

TOWING SERVICE FRANCHISE AGREEMENT

1. IDENTIFICATION

This Towing Service Franchise Agreement (“Agreement” herein), effective as of the date specified in Section 3 below, is entered into by _____, (“TOWING CARRIER” herein), a _____ corporation and the City of Barstow (“CITY” herein), a California municipal corporation.

2. RECITALS

2.1 TOWING CARRIER desires to be awarded a CITY towing service franchise, and CITY is willing to grant such a franchise to TOWING CARRIER on the terms and conditions set forth herein.

2.2 TOWING CARRIER acknowledges that this Agreement does not grant TOWING CARRIER an exclusive CITY towing service franchise.

NOW, THEREFORE, for an in consideration of the mutual covenants and conditions herein contained, CITY and TOWING CARRIER agree as follows:

3. TERM

This Agreement will become effective on July 1, 2024 and will continue in effect for one year beginning July 1, 2024 through July 1, 2025 thereafter unless terminated earlier in accordance with Section 8 below.

4. CITY’S SERVICES

CITY shall dispatch TOWING CARRIER to tow calls in accordance with CITY’S rotation dispatch system for towing companies that CITY has granted a towing service franchise. CITY shall have absolute discretion in initially determining, and subsequently modifying, its rotation dispatch system. CITY shall not be required to dispatch TOWING CARRIER to any minimum number of tow calls per month, or otherwise, during the term of this Agreement.

5. TOWING CARRIER’S SERVICES

TOWING CARRIER shall perform the following services:

5.1 Provide CITY with no more than two telephone numbers at which CITY may reach TOWING CARRIER for dispatch calls.

5.2 Be available to respond to CITY dispatch calls twenty-four hours a day, seven days a week.

5.3 Respond promptly to each CITY dispatch call with one or more tow trucks, as directed by CITY.

5.4 Store towed vehicles at a facility that:

- 5.4.1 Is located within CITY'S Corporate boundaries or within five miles of City's border;
 - 5.4.2 Has off-street space for a minimum of one hundred (100) vehicles at least five (5) of which spaces are indoors;
 - 5.4.3 Has adequate lighting, as determined by CITY in CITY'S sole discretion, for outside storage areas;
 - 5.4.4 Has at least one attendant on call twenty-four hours a day, seven days a week, excluding legal holidays; and
 - 5.4.5 Is secured to prevent access by unauthorized persons.
- 5.5 Furnish the owner of each towed vehicle, upon release of such vehicle or within ten (10) calendar days of the towing date (whichever occurs first), a writing setting forth the following information: (i) the date, time and place from which the vehicle was towed; and (ii) a fully itemized billing statement for the towing service. Such notice shall also indicate the address at which the vehicle is stored if the notice is not furnished in conjunction with the release of the towed vehicle.
- 5.6 Prepare for each towed vehicle a towing slip itemizing the contents of such vehicle. Such towing slips shall be available for inspection by CITY personnel, upon reasonable advance notice, during CITY'S regular business hours.
- 5.7 Complete and post a CITY supplied impound tag on all vehicles impounded at CITY's direction.
- 5.8 Provide CITY, on a monthly basis, with a list of all vehicles towed the preceding month in response to CITY dispatch calls. Such list shall indicate each vehicle's license plate number and vehicle identification number.
- 5.9 Comply with all applicable statutes, ordinances and regulations in the performance of services required by this Agreement.

6. COMPENSATION

- 6.1 TOWING CARRIER agrees to pay CITY, and CITY agrees to accept in full satisfaction for the services provided for hereunder, an annual franchise fee in the amount of One Hundred (\$100.00) dollars. TOWING CARRIER acknowledges that such franchise fee constitutes the amount necessary to reimburse CITY for CITY's actual and reasonable costs incurred in connection with CITY's towing program.
- 6.2 CITY shall not be responsible for TOWING CARRIER's fees that are the result of calls made to TOWING CARRIER by CITY on behalf of third parties.

7. AUDITS

CITY may, upon reasonable advance written notice, review and audit TOWING CARRIER’s financial records at TOWING CARRIER’s place of business during CITY’s regular business hours.

8. TERMINATION

This Agreement may be terminated by either party upon the giving of a written “Notice of Termination” to the other party at least thirty days prior to the termination date specified in such notice. In the event this Agreement is so terminated, TOWING CARRIER Shall immediately pay CITY any outstanding amount due.

9. RELATIONSHIP OF PARTIES

TOWING CARRIER shall act hereunder as an independent contractor. This Agreement shall not and is not intended to constitute TOWING CARRIER as an agent, servant, or employee of the CITY. Additionally this Agreement shall not and is not intended to create the relationship of partnership, joint venture or association between CITY and TOWING CARRIER.

10. INSURANCE

10.1 TOWING CARRIER agrees to maintain insurance in full force and effect during the term of this Agreement in accordance with the provisions set forth below:

10.1.1 Commercial general liability insurance with coverage limits of no less than One Million (\$1,000,000.00) dollars for loss, damage, or injury to persons or property arising from TOWING Carrier’s performance of this Agreement.

10.1.2 Comprehensive automobile liability insurance with coverage limits of no less than One Million (1,000,000) dollars for loss, damage, or injury to persons or property arising from the use of any vehicle.

10.1.3 Garage-keepers legal liability insurance with coverage limits of no less than One Hundred Thousand (\$100,000) dollars for damage to a vehicle towed, impounded or otherwise stored by TOWING CARRIER.

10.1.4 On-hook liability insurance with coverage limits of no less than One Hundred Thousand (\$100,000) dollars for damage to any vehicle towed by TOWING CARRIER or otherwise connected to any of TOWING CARRIER’s tow trucks.

10.1.5 Worker’s compensation insurance in accordance with the provision of the California Labor Code.

10.2 Each policy of insurance required by this Section10 shall satisfy the following requirements:

- 10.2.1 Be issued by an insurance company that both (i) is admitted and licensed to do business in the State of California; and (ii) is rated B+VII or better according to the most recent A.M. Best Co. Rating Guide.
- 10.2.2 Name as additional insured's CITY, its employees, agents and officers.
- 10.2.3 Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insured's shall be called upon to cover a loss.
- 10.2.4 Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 10.2.5 Contain a clause substantially in the following words: "It is hereby understood and agreed that their policy may not be cancelled, nor the amount of coverage thereof reduced, until thirty days after receipt (as evidenced by receipt of a registered letter) by the City Manager of the City of Barstow of written notice of such cancellation or reduction of coverage."
- 10.2.6 Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided.
- 10.2.7 Waive all rights of subrogation against the designated additional insured's.
- 10.2.8 Specify that costs of adjusting and defending claims against insured's (including court costs and attorney's fees) shall be paid in addition to any policy limits.
- 10.3 Prior to commencing performance under this Agreement, TOWING CARRIER shall furnish CITY with original endorsements or copies of each required policy, effecting and evidencing the insurance coverage's required by this Section 10. Such endorsements and policies shall be signed by a person authorized by the insurer to bind coverage on its behalf. TOWING CARRIER shall not commence performance until CITY has approved all such endorsements and policies.
- 10.4 If the term of this Agreement shall extend beyond one year, then TOWING CARRIER shall provide CITY with the required policies or endorsements evidencing renewal of the required insurance prior to the expiration of such insurance.
- 10.5 Procurement of insurance by TOWING CARRIER shall not be construed as a limitation of TOWING CARRIER's liability or as full performance of TOWING CARRIER's duties to defend, indemnify and hold harmless under Section 11 of this Agreement.

11. INDEMNIFICATION

11.1 To the full extent authorized by law, TOWING CARRIER shall defend (with counsel acceptable to CITY), indemnify, and hold harmless CITY, its employees, agents, and officers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged, or threatened, as well as attorneys’ fees, court costs, interest, defense costs (including expert witness fees) and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of, arising out of, or in any way attributable to, in whole or in part, TOWING CARRIER’s performance under this Agreement.

11.2 The obligations imposed by this Section 11 shall survive the termination of this Agreement.

12. NOTICES

All notices required or desired to be served by either party upon the other party shall be in writing and may be served by registered or certified United States mail return receipt requested. Service by mail shall be deemed complete on the expiration of the second day after mailing and shall be addressed as follows:

1) If served upon TOWING CARRIER, notice shall be addressed as follows:

(Company Name)

(Street Address)

(Mailing Address)

(City, State, Zip Code)

2) If served upon CITY, notice shall be addressed as follows: City Manager, City of Barstow, 220 E. Mountain View, Suite A, Barstow, CA 92311.

3) A courtesy copy of all notices and demands concerning the implementation or alteration of this Agreement shall be mailed to: City Attorney, 555 West 5th Street, 30th Floor, Los Angeles, CA 90013.

13. PROHIBITION AGAINST TRANSFER OR ASSIGNMENT

TOWING CARRIER shall not assign, delegate, transfer or hypothecate this Agreement or any interest therein directly or indirectly by operation of law or otherwise without the prior

written consent of CITY. Any attempt to do so without such consent shall be null and void and confer no right on any third party.

14. PROHABITION AGAINST RATE DISCRIMINATION

TOWING CARRIER shall not impose greater fees in connection with nonconsensual tows made in response to CITY dispatch calls than TOWING CARRIER imposes on its clients generally.

15. GENERAL PROVISIONS

- 15.1 This instrument contains the entire Agreement between CITY and TOWING CARRIER with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations here from shall be effective and binding only if made in writing and executed by CITY and TOWING CARRIER.
- 15.2 CITY and TOWING CARRIER agree that this Agreement shall not be deemed to have been prepared or drafted by any particular party hereto. CITY and TOWING CARRIER also expressly acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement
- 15.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 15.4 The waiver by CITY or TOWING CARRIER of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by CITY or TOWING CARRIER unless in writing.
- 15.5 In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountant's fees, if any, and attorneys' fees expended in such action.
- 15.6 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended so as to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such

event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.7 This Agreement shall be governed and construed in accordance with the laws of the State of California.

TO EFFECTUATE THIS TOW FRANCHISE AGREEMENT, the parties have caused their duly *authorized representatives* to execute this Agreement on the dates set forth below.

“CITY”

“TOWING CARRIER”

CITY OF BARSTOW

(Company Name)

By: _____
Chief Andrew Espinoza, Jr.
Barstow Police Department

By: _____
Title: _____

Date: _____

Date: _____

ATTEST:

By: _____
Maribel Hernandez, City Clerk

Date: _____