

United States v. City of El Paso, Texas; United Road Towing, Inc. d/b/a UR Vehicle Management Solutions; and Rod Robertson Enterprises, Inc.
(W.D. Tex., No. 3:23-cv-00044-LS)

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE CITY OF EL PASO, TEXAS**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America, through the Department of Justice (“United States”), and Defendant The City of El Paso, Texas (“El Paso” or “the City”). The United States and El Paso are referred to herein as the “Parties.”

II. RECITALS

2. This Agreement resolves the claims and causes of action against El Paso asserted in the United States’ lawsuit, *United States v. City of El Paso, Texas; United Road Towing, Inc. d/b/a UR Vehicle Management Solutions; and Rod Robertson Enterprises, Inc.*, No. 3:23-cv-00044-LS, filed in the United States District Court for the Western District of Texas on February 20, 2023, alleging violations of the Servicemember Civil Relief Act, 50 U.S.C. §§ 3901-4043 (hereinafter “the Civil Action”).

3. The Civil Action alleges that El Paso engaged in a pattern or practice of violating the Servicemembers Civil Relief Act (“SCRA”) by enforcing storage liens on the property of servicemembers during periods of military service, or within ninety (90) days thereafter, without first obtaining court orders. Specifically, the United States alleges that El Paso contracted first with Defendant Rod Robertson Enterprises, Inc. (“RRE”) and then with Defendant United Road Towing, Inc., d/b/a Vehicle Management Solutions (“URT”) as its agents to conduct vehicle storage and auction operations at the El Paso Police Department Municipal Vehicle Storage

Facility (“VSF”), where motor vehicles impounded by the El Paso Police Department are stored. The United States further alleges that, pursuant to those contracts, RRE and URT, as agents of El Paso, auctioned, sold, or otherwise disposed of servicemembers’ motor vehicles without first obtaining court orders, in violation of Section 3958 of the SCRA.

4. El Paso is a municipality organized and existing under the laws of the State of Texas. Its agencies and departments are governed by the provisions of the Charter of the City of El Paso 1986 (2022 ed.).

5. The Parties agree that it is in the public’s best interest that the allegations in the Civil Action against El Paso should be resolved without further litigation.

6. To avoid the delay, uncertainty, and expense of protracted litigation, and in consideration of the mutual promises and obligations set forth the below, the Parties agree and covenant to the following material terms and conditions:

III. STATEMENT OF CONSIDERATION

7. In consideration of, and consistent with, the terms of this Agreement, the Parties will file a Joint Stipulation of Dismissal of the United States’ claims against El Paso in the Civil Action, as set forth in Paragraph 30. The Parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

The Parties agree and covenant as follows:

A. Prohibited Conduct and Affirmative Obligation

8. In accordance with Section 3958 of the SCRA, for the duration of this Agreement, El Paso and its agents, employees, and contractors shall not foreclose on or enforce liens on the

vehicles, property, or effects of any SCRA-protected servicemember;¹ and shall not auction, sell, or otherwise dispose of vehicles or property owned by any SCRA-protected servicemember, during any period of military service or within ninety (90) days thereafter, without a court order or a waiver under a written agreement as provided in 50 U.S.C. § 3918.

B. Compliance with the SCRA and Policies and Procedures

9. On June 21, 2024, the City amended its Abandoned Auto Unit Operations Manual² to include the policies and procedures in Paragraphs 12 and 13 regarding training of the Abandoned Auto Unit employees on the SCRA and requiring contractor compliance with the SCRA. Those updated policies are online and available to review at https://elpaso.municipalcodeonline.com/book?type=publicpolice#name=Chapter_3:_Training, and

https://elpaso.municipalcodeonline.com/book?type=publicpolice#name=Chapter_8:_Auctions.

10. The City will maintain and implement the following SCRA policies and procedures throughout the term of this Agreement:

- (a) **Abandoned Auto Unit Operations Manual Updates:** El Paso’s Abandoned Auto Unit Operations Manual includes, and shall continue to include for the

¹ For purposes of this Agreement, the term “SCRA-protected servicemember” includes a member of a reserve component who is ordered to report for military service. In accordance with 50 U.S.C. § 3917(a), a member of a reserve component who is ordered to report for military service is entitled to SCRA protections during the period beginning on the date of the member’s receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, on the date on which the order is revoked).

² Under Texas law, a motor vehicle is considered “abandoned” if it has been parked illegally on public property or left unattended on a public road for more than 48 hours; is inoperable, more than five years old, and left unattended on public property for more than 48 hours; or has remained on private property without the owner’s consent for more than 48 hours. Tex. Transp. Code § 683.002.

duration of this Agreement, a requirement that training for the Unit's employees will include compliance with the SCRA. Any third party that conducts vehicle storage and auction operations on El Paso's behalf ("Contractor") must at all times comply with the requirements of the SCRA. The Manual also includes, and shall continue to include for the duration of this Agreement, a section with a heading, "COMPLIANCE WITH SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)," which states: "Before approval of any vehicle to be released for auction, the Contractor is required to fully comply with all research, contact, and other requirements of the SCRA, as it may be amended, to ensure that no vehicle is sold without meeting all current requirements of the SCRA. The Contractor shall notify El Paso in writing for each auto that the Contractor followed all requirements of the SCRA regarding such vehicle. No vehicle that does not have the Contractor's confirmation of compliance with the SCRA shall be allowed to go to auction. El Paso's Property and Evidence Supervisor will perform monthly audits on all vehicles before they are allowed to be sold at auction. The audit will also identify vehicles that may be auctioned once all compliance criteria are met."

- (b) **Contracts to require Contractor compliance with the SCRA:** The City's contractual language with Contractors concerning SCRA compliance will be included in any Request for Proposals for the operation and maintenance of the VSF ("RFP"). When an RFP is drafted, but before issuance, the City will forward it to counsel for the United States for prompt review and comments. The United States shall have fourteen (14) calendar days from receipt of the RFP to raise any objections.

(c) **City's RFPs and Contracts:** When such RFP is issued, the City's relevant RFPs and contracts for the disposition of abandoned autos will include a provision in substantially the following language: "COMPLIANCE WITH SERVICEMEMBERS CIVIL RELIEF ACT (SCRA): The Contractor shall at all times comply with the requirements of the SCRA, as may be amended, applicable to the towing, impoundment, and sale of motor vehicles. The Contractor shall have in place or adopt policies and procedures for compliance with the SCRA that include at least the following requirements:

(1) To determine whether the owner is an SCRA-protected servicemember, the Contractor shall: (i) review any information they have received from the owner(s) or from a third party for evidence of military service (e.g., statements about military service, APO/FPO addresses or addresses located on a military installation); (ii) examine the vehicle and its contents for evidence of military service (e.g., military paperwork, uniforms or equipment, military registration stickers or insignia); and (iii) search the Defense Department's Defense Manpower Data Center ("DMDC") database, located at <https://scra.dmdc.osd.mil/>, for evidence of SCRA eligibility by either last name and social security number or last name and date of birth. In cases where a social security number of an owner is not readily available, the Contractor shall use the owner's name and address to conduct a search on a commercially available public records database to obtain the owner's social security number, or if a social security number cannot be found, the owner's date of birth. When searching the DMDC by social security number or date of birth, if the Contractor is aware of

any last name variants or aliases (e.g., maiden names, hyphenated or composite surnames, or variant spellings) used by the owner, the Contractor shall run a separate DMDC search for each name variant or alias.

(2) If the Contractor determines that an owner is a servicemember in military service or has left a period of military service within the past ninety (90) days, the Contractor (or its agents, including its attorneys, contractors, and vendors) shall not foreclose on or enforce the lien against the servicemember's vehicle or property without first obtaining a court order allowing them to do so.

(3) If the Contractor pursues a storage lien action in court and the SCRA-protected owner fails to answer the action, before seeking a default judgment, the Contractor shall file an affidavit of military service with the court prepared in accordance with 50 U.S.C. § 3931(a) and (b) of the SCRA. Before seeking entry of default, the Contractor will search the DMDC database and review information in its possession, custody, or control to determine if the borrower is SCRA-protected. The DMDC Status Report must have been run no more than two (2) days prior to the date when the request for default judgment is made in the case. If the Contractor learns that a registered owner is SCRA-protected, the Contractor will file an affidavit stating that "the defendant is in military service," attaching the most recent military status report from the DMDC or a copy of the military orders or other documentation to the affidavit.

(4) If the Contractor initiates and pursues a waiver under a written agreement as provided in 50 U.S.C. § 3918, the Contractor must initiate the waiver process with the servicemember at least thirty (30) calendar days in

advance of enforcing any storage lien by sending a notice and a copy of the proposed waiver to the servicemember. To the extent the Contractor exercises this right, the Contractor shall use a notice in the form attached as Appendix A.

(5) The Contractor shall notify El Paso in writing for each motor vehicle that the Contractor followed all requirements of the SCRA regarding such motor vehicle, including provisions (1)-(4). No vehicle that does not have the Contractor confirmation of compliance with the SCRA shall be allowed to go to auction.”

- (d) **Contractor contracts to include requirements for continuing education on SCRA compliance.** El Paso’s relevant contracts will require a provision mandating that all Contractor employees, agents, and subcontractors providing services to the VSF will conduct annual training on El Paso’s SCRA policies and procedures. Any Contractor employees, agents, or subcontractors newly assigned to the VSF shall receive such training within thirty (30) calendar days of such assignment. The Contractor will provide El Paso with an annual certification of compliance with this provision.

11. If, at any time during the term of this Agreement, El Paso proposes to substantively change its SCRA policies and procedures, it shall first provide a copy of the proposed changes to counsel for the United States. A “substantive change” is one that alters the City’s or its contractor’s procedures for SCRA compliance. If the United States does not deliver written objections to El Paso within thirty (30) calendar days of receiving the proposed changes, the changes may be implemented. If the United States makes any objections to the proposed

changes within the thirty (30) day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved.

C. SCRA Compliance Training for City Employees

12. During the term of this Agreement, El Paso shall provide annual SCRA compliance training to the employees in its Abandoned Auto Unit, including the Property and Evidence Supervisor (“covered employees”), as part of its regular training program, as outlined in the Abandoned Auto Unit Manual. The City conducts its training program through a comprehensive online platform, which allows the City to track and monitor employees’ compliance with training requirements. The City’s Performance Office will prepare the training materials and collect employee data and acknowledgments upon completion of training. SCRA compliance training shall include: (a) training on El Paso’s SCRA policies and procedures; and (b) when to elevate SCRA issues to supervisors and the City’s legal department. El Paso shall also provide SCRA compliance training to any new covered employee at the same time as any other training required of such employee. Any expenses associated with the trainings required by this Paragraph shall be borne by El Paso.

13. The City will work with the United States to develop the curriculum and materials for such training, consistent with the existing training format and best practices utilized by the training professionals within the Performance Office. At least thirty (30) days before the training date, the City shall submit its training curriculum and materials to the United States. The United States shall have thirty (30) calendar days from receipt of these documents to raise any objections to the training materials. If the United States does not deliver written objections to El Paso within thirty (30) calendar days of receiving the documents, the training may be implemented.

14. The City represents that all existing employees in the Abandoned Auto Unit have already received SCRA training and updates on compliance with the SCRA.

15. In the course of its training, El Paso shall obtain an acknowledgment through its training system from all applicable employees that they received the SCRA compliance training required under the Manual.

E. Civil Penalty

16. Within ninety (90) calendar days after the effective date of this Agreement, El Paso shall cause to be paid \$20,000 to the United States Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) to vindicate the public interest. The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States. Defendant RRE has agreed to pay this amount pursuant to the indemnification provisions in its contract with the City.

F. Additional Reporting and Recordkeeping Requirements

17. For the duration of this Agreement and in compliance with Texas law establishing recordkeeping requirements applicable to Texas municipal corporations, El Paso shall retain all records relating to its obligations hereunder, including records with respect to the auction and disposal of vehicles and personal property and all records relating to compliance activities as set forth herein, in the manner and for the duration required under state law, and in accordance with existing City of El Paso recordkeeping and retention practices, and in no circumstances for less than the term of this Agreement. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request.

18. During term of this Agreement, El Paso shall notify counsel for the United States in writing promptly upon receipt of any SCRA or military-related complaint. El Paso shall

provide a copy of any written complaints with the notifications. Whether regarding a written or oral SCRA or military-related complaint, the notification to the United States shall include the full details of the complaint, including the complainant's name, address, telephone number, and email address, and the full details of all actions El Paso took to resolve the complaint. El Paso shall also promptly provide the United States all information that it may reasonably request concerning any such complaint and shall inform the United States in writing within sixty (60) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to El Paso's actions, the Parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review.

V. SCOPE OF SETTLEMENT AGREEMENT

19. The provisions of this Agreement shall apply to the City of El Paso and its agents and employees.

20. This Agreement releases and discharges the City of El Paso, its agents, and employees from liability for the violations of Section 3958 of the SCRA for auctions of motor vehicles conducted at the EPPD Vehicle Storage Facility through the date of approval of this Agreement.

21. Nothing in this Agreement excuses or avoids El Paso's compliance with any currently or subsequently effective provision of law or order of a regulator that imposes additional obligations on El Paso under the SCRA.

22. The Parties agree that this Agreement is the compromise of disputed claims and is not to be construed as an admission of liability by El Paso, and that El Paso denies liability.

23. Nothing in this Agreement affects, settles, or compromises the claims of the City against Defendants RRE or URT for their contractual defense and indemnification obligations.

Unless otherwise provided herein, where written notice to the United States is required by this Agreement, notice shall be provided via email to counsel for the United States. Similarly, unless otherwise provided herein, where written notice to El Paso is required by this Agreement, notice shall be provided via email to El Paso's City Attorney and counsel of record.

VI. IMPLEMENTATION AND ENFORCEMENT

24. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action. If the Parties are unable to resolve their differences informally, they will participate in mediation before a mutually agreeable mediator.

25. If the Parties are unable to reach a resolution after following the procedure described in Paragraph 24, the United States may bring a civil action for breach of this Agreement, or any provision thereof, in the United States District Court for the Western District of Texas. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. The Parties consent to and agree not to contest the jurisdiction of this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.

26. Failure by the Parties to enforce any provision of this Agreement shall not operate as a waiver of the Parties' right or ability to enforce any other provision of this Agreement.

VII. TERMINATION OF LITIGATION HOLD

27. The Parties agree that, as of the effective date of this Agreement, further litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, the Party is no longer required to

maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations imposed by this Agreement.

VIII. DURATION, EXECUTION, AND OTHER TERMS

28. This Agreement is effective on the date of the signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall constitute an acceptable, binding signature for purposes of this Agreement.

29. The duration of this Agreement shall be in effect for a period of two (2) years from its effective date.

30. Within fifteen (15) calendar days after the City provides proof to the United States of the payment to the United States of the Civil Penalty as set forth in Paragraph 16, the Parties shall file a Joint Stipulation of Dismissal of the underlying claims in the Civil Action against the City pursuant to Rule 41(a)(1)(A)(2).

31. Any time limits for performance imposed by this Agreement may be extended by the mutual written agreement of the Parties.

32. Except as to the cross-actions of the City against Defendants RRE and URT, each party shall be responsible for its own legal and other costs incurred in connection with this matter, including the preparation, negotiation, and performance of this Agreement.

33. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

34. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

35. This Agreement, including Appendix A, constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

36. This Agreement is governed by and shall be interpreted under the laws of the United States.

37. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

38. This Agreement is binding on the Parties and their agents and employees.

39. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

40. This Agreement is a public document. Both Parties consent to the United States' disclosure of this Agreement and information about this Agreement, to the public and to the City's issuance of public statements about this litigation and the subject matter hereof, subject to any applicable privacy laws.

41. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected

thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

42. This Agreement may be modified only with the written consent of the Parties. Any modifications must be in writing and signed by the Parties through their authorized representatives.

Dated: August 26, 2025

For the United States:

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For the City of El Paso:

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KARLA M. NIEMAN

City Attorney

APPENDIX A

IMPORTANT NOTICE TO MILITARY PERSONNEL ABOUT YOUR RIGHTS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT

Attached to this notice you will find a waiver of rights and protections that may be applicable to you under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.* (the “SCRA”). The SCRA provides military personnel and their dependents with a wide range of legal and financial protections. Among other benefits and protections, the SCRA:

- Prevents cities, their agents, and contractors from selling or disposing of a servicemember’s vehicle or property without a court order during any period of active duty or for 90 days thereafter;
- Requires that a court review and approve any action by a city, its agent, or its contractor to foreclose or enforce a lien on the property or effects of any protected servicemember;
- Allows the court to postpone the proceeding for a period of time as justice and equity require, or to adjust the obligation to the city, its agent, or its contractor in light of the servicemember’s military service; and
- Requires that the court appoint an attorney to represent any servicemember who does not make an appearance in the case.

If you choose to sign the attached waiver, the City of El Paso may auction or dispose of your vehicle and property without having a court review and approve its actions. If you do not sign this waiver, the City of El Paso will not be able to sell or dispose of your vehicle or property without having a court review and approve of its actions.

Before waiving these important statutory rights, you should consult an attorney regarding how best to exercise your rights and whether it is in your interest to waive these rights under the conditions offered by the City of El Paso.

For More Information:

- **CONSULT AN ATTORNEY:** To fully understand your rights under the law, and before waiving your rights, you should consult an attorney.
- **JAG / LEGAL ASSISTANCE:** Servicemembers and their dependents with questions about the SCRA should contact their unit’s Judge Advocate, or their installation’s Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil>.
- **MILITARY ONESOURCE:** “Military OneSource” is the U.S. Department of Defense’s information resource. Go to <http://www.militaryonesource.com>.

**AGREEMENT AND WAIVER OF RIGHTS UNDER
SERVICEMEMBERS CIVIL RELIEF ACT**

I _____ am a Servicemember OR the duly authorized agent or attorney-in-fact of _____, a Servicemember, pursuant to a power of attorney dated _____, and I am aware that I have protections available to me under the Servicemembers Civil Relief Act (SCRA). These include, but are not limited to, the right not to have a city or any agent or contractor acting on behalf of a city sell or dispose of my vehicle or personal property without a court order.

By signing this waiver, I acknowledge and agree that:

- I have read and understood the attached **IMPORTANT NOTICE TO MILITARY PERSONNEL**.
- I am waiving my right to have a court review and approve the sale or disposal of my vehicle, a [YEAR] [MAKE] [MODEL] [VIN] (the "Vehicle") and its contents by the City of El Paso in accordance with 50 U.S.C. § 3958.
- In exchange for waiving these SCRA rights, the City of El Paso and its contractors have agreed to waive their right to recover any deficiency balance, towing or storage charges, or other fees relating to the towing or impoundment of the Vehicle.
- This waiver is made voluntarily, without coercion, duress, or compulsion. I understand the terms of this waiver of rights, and acknowledge that I was advised to consult with an attorney regarding this waiver and the protections afforded by the SCRA.

Subject to the above provisions, I hereby waive and give up any right I may have to have a court review and approve the sale or disposal of the Vehicle and its contents. I authorize the City of El Paso and its agents and contractors to auction or dispose of my Vehicle and its contents in accordance with applicable state law.

Dated: _____

By: _____
Signature

Print Name