

CITY TOW OPERATION FRANCHISE AGREEMENT

I. PARTIES AND EFFECTIVE DATE

This **CITY TOW OPERATION FRANCHISE AGREEMENT** ("Agreement") is made between the **CITY OF LAKE ELSINORE**, a California municipal corporation with offices located at 130 South Main Street, Lake Elsinore, California 92530 ("City"), and **DIAMOND VALLEY TOWING**, a Towing Company licensed to conduct business in the State of California located at 424 ½ Main St., Lake Elsinore, California 92530 ("Franchisee"). City and Franchisee are sometimes collectively referred to as "Parties." All references to City include its elected officials, officers, directors, employees, agents, and volunteers. All references to Franchisee include its personnel, employees, agents, and contractors.

This Agreement is dated July 1, 2022 for reference purposes only. This Agreement will not be effective until the date on which this Agreement has been executed by the Parties authorized officials ("Effective Date"). This Agreement supersedes any prior written agreement between the Parties.

II. RECITALS

A. Franchisee is a Towing Company.

B. Pursuant to California Vehicle Code section 12110(b), City has the authority to grant franchises to companies that provide certain police towing services and to collect a fee in connection therewith, provided the fee does not exceed the amount necessary to reimburse the City for its actual and reasonable costs incurred in connection with administering its police towing program.

C. On June 28, 2022, pursuant to Resolution No. 2022- , the City granted to Franchisee a non-exclusive franchise for City tow operations in accordance with Lake Elsinore Municipal Code Chapter 12.14 ("Chapter 12.14").

D. The purpose of this Agreement is to: (i) set forth the rights and responsibilities of the Parties with respect to a non-exclusive franchise for towing operations; (ii) prescribe the basic regulations for the operation of the City of Lake Elsinore ("City") and Lake Elsinore Police Department ("Police Department") towing service in emergency situations and in the removal of vehicles that are abandoned, involved in an accident, or constitute an obstruction to traffic because of mechanical failure, and; (iii) in accordance with Chapter 12.14, provide a fair and impartial means of distributing requests for towing services among qualified franchises, and to ensure that such service is prompt and reasonably priced, and in the best interests of the public as well as the interest of efficient policing operations for the removal of such vehicles from public streets.

E. The City hereby engages Franchisee to provide Towing Services as provided herein. Franchisee shall have, throughout the term of this Agreement, the nonexclusive right to engage in the business of providing towing services to the City within the boundaries of City as they now exist, and within any territory the City hereafter annexes, except to the extent that towing services within such territory annexed would be

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unlawful or violate the legal rights of another person. Franchisee acknowledges that the City places no maximum on the number of City-generated tows that Franchisee may be required to provide in any time period, the City is not obligated to provide Franchisee with a minimum number of City-generated tows during any time period.

III. TERMS

1.0 Municipal Code Incorporated. The terms of Chapter 12.14 are hereby incorporated by this reference. To the extent that the provisions of this Agreement are inconsistent with or vary from the requirements set forth in Chapter 12.14, the terms of Chapter 12.14 shall control.

2.0 Franchise Fees.

2.1. Franchisee shall pay to the City franchise charges and fees as determined by resolution of the City Council.

2.2. The City shall retain the right to impose alternative forms of taxes and/or fees in the event that the franchise fees provided for in this Agreement are no longer assessable due to a subsequent change in federal, state or local law.

3.0 Rotation system.

3.1 Franchisee shall provide towing service to the City pursuant to the rotation system established by the Chief of the Police Department (the "Police Chief"). All operators on the rotation list shall be required to be in compliance with Chapter 12.14. The City may request services from a franchised tow truck operator who is not on-call or who is not franchised under Chapter 12.14 in emergencies when the Police Chief or City Manager deems an emergency to exist.

3.2 Franchisee may be required by the Police Chief to contract with an approved telephone answering service at their sole cost and expense. If so required, this answering service will be responsible for rotating the franchised tow truck operators according to the rotation system established by the Police Chief.

4.0 Rates

4.1 Franchisee shall not charge rates greater than 115 percent of the schedule of rates for towing established by the California Highway Patrol (CHP) for the Riverside County Area. Such rates are determined by a competitive bid process and updated annually by CHP. As they are updated, the new rates will become the rates applicable under this Agreement. If the state highway patrol does not update fees yearly, the City may grant a yearly cost of living increase in accordance with the

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Consumer Price Index (CPI) established by the United States Department of Labor Bureau of Labor Statistics for the area of Los Angeles, Riverside, and Anaheim, California, published in April of the year in which the increase is requested. Requests for a CPI increase shall be made in writing to the Police Chief. The Police Chief shall review the request and make recommendations to the City Council as to whether or not increases should be granted.

4.2 The rate for towing shall be from portal to portal at a one hour minimum. Charges in excess of one hour may be charged in fifteen minute increments. There shall be no additional charges for mileage, labor, etc. Secondary towing requests by the customer may be negotiated by the official police towing service in accordance with his/her private business practices.

4.3 Rates for service calls (out of gas, lock outs, etc.) shall be from portal to the end of the service, and may be at the hourly rate with a thirty minute minimum. Charges in excess of thirty minutes may be charged in fifteen minute increments.

4.4 The total fees added for afterhours release shall be no more than one-half the hourly rate, and shall only be allowed if there is no person available at the storage facility for release and a call back is required.

4.5 Storage fees shall be charged by calendar day except that vehicles stored eight hours or less shall be charged no more than one day storage.

4.6 Maintain a sign listing the rates and charges for all towing and storage services offered. The schedule of rates charged by Franchisee shall be posted in the lobby of the tow truck companies. Additionally, rates shall be made available upon demand to persons for who the tow services were provided or his/her agent.

4.7 When a stored vehicle is not released and Franchisee disposes of the vehicle by a lien sale or junk slip, a copy of the lien sale document or junk slip will be submitted to the Office by Franchisee in lieu of the payment receipt/invoice normally received.

5.0 Conditions on Franchises. Pursuant to this Agreement, Franchisee shall:

- A.** Provide adequate storage for a minimum of twenty-five vehicles within City boundaries in accordance with the following standards of performance. If it is determined that twenty-five spaces is inadequate, the Police Chief may raise the minimum standard of spaces. This discretion applies to a specific Franchisee, since the actual capacity of each Franchisee will vary in accordance with the volume of overall business associated with each Franchisee;

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- B.** Vehicles are to be stored at properly zoned storage facilities within City limits. The storage facility must be manned twenty-four (24) hours a day if it is at a location other than the primary place of business.
- C.** The view to all automobiles in the lot must be obstructed from the roadway. No vehicles shall be left parked or stored on the public streets at any time.
- D.** Each stored vehicle shall be a minimum of two and one-half feet from any other vehicle, structure or object.
- E.** All stored vehicles shall be reasonably accessible to the vehicle's owner or vehicle's owner/agent and the Police Department for retrieval, inspection and/or identification. Vehicle owners shall be able to retrieve a stored vehicle within a reasonable period not to exceed one (1) hour.
- F.** At the request of the Police Department, the franchisee shall waive/reimburse the registered/legal owner of any vehicle towed pursuant to this section.
- G.** Franchisee is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. Vehicles stored outside shall be within an enclosed area with a minimum of a six-foot high fence topped with wire or some other security device. Security shall be adequate to preclude theft, vandalism, or damage by activity while in the Franchisee's establishment.
- H.** Respond to Police Department calls 24 hours a day, seven days a week, within 20 minutes or another maximum response time as established by the Police Chief. Franchisee will advise the Police Department dispatch, at the time of notification, if they are either unable to respond or unable to meet the maximum response time. If, after accepting the call, the Franchisee is unable to respond or will be delayed in responding, the Franchisee shall immediately notify Central Dispatch. In the event of a delay, the Police Department has the authority to elect to contact another franchisee for service. Franchisee shall not assign calls to other franchises and shall not respond to a Police Department call assigned to another Franchisee unless requested to do so by the Police Department. There may be

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times when a driver, who was not called to a scene, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and a Police Officer requests his/her assistance in clearing the roadway. In such a case, the driver may be requested to move the vehicle to a safe location, as directed by the Officer, and leave it. There shall be no charge for this assistance, and the assistance provided shall not change the Franchisees' place in the rotation.

- I.** The Police Department may, at its sole discretion, contact the next tow operator on the rotation list when the Franchisee:
 - 1. Fails to answer the phone;
 - 2. Is unable to provide a service;
 - 3. Is unable to respond; or
 - 4. Is canceled due to excessive responsive time.
- J.** Post a tag on the windshield of all cars ordered impounded by the Police Department. In addition to posting a tag on the windshield of the car, Franchisee may also affix temporary markings on the car windshield.
- K.** Not release any vehicles ordered towed by the Police Department unless released at the direction of the Police Department. The Police Department will provide Franchisee with appropriate regulations including updates to these regulations as they occur.
- L.** When called from the rotation list by the Police Department, respond to the call and pick up all vehicles that have been involved in an accident or a traffic violation, unless the vehicles are needed for criminal evidence or the owner or someone designated by the owner is present and is capable of removing a vehicle or calling a tow company of his or her choice to remove a vehicle; provided the street can be cleared for safe public use with reasonable dispatch. Additionally, the tow operator will provide cleanup services at traffic collision sites excluding biohazard materials.
- M.** Furnish each owner of an automobile impounded by the tow truck operator with a fully itemized billing.
- N.** Record their time "in" and their time "out" on every tow truck assignment. Such records shall be available and open to Police Department examination.

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- O.** Not respond to any rotational call with a tow truck that has not been inspected by the California Highway Patrol. All new tow truck vehicles shall be inspected before being placed into service. The designated agency (California Highway Patrol) may conduct inspections without notice during normal business hours.
- P.** Have a schedule of rates available upon demand in all vehicles at all times.
- Q.** Have an attendant on call capable of responding to Police Department requests for towing services, twenty-four hours a day, seven days a week. An answering service may fulfill this requirement.
- R.** Maintain minimum operating hours for storage facilities of Monday through Friday, 8:00 a.m. to 5:00 p.m., except holidays.
- S.** The Police Department reserves the right to inspect all drivers, vehicles and their mechanical condition, equipment and yards. The Police Department also reserves the right to require that all towing vehicles be inspected by an automotive professional certified by the State of California Bureau of Automotive Repair, and selected by the Police Department. All vehicle inspection fees shall be borne solely by Franchisee. Franchisee is responsible for arranging an annual vehicle inspection to the extent required by the California Highway Patrol. Any towing vehicle that fails an inspection shall not be used to provide towing service in the City, until it is repaired and passes reinspection.
- T.** Obtain and produce upon request proof of Workers' compensation, Commercial liability and Commercial automobile/truck insurance of not less than \$1,000,000 combined single limits for each type. Said policies shall be endorsed to state that coverage shall not be reduced, suspended, voided or canceled by either party during the term of the franchise.
- U.** All vehicles stored or impounded as a result of towing services requested by the Police Department or City, shall be made available to the owner of these vehicles or his representative, an authorized insurance agent, insurance adjustor, or body shop or car dealer, for the purpose of estimation or appraising damages, except vehicles with a Police Hold/Impound.

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- V.** All vehicles stored or impounded as a result of tow services regulated by the City or Police Department shall be towed directly to an official storage facility unless the Police Department or other person legally in charge of the vehicle requests that it be taken to some other location.
- W.** Upon approval of the Police Department, Franchisee may release personal property from an impound vehicle at the request of the vehicle owner or their agent. There shall be no charge for the release of personal property during normal business hours. Franchisee may charge an afterhours release fee for property released after normal business hours.
- X.** Equip all towing vehicles with the auxiliary equipment required for vehicles towing for the California Highway Patrol, in accordance with Attachment "C" of the State of California, Department of California Highway Patrol Tow Service Agreement (CHP 234 (REV. 1-98) OPI 061), or any successor Tow Service Agreement.
- Y.** Comply with all applicable federal, state and local regulations for providing towing service.
- Z.** Submit a report regarding response time statistics for all franchise tows if requested to do so by the Police Department along with other related information as may be requested.
- AA.** While providing Towing Services pursuant to this Agreement, Franchisee and/or its employees or agents shall not engage in any misconduct, including, but not limited to, any of the following:
 - 1. Rude, offensive or discourteous behavior;
 - 2. Lack of service, selective service, refusal to provide service which the Franchisee is capable of performing;
 - 3. Discrimination based upon on creed, sex, race, national origin, or any other classification prohibited by state or federal law;
 - 4. Unsafe or unlawful driving practices; or
 - 5. Exhibiting any objective symptoms of drug or alcohol use including, but not limited to, arriving at a tow scene with alcohol on their breath.

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- BB.** Take prompt and appropriate steps to resolve any third party complaints arising from or related to services provided pursuant to the Agreement.

6.0 Tow Truck Classifications

6.1 Franchisee shall equip and maintain a minimum of three tow truck(s), with a total vehicle capacity of four vehicles. Tow trucks must be in like-new appearance and tow operators shall equip and maintain tow trucks covered under this Agreement within the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the specifications contained herein, and in a manner consistent with industry standards and practices.

6.2 The four classes of tow trucks covered by this Agreement include:

- A.** Class A - Light Duty. A tow truck with a manufacturer's Gross Vehicle Weight Rating of 10,000 to 19,500 pounds with wheel lift capability, and may have a car carrier. A tow truck company who had a car carrier may be exempted from the wheel lift capability requirements. However, the car carrier must be an additional unit.
- B.** Class B-Medium Duty. A tow truck with a manufacturer's Gross Vehicle Weight Rating of 19,501 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle's brakes. A tow truck company may also have a car carrier. However, the carrier must be an additional unit.
- C.** Class C-Heavy Duty. A tow truck with a manufacturer's Gross Vehicle Weight Rating of at least 33,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle's brakes.
- D.** Class D-Super Heavy Duty. A tow truck with a manufacturer's Gross Vehicle Weight Rating of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle's brakes.

6.3 To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. The specifications required by the California Highway Patrol will be required for all classes of equipment.

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7.0 Transfer or Assignment of Franchise. Franchisee shall not sell, transfer, lease, assign, sublet, mortgage or dispose of in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any rights or privileges therein granted, without the prior written consent of the City Manager. The City's approval of a transfer or assignment of a franchise granted pursuant to this Agreement shall be conditioned upon Franchisee's sale or disposal of all ownership rights in the franchised tow truck business. If Franchisee desires to transfer or assign its franchise tow truck business because Franchisee intends to sell or dispose of all interests in the franchise tow truck business, the Franchisee shall make a written request to the City Manager for a transfer or assignment of the franchise at least 120 calendar days before the requested effective transfer or assignment date. The Police Department shall investigate the proposed transferee or assignee and determine whether they are qualified to serve as a tow truck operator franchisee pursuant to the criteria and requirements set forth in the City's Municipal Code. If the Police Department determines that the proposed transferee or assignee is qualified to be a tow truck operator franchisee, the Police Department shall recommend that the City approve the transfer or assignment. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the prior consent of the City Manager shall be null and void.

8.0 Term. The term of this Agreement shall be for a period of four (4) years from the Effective Date (the "Initial Term").

9.0 Agreement Extension. This Agreement shall automatically renew at the sole and absolute discretion of the City for two (2) additional years unless written notice of cancellation has been provided to the Franchisee by the City at least six (6) months prior to the expiration of the Initial Term.

10.0 Cancellation, Suspension and Revocation of Franchise.

10.1 The City and Police Department reserves the right to cancel this Agreement for any reason, and in its sole and absolute discretion, by providing Franchisee with thirty (30) days written notice of cancellation. The City also reserves the right to revoke or suspend the franchise granted pursuant to this Agreement and to rescind all rights and privileges associated with it at any time if:

- A.** Franchisee defaults in the performance of its material obligations under this Agreement and fails to cure such default within ten calendar days after receipt of written notice of the default from the City and a reasonable opportunity to cure the default in accordance with subsection (b)(1). This includes nonpayment of any City business license or any other fees provided in this Agreement; or

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- B.** Franchisee is habitually late, habitually fails to respond, frequently make notification of an inability or unwillingness to respond, or selectively make notifications of an inability or unwillingness to respond to certain tows; or
- C.** Franchisee fails to provide or maintain in full force and effect the insurance coverage as required by this Agreement; or
- D.** Franchisee violates any order or ruling of any regulatory body having jurisdiction over Franchisee relative to Franchisee's tow truck business, unless such order or ruling is being contested by Franchisee by appropriate proceedings conducted in good faith. This includes failure to comply with the Lake Elsinore Municipal Code; or
- E.** Franchisee practices any fraud or deceit upon the City or upon persons to whom it provides tow truck service as determined by a court of law; or
- F.** Franchisee becomes insolvent, unable or unwilling to pay its debts and obligations, or is adjudged to be bankrupt. The City's revocation of this Agreement shall in no way affect any right of the City to pursue any remedy under the franchise or any other provision of law; or
- G.** Franchisee breaches any rule, regulation or condition as provided in this Agreement; or
- H.** Franchisee fails to maintain a satisfactory level of service to the Police Department, such as a maintaining a high standard of customer relations and professionalism; or
- I.** Violation of any federal, state or local law by the contract holder, franchisee or any person having any ownership interest in the official police tow service or any employee of the official police tow service.

10.2 Prior to revoking or suspending a franchise granted under this Agreement, City or the Police Department shall give Franchisee notice and an opportunity to be heard on the matter, in accordance with the following procedures:

- A.** The City shall first notify Franchisee of the violation in writing by personal delivery or registered or certified mail, and

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demand that Franchisee cure the default within a reasonable time, which shall not be less than ten days in the case of Franchisee's failure to pay any sum or other amount due to the City under this Agreement with the City and 30 days in all other cases. If Franchisee fails to correct the violation within the time prescribed or if Franchisee fails to commence correction of the violation within the time prescribed, the City shall give Franchisee fourteen (14) calendar days' written notice of a hearing to be held before the City Manager or his designee ("Hearing Officer"). The written notice shall specify the alleged violations supporting the recommendation for revocation of the franchise.

- B.** The Hearing Officer shall hear and consider all relevant evidence submitted by staff and Franchisee or its agent or representative. The Hearing Officer shall not be limited by the technical rules of evidence, but may consider any evidence upon which a prudent person might rely in arranging his or her own affairs. The Hearing Officer may appear in person at the hearing or present a written statement in time for consideration at the hearing. If the Hearing Officer finds that Franchisee has committed a material breach under this Agreement and that Franchisee has not corrected the violation or has not diligently commenced correction of the violation after receiving proper notice in accordance with this Agreement, the Hearing Officer may revoke the franchise.
- C.** The Hearing Officer may impose such conditions and take such other action as he or she deems appropriate under the circumstances to carry out the purpose of this Agreement. If an interested party makes a written presentation to the Hearing Officer but does not appear, he or she shall be notified in writing of the decision.
- D.** Notwithstanding the City's right to revoke or suspend a franchise, the Police Chief shall have the right to suspend, for a period not to exceed ninety (90) days, any franchise granted pursuant to this Agreement, and to rescind all rights and privileges associated with it during the suspension period, if the Police Chief has reasonable cause to believe that Franchisee has engaged in fraudulent conduct with respect to the performance of the towing services as provided herein or that Franchisee's continued performance of towing services

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as provided herein constitutes a potential endangerment to the health or safety of the public.

- E.** The business owner may appeal the decision of the Hearing Officer to the City Council within 15 days following service of the Hearing Officer's decision.

11.0 Liability Insurance

11.1 Coverage. Throughout the term of this Agreement, Franchisee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

- A.** Commercial General Liability Insurance which shall be on the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage F01m CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.
- B.** Garagekeepers Legal Liability Insurance which shall include coverage for vehicles in the care, custody, and control of the Franchisee with limits of liability of not less than \$500,000 per occurrence for property damage.
- C.** Commercial Automobile Liability Insurance which shall be on the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto) with limits of not less than \$1,000,000 per accident for bodily injury and property damage.

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- D.** On-Hook/Cargo Insurance which shall include coverage for vehicles in tow with limits of liability based on the size of the tow truck, which are as follows:
 - 1. Class A tow truck \$50,000
 - 2. Class B tow truck \$100,000
 - 3. Class C tow truck \$200,000
 - 4. Class D tow truck \$250,000
- E.** Workers' Compensation Insurance as required under the California Labor Code.
- F.** Employers' Liability Insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

11.2 Policy Endorsement. Every policy and every certificate of motor vehicle liability insurance coverage filed pursuant to the provisions of this Agreement shall contain the following endorsements:

- A.** It is hereby understood and agreed that, notwithstanding expressions or provisions inconsistent with, or contrary thereto in this policy contained, the policy is expressly issued to cover a motor vehicle regulated by the provisions of Chapter 12.14 of the City of Lake Elsinore Municipal Code. This policy shall inure to, and be for the benefit and protection of, each person who shall sustain any damages or injury, or to the heirs, personal representatives, administrators, executors or assigns of any such person who may be so damaged or injured, to suffer death by reason of the operation of a motor vehicle covered by this policy or from the defective conditions thereof. Liability under this policy shall be in no manner abrogated or abated by the death of the tortfeasor or the insured.
- B.** This is a continuing liability for claims incurred up to the full amount hereof, notwithstanding any action or recovery thereon.
- C.** No cancellation or reduction of coverage of this policy for any reason whatsoever shall become effective until the expiration of thirty days after written notice of such cancellation or reduction in coverage shall have been given in writing to the

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City's Risk Manager. The thirty day period shall commence upon the date the notice is actually received in the office of the City's Risk Manager if personally delivered, or, if given by registered United States mail with return receipt requested, in the second business day after the notice is deposited in the United States mail, postage prepaid or on the date of receipt shown on the return receipt, whichever is later.

- D. The City of Lake Elsinore and Lake Elsinore Police Department shall be listed as "Also Insured."

12.0 Additional Services to be Provided. Franchisee shall provide to the City, at no charge, the services needed to facilitate the City's Vehicle Abatement Program. Additionally, the Franchisee will provide emergency response to aid and service City and Police Department vehicles that are one ton or less, within a reasonable radius of the City, at no cost to the City or Police Department.

13.0 Additional Franchises. The franchise granted herein shall be not be exclusive; however, notwithstanding the foregoing, any new tow franchise granted by the City following the Effective Dates shall, during the Initial Term, be subject to substantially the same terms and conditions as set forth herein.

14.0 Indemnity. Franchisee agrees to protect, indemnify, defend and hold harmless the City and the Police Department from all claims, demands or liability arising out of or encountered in connection with its agreement with the City or the performance of work in preparation for the towing operation, or claims, demands and liability occurring during the towing and subsequent storage and maintenance activities whether such claims, demands or liability are caused by the tow service or its employees or agents.

15.0 Severability. If any provision, clause, sentence or paragraph of this Agreement or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Agreement and are hereby declared to be severable.

CITY OF LAKE ELSINORE, a municipal corporation

Dated: _____

By: _____
Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

City Attorney

DIAMOND VALLEY TOWING

Dated:_____

By:_____

Its:_____