APPENDIX C
LIQUIDATED DAMAGES

I. DEFINITIONS:

"Failure" or "Fail" shall refer to functionality described under the third column heading “Description of Failure” that falls short of the specified “Threshold for LD Assessment”, located in the fourth column. The following items are excluded from the definition of Failure:

1. Unavoidable delays.
2. Failures that are solely caused by the negligent actions or inactions of SFMTA/ City departments or its contractors or subcontractors.
3. Failure of third-party providers of electrical power, internet access or cellular communications.

II. LIQUIDATED DAMAGES:

The SFMTA may deduct a sum representing the liquidated damages assessed from any money due to Contractor under this Agreement. Should an assessment take place, the SFMTA will send written notification to the Contractor for its information. Excess liquidated damages (over a monthly cap) will be carried over to the following month.

If two or more Failures are determined for a particular event, the Contractor will be charged for the Failure with the highest assessment.

Where, under the provisions below, SFMTA is required to issue a written warning after the first Failure to the Contractor prior to assessment of liquidated damages, the Contractor’s obligation to repair, replace, correct, adjust, or modify a Failure shall not commence until the date SFMTA issues such written warning. The written warning shall include a reasonable description of the nature of the Failure as known to SFMTA at the time. Any extensions to the cure period must be authorized by the SFMTA in writing.

Where, under the provisions below, SFMTA is not required to issue a written warning to Contractor prior to assessment of liquidated damages, SFMTA, as soon as practicable after the Failure, will send a written notice of assessment to Contractor, setting forth a reasonable description of the nature of the Failure, as known to SFMTA at the time, and the amount of the assessment.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
Appendix A - Section II: Service Requirements					
1	II.F.2.a	The Contractor Fails to provide 16 hours of completed employee customer service training for all employees including subcontractors that interact with the public.	The Contractor does not submit the required training completion certificates within 30 days of the first anniversary of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one month to cure. If no cure, the assessment will be $225 per week until certificates are received.	Verification by Certificates
2	II.F.2.b	The Contractor Fails to provide annually four hours of completed customer service "refresher" training to its employees in each subsequent contract year.	The Contractor does not submit the required training completion certificates annually within 30 days of each subsequent anniversary of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure. If no cure, the assessment will be $225, per week until certificates are received. Additional Failures will be assessed at $225 for each occurrence the Failure occurs, with no written warning.	Verification by Certificate

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
3	II.F.3.a	The Contractor Fails to provide an electronic queueing system for the Customer Service Center.	Queueing system is not in place by the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until system is in place and fully functional.	Written confirmation and demonstration
4	II.F.4.a	The Contractor Fails to provide a dedicated telephone land line to the SFMTA Tow Desk.	Land line not provided as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until the phone line is available and fully functional.	Verification with Tow Desk

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
5	II.F.4.a.iii	The Contractor does not provide sufficient telephone operators to service Customers.	Less than 95% of Customers reach a live operator within three minutes of request; and less than 98% of Customers reach an operator within five minutes of request, within a calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If the Failure is not cured, the assessment will be $225. Any further Failures, after the first occurrence, will be assessed at $225 for each month the Failure occurs, with no written warning.	Call Volume Report
6	II.F.4.b.i	The Contractor Fails to establish and maintain one customer service phone line with an Interactive Voice Response (IVR) system that the public may call for information regarding towed vehicles	IVR system is not in place by the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If the Failure is not cured, the assessment will be $225 per week until system is in place.	Call number

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
7	II.F.4.d.ii	The Contractor Fails to keep time-stamped audio recordings for the length of time required.	Audio recordings for the previous 120 days prior to request are not available.	The SFMTA will issue a written warning for the first occurrence. Should the Failure occur a second time, the assessment will be $600. Further Failures will be assessed at $600 per occurrence, with no written warning.	Spot check by requesting audio
8	II.F.4.d.iii	The Contractor Fails to provide time stamped audio recordings to the SFMTA within the time required.	Audio recording is not received by the SFMTA within 48 hours of a request.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one day (not including weekends and holidays) to cure. If no cure, the assessment will be $600, with an additional $225 per week not received. Further Failures will have no written warning, and will be assessed at $600 with an additional $225 per week not received ,	Spot check by requesting audio

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
9	II.F.5.a	During Peak Tow Hours, the Contractor will have a sufficient number of trained staff at the Customer Service Center to open up to six windows to the public	Less than six trained staff available to open windows to the public during Peak Tow Hours once or more within one calendar month, unless approved in writing by the SFMTA.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next month. If no cure, the assessment will be $225. Further Failures will be assessed at $225 for each month the Failure occurs, with no written warning.	Spot Check or Video Review.
10	II.F.5.b	The Contractor Fails to provide window service to Customers within the time required.	Wait for service is longer than ten minutes once or more within a calendar month, unless all six service windows are open.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $225. Further Failures will be assessed at $225 for each month the Failure occurs, with no written warning.	Customer Queue Report/ Spot Checking

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
11	II.F.6.c-d	The Contractor Fails to provide a customer service manager (or authorized supervisor) as required.	No one available during Peak Service Hours Or Customer service manager does not attend to line when more than eight people are queued.	The SFMTA will issue a warning for the first occurrence. Further Failures will be assessed at $600 per occurrence, with no written warning.	Customer complaint to SFMTA and/or spot checking
12	II.F.7	The Contractor Fails to provide required posting or receipt information.	Contractor does not make available to Customers all posting and/or receipt information as described in Appendix A – Scope of Work Sections referenced in column 1.	The SFMTA will issue a warning for the first occurrence. Further Failures will be assessed at $225 per occurrence, with no written warning.	Customer complaint to SFMTA and/or spot checking
13	II.F.8	The Contractor Fails to create and maintain a website that provides general information to the Customer within the time required.	Website, as specified in scope of work is not available as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until the website is in place and fully functional.	Written Verification and SFMTA attempts to access website

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
14	II.G.1.a	The Contractor Fails to provide a Global Positioning Tracking System (GPS) within the time required.	GPS is not operational as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until system is in place and fully functional.	Written verification/ SFMTA accesses GPS software
15	II.G.2.c	The Contractor Fails to ensure that GPS recorded arrival location and the tow vehicle operator location are identical for 95% of the tows during a calendar month.	Less than 95% of GPS recorded arrival location and tow vehicle operator location are identical during a calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $600. Further Failures will be assessed at $600 for each month the Failure occurs, with no written warning.	GPS Tracking Report and Vehicle Intake Report

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
16	II.G.3.b.1	The Contractor Fails to provide a list of approved wireless handheld communications devices to Tow Truck Operators within the time required.	List not issued as of the date specified in the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until devices are distributed to all Tow Truck Operators.	Written confirmation that handhelds were distributed/confirm with Enforcement.
17	II.H.1.c	The Contractor Fails to respond to light and medium duty tow requests, with the appropriate equipment to the designated point of tow, within the applicable time limit for 90% of the requested tows.	No response within 35 minutes during Peak Towing Hours, within 25 minutes at any other time or within 10 minutes of the time designated for initiating a pre-scheduled tow with one calendar month; once or more during one calendar month	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $600. Further Failures will be assessed at $600 for each month, with no written warning.	Tow Response Report/Enforcement Notification

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
18	II.H.1.c	The Contractor fails to maintain an average response time to tow requests, with the appropriate equipment to the designated point of tow	The average response time is greater than an average of 22 minutes within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $600. Further Failures will be assessed at $600 for each month, with no written warning.	Tow Response Report/Enforcement Notification
19	II.H.1.d	The Contractor Fails to respond, to heavy duty tow requests, with the appropriate equipment to the designated point of tow within the applicable time limit.	Failure to respond to at least 90% of heavy duty tow requests within 90 minutes for both Peak and Non-Peak Tow times within one fiscal year.	No warning letter will be issued. Assessment will be $600 per incident.	Tow Response Report/Enforcement Notification

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
20	II.H1.e	The Contractor fails to provide notification to the Tow Desk if a late arrival time is anticipated.	Failure to provide electronic notification of an updated arrival time five minutes before response time deadline for late arrivals for at least 98% of late tows within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $600. Further Failures will be assessed at $600 for each month the Failure occurs, with no written warning.	Tow Response Report/Enforcement Notification
21	II.H.1.e.i	The Contractor Fails to respond to tow requests from SFMTA's Tow Desk.	Failure to respond within 30 seconds or less for at least 95% of the requests, and failure to respond within 90 seconds for at least 98% of requests within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $225. Further Failures will be assessed at $225 for each month, with no written warning.	Tow Desk Notification/ Tow Response Report

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
22	II.H.1.e.ii	The Contractor's Central Dispatch Fails to assign a tow request within the time required.	Failure to assign a Request to a Tow Firm within five minutes, or directly to a Tow Truck Operator within ten minutes of receipt of request from the SFMTA's Tow Desk, at least98% of the time within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $225. Further Failures will be assessed at $225 for each month, with no written warning.	Tow Desk Notification/ Tow Response Report
23	II.H.2.a	The Contractor Fails to prioritize Expedited Tow requests above all other tow requests.	An expedited tow request not given priority.	the SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $600 for each occurrence with no written warning.	Enforcement or SFPD Notifications

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
24	II.H.4.b	The Contractor Fails to respond to Peak Tow Hour requests for City-owned vehicles within 35 minutes, and to Non-Peak Tow Hour requests for City-owned vehicles within 25 minutes	Contractor shall respond within the designated times for no fewer than 95% of requests within one calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $600. Further Failures will be assessed at $600for each month, with no written warning.	Tow Response Report/Enforcement Notification
25	II.H.6	The Contractor Fails to provide tow service for light and medium tow requests during Peak Tow Hours, within 120 minutes, resulting in an extended delay.	Tow not provided within 120 minutes.	The SFMTA will issue a written warning for the first occurrence. Future occurrences result in an assessment of $600 per incident.	Enforcement or SFPD notification or periodic check by Contract Monitor.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
26	II.I.1.a-c	The Contractor Fails to meet timing requirements for tow request and tow completion input into the TVMS within the required time or percentage minimum.	**a.** A record of each dispatched tow request must be is created in the TVMS within five minutes of receiving the request. **b.** Record of the tow completion must be created in the TVMS within 15 minutes of the vehicle arriving at the Primary Storage Facility. **c.** These requirements must be met in 95% of all tows within a calendar month.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one month to cure by meeting the requirement in the next monthly report. If no cure, the assessment will be $225. Further Failures will be assessed at $225 for each month, with no written warning.	Vehicle Intake Report (modified for monthly summary)
27	II.I.2.b	The Contractor Fails to provide the DMV with VIN data and to request vehicle ownership information.	More than 24 hours elapse after receiving notification from DMV of VIN and license plate mismatch before alerting SFPD.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $600 per occurrence, with no written warning.	Spot check/Waiver Report

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
28	II.I.4.a	The Contractor fails to photograph any damage observed on a vehicle prior to handling the vehicle.	Photo(s) not available .	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $225 per occurrence, with no written warning.	Notification from Agency requesting image or Contract Monitor
29	II.I.4.b.c	The Contractor Fails to provide electronically-stored images within the time requested.	Images not provided within one business day of an authorized City agency's request.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one day (excluding weekends and holidays) to cure. $600, with an additional $225 per week not received. Further Failures will have no written warning, and will be assessed at $600 with an additional $225 per week not received , with no written warning.	Notification from Agency requesting image

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
30	II.I.5.g.i	The Contractor Fails to have electronic vehicle inventory and vehicle locator systems at both Primary and Long-Term Storage Facilities.	System is not operational as of the date specified in the Notice to Proceed	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until system is in place and fully functional.	Notification by Contract Monitor
31	II.J.1.a-b	The Contractor releases, sells disposes or otherwise loses possession of or is unable to locate a towed vehicle, and the Customer files a Claim against the Contractor.	**a.** The Contractor does not resolve the Claim within 60 days of initiation by the Customer; or. **b.** The Contractor does not notify the SFMTA within 72 hours when a vehicle loss occurs due to the circumstance referenced occurs.	No warning letter will be issued. Assessment will be $1,200 per incident.	Monthly Monetary Claims report; Customer complaint

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
32	II.J.4.e	The Contractor Fails to retrieve a vehicle for an authorized Customer from the Long-Term Storage Facility (LSF) within the time required.	A vehicle is not returned to Customer(s) within one hour after the Customer(s) pays the fees required for vehicle release.	The SFMTA will issue a written warning for the first occurrence. The second Failure will be assessed at $600. Further Failures will be assessed at $600, with no written warning.	Customer Complaint and SFMTA verification
33	II.J.5.a	The Contractor releases a vehicle on Police Hold without written or electronic authorization (through the TVMS) from the SFPD.	No threshold.	No warning letter will be issued. Assessment will be $1,200 per incident.	SFPD notification/Vehicle Release Report
34	II.J.5.b	The Contractor releases a vehicle with five or more unpaid citations (scofflaw).	No threshold.	No warning letter will be issued. Assessment will be $1,200 per incident.	Citation/Hearing compliant/Vehicle Release Report
35	II.J.6.d	The Contractor releases personal items from a vehicle on Police Hold.	No threshold.	No warning letter will be issued. Assessment will be $1,200 per incident.	Customer notification

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
36	II.J.7.f.i	The Contractor sells vehicle(s) to an individual prohibited by the City from purchasing vehicles at Auction.	No threshold.	No warning letter will be issued. Assessment will be $1,200 per incident.	SFPD notification
37	II.J.7.f.vi	The Contractor Fails to support the Contract Monitor with quarterly audit of Auctions.	No threshold.	The SFMTA will issue a written warning for the first occurrence. The Contractor shall have until the next audit period to cure. If no cure, the assessment will be $1,200. Further Failures will be assessed at $1,200, with no written warning.	Written verification/request to review audit
38	II.K.1.b	The Contractor Fails to respond to and resolve Customer's Monetary Claim within the time required.	Does not respond to a Claim within 14 days of receipt, and/or does not resolve a claim within six months of receipt.	$600 per incident. The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $600 per occurrence, with no written warning.	Customer notification/ Claim/Complaint Report

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
39	II.K.3.b	The Contractor Fails to respond to Customer's Service Complaint within the time required.	Does not respond to a Service Complaint within seven days receipt.	$600 per incident. The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $600 per occurrence, with no written warning.	Customer notification/Claim/Complaint Report
Section III: Staffing					
40	III.A.2	The Contractor Fails to apply appropriate signage to tow trucks as described in this section.	No threshold.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $225 per occurrence, with no written warning.	Customer complaint or SFMTA staff observation.
41	III.A.3.a.b	The Contractor Fails to make available electronic copies of all Tow Firm subcontractor agreements to the SFMTA	Tow Firm agreement or insurance copies are not made electronically available to the SFMTA within seven days of signed agreement.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $225 per occurrence, with no written warning.	Periodic audit by Contract Monitor.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
42	II.A.5.b	The Contractor Fails to make available electronically annual confirmation of the validity of Tow Firm and Tow Truck Operator licenses and permits.	Annual confirmation is not made available to the Contract Monitor.	The SFMTA will issue a written warning for the first occurrence. Further Failures will be assessed at $225 per week until compliance.	Periodic audit by Contract Monitor
43	III.B.1	The Contractor Fails to rotate auctioneers annually or as mutually agreed by the SFMTA and Contractor.	No threshold.	No warning letter will be issued. Assessment will be $600 per incident.	Periodic audit by Contract Monitor
Section IV: TVMS					
44	IV.A.4	TVMS availability	The Contractor's TVMS System is not operational or available at least 98% of the time within a given calendar month, except in the case of an Unavoidable Delay	The SFMTA will issue a written warning for the first occurrence. For all future Failures, the assessment will be $1,200 per incident.	Notification from Enforcement, or any SFMTA staff requiring access to the TVMS.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
45	IV.C.1	The Contractor Fails to integrate the TVMS to the SFPD's CAD system.	Integration not complete within 90 days of agreement by the Contractor and City on an interface design and joint project plan	The SFMTA will issue a written warning. The contractor shall have one week to cure. If no cure, the assessment will be $225 per week until the system is in place.	Notification by SFPD or Contract Monitor.
46	IV.E	The Contractor fails to integrate the TVMS to the SFMTA's handheld citation issuance devices.	Integration not complete within 90 days of agreement by the Contractor and City on an interface design and joint project plan	The SFMTA will issue a written warning. The contractor shall have one week to cure. If no cure, the assessment will be $225 per week until the system is in place.	Notification by SFPD or Contract Monitor.
47	IV.D.2	The Contractor Fails to electronically scan and file tow inventory slips and cross-reference the scanned slip to the matching TVMS record of tow in a timely manner.	Process not complete within eight hours of vehicle arriving at the towing facility.	The SFMTA will issue a written warning for the first occurrence. For all future Failures, the assessment will be $225 per incident.	Notification by Customer or SFMTA staff when looking for towed vehicle data.

Item #	Section	Description of Failure	Threshold for LD Assessment	Potential Assessment	Mechanism for Review
48	IV.I.1	The Contractor Fails to integrate its TVMS system with the SFMTA's citation processing system.	TVMS is not integrated within 90 days of agreement between the Contractor and the SFMTA on an interface design and joint project plan.	The SFMTA will issue a written warning. . The Contractor shall have one week to cure. If no cure, the assessment will be $225 per week until devices are distributed to Tow Truck Operators.	Written confirmation/verification by checking system
Section VI. Operations Manual					
49	VI.	The Contractor Fails to provide any plan element draft required for the Operations Manual, as described in Appendix A Section VI.	Plan element is not provided within 60 days of the Notice to Proceed.	The SFMTA will issue a written warning. The Contractor shall have one week to cure. If no cure, the assessment will be $600 per week the plan element draft is received.	Notification by Contract Monitor
Section VII. Fees, Deposits and Handling of Monies					
50	VII.4.	The Contractor fails to administer waiver and reimbursement policies as described in the Transportation Code, Division II, Section 305.	None.	There will be no written warning. The Assessment will be the amount waived, reimbursed incorrectly or in violation of SFMTA policies, plus $1,200 per incident.	Notification by Contract Monitor.