

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF CARSON**

**and**

**PENSKE TRUCK LEASING CO., L.P.**

**EXHIBIT NO - 3**

**- 1 -**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF CARSON AND  
PENSKE TRUCK LEASING CO., L.P.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Carson, a California municipal corporation ("City") and Penske Truck Leasing Co., L.P., a Delaware limited partnership ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those

standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

### 1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### 1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Nineteen Thousand Two Hundred Sixty Eight Dollars (\$119,268.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less

contract retention; (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by City for any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### 2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**ARTICLE 4. COORDINATION OF WORK**

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall utilize only competent personnel to perform services pursuant to this Agreement. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### 4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be [\_\_\_\_\_] or] such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent

contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### ARTICLE 5. INSURANCE AND INDEMNIFICATION

#### 5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.



(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

#### 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Contractor Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### 5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete

and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

#### 6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

#### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any

such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

### **7.2 Disputes; Default.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part

of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

#### 7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

#### 7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this

Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### 7.8 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

## 8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## 8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

## 8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# ARTICLE 9. MISCELLANEOUS PROVISIONS

## 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed



communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or

other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials \_\_\_\_\_

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Albert Robles, Mayor

ATTEST:

\_\_\_\_\_  
Donesia L. Gause, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[EQG]

**CONTRACTOR:**

PENSKE TRUCK LEASING CO., L.P., a Delaware limited partnership

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

## EXHIBIT "A"

### SCOPE OF SERVICES

#### **I. Contractor shall perform the following Services:**

Contractor shall provide, to the City, Preventative Maintenance Services on a regular basis (i.e., "Included Services"), and Corrective Maintenance Services for damages, defects or deficiencies ("Mechanical Repairs") when requested in writing by Contract Officer or his/her designee (i.e., "Additional Services"), for the following thirteen (13) heavy-duty trucks and trailers:

NO.	VEH	YEAR	MAKE	DESCRIPTION	MODEL	GVW	VIN
1	766	1997	INTERNATIONAL	DUMP TRUCK	2574	56,000	1HTGGAET2WH51616
2	824	2000	ZIEMAN	TRAILER	2235	19,500	1ZCT27E24XZP21251
3	877	2001	ZIEMAN	TRAILER	2235	19,500	1ZCE261ZP22055
4	914	2001	STERLING	DUMP TRUCK	LT9500	58,000	2FZHAZBD72AJ35443
5	970	2002	FORD	DUMP TRUCK	F-750	30,000	3FDXF75222MA04031
6	972	2002	FORD	AERIAL LIFT	F-750	33,000	3FDXF75H33MB02670
7	987	2002	HOLDEN	TRAILER	TD020	25,000	12HTD32233S109221
8	988	2002	HOLDEN	TRAILER	TD020	25,000	12HTD32213 S109220
9	1024	2003	FORD	AERIAL LIFT	F-750	30,000	3FDX75823MB06158
10	1379	2013	FREIGHTLINER	PATCH TRUCK	114SD	58,000	1FVHG3DX93HFU1796
11	1392	2014	FREIGHTLINER	DUMP TRUCK	114SD	28,000	1EVAC4DX4EHFV480
12	1414	2014	TRAILBOSS	TRAILER	DP302	57,120	4SODP3026E1003418
13	1049	2004	GMC	DUMP TRUCK	C7500	30,000	1GDM7C1E74F510224

With respect to each vehicle serviced under this Agreement ("Vehicle"), Contractor will provide two (2) types of services: (a) those services listed herein being included in the vehicle's fixed, mileage or hourly charges ("Included Services") and (b) all other services, whether or not listed in Exhibit "A", that are not included in the Vehicle's fixed, mileage or hourly charges ("Additional Services").

C. The Preventative Maintenance Services provided by Contractor to the City for these Vehicles are Included Services. Preventive Maintenance Services shall mean (a) inspecting a Vehicle pursuant to Contractor's standard checklist for that type of vehicle, (b) performing an oil coolant analysis, (c) conducting Federal and state inspections, (d) tightening bolts, and (e) checking and (if necessary) replacing lubrication fluids and oil and fuel filters. To the extent not requiring additional labor or parts, shall further include:

care and servicing for the purpose of maintaining equipment in satisfactory operating condition so as to meet DOT and annual inspection requirements (if additional labor or parts are required beyond subsections (a) through (e) above, such additional labor or parts shall be Additional Services); and

maintaining and keeping all applicable safety compliance records related to the Included Services and Additional Services; and

systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects; and

tests, measurements, adjustments, and recommended parts replacement, performed specifically to prevent faults from occurring; and

preserving and restoring equipment reliability by recommending the replacement of worn components before they actually fail (parts and labor shall be Additional Services); and

oil changes, lubrication, minor adjustments, etc.; and

recommending partial or complete overhauls as warranted; and

recording equipment deterioration with the purpose of providing for replacement and/or repair of worn parts before they cause system failure; and

BIT inspections to the extent relating to the Included Services or Additional Services; and

CHP Terminal Inspection Services to the extent relating to the Included Services or Additional Services (and shall not include any required driver records).

C. The Corrective Maintenance Services provided by Contractor to the City for these Vehicles are Additional Services and shall include, but not be limited to:

1. mechanical repairs, replacement of tires, and washing; and
2. road services and towing, including roadside emergency services twenty-four (24) hours a day through the use of mobile service trucks; and

3. substitute vehicles as needed; and
  4. physical damage repairs.
- D.** Upon completion of Preventative Maintenance Services, any identified follow-up Corrective Maintenance Services (i.e., Additional Services consisting of Mechanical Repairs) will be communicated to the City's fleet maintenance liaison for approvals. Online and/or electronic communication shall be the default method of communication and shall be provided at request of Contract Officer.
- E.** Upon receiving approval, and only upon receiving approval, the Contractor will complete any needed Corrective Maintenance Services (i.e., Additional Services consisting of Mechanical Repairs) and will communicate that the vehicle is ready to return to service. Online and/or electronic communication shall be the default method of communication and shall be provided at request of Contract Officer.
- F.** Contractor shall keep and maintain all maintenance and repair records of services performed by Contractor for all City vehicles being serviced. Records of roadside services shall be kept in each vehicle's file.
- G.** Contractor shall keep and maintain all mandated safety compliance records for Included Services and Additional Services, in order to ensure that the City's heavy-duty trucks and trailers are safe for use. Such records shall comply with the standards of the Department of Transportation and the California Highway Patrol.
- H.** If Contractor rents a substitute vehicle to the City as part of the Included or Additional Services, the City shall execute Contractor's rental agreement, which shall govern the terms and conditions of such rental.
- I.** If Contractor provides fuel for use by the City outside of the performance of Contractor's Services, it shall be provided at charges that vary over time from Contractor's facilities or from facilities participating in the Penske Fuel Stop Program. Contractor shall invoice the City for the charges and all applicable taxes and fees for the fuel. City may procure fuel from other sources at its own expense. If City is past due on payment of any invoices rendered or is otherwise in default of the Agreement, Contractor may (in addition to any other remedy under this Agreement) immediately discontinue providing fuel to City. All fuel shall be considered Additional Services.
- J.** If Contractor provides City with any fuel cards for the purchase of fuel, Contractor shall be fully responsible for all purchases made under such fuel cards, even if made improperly or illegally. City shall immediately report lost or stolen fuel cards to Contractor. If City fails to pay fuel card charges when due, Contractor may (in addition to any other remedy under this Agreement) immediately cancel



City's fuel cards. All purchases with fuel cards shall be considered Additional Services.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

- A.** Quarterly (i.e., every three months) reports containing all service, repair and maintenance records generated by the preventative services provided to the City by Contractor, including but not limited to all records referenced in Section II above. Online and/or electronic reporting shall be the default method of reporting and shall be provided at request of Contract Officer.
- B.** Quarterly (i.e., every three months) reports containing all service, repair and maintenance records generated by the corrective services provided to the City by Contractor, including but not limited to all records referenced in Section II above. Online and/or electronic reporting shall be the default method of reporting and shall be provided at request of Contract Officer.

**IV. Initial Vehicle Condition.** With respect to each vehicle under this Agreement, Contractor will, within a reasonable period of time: (i) approve the specifications for such vehicle as part of the Included Services, and (ii) perform any and all work necessary to make sure such vehicle is in compliance with all applicable federal, state and local laws and regulations and Contractor's established safety related standards. Contractor shall obtain City's consent before performing any of the work under subsection (ii); if City does not consent to such work, Contractor may terminate the affected vehicle from this Agreement upon written notice to City.



EXHIBIT "A-1"



*Penske Proposal for:*



RFP #P15-04

August, 6, 2015



August 6, 2015

City of Carson  
Office of the City Clerk  
701 East Carson Street  
PO Box 6234  
Carson, CA 90749  
Attn: Ms. Ruth Rodriguez

Dear Ms. Rodriguez,

We are pleased to submit our Proposal to the City of Carson (the City) to provide contract maintenance services for RFP No. P15-04. As the fleet maintenance provider for the City since 2011, Penske is best qualified to provide the services set forth in this RFP. The Penske team has a comprehensive understanding of the fleet, its maintenance needs, the scope of work involved, and all other matters that can affect the services.

Since the inception of our original agreement, Penske and the City have worked successfully together to ensure all parameters of the agreement are met. During this time, our knowledge and understanding of the City's fleet and fleet have been key factors in meeting the goals of receiving the high quality maintenance service that Penske provides. And as a local Carson business, we appreciate the opportunity to partner with the City.

Penske's performance record for providing on time, comprehensive preventive maintenance combined with our quality follow-up repairs will continue to best serve your fleet maintenance needs for these vehicles.

On behalf of the entire Penske team, I thank you for your current business as well as the opportunity to submit this proposal for your future fleet maintenance service needs.

Sincerely,

*Jim Ferris*

Jim Ferris

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## Penske History

1969	1981	1982	1983-1986	1988	2000s
Company founded by Roger Penske	Penske grows to 33 facilities staffed by 400+ employees	Penske and Hertz form joint partnership Hertz-Penske Truck Leasing	Partnership acquires Goldston in 1983 and Leaseway Transportation in 1986	Purchased Hertz's remaining share of the joint venture and formed partnership with GE	Acquires Rentway Truck, merges with Rollins Truck, purchases Bright Truck Leasing

Penske Truck Leasing operates, maintains and manages more than **220,000 vehicles** and employs approximately **18,000 associates**. Penske provides service to its customers from nearly **1,000 locations** in the United States, Canada, Mexico, South America and Europe. Annual revenues are approximately **\$5.1 billion**.



Our approach to providing maintenance for the City of Carson is based on exceeding your minimum requirements for maintenance service and meeting your desired requirements for maintenance service. To recap our

# Penske Approach

qualifications please review below how we qualify as a potential vendor according to your requirements:

## **Minimum Requirements for Maintenance Service:**

**Contractor must own a shop facility within (5) miles of the City of Carson City Hall.**

*Penske has (2) facilities to potentially service your vehicles, both of which are well within the desired 5 miles radius of your City Hall:*

**Location:** 19646 S. Figueroa Street  
Carson, CA 90745

**Hours of Operation:** Monday – Friday 5 am to 11 pm  
Saturday 6:30 am to 3:30 pm / Sunday CLOSED

**Rental Hours:** Monday - Friday 6:30 am to 6 pm  
Saturday and Sunday 7 am to 3 pm

**Contacts:** Chris Reynolds-District Operations Manager  
JR. Castro-Sales Representative  
Art Munoz-District Service Manager  
Terry Annella-Maintenance Supervisor  
Dennis Mendoza-Customer Service Coordinator  
Glenda Nixon-Asst. District Administrator

**Must have (5) years demonstrated experience maintaining large fleets.**

*Penske has been maintaining large fleets for over 28 years here in California. We have the experience needed to properly implement these services for your fleet. Nationally we operate over 200,000 vehicles today.*

**Must have ability to provide online maintenance reporting and invoicing.**

*We have online maintenance reporting & invoicing available today for our customers. Examples of our capabilities are included in our proposal for your review. A live demonstration of these capabilities can set up for you.*

**Must have mobile service capability including mobile service trucks**

*We have (13) mobile services trucks available out of our nearby Carson district. These trucks can do simple repairs as well as more detailed work in the field as necessary to serve you.*

## **Desired Requirements for Maintenance Service:**

**Multi-shop shift operation with at least (2) FT shifts M-F and Weekend service**

*Our shop hours meet this requirement and are as follows:*

*Penske Carson Shop Hours: M-F 5:00 am – 11:00 pm, Saturday 6:30 am - 3:30 pm*

**Experience maintaining Heavy Duty Buses and Heavy Duty Trucks**

*We maintain both Buses and Heavy Duty Trucks through California. Key bus customers include the Los Angeles and Riverside County Sherriff's fleets, the American Red Cross, and the University of Southern California. We have included several local truck accounts as references in this proposal as well.*

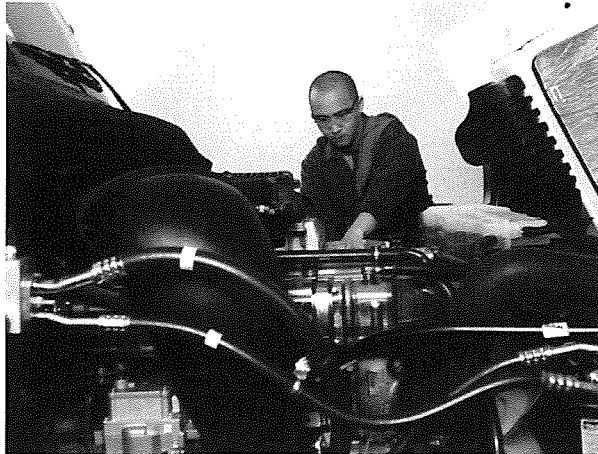
**Ability to include all Preventive Maintenance in Fixed Billing**

*We have the ability to include Preventive Maintenance for your vehicles up front in our Fixed Monthly Billing. Any post PM repairs would then be billed on a labor rate plus needed parts. We have included (4) PM's annually for your buses & trucks and (2) PM's annually for your trailers. Monthly washing is also included for all power units.*

**95% Demonstrated On Time Preventive Maintenance Competency**

*Penske operates nationally at over 99% on time for our customer's preventive maintenance needs. Once a schedule is set up for your vehicles we will follow-up to make sure they are brought in on time.*

# Penske Approach



Penske's maintenance program includes all general repair work. Equipment repairs, whether identified by the preventive maintenance service, by users, or by malfunction, will be made by Penske as required. Penske will pay strict attention to all repairs limiting the nature and extent of repairs due to age, mileage, and cost to repair criteria. We will assist the City's fleet management team in the repair/replace decision-making process in order to optimize the use of personnel and capital resources.

As repairs are made, repair costs are entered into a vehicle repair history database using a sophisticated coding system derived from the American Trucking Association's VMRS codes. This procedure allows thorough tracking of all transactions, automated review of repetitive repairs, continual monitoring of warranty, post warranty and recall notification follow-up as required on a real-time basis.

The Penske Preventive Maintenance Process is the foundation of the Penske Maintenance model and is considered "Best in Industry". This is the primary process by which Penske delivers on our value proposition of ensuring optimal levels of uptime and vehicle reliability to our customers and is ultimately the customer experience.

The PM is designed to achieve several items:

- To increase the 100% complete metric
- Improve PM Quality through a consistent PM Training and Certification program
- To minimally increase touch labor time
- To improve planning and communication with the customer
- Consistently meet the customer's goal time

Maintenance is part of the cost of doing business and every fleet has a major investment in its equipment. Whether or not that equipment operates efficiently and reliably has a major impact on corporate profitability. Making certain that equipment operates well is where preventive maintenance comes into the picture. Our company has implemented a PM program because of the positive impact it has in the following areas:

- **PM is a major factor in promoting highway safety:** A well-maintained truck is a safer truck. PM alerts all personnel to potentially hazardous conditions, e.g., equipment failure. It also facilitates recordkeeping. Safer trucks promote high driver morale, are involved in fewer accidents, create a favorable public image customer, have fewer breakdowns and delays, and may play a role in determining better insurance rates.
- **PM prolongs useful life of equipment:** Narrow profit margins mean that transportation companies need equipment that continues to run well and economically as it ages. Component replacement in older vehicles is more difficult to schedule, so PM and its careful monitoring of vehicles is a big help.

# Penske Approach

- **PM reduces unscheduled downtime:** An idle truck is not making any money for its owner. Anything that minimizes unscheduled downtime in a fleet makes the equipment more productive. Drivers don't have to wait for vehicles to get out of the shop, and customers are happy because service is more reliable. Vehicle and personnel utilization are both improved when companies are able to balance workloads.
- **PM reduces unscheduled repairs and the higher cost related to them:** In an in-house shop, parts inventory can be kept lower if component replacement is planned as part of an overall PM schedule.



Penske will perform most work on City's fleet in-house during the normal hours of operation. However, we will routinely subcontract some work, including tire service, towing, engine, transmission overhaul and any maintenance services we cannot do on-site. Penske maintains a working relationship with more than 12,000 vendors nationwide, and prides itself on managing both service level and cost. We assure minimal delays through an ongoing evaluation and rating of our vendors. Additionally, we have developed strong business partnerships with qualified vendors who support our fleet maintenance requirements.

## Third Party Service Providers

Penske will provide the majority of services and repairs using our dedicated, on-site technicians. However, in the course of providing maintenance services, from time to time it will be more practical and optimal for Penske to secure the services of third-party vendor service providers. These contracted services are necessarily engaged and used on an ad hoc or emergency need basis. Services that are vended out typically include, but are not limited to, towing, tire serves, no-starts, jump-starting, lockout assistance, accident assistance etc.

If needed, Penske will leverage one of our vendor relationships for pricing efficiencies and quality repair through one or more of our vendors in our vast network of high-quality providers.



# Penske Approach

## After Hours Response

Penske's staffing model is designed to correlate with City's current shop schedule and meet current workload. It is not designed to meet extended shop hours or expanded fleet. If City's would like to expand their fleet or extend their shop hours, we can revise our staffing model to meet your needs. For any emergency maintenance services required outside normal business hours, third party vendors will be secured through our 24/7 Roadside Assistance department in Green Hills, PA. Their activities are tracked, managed, rated, recorded, and paid for by Penske. The use of OEMs and specialized vendors to perform scheduled repairs is managed locally by the shop staff and monitored by Penske.

While Penske cannot contractually guarantee insurance limits or indemnify our vendors or agents in these activities, Penske does represent that, the best of our knowledge, these vendors are qualified perform the services



for which we contract and that the services will be provided in a quality and workman-like manner. Penske consistently rates the quality and responsiveness of the contractors we use and those who do not meet our standards are dropped from our roles.

## Training

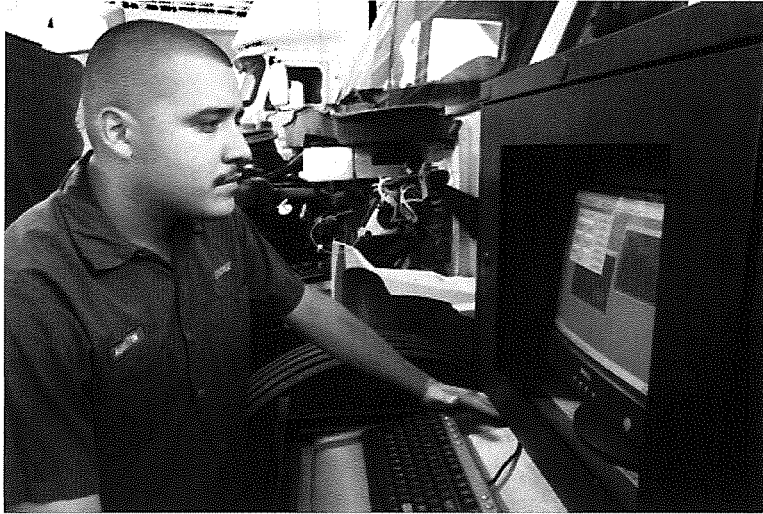
**Penske's internal Technician Certification Program is unique to our business model** and is recognized and accredited by ASE's Automotive Training Managers Council (ATMC). This accreditation puts Penske in a class by itself as the first and only truck leasing company in North America to earn this merit of achievement. Our program is nationally recognized and has received an Excellence In Training award.

Businesses that operate standalone shops or whose core business is not fleet management and maintenance often rely on ASE certifications to measure the technical skills of their technicians for them. For a business or public entity to train and assess technical skills in-house requires a level of expertise, staffing and funding that most simply do not have.

**Fleet maintenance and management is Penske's core business.** Consequently, Penske takes full responsibility for the training, competency and skill of its technicians in addition to the development of online software applications and our own fleet maintenance management system. We know our business inside out.

**Penske's Technician Certification Program** is accredited as following strict industry standards set by ATMC and ASE for continuing education. In other words, Penske technicians who successfully complete the Penske Technician Certification Program are well prepared to sit for ASE exams.

# Penske Approach



**ASE requires candidates to have completed two years' work experience** as a technician and/or to have completed a formal training program before sitting for a test. Penske's maintenance technician training program is ongoing and begins day one. Penske technicians advance according to their skill and personal initiative. Individual learning progress is not dependent on a rigid time line.

Most importantly, Penske's technical training continues to evolve with the introduction of new engines and advanced technology/electronics. We employ a team of maintenance trainers and maintenance specialists who provide instruction in the field and assist in rollouts of new technology. Our goal of flawless and efficient service cannot be achieved without highly skilled technicians backed by in-house industry experts and proven maintenance procedures.

**Our maintenance specialists have access to the latest diagnostics**, PM changes recommended by OEMs, and new products that routinely replace those on the shelf today. New products and procedures are incorporated into our maintenance services and put into the field as they are introduced.

Lastly, **Penske is not just reactive to changes in our industry. We are a leader.** We partner with vehicle OEM's such as Volvo and Freightliner to beta test the next generation vehicles before they are rolled out. We have been doing this work for 45 years and many of our senior maintenance staff has been with us nearly as long. You can depend on a trained Penske technician to know his business.

## **Compliance with ANSI and OSHA**

The success level of a safety program is largely determined by the attitude of management toward safety, their dedication in establishing a working safety program, and the capabilities and training of their employees. Penske places a premium value on safety and adhering to proper protocols. As a result, we are recognized as a company with world class safety management processes and performance. Planning for safety must be incorporated into operational planning in any successful accident prevention effort. When safety is made an integral part of the operations of any fleet, operating expenses can be reduced and the accident frequency and severity can be held to a reasonable level. Penske adheres to proper ANSI and OSHA requirements at every facility in which we work/ provide vehicle maintenance and will be in compliance while performing maintenance on the City's fleet.

## **Technology**

MyFleetAtPenske.com is a secure, easy-to-use online resource that helps customers manage their fleets more effectively. Access to your fleet data is immediate and real-time. The currency of information that fleet managers can access will increase their ability to proactively manage fleet maintenance and to provide line managers with the most current information.

# Penske Approach

Through MyFleetAtPenske.com authorized users have access to:

- Fleet profile
- Online invoices
- Maintenance repair orders
- Preventive maintenance schedules
- Track roadside assistance, both historical and in-progress calls
- Safety and compliance

## **Fleet Profile**

MyFleetAtPenske.com puts a complete fleet profile at your fingertips. Simply by clicking a link on the home page, you can view your company's Penske customer number and the following information about your fleet:

- Penske's assigned unit number
- The Penske district's name and number that services the vehicle
- The vehicle's assigned billing group
- The type of vehicles, e.g., trailer, tractor, bus, etc.
- Vehicle year, make and model
- Vehicle VIN number, license plate number and state of registration
- Leased vehicle contract start and end dates along with the number of months remaining until contract expiration
- Where applicable, the fixed monthly rate and per mileage rate per vehicle
- Date of last preventive maintenance (PM) inspection

## **Online Invoices**

The web site is designed to make a three-year history of invoices available to our customers. Customers no longer need to wait until the end of a billing cycle to review repair invoices. Repair invoices are uploaded to the customer's account on [MyFleet@Penske](mailto:MyFleet@Penske) and available online the day after they are closed.

## **Maintenance Repair Orders**

Maintenance repair orders can be viewed the day after service is completed. Customers have the opportunity to review completed orders and to make inquiries on any service that may require additional information.

This also allows fleet managers a means of tracking unscheduled repairs before they appear on the monthly invoice.

## **Preventive Maintenance Schedules**

Penske customers can view scheduled PMs online. The online PM scheduler is an interactive, forward-looking calendar that cannot provide access to previous months' schedules. Its purpose is to provide current information that fleet managers can use to manage maintenance scheduling in their day-to-day operations.

Preventive maintenance can be rescheduled with some limitations. PMs that are due in a week or less cannot be changed as well as any PM that is past due.

The rescheduling of PMs is contingent on available shop schedule capacity. Penske's maintenance manager will confirm the rescheduled date. Customers can add repair requests to a scheduled PM inspection.

# Penske Approach

## Penske 24/7 Roadside Assistance

View roadside call activity as it happens on MyFleetAtPenske.com. You can view all calls for assistance by your drivers to Penske's emergency services and track them to resolution. In addition, completed calls are available for management review.

## Safety and Compliance

Check this page for safety bulletins, information with partner programs and preferred pricing for Penske customers. Penske also publishes its calendar of safety events on this page.

## KPI's

In order to drive our company toward continuous improvement, Penske has established programs to monitor and improve the process within our organization and with our valued customers.

Penske tracks quality measurements and key performance indicators at all of its maintenance facilities. ServiceNet, our online service tracking system, and other corporate analytical reports are used together to monitor the efficiency and level of service provided to every customer. Penske customers periodically receive important analytical reports generated by our ServiceNet system. Most KPI reports are delivered to our customers electronically on a weekly, monthly, quarterly or annual basis.

To assure that we are working with our customers on the issues that concern them the most, our account executives visit each customer and conduct an Annual Customer Review. Penske representatives compile and present a summary of our KPIs to our customers. Our goal is to identify what is most important to the customer and to construct a working plan for the next twelve-month period.

Finally, customers rate Penske across a wide array of services annually using our Voice Of the Customer survey. The critical feedback from this survey helps to identify areas where Penske should allocate resources and what process improvements we can make that will bring immediate value to our customers.

Our key performance indicators report and measure:

- 1 The percentage of vehicles in the fleet that is current with their scheduled preventive maintenance.
- 2 The number of vehicles requiring service within 90 days of a PM for any item that is inspected or repaired/replaced as part of the PM service.
- 3 The percentage of repair orders that complete all items on the order by the scheduled pick-up time.
- 4 The total number of repair orders that were complete by the customer's "needed time."
- 5 The reason and causes why any repair order was unable to be delivered on-time or complete.
- 6 The number of vehicles receiving emergency road call service.
- 7 The number of vehicles sent to a third-party vendor for repairs.

**City of San Jose**

**Contact:** Kathy Houser

**Phone:** 408-392-3515

**Synopsis:** Penske leases and maintains 10 CNG (compressed natural gas) powered busses for the city's airport and has provided these services since 1993. The airport relies on Penske for all maintenance and support of these vehicles. The lease provides a predictable budgetary option for the city without having to sustain large capital outlay for a CNG bus.

**Los Angeles County Sheriff Department**

**Contact:** Lt. Vance Duffy (Head of Fleet Operations)

**Phone:** 323-881-3984

**Synopsis:** Penske created a unique and comprehensive planning, training, and implementation/rollout plan for LA County and its critical mission fleet vehicles that exceed the initial work scope. Penske upfits new vehicles and refurbishes existing fleet vehicles with safety and security equipment, communication devices, interior, engine rework, etc.

Penske assumed management and maintenance of the fleet of Los Angeles County Sheriff's Department, the nation's largest local law enforcement agency. The fleet consists of 4,900 units consisting of law enforcement vehicles, motorcycles, buses and other emergency and specialized vehicles. The fleet is maintained at 25 locations across the County by approximately 110 Penske associates. LA County Sheriff has been a client since March 2007.

**TRIMET**

**Contact:** David Trimble, Director LIFT

**Phone:** 503-962-4984

**Synopsis:** Penske provides dedicated maintenance on a fleet of (267) cutaway buses that provide handicapped transportation for the greater Portland area. We do all preventive and corrective maintenance as well as all road service and maintain 100% on time PMs for them as well.



Penske and the City of Carson have enjoyed a 4-year partnership that has been mutually beneficial to both parties. Our relationship has been built on a common goal of having a comprehensive maintenance program that helps provided dependable service of the City's fleet and doing so within acceptable budget guidelines.

From the outset of our working relationship with the City, we took a proactive approach on servicing the fleet in a timely manner and communicated Preventive Maintenance schedules and needed Post PM repairs with the fleet staff on an ongoing basis.

Additionally, we collect and share key maintenance data to assist City fleet staff in making decisions on repairs and other fleet needs. It has resulted in a more dependable fleet that operated within maintenance budget and maintenance data that the City desired.

It is a relationship that is built on years of experience working together and will continue to evolve should we be chosen to continue as your partner. We look forward to having an opportunity to continue this relationship with your team.

Our understanding is that we would provide the City of Carson with all PM services for the selected group of vehicles identified including any DOT and annual inspection requirements. Upon completion of these PM services we would communicate any needed follow-up work to the appropriate City contract for approvals and would complete these repairs after receiving the approvals to make these repairs. Penske would utilize the most current technologies and training for its staff that would be performing these PM's and follow-up repairs. We recommend that a monetary threshold for normal repairs be set up in advance for those repairs that are most common.

In addition to normal PM's and follow-up repairs Penske would also provide emergency road service 24 hours a day for City vehicles under this program. A single call to our shop by either the vehicle operator or a supervisor would be all that would be needed to get emergency service initiated. Our goal for a vehicle breakdown would be to get the vehicle up and running as soon as possible or tow the vehicle into the shop is the breakdown is of a more severe nature and further approvals would be needed to affect a repair.

Steps to add your vehicles into our maintenance program would include initiating an agreement between our two teams, a review of the vehicles to be included, and agreement on a start-up date. Any past PM scheduling information would be helpful to our team to set up the PM schedule going forward for your vehicles that we would be maintaining.

#### **BILLING**

Our billing would be a simple fixed format and would have all PM's included in a monthly fixed cost per vehicle as well as all record keeping. For our initial proposal we have included (4) PM's per vehicle annually for your trucks and buses and (2) PM's annually for your trailers. More or less PM's can be set up depending on any final agreements we make with your team.

Any post PM repairs would be billed out at the actual hours works plus our fleet cost for parts needed. You would have online capability to review repairs online the very next day after we complete work on your vehicle, before your final monthly invoice is generated.

The contract documents to initiate our maintenance program are included in this proposal. We are available to meet with you and review the next steps to start services with us.

On the following page, you can view a billing and reporting sample.

**ABC ORGANIZATION 612345**

District Name	Unit #	Customer Unit #	Activity Type	Invoice Number	Invoice Date	Repair Order District	Repair Order Number	Repair Order Date	Component Code	Description
BOSTON NORTH	555555	0169	M	M102682616	03-Jan-07	0064	167966	08-Dec-06	034	LIGHTING SYSTEM
BOSTON NORTH	555666	0170	M	M102682616	03-Jan-07	0064	168567W	03-Nov-06	034	LIGHTING SYSTEM
BOSTON NORTH	555777	0171	M	M102743444	02-Feb-07	0064	168689W	13-Nov-06	003	INSTRUMENTS, SPEEDOMETER & GAUGES
BOSTON NORTH	555888	0172	M	M102682616	03-Jan-07	0064	168963	01-Dec-06	072	REAR DOOR
BOSTON NORTH	555999	0173	M	M102682616	03-Jan-07	0064	168963	01-Dec-06	098	VALVES
BOSTON NORTH	556111	0174	M	M102806476	02-Mar-07	0064	168987	02-Feb-07	032	CRANKING SYSTEM
BOSTON NORTH	555222	0175	M	M102806476	02-Mar-07	0064	168987	02-Feb-07	034	LIGHTING SYSTEM
BOSTON NORTH	555333	0176	M	M102806476	02-Mar-07	0064	168987	02-Feb-07	052	ELECTRICAL ACCESSORIES
BOSTON NORTH	555444	0177	M	M102875622	03-Apr-07	0064	168987W	02-Feb-07	052	ELECTRICAL ACCESSORIES
BOSTON NORTH	555123	0178	M	M102806476	02-Mar-07	0064	169022	02-Feb-07	002	CAB AND SHEET METAL
BOSTON NORTH	555456	0179	M	M102806476	02-Mar-07	0064	169022	02-Feb-07	071	DRY FREIGHT BODY
BOSTON NORTH	555789	0180	M	M102682616	03-Jan-07	0064	169143	08-Dec-06	098	VALVES
BOSTON NORTH	555000	0181	M	M102682616	03-Jan-07	0064	169164	11-Dec-06	098	VALVES

**January 8, 2007 - March 31, 2007**

**Labor and Outside Repair Reconciliation**

YTD Fixed/Labor	YTD O/S Repairs	Total Labor & O/S Repairs	YTD Non Target O/S Repairs	YTD Net Labor & O/S Repairs	YTD Target (12 Weeks)	YTD Savings
\$148,082.61	\$61,372.19	\$209,454.80	\$41,525.96	\$167,928.84	\$230,769.23	\$62,840.39

**Parts and Tire Reconciliation**

YTD Parts	YTD Tires	Total Parts & Tires	YTD Non Target Parts & Tires	YTD Net Parts & Tires	YTD Target (12 Weeks)	YTD Savings
\$88,750.99	\$112,472.81	\$201,223.80	\$821.16	\$200,402.64	\$230,769.23	\$30,366.59

**Consolidated Reconciliation**

YTD Total Cost	YTD Non Target	YTD Net Cost	YTD Target (12 Weeks)	YTD Savings	Annualized Saving
\$410,678.60	\$42,347.12	\$368,331.48	\$461,538.46	\$93,206.98	\$403,896.92



Our quoted labor rate for work done at our nearby shop or via our mobile service trucks is \$84.00/hour. As required under this RFP that is for our real time for work performed. For any work that is performed by an outside vendor the cost to the City will be our vendor cost plus 10%.

All parts that we provide will be at our national fleet price less 10%.

There is an administrative fixed fee per month per vehicle that is broken down by the following vehicle categories. We include PM's as listed below included in this cost:

<b>Light duty vehicles</b>	(includes (2) PM's /year)	\$85 /month each
<b>Heavy Duty Trucks</b>	(includes (4) PM's /year)	\$265/month each
<b>Aerial Lift Trucks</b>	(includes (4) PM's /year)	\$299/month each
<b>Trailers</b>	(includes (2) PM's/year)	\$75/month

The above pricing model is the same that we are currently using for our maintenance services today with the City of Carson. We have included a light duty category for the City's vans and pickup trucks that may need service as well. If chosen to continue as your maintenance provider, we will provide a Schedule A pricing document to be signed to renew our contract. The above will be adjusted 3% annually.

## **EXHIBIT "B"**

### **SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)**

#### **I. Section 1.1, Scope of Services, is hereby amended to read as follows:**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder ~~and that all materials will be both of good quality as well as fit for the purpose intended.~~ CONTRACTOR MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR ABSENCE OF ANY MANUFACTURING DEFECTS OF ANY VEHICLE OR PARTS COVERED BY THIS AGREEMENT, OR EXCEPT AS OTHERWISE CONTAINED HEREIN, ANY SERVICES PROVIDED BY CONTRACTOR HEREUNDER. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### **II. Section 1.2, Contractor's Proposal, is hereby amended to read as follows:**

~~The Scope of Service shall include the following items from the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein: Exhibit "A-1" - Bid Terms~~ Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

#### **III. Section 1.3, Compliance with Law, is hereby amended to read as follows:**

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all applicable ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

**IV. Section 1.4, Licenses, Permits, Fees and Assessments, is hereby amendment to read as follows:**

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. The City shall pay all applicable taxes and assessments that are now in force or may hereafter be levied on the vehicles as properly paid by the vehicle owner, or in respect of this Agreement (excluding income or payroll taxes of Contractor). Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

**V. Section 1.5, Familiarity with Work, is hereby amended to read as follows:**

By executing this Agreement, Contractor ~~warrants~~ agrees that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions on the City's site, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

**VI. Section 1.6, Care of Work, is hereby amended to read as follows:**

**1.6 Damage to Vehicles**~~Care of Work.~~

The City assumes the risk of loss or damage to all vehicles from any and every cause whatsoever, including, but not limited to, casualty, collision, upset, deterioration, structural failure, fire, theft, malicious mischief, vandalism, graffiti, glass breakage, and mysterious disappearance, except to the extent caused solely by Contractor's negligence or willful misconduct. Contractor shall have no obligation to repair such damages. Repairs of damage shall be considered Additional Services under this Agreement. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

**VII. Section 1.8, Additional Services, is hereby amended to read as follows:**

City shall have the right at any time during the performance of the Included Services, without in validating this Agreement, to request Additional Services. No such Additional Services may be undertaken unless a written order is first given by the Contract Officer to and accepted by the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. The City shall ensure that its Contact Officer does not approve services or work without the requisite authorization. It is expressly understood by Contractor that the provisions of this Section requiring approval shall not apply to services specifically set forth in the Scope of Services. City may in its sole and absolute discretion have similar work done by other contractors (except Included Services for the applicable vehicles).~~City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.~~

**VIII. Section 2.1, Contract Sum, is hereby amended to read as follows:**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Nineteen Thousand Two Hundred Sixty Eight Dollars (\$119,268.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8 and as otherwise described in this Agreement or the Exhibits attached hereto (constituting "Charges" and collectively encompassing all charges under this Agreement, the "Contact Sum").

**IX. Section 2.2, Method of Compensation, is hereby amended to read as follows:**

~~———The method of compensation shall be governed by Section 2.4 below. The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.~~

**X. Section 2.4, Invoices, is hereby amended to read as follows:**

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month ~~in a form approved by City's Director of Finance~~. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person (provided the following limitation shall apply to duplicate services only and shall not limit Contractor's ability to assign more than one of its personnel to any services).

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. City shall pay all invoices within thirty (30) days of the date of Contractor's invoice. In the event any charges or expenses are disputed by City, City shall give written notice to Contractor, and the Parties shall use reasonable efforts to meet within thirty (30) days of the date of the notice of dispute to attempt to resolve such dispute in good faith. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by City for any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

City shall pay charges to the location designated by Contractor, and all payments shall be made in the form of check, electronic funds transfer or ACH payment; cash or credit cards shall not be accepted for payment. Unless the parties agree otherwise, or unless the City does not obtain fuel from Contractor, Contractor will determine the mileage and (if applicable) the refrigeration hours for each vehicle. If the City does not obtain fuel from Contractor, the City

shall provide mileage readings and (if applicable) refrigeration hour readings for each vehicle on at least a monthly basis.

**XI. Section 2.5, Waiver, is hereby amended to read as follows:**

\_\_\_\_\_ Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor; however, unless the City protests the correctness of any invoice within sixty (60) days of its receipt, such invoice shall be presumed to be correct.-

**XII. Section 3.1, Time of Essence, is hereby amended to read as follows:**

Intentionally deleted. Time is of the essence in the performance of this Agreement.

**XIII. Section 3.2, Schedule of Performance, is hereby amended to read as follows:**

Contractor shall commence the services pursuant to this Agreement as of the date of this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

**XIV. Section 3.3, Force Majeure, is hereby amended to read as follows:**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, labor disputes, manufacturer, supplier or transportation shortages or delays, fuel allocation program(s), manufacturer defects, and/or acts of any governmental agency, including the City, if the Contractor shall within a reasonable time ~~ten (10) days~~ of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

**XV. Section 3.4, Term, is hereby amended to read as follows:**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect for a period of three (3) years ~~until completion of the services but not exceeding one (1) years~~ from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**XVI. Section 4.1, Representatives and Personnel of Contractor, is hereby amended to read as follows:**

The following ~~principals of~~representatives of Contractor ("~~Principals~~Representatives") are hereby designated as being the ~~principals and~~ representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Ed Mendoza</u>	<u>District</u>
<u>Manager</u>	
(Name)	(Title)

<u>Art Narmi</u>	<u>Area</u>
<u>Vice President</u>	
(Name)	(Title)

<u>Rick Pytlik</u>	<u>Senior</u>
<u>Vice President</u>	
(Name)	(Title)

~~It is expressly understood agreed that the experience, knowledge, capability and reputation of the Contractor foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall utilize only competent personnel to perform services pursuant to this Agreement. Contractor shall make every reasonable efforts to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this~~

~~Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.~~

**XVII. Section 4.2, Status of Contractor, is hereby amended to read as follows:**

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

The City shall have no authority to bind Contractor in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against Contractor, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by Contractor. City shall not at any time or in any manner represent that City or any of City's officers, employees, or agents are in any manner officials, officers, employees or agents of Contractor. Neither City, nor any of City's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to Contractor's employees. City expressly waives any claim City may have to any such rights.

**XVIII. Section 4.3, Contract Officer, is hereby amended to read as follows:**

The Contract Officer shall be [\_\_\_\_\_ or] such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, ~~if specified in writing by the City Manager,~~ to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**XIX. Section 4.4, Independent Contractor, is hereby amended to read as follows:**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an



independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City and Contractor shall not in any way or for any purpose become or be deemed to be a partner of Contractor the other in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor the other.

**XX. Section 4.5, Prohibition Against Subcontracting or Assignment, is hereby amended to read as follows:**

~~————In no event will either party assign or transfer this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than fiftytwo five percent (5025%) of the present ownership and/or control of the general partner of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.~~

**XXI. Section 5.1, Insurance Coverages, is hereby amended to read as follows:**

~~————The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:~~

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$5,000,000 for bodily injury, personal injury, and property damage, including coverages for contractual liability, independent contractors, broad form property damage, products and completed operations.~~\$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.~~

~~————(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any~~

~~persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.~~

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

~~——(d) Professional Garagekeeper's Liability Insurance. Contractor will maintain garage keeper's legal liability insurance in an amount of at least one million dollars (\$1,000,000.00) per occurrence. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.~~

~~——(e) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.~~

——(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(g) City Insurance. City shall at its sole cost procure and maintain liability coverage for each Vehicle, with an insurance carrier having an AM rating of B+ or above, protecting City and Contractor and its partners and their respective agents, servants and employees, in accordance with the standard provisions of a basic automobile liability insurance policy as required in each jurisdiction in which the Vehicle is operated, against liability for bodily injury, including death, and property damage arising out of the ownership, maintenance, use and operation of each Vehicle with limits of at least a combined single limit of Ten Million Dollars (\$10,000,000.00) per occurrence. Such coverage shall be primary and not excess or contributory and shall be in conformity with the motor vehicle minimum financial responsibility laws as respects "Uninsured Motorist", "No Fault", or other optional coverages. Such coverage shall be endorsed to include Contractor as an additional insured and shall be in a form acceptable to Contractor. City shall, prior to Contractor performing services under this Agreement, deliver to Contractor a certificate of insurance showing the coverage required pursuant to this paragraph. The insurer shall agree, by endorsement upon the policy issued by it or by an independent document provided to Contractor, that it shall endeavor to give Contractor thirty (30) days' prior written notice of the effective date of any cancellation or material alteration of such policy, and that such notice shall be sent by registered or certified mail postage prepaid, return receipt

requested, to Penske Truck Leasing Co., L.P., Route 10 - Green Hills, P.O. Box 563, Reading, PA 19603-0563, Attention: Insurance Risk Management Department.”

**XXII. Section 5.2, General Insurance Requirements, is hereby amended to read as follows:**

All of the above Contractor policies of insurance shall name the City, its elected and appointed officers, employees and agents as additional insureds.

Contractor shall endeavor to give City thirty (30) days prior written notice by certified mail return receipt requested, of any cancellation or material alteration of such policy. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

~~———— All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor’s insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.~~

~~———— All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.~~

~~———— No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.~~

~~———— All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:~~

~~———— CANCELLATION:~~

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.~~

~~[to be initialed]~~ \_\_\_\_\_

~~Contractor Initials~~

~~City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.~~

~~Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.~~

~~In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.~~

**XXIII. Section 5.3, Indemnification, is hereby amended to read as follows:**

TO THE FULL EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNIFIED PARTIES") AGAINST, AND WILL HOLD AND SAVE THEM AND EACH OF THEM HARMLESS FROM, ANY AND ALL ACTIONS, EITHER JUDICIAL, ADMINISTRATIVE, ARBITRATION OR REGULATORY CLAIMS, DAMAGES TO PERSONS OR PROPERTY, LOSSES, COSTS, PENALTIES, OBLIGATIONS, ERRORS, OMISSIONS OR LIABILITIES (HEREIN "CLAIMS OR LIABILITIES") THAT MAY BE ASSERTED OR CLAIMED BY ANY THIRD PARTY TO THE EXTENT CAUSED BY (I) CONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING THE SERVICES OR WORK CONTEMPLATED BY THIS AGREEMENT, OR (II) CONTRACTOR'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

NOTWITHSTANDING THE FOREGOING, CONTRACTOR WILL NOT INDEMNIFY ANY INDEMNIFIED PARTY FOR ANY CLAIMS OR LIABILITIES TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY.

TO THE FULL EXTENT PERMITTED BY LAW, CITY AGREES THAT IT WILL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR AND ITS RESPECTIVE AGENTS, SERVANTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, COSTS, DAMAGES, EXPENSES AND LIABILITIES ARISING FROM: (I) CITY'S FAILURE TO COMPLY WITH ITS OBLIGATIONS TO GOVERNMENTAL BODIES HAVING JURISDICTION OVER CITY AND THE VEHICLES UNDER THIS AGREEMENT OR CITY'S FAILURE TO COMPLY WITH THE TERMS OF THE AGREEMENT; (II) ANY AND ALL INJURIES (INCLUDING DEATH) OR PROPERTY DAMAGE SUSTAINED BY CITY OR ANY DRIVER, AGENT, SERVANT OR EMPLOYEE OF CITY; OR (III) CITY'S FAILURE TO PROPERLY OPERATE, OR MAINTAIN A TRAILER OR OTHER EQUIPMENT NOT PROVIDED OR MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT, OR PROPERLY CONNECT ANY TRAILER OR OTHER EQUIPMENT. NOTWITHSTANDING THE FOREGOING, CITY WILL NOT INDEMNIFY FOR SUCH CLAIMS, SUITS, COSTS, DAMAGES, EXPENSES, OR LIABILITIES TO THE EXTENT THE SAME ARE CAUSED BY PENSKE'S NEGLIGENCE OR WILLFUL MISCONDUCT.

(A) CLAIMS HANDLING. IT IS THE INTENTION OF THE PARTIES THAT NEITHER PARTY SHALL BE REQUIRED TO INDEMNIFY THE OTHER FOR ANY CLAIMS, SUITS, COSTS, DAMAGES, OR LIABILITIES TO THE EXTENT THE SAME ARE CAUSED BY THE OTHER PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT. BECAUSE A DISPUTE MAY ARISE BETWEEN CITY AND CONTRACTOR AS TO THE LEGAL CAUSE OF AN OCCURRENCE, THE PARTIES AGREE THAT THE HANDLING AND DISPOSITION OF THIRD PARTY CLAIMS SHOULD NOT AWAIT THE DETERMINATION OF LEGAL CAUSE AS BETWEEN CITY AND CONTRACTOR; THE PARTIES, THEREFORE, AGREE AS FOLLOWS:

(I) IT SHALL BE THE PRIMARY OBLIGATION OF CITY AND ITS INSURANCE CARRIER TO INVESTIGATE, DEFEND, SETTLE, OR LITIGATE THIRD PARTY CLAIMS AS THE MERITS OF THE THIRD PARTY CLAIMS INDICATE. ALL RIGHTS OF CITY AND ITS INSURANCE CARRIER AGAINST CONTRACTOR ARE PRESERVED AND ARE NOT TO BE CONSIDERED WAIVED BY SUCH ACTION.

(II) PROMPTLY AFTER CITY LEARNS OF THE HAPPENING OF AN OCCURRENCE IN WHICH CITY OR ITS INSURANCE CARRIER REASONABLY BELIEVES TO HAVE ARISEN OR RESULTED IN WHOLE OR PART FROM CONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT, CITY SHALL NOTIFY CONTRACTOR OF THE HAPPENING OF SUCH OCCURRENCE TO ALLOW CONTRACTOR AND ITS INSURANCE CARRIER TO INVESTIGATE SUCH OCCURRENCE. CONTRACTOR MAY THEN DECIDE TO TAKE NO ACTION PURSUANT TO SUBPARAGRAPH (I) ABOVE OR JOIN IN THE DEFENSE OR

SETTLEMENT OF THE CLAIMS ARISING OUT OF SUCH OCCURRENCE, AS CONTRACTOR DEEMS PROPER UNDER THE CIRCUMSTANCES. NO SUCH ACTION BY CONTRACTOR SHALL BE DEEMED AN ADMISSION OF LIABILITY FOR SUCH OCCURRENCE, AND ALL RIGHTS OF CONTRACTOR AGAINST CITY ARE PRESERVED AND ARE NOT TO BE CONSIDERED WAIVED BY CONTRACTOR TAKING ANY ACTION PURSUANT TO THIS SUBPARAGRAPH (II). THE PROVISIONS OF THIS SECTION 5.3 SHALL SURVIVE ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT."

~~To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:~~

~~—— (a) —— Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;~~

~~—— (b) —— Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder, and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;~~

~~—— (c) —— In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.~~

~~—— Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring~~

~~as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.~~

**XXIV. Section 5.4, Sufficiency of Insurer, is hereby amended to read as follows:**

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. ~~If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.~~

**XXV. By adding a new Section 5.5, Notification of Accidents, to the end of the Section thereof:**

Section 5.5 Notification of Accidents.

Parties shall reasonably notify each other promptly of any substantial loss or, substantial damage to, or accident involving any Vehicle. Parties shall cooperate fully in the investigation, prosecution, and/or defense of any claim or suit arising out of any such occurrence and shall do nothing to impair or invalidate any applicable liability, physical damage, or cargo coverage.

**XXVI. Section 6.1, Records, is hereby amended to read as follows:**

~~Contractor shall keep, and endeavor to request subcontractors to keep all invoices and maintenance records relating to the amounts~~ require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to a representative sample of such invoices and records at reasonable times during normal business hours of Contractor ~~such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the~~



City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. ~~Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.~~

**XXVII. Section 6.2, Reports, is hereby amended to read as follows:**

Contractor ~~may reasonably~~ shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein ~~or, if Contractor is providing design services, the cost of the project being designed,~~ Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto ~~and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.~~

**XXVIII. Section 6.3, Ownership of Documents, is hereby amended to read as follows:**

~~Intentionally deleted. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.~~



**XXIX. Section 6.4, Confidentiality and Release of Information, is hereby amended to read as follows:**

(a) All information shared by City with Contractor which is not generally known to the public and is marked or identified by City as "confidential" or "proprietary", or which would be understood by a reasonable person to be confidential based on the nature of the information or the circumstances surrounding its disclosure gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer, except as may be necessary to carry out the services and work contemplated hereby.

(b) Contractor, its officers, employees or, agents ~~or subcontractors~~, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena, unless such notice is prohibited by applicable law or court order.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to seek injunctive and equitable relief, in addition to any other remedies at law or in equity reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City (unless such notification is prohibited by applicable law or court order) should Contractor, its officers, employees or, agents ~~or subcontractors~~ be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. ~~City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.~~

**XXX. Section 7.2, Disputes; Defaults, is hereby amended to read as follows:**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the

default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

In the event that the City is in default under the terms of this Agreement, Contractor shall give written notice to City of the default and the reasons for the default. The notice shall include the timeframe in which City may cure the default. For (i) payment or insurance defaults, there shall be no notice and cure period; (ii) for other defaults, this timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. If a default of type (i) occurs, or if a default of type (ii) occurs and is not cured within the applicable timeframe, Contractor may terminate this Agreement, and/or proceed by appropriate court action to enforce the terms of this Agreement and/or to recover damages for the breach of any of its terms. Any failure on the part of the Contractor to give notice of the City's default shall not be deemed to result in a waiver of the Contractor's legal rights or any rights arising out of any provision of this Agreement.

**XXXI. Section 7.3, Retention of Funds, is hereby amended to read as follows:**

Section 7.3 No Retention of Funds.

~~City shall have no right to deduct or setoff any funds owed to Contractor under this Agreement. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.~~

**XXXII. Section 7.6, Legal Action, is hereby amended to read as follows:**

In addition to any other rights or remedies, either party may seek to take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to seek to compel specific performance of this Agreement, to seek to obtain declaratory or injunctive relief, or to seek to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim

~~pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue a legal action under this Agreement.~~

**XXXIII. Section 7.7, Termination Prior to Expiration of Term, is hereby amended to read as follows:**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract upon each annual anniversary of the date of this Agreement, with or without cause, upon ninety (90) days' written notice to Contractor, except that where termination is due to the breach of this Agreement by the Contractor, termination shall be governed by Section 7.2 above. In addition, the Contractor reserves the right to terminate this Contract upon each annual anniversary of the date of this Agreement, with or without cause, upon ninety (90) days' written notice to City, except that where termination is due to the breach of this Agreement by the City, termination shall be governed by Section 7.2 above. Upon the effective termination date of the Agreement, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. The Contractor shall be entitled to compensation for all services rendered prior to the effective date of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

~~This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.~~

**XXXIV. Section 7.8, Termination for Default of Contractor, is hereby amended to read as follows:**

~~Intentionally deleted. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set off or partial payment of the amounts owed the City as previously stated.~~

**XXXV. Section 7.9, Attorneys' Fees, is hereby amended to read as follows:**

In the event of litigation between the Parties in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reimbursement of reasonable, documented and out of pocket attorneys' fees and court costs. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**XXXVI. By adding a new Section 7.10, Non-liability for Contents, to the end of the Section thereof:**

7.10 Non-liability for Contents.

Contractor shall not be liable for loss of, or damage to, any cargo or other property left, stored, loaded or transported in, upon, or by any Vehicle at any time or place.

**XXXVII. By adding a new Section 7.11, Disclaimer, to the end of the Section thereof:**

7.11 Disclaimer.

CONTRACTOR AND ITS PARTNERS SHALL NOT BE LIABLE FOR LOSS OF CITY'S PROFITS OR BUSINESS, LOSS OR DAMAGE TO CARGO, LOSS OR DAMAGE RESULTING TO CITY BY REASON OF DELAY IN DELIVERY OR FAILURE TO DELIVER PRODUCTS OWNED OR TRANSPORTED BY CITY, DRIVER'S TIME OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES.

**XXXVIII. Section 8.2, Conflict of Interest, is hereby amended to read as follows:**

In performing its services under this Agreement, Contractor will comply with its Code for Business Conduct, a copy of which the City acknowledges receipt. The person executing this Agreement on behalf of Contractor does not know of any interest of Contractor which would constitute a conflict of interest under Contractor's Code for Business Conduct or which would in any way hinder Contractor's performance of services under this Agreement.~~Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.~~

City warrants that no~~No~~ officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**XXXIX. Section 8.3, Covenant Against Discrimination, is hereby amended to read as follows:**

~~Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that it will comply with all applicable laws, rules and regulations regarding non-discrimination~~there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

**XL. Section 8.4, Unauthorized Aliens, is hereby amended to read as follows:**

Contractor hereby promises and agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such

liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**XLI. Section 9.1, Notices, is hereby amended to read as follows:**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either (i) served personally, or (ii) sent by (a) prepaid, certified first-class mail, return receipt requested, or (b) via national recognized overnight courier served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed given upon receipt or refusal for deliver if sent as provided in this Section communicated at the time personally delivered or in seventy two (72) hours from the time of mailing if mailed as provided in this Section.

**XLII. By adding a new Section 9.8, City's Obligations, to the end of the Section thereof:**

Section 9.8 City's Obligations.

City shall not cause or permit any person other than Contractor or persons authorized by Contractor to provide any Included Services for a vehicle and shall abide by Contractor's directions concerning emergency repairs. The City will cause its drivers to promptly report any substantial trouble concerning a vehicle and check oil and coolant levels in each vehicle on a regular basis. The City will return each vehicle to Contractor at the service location at 19646 S. Figueroa St., Carson, CA 90745, or as otherwise directed by Contractor, for performance of Preventative Maintenance Services (as defined in Exhibit "A"), at the intervals provided by Exhibit "D", and any other applicable Included or Additional Services at mutually agreed upon scheduled times. Vehicles shall be operated by safe, qualified, properly licensed drivers, who, for purposes of this Agreement only, shall conclusively be presumed to be City's agents, servants or employees, and subject to City's exclusive direction and control. Vehicles shall not be operated: (a) by a driver in possession of or under the influence of alcohol or any controlled drug, substance or narcotic, (b) in a reckless or abusive manner, (c) off an improved road, (d) on an underinflated tire, (e) with insufficient coolant or oil, (f) while improperly loaded or loaded beyond its maximum legal weight, or (g) in violation of any applicable laws, ordinances, or rules. City shall be responsible for all expenses for removing or towing any mired or snowbound Vehicle or a Vehicle that has been in an accident, with the exception of when a vehicle is in the sole care, custody and control of Contractor, whereupon Penske will shall be responsible."

**XLIII. By adding a new Section 9.9, Vehicle Maintenance and Warranty Records, to the end of the Section thereof:**

Section 9.9 Vehicle Maintenance and Warranty Records.

City shall make reasonable efforts to furnish to Contractor complete specifications and prior maintenance and warranty records of each Vehicle prior to its placement into service under this Agreement. City authorizes the manufacturer of each Vehicle to provide Contractor with all major component information of such Vehicle (including, without limitation, vehicle sales order data, but excluding any proprietary City specific pricing information). City acknowledges and agrees that Contractor will provide a copy of this authorization to the vehicle manufacturer, which manufacturer shall be entitled to fully rely on this authorization. City shall furnish or assign to Contractor all manufacturers' warranties applicable to the Included Services to be provided and shall reasonably assist Contractor in obtaining the benefits of such warranties. City hereby appoints Contractor to be City's attorney-in-fact for the sole purpose of making and pursuing warranty claims. In the event a manufacturer requires City to submit warranty claims directly, Contractor will provide the data to enable City to prepare and submit its own warranty claim form. All amounts paid by manufacturers to Contractor for warranty claims made pursuant to Included Services will be the property of Contractor upon submission to City of an itemized accounting of such amounts, and City will promptly advise Contractor of its submission of a warranty claim and remit the proceeds of any claim to Contractor if the proceeds are for Included Services performed by Contractor. All amounts paid by manufacturers to Contractor for warranty claims made pursuant to Additional Services will be credited against the City's invoice for the month immediately following the month Contractor receives such proceeds.

## **EXHIBIT "C"**

### **SCHEDULE OF COMPENSATION**

- I. Contractor shall perform the Services described in EXHIBIT "A" for the rates listed in EXHIBIT "C-1", with the following additions:**
- A.** The fixed monthly cost for preventative maintenance services per vehicle shall include all record keeping and reporting services provided for under this Agreement.
  - B.** The fixed labor rate for all corrective maintenance services performed by Contractor under this Agreement shall be \$84.00 per hour, and shall be charged at real time repair hours (no book rate or mark up).
  - C.** Invoicing for services provided shall be provided online and/or electronically at request of Contract Officer.
  - D.** For Additional Services provided by third parties hired by Contractor, Contractor will bill the City at the third party's invoice price plus a reasonable markup. Contractor will not perform Additional Services unless authorized in writing by City. Any Additional Services shall be provided in accordance with Section 1.8.
  - E.** A ten percent (10%) discount to Contractor's then-current pricing shall apply to all parts provided by Contractor to City in the performance of the services provided for under this Agreement.
  - F.** For each rise of at least one percent (1%) in the Consumer Price Index for All Urban Consumers for the United States published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index designated by Contractor, above the CPI figure applicable for each vehicle as of the effective date of this Agreement, the charges for such vehicle shall be adjusted upward based upon such percentage increase in the CPI. All increases under this subsection shall be cumulative and shall be calculated only on the charges initially shown on Exhibit C-1. Adjustments shall be implemented semi-annually on January 1 and July 1. Upon adjustment, the fixed charge and hourly labor charge shall be rounded off to the nearest whole cent and all adjustments in the basic mileage and refrigeration charges shall be rounded off to the nearest tenth of a mil. Any annual increase for fixed costs and/or hourly labor rates shall not exceed three percent (3%) annually based on the CPI.
- III. The City will compensate Contractor for the Services performed upon submission of a valid invoice, in accordance with Section 2.4. Each invoice is to include:**



- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
  - B. Line items for all materials and equipment properly charged to the Services.
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
  - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- IV. The total compensation for the Services shall not exceed \$39,756 per year, except as may otherwise be authorized by City, for a total not to exceed amount of \$119,268 for the three year term of this Agreement, except as may otherwise be authorized by City.**

**EXHIBIT "C-1"**

**FIXED MONTHLY PREVENTATIVE MAINTENANCE RATES**

Veh #	Year	Make	Description	Model	Gross Vehicle Weight	VIN	Category	Cost/Mo nth	Annual Preventive Maintenance
972	2002	FORD	AERIAL LIFT	F-750	33,000	3FDXF75H33MB02670	Aerial Lifts	\$ 299	\$ 3,588
1024	2003	FORD	AERIAL LIFT	F-750	30,000	3FDXF75823MB06158	Aerial Lifts	\$ 299	\$ 3,588
<b>Aerial Lifts Total</b>								<b>\$ 598</b>	<b>\$ 7,176</b>
1049	2004	GMC	DUMP TRUCK	C7500	30,000	1GDM7C1E74F510224	Heavy Duty	\$ 265	\$ 3,180
766	1997	INTERNATIONAL	DUMP TRUCK	2574	56,000	1HTGGAET2WH516165	Heavy Duty	\$ 265	\$ 3,180
914	2001	STERLING	DUMP TRUCK	LT9500	58,000	2FZHAZBD72AJ35443	Heavy Duty	\$ 265	\$ 3,180
970	2002	FORD	DUMP TRUCK	F-750	30,000	3FDXF75222MA04031	Heavy Duty	\$ 265	\$ 3,180
1379	2013	FREIGHTLINER	PATCH TRUCK	114SD	58,000	1FVHG3DX9EHFU1796	Heavy Duty	\$ 265	\$ 3,180
1392	2014	FREIGHTLINER	DUMP TRUCK	114SD	28,000	1FVAC4DX4EHFV4801	Heavy Duty	\$ 265	\$ 3,180
<b>Heavy Duty Total</b>								<b>\$1,325</b>	<b>\$ 15,900</b>
824	2000	ZIEMAN	TRAILER	2235	19,500	1ZCT27E24XZP21251	Trailers	\$ 75	\$ 900
877	2001	ZIEMAN	TRAILER	2235	19,500	1ZCE261ZP22055	Trailers	\$ 75	\$ 900
987	2002	HOLDEN	TRAILER	TD020	25,000	12HTD32233S109221	Trailers	\$ 75	\$ 900
988	2002	HOLDEN	TRAILER	TD020	25,000	12HTD32213S109220	Trailers	\$ 75	\$ 900
1414	2014	TRAILBOSS	TRAILER	DP302	57,120	4SODP3026E1003418	Trailers	\$ 75	\$ 900
<b>Trailers Total</b>								<b>\$ 375</b>	<b>\$ 4,500</b>
<b>Grand Total</b>								<b>\$2,563</b>	<b>\$ 30,756</b>

**ESTIMATED ANNUAL CORRECTIVE MAINTENANCE = \$ 9,000**

**ESTIMATED ANNUAL TOTAL COSTS = \$ 39,756**

**THREE YEAR NOT-TO-EXCEED COSTS = \$ 119,268**

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

- I. Contractor shall perform all Preventative Maintenance Services timely in accordance with the following schedule:**
  - A. Trucks and Aerial Lifts.** Contractor shall conduct preventative maintenance four (4) times per year (i.e., approximately every three months) on each City truck and each City aerial lift listed in Exhibit A, Section I(A).
  - B. Trailers.** Contractor shall conduct preventative maintenance two (2) times per year (i.e., approximately every six months) on each City trailer listed in Exhibit A, Section I(A).
- II. Contractor shall perform all corrective maintenance services timely upon written request by the Contract Officer or his/her designee, in accordance with a schedule to be developed by Contractor and subject to the written approval of the Contract Officer or his/her designee.**
- III. Contractor shall perform all services on schedule at least 95% of the time, subject to force majeure and the reasonable cooperation of the City.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**