

## WRECKER SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between Recovery Systems, Inc. DBA Pro Tow Wrecker Service (hereinafter the "Contractor") and **THE CITY OF LEWISVILLE, TEXAS** (hereinafter the "City").

WITNESSETH:

WHEREAS, the City is a home-rule municipality with the power and authority to regulate the storage, parking and towing of vehicles within its corporate city limits; and

WHEREAS, the City desires to enter into an agreement with a wrecker service to remove, at the request of the City, vehicles which (i) violate City ordinances; (ii) violate state law; (iii) otherwise need to be removed (including incident management tows); or (iv) must be towed and there is no request by the person in charge of such vehicles to utilize another provider of such service; and

WHEREAS, the City also desires to enter into an agreement with a wrecker service to operate and maintain a vehicle storage facility and to provide for the disposition of unclaimed stored vehicles; and

WHEREAS, Contractor maintains all required licenses and certifications of any kind in connection with commercial towing and vehicle storage, and shall, during the term of this Contract, meet any additional license or certification requirements for commercial towing and/or vehicle storage companies that may be imposed by any federal, state or local authority; and

WHEREAS, Contractor shall provide all labor, supervision, materials and equipment necessary for towing and wrecker service for the City, for the maintenance and operation of a vehicle storage facility and for the disposition of unclaimed stored vehicles.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Recitals.** That the above recitals are found to be true and correct and incorporated herein for all purposes.

**Section 2. Definition of Vehicle.** The term "vehicle" as used in this Contract means, but is not limited to, automobiles, trucks, trailer combinations, boats, mopeds, motorcycles, and other objects which cannot be operated under their own power if for some reason must be transported in the tow and/or control of another vehicle.

**Section 3. Grant of Rights.** The City hereby grants to Contractor, for a term set forth herein, the right to perform the following services:

- (1) Tow and remove, at the request of the City, vehicles which (a) violate City ordinances; (b) violate state law; (c) otherwise need to be removed (including incident management tows); or (d) must be towed and there is no request by the person in charge of such vehicles to utilize another provider of such service (collectively "City-directed pulls");
- (2) Operate and maintain a vehicle storage facility; and
- (3) Dispose of unclaimed stored vehicles.

**Section 4. Term.** The initial term of this Contract shall be a period of three (3) years commencing upon the effective date hereof; and will have an option to extend for up to two additional one-year periods, subject to the approval of the City and the contractor.

**Section 5. Suspension/Termination.**

A. The City may suspend its use of Contractor's services under this Contract by giving the Contractor one (1) written notice. Reasons for suspension may include, but are not limited to, unsatisfactory service on the part of Contractor and failure to perform according to the terms of this Contract on the part of Contractor.

B. The City may terminate this Contract with or without cause by giving Contractor thirty (30) days written notice.

C. Upon delivery of a notice of suspension or termination, Contractor shall continue to preserve and store vehicles already in its possession until all vehicles have either been properly claimed or auctioned. Contractor is entitled to payment for towing, preservation, storage and other fees allowed by law for those vehicles stored at the time of termination. The City shall have no further obligations to utilize Contractor after such termination.

**Section 6. Fees.**

A. All towing, storage, notification, and other fees shall be collected by Contractor. The City shall not participate, in any manner, in the collection of fees.

B. Contractor agrees that it shall not charge or seek to collect from the City, any fees or costs incurred by Contractor for the towing of City vehicles or vehicles seized by the City.

A. At all times, twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year, Contractor shall maintain personnel on duty who shall be able to respond to a City request for towing and wrecker service and to requests for release of vehicles stored and parked on Contractor's property.

B. Contractor shall respond to City-directed pulls by arriving at the location requested within twenty (20) minutes from the time the request for such service is received by Contractor or within forty-five (45) minutes when a heavy duty wrecker is required. Requests may be initiated by telephone or by electronic means as agreed to by Contractor and the City. The City retains the right to cancel a request for towing and wrecker service at any time, including after arrival, without incurring a charge. In addition, if the Contractor fails to arrive on the scene within the allotted time, a penalty of \$100 may be assessed at the City's discretion and the City reserves the right to call another towing vendor.

C. Contractor shall obey all traffic laws and ordinances when responding to or leaving from a City-directed pull unless directed otherwise by a peace officer.

D. Contractor shall not refer any calls to another wrecker service company. If Contractor is unavailable or unable to respond to the City's call for service in the time required or cannot upright or tow the disable vehicle, Contractor must advise the City, and the City will contact another wrecker service. At no time will Contractor subcontract any of the services outlined in this Contract, unless agreed to, in writing, by the City.

E. Contractor shall have the right to continue to provide towing and wrecker services to persons other than the City; provided, however, that calls and requests for towing and wrecker service made by the City shall have immediate and absolute priority over any other calls received.

F. Contractor shall remove and properly dispose of all glass, debris, or any other objects left in the roadway from an accident where a response has been made for services pursuant to this Contract. Contractor shall use sand or an oil absorbent material on areas where any fluids have leaked from wrecked vehicles.

G. Contractor shall tow, park, and store all vehicles in a safe, secure and workmanlike manner. Contractor shall be responsible for any damage to a vehicle towed by Contractor.

H. Contractor shall train all its responders and managers in Freeway Incident Management as provided by the North Central Texas Council of Governments.

I. The Contractor shall, during all periods of this Contract, make available competent supervision of employees to assure complete and satisfactory fulfillment of the work and the terms of this Contract. A capable, fully authorized representative of the Contractor must be available during all work activities to receive any and all instructions from the City.

J. Contractor agrees to tow City vehicles and perform road service, such as changing flat tires or jumping batteries, on City vehicles at no charge. Said towing and road service shall be provided at all times, twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year, within the City limits or a twenty-five (25) mile radius surrounding the City. The average response time for said towing or road service shall be no greater than thirty (30) minutes within the City limits and no more than forty-five (45) minutes outside the City. Mileage may be charged at rate of \$0.20 per mile for the transport of City-owned equipment beyond the twenty-five (25) mile radius.

K. Contractor agrees to waive all towing fees for any citizen of Lewisville whose vehicle is stolen and recovered in Lewisville. Contractor also agrees to waive all storage fees for said vehicle, provided that said vehicle is claimed within 24 hours of the tow. If said vehicle is not claimed within 24 hours of the tow, storage fees may begin to accrue (minus the first 24 hours).

L. Contractor agrees not to charge a fee for any mistaken tows initiated by the City such as for abandoned vehicles, no proof of insurance tows or seized vehicles.

M. The City may instruct the Contractor to release a vehicle at no cost for reasons determined by the City to better serve the public. Said no cost releases shall be limited to a maximum of three (3) per month.

N. Contractor shall not solicit any wrecker service business in any manner at the scene of a wrecked or disabled vehicle. This prohibition applies regardless of whether the solicitation is for the purpose of towing, repairing, wrecking, storing, trading or purchasing the vehicle. If Contractor has not been called by the City or owner/operator of a vehicle to the scene of an accident or disablement, its presence at the scene shall be prima facie evidence of solicitation in violation of this Contract.

O. Contractor shall comply with the instructions given by City personnel during City-directed pulls.

P. Failure to correct all conditions, discrepancies and/or problems not in compliance with the Contract within twenty-four (24) hours from written notice will result in a penalty, paid to the City, in the amount of \$200.00 per day.



Q. The Contractor agrees to pay the City a minimum of twelve and one half percent (12 1/2%) of gross revenue resulting from all City-directed pulls. Payments are due on or before the 10th day of each month. Gross revenues from City-directed pulls shall be defined as all revenues generated from performing City-directed pulls under this Contract, but excluding sales tax, requests for towing and wrecker service on City-owned vehicles and equipment, and state mandated pound and registered notice fees.

### **Section 9. Equipment.**

A. Contractor will maintain and have available for towing and wrecker service as required by this Contract the following equipment, as a minimum:

- (1) Three (3) wreckers with a minimum towing capacity of 4,000 pounds;
- (2) One (1) hydraulic wheel lift for towing late model vehicles;
- (3) Trailer and sling for towing motorcycles;
- (4) Dollies for towing damaged vehicles;
- (5) Two (2) tandem axle tow trucks with minimum 50,000 pound gross vehicle weight, with individual boom capacity of not less than 50,000 pounds and two individual hydraulic power winch pulling capacity of not less than 25,000 pounds each, and a total rating of not less than 50,000 pounds; and
- (6) Other equipment as may be needed from time to time, including vehicle mounted air compressors, portable air tanks, brooms, towing chains, electric winch, etc.

B. Contractor shall maintain and have available equipment to remove, within a reasonable time, a vehicle weighing up to forty (40) tons and to remove, within a reasonable time, a vehicle submerged within 100 feet of a shoreline.

C. Contractor must provide the City with a list of towing equipment to be used in the execution of this Contract including the make, mode of chassis, year, winch capacity, vehicle tonnage, and towing capacity. A copy of the title of each wrecker to be used shall be provided upon request.

D. Each side of each piece of equipment used to provide towing and wrecker service pursuant to this Contract shall clearly identify the name and telephone number of Contractor.

E. All equipment used to provide services outlined in this Contract shall be properly licensed, inspected and registered in accordance with federal, state and local law and shall remain in compliance with said laws.

**Section 10. Vehicle Storage Facility.**

A. Contractor shall maintain and operate a place for storage of vehicles towed pursuant to this Contract (hereinafter the "vehicle storage facility"). The vehicle storage facility shall be of sufficient size to accommodate all vehicles towed at the direction of the City under the terms of this Contract.

B. The vehicle storage facility shall be located within the corporate limits of the City of Lewisville, Texas. Contractor shall deliver all vehicles to and store such vehicles at said location, unless directed otherwise by the City.

C. The vehicle storage facility shall be maintained and kept in good condition and free from trash and litter. It must be fenced, adequately lighted, and secured in a manner reasonably designed to prevent loss by theft or criminal mischief.

D. Contractor shall provide a secure enclosed storage area for the purpose of storing and processing criminal evidence which shall only be accessible to the Lewisville Police Department.

E. Contractor shall provide the opportunity for vehicle owners to remove items from their vehicles and for appraisals and photographs by insurance agents, repair personnel and other authorized agents of the owners or of the City. There will be no charge for this service.

F. Contractor shall comply with applicable state laws and regulations concerning the operation of a vehicle storage facility, including, but not limited to, the requirements related to notifications and the release of vehicles from storage.

G. Contractor shall be responsible for release of all vehicles stored under this Contract, except for vehicles on which the City has placed a hold. Contractor shall be responsible for the preparation and processing of all vehicle storage facility release slips. No vehicle impounded shall be released to any person without written/printed proof of ownership and verification of the identity of the claimant.

H. When a vehicle is impounded by the City for evidentiary, seizure or examination purposes, towing, storage, impound or notification fees will not be charged to the owner or the City for the period of time that vehicle is held for said purposes.

Contractor will not release a vehicle held on behalf of the City for evidentiary, seizure or examination purposes until Contractor receives a release authorization from the City. The vehicle hold status release notification must indicate that the vehicle was held for evidentiary, seizure or examination purposes in order for Contractor not to charge the person to whom the vehicle is being released.

#### **Section 11. Auction Services.**

A. Any vehicle removed and impounded pursuant to this Contract may be sold at public sale in accordance with state law.

B. Contractor is to act as the City's agent for the auctioning of abandoned vehicles, including vehicles reported to the Lewisville Police Department as abandoned, in accordance with state law.

C. Contractor shall follow all notification and administrative procedures required by state law. Specifically, Contractor shall be responsible for the preparation, publication, posting, mailing costs and dispatch of all notices and advertisements required by law to be given or provided by the Lewisville Police Department and/or Contractor as agent for the Lewisville Police Department, or as operation of the City designated vehicle storage facility with respect to the impoundment, storage, release, destruction, auction, sale and disposal of any junked vehicle, abandoned motor vehicle or other vehicle impounded at the vehicle storage facility at the direction of the City.

D. If, after following all state laws, rules, regulations and procedures for proper notification of the last known owner, all lienholders, or other parties required by law to be notified, the vehicle is determined abandoned, then the vehicle may be sold either at public auction by Contractor or used by the Lewisville Police Department, as provided by state law.

E. Contractor shall arrange and be responsible for all auctions of vehicles, including, but not limited to, paying the on-line auction firm. All auctions shall be performed on-line by an auctioneer licensed by the State of Texas and shall be conducted in accordance with state law. Only those vehicles towed at the request of the City will be auctioned through this process. All on-line auction transactions shall be recorded and available for review for a period of five years after sale.

F. The Lewisville Police Department shall issue a sales receipt for auctioned vehicles for those vehicles towed at the request of the City and determined to be abandoned.

G. Within 72 hours after the auction, Contractor must submit to the Lewisville Police Department the auction sales receipts for signature and an affidavit setting forth an itemized list of all the vehicles sold at auction, including, but not limited to, the date of impound, year/color/make/model of vehicle, license number, vehicle identification number and sale amount. The affidavit must affirm the accuracy of the sales receipts provided to the Lewisville Police Department for signature.

H. Contractor shall pay the City twenty-five percent (25%) of the gross proceeds from the sale of each vehicle auctioned on behalf of the City, plus an additional ten (10) dollars for each vehicle auctioned on behalf of the City.

I. When final disposition on an impounded vehicle is completed, Contractor will forward copies of all related paperwork to the City, attention Chief of Police. Related paperwork includes a copy of the impound form, the release information, notifications, advertisement, auction sales receipts, Buyer's Guide, odometer statements and demolisher motor vehicle receipts.

## **Section 12. Call Rotation**

A. In the event that more than one wrecker service enters into a contract with the City, the companies will be placed on a call rotation established by the Chief of Police or his designee.

B. In cases where multiple vehicles are to be towed from the same scene, the towing company whose turn it is in the rotation will be responsible for towing all vehicles. It will be the responsibility of the towing company to advise the Lewisville Police Department immediately upon notification of the call if it does not have the sufficient assets available to respond within the specified time limits to tow all vehicles involved. In such cases, the towing company up next in the rotation will be notified to respond to tow the additional vehicle(s).

## **Section 13 Records and Audit.**

A. Contractor will maintain a complete and updated records file of all vehicles towed at the request of the City.

B. Contractor shall submit to the City, attention to the Chief of Police, a monthly report by the fifteenth day of the subsequent month. The report shall contain at least the following information related to all vehicles towed pursuant to this Contract:

- (1) The year, make and model of the vehicle;
- (2) The vehicle identification number;
- (3) The license plate number;
- (4) The year and state of registration;
- (5) The date, time, and location that the vehicle was towed;
- (6) The reason the vehicle was towed;
- (7) The police report number, if any;
- (8) Whether the vehicle has been claimed or remains in Contractor's possession;
- (9) The odometer reading;
- (10) A copy of Contractor's invoice regardless of the location to which the vehicle was towed; and
- (11) A description and reason for any tow charge, other than the flat fee.

C. Contractor shall retain and maintain all business records related to the services provided pursuant to this Contract for a period of five (5) years.

D. Contractor agrees to allow the City to inspect and audit all records relative to the towing, storage and sale of vehicles at any reasonable time. Contractor shall make its records available for viewing or copying within 48 hours of receipt of a written request by the City. The audit will be at the City's expense. If discrepancies are found during the audit, the cost of the audit will be borne by Contractor.

E. Contractor shall file a report with the City, attention to the Chief of Police, within two (2) business days of any of the following occurring:

- (1) Contractor exceeds the response time set forth herein;
- (2) Contractor's equipment is in poor condition or is inoperable;
- (3) Contractor's employee(s) is/are disrespectful to the Lewisville Police Department or the general public;
- (4) A complaint is filed against Contractor; or
- (5) A commendation is filed with Contractor.

Contractor shall make a timely response to all complaint or commendation letters, and a copy of the response shall be sent to the City, attention to the Chief of Police.

#### **Section 14. Protection to Employees and the Public.**

A. Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify the City for any and all losses arising out of or related to breach of this duty by Contractor pursuant to Section 16 (Indemnification) and Section 19 (Compliance with Applicable Laws) set forth herein.

B. Contractor shall be responsible for any damage caused to the vehicle or equipment, and its contents, towed or stored by Contractor.

C. If it is necessary to disconnect, alter, or remove any part, gear, or emergency brake of the vehicle before towing, Contractor will, on termination of the tow, repair, replace or reaffix it to place the vehicle back in its original condition prior to the tow at Contractor's expense.

D. Contractor shall not remove or sell parts, dismantle or sell the vehicle, fix or otherwise modify the vehicle unless prior written permission from the owner of the vehicle is received.

#### **Section 15. Independent Contractor.**

By execution of this Contract, the City and Contractor do not change the independent contractor status of Contractor. Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between the City and Contractor, its officers, agents, employees, contractors, subcontracts and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between the City and Contractor.

#### **Section 16. Indemnification.**

A. Contractor shall release, defend, indemnify and hold the City and its officers, agents and employees harmless from and against all claims, damages, injuries (including death), property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from Contractor's performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible



(hereinafter "Claims"). Contractor is expressly required to defend the City against all such Claims.

B. In its sole discretion, the City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligations hereunder to defend and indemnify the City, unless such right is expressly waived by the City in writing. The City reserves the right to provide a portion or all of its own defense; however, the City is under no obligation to do so. Any such action by the City is not to be construed as a waiver of Contractor's obligation to defend the City or as a waiver of Contractor's obligation to indemnify the City pursuant to this Contract. If Contractor fails to retain counsel within a timely period, the City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by the City.

**Section 17. Assumption of Liability.** Contractor assumes complete responsibility for any claim of property loss, damage or bodily injury which may directly or indirectly rise from Contractor's performance under the term of this Contract.

**Section 18. Insurance.** Contractor shall procure and maintain for the duration of the Contract insurance coverage as set for in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. A certified statement of insurance shall be provided to the City by Contractor's insurer. If at any time Contractor fails to maintain the minimum insurance requirements, this Contract will be subject to termination. Contractor shall maintain proof of such insurance and shall furnish current proof to the City upon request. Contractor shall follow all processes as required by law, including any changes to the law that occur during the Term or extension(s), if any, of this Contract.

#### **Section 19. Compliance with Applicable Laws**

A. Contractor shall at all times observe and comply with all federal, state and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and shall indemnify and save harmless the City against any claim related to or arising from the violation of any such laws, ordinances and regulations whether by Contractor, its employees, officers, agents, subcontractors, or representatives. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify the City in writing.

B. Contractor shall follow all processes as required by law, including any changes to the law that occur during the term or extension(s), if any, of this Contract.

**Section 20. Taxes.** Contractor shall render all of its property used to provide services pursuant to this Contract for taxation and shall not be delinquent on its taxes due to the City.

**Section 21. Notices.** All notices required under this Contract shall be as follows:

To City:           Chief of Police  
                      Lewisville Police Department  
                      P.O. Box 299002  
                      Lewisville, Texas 75029-9002

To Contractor:

Such notices shall be deemed served when deposited in United States mail, postage prepaid, addressed as stated above. Any party may change the address to which notices are to be sent by giving the other party written notice in the manner provided in this paragraph.

**Section 22. Assignment and Subletting.** Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of the City, and that no part or feature of the work will be sublet to anyone objectionable to the City. Contractor further agrees that the subletting of any portion or feature of the work, materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to the City as provided by this Contract.

**Section 23. Governing Law.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Denton County, Texas, and that exclusive venue shall lie in Denton County, Texas.

**Section 24. Entire Agreement.** This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**Section 25. Legal Construction.** If any clause, paragraph, section, subsection, sentence phrase, or word of this Contract shall be found by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the remainder of this Contract shall remain in full force and effect, and the parties hereto shall be

deemed to have contracted as if said clause, paragraph, section, subsection, sentence, phrase, or word had not been in the Contract initially.

Although this Contract is drafted by the City, should any part be in dispute, the parties agree that the Contract shall not be construed more favorably for any party.

**Section 26. Successors and Assigns.** This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**Section 27. Headings.** The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract to be effective from the last date signed and marked by a participating party.

SIGNATURE PAGE(S) FOLLOW

APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS:

BY:

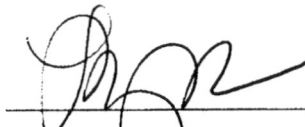
  
Donna Barron, CITY MANAGER

DATE: 8-16-16

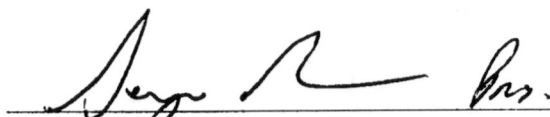
ATTEST:

  
Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

  
Lizbeth Islas Plaster, CITY ATTORNEY

CONTRACTOR

 DATE: 7-11-16  
Name, TITLE  
George Green, President  
Recovery Systems Inc.  
DBA Pro Tow Wrecker Service

## **EXHIBIT A**

### **CITY OF LEWISVILLE FEE SCHEDULE FOR WRECKER SERVICE**

#### **FEES AND CHARGES FOR CITIZENS SERVICES:**

#### **FLAT RATE**

The flat rate includes all costs of recovery, such as the use of dollies, winching, car carriers, rollovers and all fuel surcharges as may be applicable.

- |  |           |
|--|-----------|
| A. Flat rate charge for towing vehicles<br>weighing 10,000 lbs. GVW and below          | \$ 150.00 |
| B. Flat rate charge for towing vehicles<br>weighing between 10,001 and 26,000 lbs. GVW | \$ 192.00 |
| C. Flat rate charge for towing vehicles<br>weighing 26,001 lbs. GVW and over           | \$ 465.00 |
| D. Flat rate charge for towing motorcycles   | \$ 150.00 |
| E. Per hour charge for labor<br>(pro-rated on ½ hour increments) *                     | \$ 120.00 |

#### **STORAGE FEES**

Storage fee, which is charged per day, beginning with the calendar day the vehicle is towed. Each additional calendar day begins at 12:00 midnight. The fee charged is to be in accordance with the Occupations Code.

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS** **GENERAL CONTRACTS FOR SERVICES**

Service work, supplies requiring installation, Janitorial Services, Welding, Surveyors, Plumbing Contractors, Maintenance Agreements, Concessionaires, Tire Repairs, Tow Service, Painting, Electrical, Movers, Major street repairs and Waterline projects, etc.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the vendor's bid.

#### **A. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (Ed 10 01) covering Comprehensive General Liability "Occurrence" form only, "claims made" form is unacceptable except for professional liability.
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.

#### **B. MINIMUM LIMITS OF INSURANCE**

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for:
  - a. Premises – Operations
  - b. Broad Form Contractual Liability
  - c. Products and Completed Operations
  - d. Personal Injury
  - e. Broad Form Property Damage
  - f. If applicable, Explosion Collapse and Underground (XCU) Coverage (when applicable, Fire Damage, Medical Expense)

***NOTE: The aggregate loss limit applies to each project.***



2. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Risk Manager or designee.

**C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductible or self-insured retentions must be declared to and approved by the City.

**D. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.
  - b. The vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
  - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Workers' Compensation and Employer's Liability Coverage  
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.
3. All Coverages  
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City.

**E. ACCEPTABILITY OF INSURERS**

The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard and Poors.

**F. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind

coverage on its behalf. Certificates of Insurance similar to the ACCORD Form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**G. HOLD HARMLESS AND INDEMNIFICATION**

Contractor agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of these terms and conditions or by any negligent or strictly liable act or omission of Contractor, its officers, agents, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of the Contractor and the City, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**H. PROOF OF INSURANCE**

Contractor is required to submit proof of insurance on a form acceptable to the City of Lewisville. Certificates of Insurance similar to the ACCORD form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. City, at its own discretion, may require a copy of any policy presented to the City.