotation list to reasonably equalize the distribution of calls for service. A call from the rotation list will constitute a turn resulting in the CONTRACTOR rotating to the bottom of the list. This includes when the CONTRACTOR fails to answer the phone, is unable to respond, is unable to perform the required service, declines to respond or provide service, or is cancelled due to excessive response time. Failure to respond to perform the required towing or service and/or repeated failures to meet the maximum requirements shall constitute failure to comply with the terms and conditions of the AGREEMENT and may result in suspension or termination of the AGREEMENT. OPD may take immediate action, up to and

including suspension or termination of this AGREEMENT for any violation of the requirement to respond within the maximum time.

If the CONTRACTOR is cancelled by the OPD, up to and including arrival on scene that does not result in a tow, there shall be no charges and the operator will be placed back at the top of the rotation list. If the OPD requests a contractor on behalf of a vehicle owner/operator and the vehicle owner or their agent declines service prior to contractor possession, no charges will apply. The CONTRACTOR shall then notify OPD Communications of the cancellation to be placed back at the top of the rotation list.

C. Notification

CONTRACTOR shall be notified for rotation tow services via telephone from the OPD Communications Center. OPD Communications personnel shall attempt telephone contact one time, allowing the phone to ring at least six (6) complete rings. If after the sixth ring there is no answer, or the call goes to voicemail, the CONTRACTOR will move to the bottom of the rotation list and the next contractor will be called.

CONTRACTORS shall not dispatch more tow trucks than the number requested by OPD Communications Center Personnel.

D. OPD Communications Center

Inquiries to the Communications Center will only be made for urgent and justified circumstances. Contractor shall not inquire with the Communications Center as to their placement on the rotation tow list. When a CONTRACTOR will be temporarily unavailable to provide services due to a preplanned event or scheduled activity, CONTRACTOR shall notify the Communications Center in writing at least 24 hours prior to the date services will be unavailable noting dates and times of unavailability. Such written notice will be forwarded to the Traffic Services Unit (TSU) Senior Office Specialist, or other designated TSU staff, for filing.

E. Notification Information Provided

OPD Communications personnel will provide the CONTRACTOR with the following information: OPD, rotation tow request, and location with a cross street.

Officers will be responsible for notifying the Communications Center of any special equipment requests from the CONTRACTOR. These special equipment requests may include, but are not limited to the following:

1. Vehicles with four flat tires. These vehicles must be towed with a flat bed.
2. Vehicles excessive in weight or size. These vehicles may not be able to be towed with a standard Class I tow truck. Officers can have dispatch check the GVW (gross vehicle weight) that appears on the registration printout and have dispatch relay that information to the CONTRACTOR.
3. Vehicles requiring salvage or recovery operations that may require the use of a cable and winch. A flat bed truck cannot respond for salvage or recovery operations.

Failure of an OPD officer or the CITY to notify the vendor of such special equipment requirement requests shall not be deemed to be a breach of this AGREEMENT, nor shall such failure entitle CONTRACTOR to any special or additional compensation for services.

F. Facility

CONTRACTOR must maintain a business office and a business address within the CITY. CONTRACTOR shall utilize only the property owned by the CITY located adjacent to North River Road (hereinafter referred to as the CITY IMPOUND YARD) currently leased to Allied Gardens Towing, Inc. dba Road One (attached hereto as Exhibit \_\_) to store and/or impound any vehicles towed pursuant to this AGREEMENT. In the event that the CITY IMPOUND YARD is physically unavailable to accept the storage and/or impoundment of any vehicle towed pursuant to this AGREEMENT, CONTRACTOR may, upon written approval of the Chief of Police or his or her designee, store and/or impound the vehicle at another storage facility located within the CITY, provided that such storage facility meets the following minimum conditions:

1. The place of business for the release of impounded or stored vehicles must be staffed and open between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday excluding the following state recognized holidays: New Year's Day, Martin Luther King Day, Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Cesar Chavez Day, Thanksgiving Day, day after Thanksgiving Day and Christmas Day.
2. The vehicle storage facility must be located within the CITY. At a minimum, a six foot fenced or enclosed area shall be provided for outside storage. Storage lot size shall be a minimum of

5,000 square feet, have a room for at least 20 passenger sized vehicles, and be in compliance with the Oceanside City Code and Zoning Ordinance. The primary storage facility shall be at the same location as the business address. The vehicle and or property shall be released from the primary storage facility.

3. Primary method for storage of vehicles shall be outside storage unless prior written approval from the Chief of Police or his designee has been obtained. The approved outside storage rate shall be charged for any vehicle stored inside without prior approval. CONTRACTOR is responsible for the security of all property inside "stored" and "impounded" vehicles possessed under the terms of this AGREEMENT. No waiver, hold harmless agreement, or other similar release and/or indemnification agreement shall be required as a condition to the release of a vehicle possessed under the terms of this AGREEMENT. No property may be removed from "stored" or "impounded" vehicles unless secured in permanently mounted, lockable storage that is only accessible by the contractor and/or his/her designee. Property in stored or impounded vehicles may not be held "hostage" by the CONTRACTOR to leverage payment for towing or storage fees from vehicle owner or responsible party. CONTRACTOR must follow all available legal processes to obtain payment for monies owed. Failure to abide by this provision may result in immediate termination of the AGREEMENT with the CITY to provide towing and storage services.

G. Notification of Evidence Holds

CONTRACTOR shall notify the OPD when any OPD Evidence Hold reaches five calendar days of storage. If the fifth day falls on a weekend or holiday, the notification will be made on the next business day. Notifications under this section must be made by fax (760) 722-7512 or by e-mail to the Traffic Services Senior Office Specialist, or other designated TSU staff. Failure to notify will result in suspension of storage fees beyond the initial five days or up to eight days including holidays and weekends. Storage fees shall recommence following compliance with the evidence hold notification requirement.

H. Vehicle Processing/Release Procedures

Prior to releasing a vehicle towed by the CITY, the CONTRACTOR will verify payment of administrative fees with an authorized "Impound Payment Receipt" form or waiver of such fees on the "Update of Vehicle Status" form. Vehicles held on evidence hold

shall only be removed from such hold with a "Notice of Vehicle Status" form.

I. Removal of Inoperable City Vehicles

The CITY may, from time to time, require towing, jump starts, and flat tire repair of inoperable CITY vehicles within the CITY limits. If a vehicle requires towing, it will be towed to an appropriate facility within the City limits. Such services will be provided by the CONTRACTOR at no charge for vehicles similar to a one-ton pickup and smaller. The CONTRACTOR will charge the CITY a fixed rate for larger vehicles equal to the rate authorized for towing services by this AGREEMENT, currently \$200.00. Tow services requiring a "Heavy Duty" tow truck will incur an additional \$25.00 fee.

A rotation list (as described in section B above) will be established specifically for this service to reasonably equalize the distribution of calls for service. A call from the rotation list, regardless of the service provided, will constitute a turn resulting in the CONTRACTOR rotating to the bottom of the list. Failure to respond to perform the required towing or service and/or repeated failures to meet the maximum requirements shall constitute failure to comply with the terms and conditions of this AGREEMENT and may result in suspension or termination of this AGREEMENT in the sole discretion of the Chief of Police or his designee.

J. COMPENSATION

1. Rates

The service rates and billing practices by which a CONTRACTOR charges for towing and storage services initiated through the CITY shall be determined as follows: The contracted rates for each CONTRACTOR, as authorized by the Oceanside office of the California Highway Patrol (CHP) at the time of this AGREEMENT, will be used to determine the average rates. The average rates will be the authorized service rates for towing and storage services provided pursuant to this AGREEMENT. For this AGREEMENT the fee for towing services will be \$200.00, while the fee for storage will be \$46.50 per day. Such billing practices and service rates shall apply unless specifically stated otherwise herein. (Attachment A) A copy of the rates shall be available for public inspection at the CONTRACTOR's place of business. Rates and fees authorized by the OPD represent the maximum a contractor may charge for services initiated under the terms of this AGREEMENT and do not preclude a contractor from charging less. No CONTRACTOR or

employee shall refer to any rate, other than the administrative fee, as required by the CITY.

Any CONTRACTOR charging rates above the authorized rate shall be in violation of this AGREEMENT and subject to suspension or termination of this AGREEMENT.

Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class tow truck.

A valid bank credit card or cash payment shall be accepted for payment of storage and/or towing when a vehicle is stored pursuant to Section 22651CVC (Section 22651.1 CVC).

The approved schedule of rates charged by the operator shall be available in the tow truck, and shall be presented upon demand to the vehicle owner/agent for whom the tow service was provided.

There shall be no additional charge for moving (i.e., driving, towing, pushing, utilizing a forklift) a stored vehicle from inside an operator's storage yard to the front of the business establishment.

The rate for towing should be computed from portal to portal when a vehicle is towed to the operator's storage yard.

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

The time expended, for towing a vehicle back to the operator's storage yard, should be charged at a rate not to exceed the hourly rate.

- b. Time expended in excess of the hourly rate shall be calculated in no more than one-minute increments.
- c. There shall be no additional charges for mileage, etc.

The operator shall base towing charges upon the class of vehicle being towed, regardless of the class of truck used.

## 2. Storage Fees

A vehicle stored 24 hours or less shall be charged no more than one day storage pursuant to Section 3068.1(a) of the Civil Code.

- a. If the vehicle is released from storage after 24 hours has lapsed, charges may be allowed on a full, calendar –day basis for each day of storage, or part thereof pursuant to Civil Code Section 3068.1(a).

Storage of vehicles in combination should be charged a per vehicle rate except for dollies, con-gear, vehicle on a car carrier/trailer, etc.

- b. Dollies and con-gear, not in combination, may be charged a storage rate not to exceed Class A storage fees.

Inside Storage fees shall only be charged when inside storage is requested by OPD, Superior Court or the District Attorney, registered owner, legal owner, insurance company or when the inside storage can be justified by the tow operator.

The operator shall display in plain view at all cashier stations, a sign as described in Civil Code section 3070(d)(2)(E), disclosing all storage fees and charges in force, including the maximum storage rate.

The CITY will assess the CONTRACTOR a fee equal to twenty (20%) percent of the gross income charged by the CONTRACTOR for vehicle storage after the fifth day of storage. Gross income includes all storage revenues collected from persons or companies. If the vehicle is not recovered by the owner or sold through lien sale, this provision shall be waived. The CITY shall recover its costs in accordance with the provisions enumerated in Section D (Disbursement of Lien Fees) of this agreement.

## 3. Collection of Fees

All administrative fees assessed by the CITY shall be paid in person at the OPD Department prior to the release of any vehicle. All other fees due the OPD, including storage fees and lien sale funds, shall be remitted by the CONTRACTOR to the OPD by the

25<sup>th</sup> of the following month. Failure to do so may result in immediate suspension or termination of this AGREEMENT.

#### 4. Disbursement of Lien Fees

On lien sale vehicles towed with a value of \$250.00 dollars or more, OPD will receive from the CONTRACTOR 15% of the gross sale not to exceed one hundred sixty five dollars (\$165.00). In the event the registered owner pays the one hundred sixty five dollars (\$165.00) police administrative fee directly to OPD, the CONTRACTOR will not be required to pay the 15% of the gross sale to OPD.

For the purpose of accurate fee collection and verification, CONTRACTOR will provide a copy of the "record of sale" for each vehicle, including sale amount when requested by the CITY.

#### K. Monthly Vehicle Status Report

A monthly accounting of all vehicles impounded, stored, released, sold or salvaged by the CONTRACTOR under the terms of this AGREEMENT will be reported to the Traffic Services Senior Office Specialist, or other designated TSU staff, by the 25<sup>th</sup> day of the following month. The report shall include, at a minimum, the following information on every vehicle:

- i. Vehicle license number or vehicle identification number, make model and year.
- ii. Date vehicle was initially impounded or stored.
- iii. Vehicle disposition; release to owner, repossessed, lien sold, salvaged or stored.
- iv. Date of release, sale, or salvaged.
- v. Summary of fees collected to include the daily storage fee charged per vehicle.
- vi. OPD case number

### III. GENERAL RESPONSIBILITIES OF THE CONTRACTOR

#### A. Cancellation of Agreement

The Chief of Police or his designee may cancel or suspend this AGREEMENT should the CONTRACTOR default or fail in the performance of any of the provisions of the AGREEMENT upon ten (10) days notice. If the Chief of Police, or his designee, determines

that such default or failure is curable, the CITY shall notify CONTRACTOR in writing specifying the default and demanding its correction. If CONTRACTOR cures such default or failure within ten (10) days, this AGREEMENT may be reinstated. The decision to allow CONTRACTOR to cure a default or failure and/or to reinstate this AGREEMENT is at the sole discretion of the Chief of Police or his designee.

Notwithstanding the foregoing, the CITY may terminate the AGREEMENT with or without cause or reason upon thirty (30) days written notice to CONTRACTOR.

B. Non-discrimination in Service

CONTRACTOR shall not discriminate in its performance of services under this agreement in employment practices due to race, color, religion, national origin, ancestry, sex, age, physical or mental handicap, or other prohibited basis.

C. Auxiliary Equipment

All approved tow trucks shall have two-way audio communications between their shop/base station and field units as their primary means of communication. Cellular phones may be used as a means of communication. The CONTRACTOR shall not charge for the use of any cellular phone on any rotation tow call.

D. Tow Trucks

The tow trucks used by the CONTRACTOR under this AGREEMENT shall meet the minimum requirements as outlined in the most current California Highway Patrol Tow Services Agreement. All service trucks shall display a current California Highway Patrol approved inspection decal. Each service vehicle shall maintain the necessary safety equipment and resources to provide the services per the terms of this AGREEMENT; i.e. remote lighting, shovels, brooms, sand, etc.

A violation of the Gross Vehicle Weight Rating (GVWR) and safe loading requirements of a tow truck may be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining fifty (50) percent of the tow truck's unladen front axle weight on the front axle when towing.

E. Tow Truck Drivers

The CONTRACTOR shall ensure tow truck drivers responding to calls initiated by the CITY are qualified and competent employees in performing the services required. The drivers shall be at least 18

years of age and possess the proper class license and certifications for the towed and towing vehicle.

The CONTRACTOR must maintain a current list of drivers upon implementation of this AGREEMENT. The CONTRACTOR shall notify the Traffic Services Senior Office Specialist, or other designated TSU staff, upon any change in driver status, to include the addition and deletion of drivers. Such changes shall be submitted in an updated list within ten (10) days of a change in driver status.

All drivers are required to complete and sign the California Highway Patrol Tow/Operator Information Sheet (CHP234F).

When providing services under the terms of this AGREEMENT, CONTRACTOR employees shall wear a uniform shirt bearing the name of the CONTRACTOR's company and the employee's first name.

F. Demeanor and Conduct

When conducting business under the terms of this AGREEMENT, CONTRACTOR and employees shall refrain from any acts of misconduct including but not limited to:

- i. Rude or discourteous behavior.
- ii. Lack of service, selective service, or refusal to provide service which the Contractor is/should be capable of performing.
- iii. Any act of sexual harassment or sexual impropriety.
- iv. Unsafe driving practices.
- v. Exhibiting any objective symptoms of alcohol and/or drug use.
- vi. Violations of any State, Federal or CITY law, code or ordinance.

Services will be conducted in a professional manner.

CONTRACTOR is responsible for collecting and removing miscellaneous collision debris associated with vehicles being towed. To ensure all necessary services have been performed, CONTRACTOR will consult with on-scene CITY employee prior to departing a tow call.

CONTRACTOR shall not record, via audiotape, videotape or photograph, an accident or crime scene to which it is called by OPD

unless such recording is for official use by the CONTRACTOR for business related reasons and such recording is specifically authorized by an OPD supervisor holding the rank of sergeant or higher. In the event the CONTRACTOR is determined to be in violation of this provision, CONTRACTOR will immediately surrender any such recording to OPD. Failure to comply with the provisions of this Section may result in suspension or termination of this AGREEMENT in the sole discretion of the Chief of Police or his designee.

G. Assignments

The CONTRACTOR shall not assign, subcontract or transfer, by operation of law, any obligation hereunder without prior written consent of the CITY.

H. Business Records

The CONTRACTOR shall maintain records of all tow services furnished. The records will be maintained at the CONTRACTORS place of business. Invoices shall, at a minimum, include the description of each vehicle, nature of services, date, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name and truck used.

The CONTRACTOR shall maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing, and non-OPD tows.

A designated member of the OPD may inspect all CONTRACTOR records without notice during normal business hours. CONTRACTORS shall permit copies of business records to be made upon request. Records shall be maintained for a minimum period of two (2) years.

Failure of the CONTRACTOR or their employees to comply with the inspection shall be cause for suspension or termination of this AGREEMENT.

I. Entire Agreement

This AGREEMENT integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations and prior writings with respect to the subject matter hereof. No modification is effective unless signed in writing by both parties. The terms and conditions of this AGREEMENT shall supersede any conflicting OPD policies and/or procedures.

J. Independent Contractor

CONTRACTOR is, and shall at all times remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its officers, employees nor agents shall have control over the conduct of the CONTRACTOR, any of the contractor's officers, employees or agents, except as herein set forth. The CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the CITY.

K. Applicable Law and Forum

This AGREEMENT shall be construed and interpreted according to California law, and any action to enforce the terms of this AGREEMENT or for the breach thereof shall be brought to and tried in the County of San Diego.

L. Compliance with Law

The CONTRACTOR shall remain in compliance with the Oceanside City Code, Traffic Code, Zoning Ordinance, and all other Codes and Ordinances adopted by the City, in addition to all applicable State and Federal Laws. Towing operators shall submit proof of compliance with all applicable laws and local codes with their application to enter into this AGREEMENT, and subsequently if requested by the CITY.

The CITY and OPD recognizes the Tow Service Agreement between the Tow Contractors and the California Highway Patrol. A copy of this agreement must be submitted concurrently with the submittal of this AGREEMENT. CONTRACTORS must maintain a Tow Service Agreement with the California Highway Patrol (CHP) and failure to do so may result in immediate termination of the AGREEMENT. CONTRACTOR must immediately notify the Traffic Services Unit Lieutenant if the CHP Tow Agreement is suspended, revoked, terminated, or expires. If the Tow CONTRACTOR is temporarily suspended from the California Highway Patrol contract, the Traffic Services Unit Lieutenant will determine if such suspension establishes cause for suspension of this AGREEMENT.

CONTRACTOR agrees that their business practices not related to this Agreement can be used by OPD to determine if cause exists for suspension or termination of this AGREEMENT. Specifically, should OPD determine that CONTRACTOR has removed vehicles on behalf of private property owners or their agents in a manner that violates any State or local law, such action shall, in the sole discretion of the Chief of Police, be grounds for suspension or termination of this AGREEMENT.

M. Worker's Compensation Certification

Pursuant to Labor Code Section 3700, the CONTRACTOR shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of that Code, and provide certification of such compliance as a part of these AGREEMENT Documents.

N. Liability Insurance

CONTRACTOR shall, throughout the duration of this AGREEMENT, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this AGREEMENT including but not limited to premises and automobile. CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit per Occurrence	\$1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 2,000,000

Automobile Liability	\$ 1,000,000
----------------------	--------------

\* General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this AGREEMENT.

All insurance companies affording coverage to the CONTRACTOR shall be required to add the CITY as "additional insured" under the same insurance policy.

All insurance companies affording coverage to the CONTRACTOR shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the Oceanside City Attorney, concurrently with the submittal of this AGREEMENT.

A statement on the insurance certificate which states that the insurance company "will endeavor" to notify the Certificate Holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" does not satisfy the requirements. The CONTRACTOR shall ensure that the above quoted language is stricken from the certificate by the authorized representative of the insurance company.

CONTRACTOR shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by Operator.

Maintenance of insurance by the CONTRACTOR as specified in this AGREEMENT shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

O. Contractor's Indemnification of City of Oceanside

To the greatest extent allowed by law, CONTRACTOR shall indemnify and hold harmless the CITY and its departments, officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct of the CONTRACTOR or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this AGREEMENT, except for those claims arising from the willful misconduct, or sole or active negligence of the CITY's officers, agents or employees. CONTRACTOR's indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its departments, officers, agents or employees in defending against such claims, actions or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit, action or

claim brought against the CITY, its departments, officers, agents or employees, resulting or arising from the conduct, or tortuous acts or omissions of the CONTRACTOR.

CONTRACTOR's indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

P. Dispute Resolution

Prior to the filing of any lawsuit based upon any controversy or claim arising out of or relating to this AGREEMENT, or concerning the breach or interpretation thereof, such controversy or claim shall first be submitted to non-binding mediation, the cost of which shall be borne equally by the parties.

No suit shall be brought on this AGREEMENT unless all statutory claims filing requirements have been met, including, but not limited to those set forth in the Government Claims Act.

IV. TERMS OF AGREEMENT

This Agreement shall commence upon January 1, 2013 and shall remain in effect until December 31, 2013, unless terminated sooner pursuant to the terms of this AGREEMENT. Up to a six month extension may be imposed by OPD pending approval of a new AGREEMENT. This AGREEMENT may be cancelled by either PARTY upon thirty (30) days notice given pursuant to Section V, below.

V. NOTICES

Notices pursuant to this AGREEMENT shall be given in person or by the United States Mail, postage prepaid, addressed as follows:

(a) To CITY: Frank McCoy  
Chief of Police  
Oceanside Police Department  
3855 Mission Avenue  
Oceanside, California 92058

(b) To CONTRACTOR: Allied Gardens Towing, Inc.  
DBA RoadOne Towing  
1501 S. Coast Hwy  
Oceanside, CA 92054

S&R Towing, Inc.  
1060 Airport Road  
Oceanside, CA 92054

Auto Parts & Salvage, Inc.

DBA San Luis Rey Auto Salvage & Towing  
P.O. Box 186  
San Luis Rey, CA 92068 (Mailing address)  
471 N. El Camino Real  
Oceanside, CA 92054 (Storage address)

Tonka Tow  
2391 Oceanside Blvd.  
Oceanside, CA 92054

Towizard, Inc.  
1040 Airport Road  
Oceanside, CA 92054

NK Towing and Roadside Services, Inc.  
1726 Don Lee Place  
Escondido, CA 92029

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed to have been served upon personal service or, if deposited in the mail, on the third business day after the same has been deposited in the United States Postal Service. This shall be valid and sufficient service of notice for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CONTRACTOR:

CITY OF OCEANSIDE

\_\_\_\_\_  
By: Owner/President/CEO

\_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Secretary/Treasurer/CFO

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR THE  
CITY OF OCEANSIDE:

\_\_\_\_\_  
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE  
ATTACHED**

