

COUNCIL MEETING  
September 15, 2009

Honorable Mayor and Members  
of the Torrance City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: Police – Approve an Amendment to the Contract Services Agreement with Van Lingen Towing, Inc. to extend the term of the Agreement through September 16, 2011. Expenditure: Not applicable.**

**RECOMMENDATION**

Recommendation of the Chief of Police that the City Council approve an Amendment to Van Lingen Towing, Inc. Agreement to extend the term of the Agreement through September 16, 2011.

**Funding**

Not applicable. The City of Torrance incurs no specific costs for this contract. Services provided by the towing company are the responsibility of the vehicle owners.

**BACKGROUND / ANALYSIS**

A Contract Services Agreement (C2006-181) was entered into by the City of Torrance and Van Lingen Body Shop, DBA Van Lingen Towing, on September 16, 2006. The original Agreement was for a three-year term, effective through September 16, 2009. Under the terms as set forth in "AGREEMENT", ITEM #2, at the City's option, the term of the Agreement may be extended for a period not to exceed two years under the same terms and conditions.

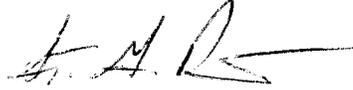
Because of the continuing need for the services provided under the Agreement, and the fact that the Police Department is and has been satisfied with the level of service provided by Van Lingen Towing, it is the desire of the Police Department to avail itself of the provision for the extension of the Agreement for two additional years.

If the Amendment to the Agreement is approved by Council, in all other respects, the Agreement dated September 16, 2006 between the City of Torrance and Van Lingen Towing is ratified and reaffirmed and will be in full force and effect. Further, if approved by Council, and unless earlier terminated in accordance with provisions of the

original Agreement, the Amendment to the Agreement will continue in full force and effect until September 16, 2011.

Respectfully submitted,

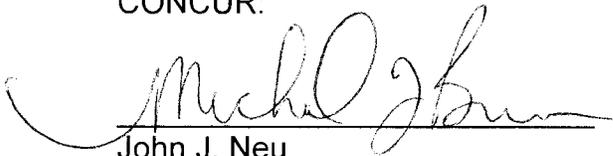
JOHN J. NEU  
CHIEF OF POLICE



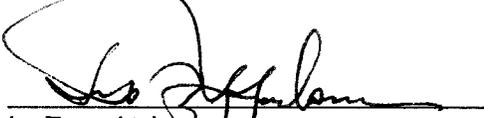
*For* By

Lieutenant Ross Bartlett  
Services Division Commander

CONCUR:



John J. Neu  
Chief of Police



LeRoy J. Jackson  
City Manager

Attachment A: Agreement Amendment  
Attachment B: Agreement, C2006-181

**AMENDMENT TO AGREEMENT C2006-181**

This Amendment to Agreement is made and entered into as of September \_\_, 2009, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Van Lingen Towing, Inc., a California Corporation ("CONTRACTOR").

**RECITALS:**

- A. CITY and CONTRACTOR entered into an Agreement on September 16, 2006, whereby CONTRACTOR agreed to furnish vehicle towing and storage services for the City of Torrance Police Department on an "as-needed basis."
- B. The CITY is satisfied with the level of service provided by CONTRACTOR.
- C. Both parties wish to amend the contract to extend the term from September 16, 2009 to September 16, 2011.

**AGREEMENT:**

- 1. Paragraph 2, "TERM," is amended to read in its entirety as follows:

**"2. TERM**

Unless earlier terminated in accordance with Paragraph 5 below, this Agreement will continue in full force and effect from the Effective Date through September 16, 2011.

- 2. In all other respects, the Agreement dated September 16, 2006, between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE  
a Municipal Corporation

Van Lingen Towing, Inc.  
a California Corporation

\_\_\_\_\_  
Frank Scotto  
Mayor

By: \_\_\_\_\_  
Robert G. Van Lingen, President

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

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

**CONTRACT SERVICES AGREEMENT**

This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of September 16, 2006 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Van Lingen Towing, Inc., a California Corporation ("CONTRACTOR").

**RECITALS:**

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to furnish vehicle towing and storage services for the City of Torrance Police Department on an "as-needed basis."
- B. In order to obtain the desired services, the CITY has circulated its Request for Proposal to furnish vehicle towing and storage services for the Torrance Police Department on an "as-needed basis," RFP No. **B2006-33** (the "RFP"); and
- C. CONTRACTOR has submitted a Proposal in response to the Request for Proposal. In its Proposal Response CONTRACTOR represents that it is qualified to perform those services requested in the RFP. Based upon its review of all Proposals submitted in response to the RFP, the CITY is willing to award the contract to CONTRACTOR.

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**AGREEMENT:**

**1. SERVICES TO BE PERFORMED BY CONTRACTOR**

CONTRACTOR will provide the services and those materials listed in CONTRACTOR's Proposal submitted in response to the RFP. A copy of the RFP is attached as Exhibit A. A copy of the RFP Response is attached as Exhibit B.

**2. TERM**

Unless earlier terminated in accordance with Paragraph 5 below, this Agreement will continue in full force and effect for three years from the Effective Date. At the City's option the TERM of the Agreement may be extended for a period not to exceed two years under the same terms and conditions set forth in this Agreement.

**COPY**

### 3. ADDITIONAL SERVICES

The CITY has the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the RFP or make changes by altering, adding to or deducting from the work. No extra work may be undertaken unless a written order is first given by the CITY, incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement. Any increase in compensation of 10 percent or less of the Agreement Sum, or in the time to perform of 180 days or less, may be approved by the City Representative. 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 paragraph do not apply to services specifically set forth in the RFP or reasonably contemplated in the RFP. CONTRACTOR acknowledges that it accepts the risk that the services to be provided pursuant to the RFP may be more costly or time consuming than CONTRACTOR anticipates and that CONTRACTOR will not be entitled to additional compensation for the services set forth in the RFP.

### 4. TERMINATION OF AGREEMENT

#### A. Termination without Cause.

Either party may terminate this Agreement at any time, without cause, upon 30 days' written notice to the other party. Upon receipt of the notice of termination, the CONTRACTOR must immediately cease all work or services except as may be specifically approved by the CITY. CONTRACTOR will be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for additional services specifically authorized by the CITY. The CITY will be entitled to reimbursement for any expenses that have been paid for but not rendered.

#### B. Termination for Cause.

If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the non defaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR

and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of RFPs; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the City determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or

hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of such cause for failure to perform.

**6. RETENTION OF FUNDS**

CONTRACTOR authorizes the CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONTRACTOR's acts or omissions in performing or failing to perform CONTRACTOR's obligations 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 exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

**7. THE CITY'S REPRESENTATIVE**

The Police Chief is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

**8. CONTRACTOR REPRESENTATIVES**

The following principals of CONTRACTOR are designated as being the principals and representatives of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Robert G. Van Lingen  
President

**9. INDEPENDENT CONTRACTOR**

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

**10. BUSINESS LICENSE**

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

**11. OTHER LICENSES AND PERMITS**

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

**12. FAMILIARITY WITH WORK**

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) 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 set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

**13. CARE OF WORK**

CONTRACTOR must 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 other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

**14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

**15. INDEMNIFICATION**

CONTRACTOR will indemnify, defend, and hold harmless the CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, bodily injury, death, personal injury, or property loss or damage arising from or related to acts or omissions of CONTRACTOR, its officers, employees, agents, subcontractors or vendors, or in connection with the performance by CONTRACTOR, its officers, employees, agents, subcontractors or vendors, of its services, except for liability resulting solely from the negligence or willful misconduct of the CITY, its officers, employees, or agents. Payment by the CITY is not a condition precedent to enforcement of this indemnity.

**16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES**

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

**17. INSURANCE**

- A. (1) Automobile Liability, including owned, non-owned and hired vehicles with at least \$1,000,000 in combined single limits per occurrence.
- (2) General Liability including coverage for premises, products and completed operations, independent contractors and vendors, and contractual obligations with combined single limits of at least \$1,000,000 per occurrence.
- (3) Garage keepers Legal Liability with limits of at least \$200,000 per occurrence.
- (4) On-Hook coverage of at least \$50,000 per vehicle.

- B. The CITY, the City Council, the CITY's officers and employees must be named as additional insureds under the automobile and general liability policies.
- C. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
- D. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to the CITY.

**18. SUFFICIENCY OF INSURERS AND SURETIES**

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. 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 any insurance policies and/or performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation,

auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or RFP.

20. **NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
- (1) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  - (2) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
  - (3) Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
  - (4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
  - (5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for the purpose of giving notice are as follows:

CONTRACTOR: Robert G. Van Lingen  
Van Lingen Towing  
2755 Lomita Blvd.  
Torrance, CA 90505  
Fax: (310) 326-9973

CITY: City Clerk  
 City of Torrance  
 3031 Torrance Boulevard  
 Torrance, CA 90509-2970  
 Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other.

**22. INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

**23. INTERPRETATION**

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

**24. SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

**25. TIME OF ESSENCE**

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

**26. GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

**27. COMPLIANCE WITH STATUTES AND REGULATIONS**

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

**28. WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

**29. ATTORNEY'S FEES**

In any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

**30. EXHIBITS**

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

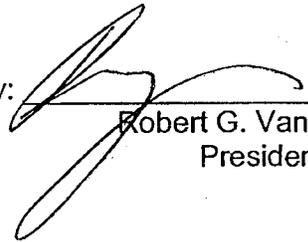
**31. CONTRACTOR'S AUTHORITY TO EXECUTE**

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR 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 the CONTRACTOR is bound.

CITY OF TORRANCE,  
a Municipal Corporation

Van Lingen Towing, Inc.  
A California corporation

  
\_\_\_\_\_  
Frank Scotto  
Mayor of the City of Torrance

By:   
\_\_\_\_\_  
Robert G. Van Lingen  
President

ATTEST:

  
\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By:   
\_\_\_\_\_  
Ronald T. Pohl  
Assistant City Attorney

Attachments:    Exhibit A:    RFP  
                         Exhibit B:    RFP Response