

**EXHIBIT B**

**FRANCHISE AGREEMENT FOR VEHICLE TOW SERVICES BETWEEN THE CITY OF  
SANTA ROSA, ACTING BY AND THROUGH THE SANTA ROSA POLICE DEPARTMENT**

**AND**

[ \_\_\_\_\_ ]

**City Agreement Number \_\_\_\_\_**

**Dated \_\_\_\_\_**

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## **FRANCHISE AGREEMENT FOR VEHICLE TOW SERVICES**

This Franchise Agreement for Vehicle Tow Services ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Santa Rosa ("City"), acting by and through the Santa Rosa Police Department ("Department"), and \_\_\_\_\_, a \_\_\_\_\_ ("Operator").

### **RECITALS**

A. City requires tow services in the exercise of its police powers as necessary or appropriate for the general welfare of its citizens.

B. City has adopted Chapter 6-84 of the Santa Rosa City Code requiring tow operators to enter into franchise agreements for police generated tow operations.

C. Operator desires to obtain a non-exclusive franchise permitting Operator to provide tow services generated by the Department on a rotational basis with other tow franchisees.

D. Operator also desires to provide miscellaneous on call tow services to the City that are not expressly included in the scope of the tow franchise.

E. City and Operator have negotiated the terms pursuant to which Operator will operate the franchise and provide such miscellaneous services to the City and have herein reduced such terms to writing.

## FRANCHISE AGREEMENT FOR VEHICLE TOW SERVICES

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Operator hereby agree as follows:

### **SECTION 1. DEFINITIONS**

The terms defined below shall for all purposes hereof have the meanings ascribed to them herein, unless the context clearly requires some other meaning. Other terms shall have the meanings given to them herein. Words not defined herein shall be given their common and ordinary meaning.

**“After Hours”** means weekdays between 5:00 p.m. and 8:00 a.m. and all weekends and Holidays.

**“Assigned Traffic Personnel”** means the traffic sergeant or the sergeant’s designee.

**“Business Hours”** means weekdays from 8 a.m. through 5 p.m., excluding weekends and Holidays.

**“Department”** means the Santa Rosa Police Department and the Santa Rosa Police Department Communication Center.

**“Franchisee”** means a tow truck operator awarded a non-exclusive tow franchise pursuant to a franchise agreement with the City.

**“Holiday”** means New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

**“Impounded Vehicle”** means a vehicle seized and held by a law enforcement agency.

**“Interested Party”** means a registered vehicle owner or the owner’s legally authorized agent.

**“Load Salvage Operation”** means any operation of Class B, C or D Tow Trucks involving the recovery of a load that has been spilled, or the off-loading and reloading of a load from an overturned vehicle.

**“Operator”** means Operator and Operator’s managers.

**“Possession”** of a vehicle arises when the vehicle is removed and is in transit, or when a Vehicle Recovery Operation or Load Salvage Operation has begun.

**“Personal Property”** means property that is not attached to the vehicle.

**“Response Time”** means the amount of time from the time the call was placed to Operator by the Department to the time of arrival at the point of destination.

**“Rotation Tow List”** means a list of Franchisees maintained by the City.

**“Time of Call to End of Service”** means the amount of time from the time the call was placed to Operator by the Department until the estimated time of return to Operator’s place of business or the completion of the call.

**“Tow Truck”** has the same meaning as that assigned to it in California Vehicle Code section 615.

**“Vehicle Recovery Operation”** means an operation involving the process of up righting an overturned vehicle that requires the use of auxiliary equipment due to the size or location of the vehicle and which is normally limited to operations requiring Class B, C or D Tow Trucks.

## **SECTION 2. ROTATION TOW LIST**

A. The City will use a Rotation Tow List to request Franchisees to tow vehicles in the order in which the Franchisees appear on the list. The list will not exceed ten Franchisees at any one time. Operator will be placed on the Rotation Tow List upon execution of this Agreement by City and Operator.

B. A call to a Franchisee shall constitute one turn on the list and that Franchisee will then be moved to the bottom of the list. City will call the next Franchisee on the list when the prior Franchisee: 1) fails to answer the telephone; 2) cannot or refuses to respond; or 3) is canceled due to excessive Response Time.

C. OPERATOR agrees to all rotation tows, when called by the Department for service at anytime during a 24 hour period.

D. Operator will be removed from the Rotation Tow List for two rotation cycles if Operator refuses or fails to respond to a call for service. If Operator fails to respond to calls for service on more than three occasions within a 30 day period, the City may suspend Operator’s services or terminate this Agreement.

E. If Operator is unable to provide storage space in response to a call for service, it will be removed from the Rotation Tow List for 24 hours or until storage space is made available, whichever is greater.

F. Operator may not impose any fees or charges on any party where City or an Interested Party cancels a call for service prior to Possession. In such cases, City will place Operator on the top of the Rotation Tow List.

G. Where Possession has begun in response to a Department call and is canceled by an Interested Party, charges to the Interested Party shall not exceed one half of the regular towing charge for the call for service.

H. If two or more Franchisees are called to a scene, Operator agrees that Department employee in charge of the incident has the discretion to assign Franchisees to particular vehicles to be moved or towed. Where Operator is directed to move vehicles to clear a road or protect lives, Operator shall provide the requested assistance at no charge to City and City will place Operator on the top of the Rotation Tow List.

I. Nothing in this Agreement shall prohibit the Department employee in charge of the incident from requesting a Franchisee that is not at the top of the Rotation Tow List when reasonably required under the circumstances. In such cases, the Franchisee will be placed at the bottom of

the Rotation Tow List unless the call for service is canceled, whereupon Franchisee will maintain its place on the list.

### **SECTION 3. OPERATOR OBLIGATIONS**

A. Operator agrees that City shall have the right to conduct a background investigation of Operator and to request and receive summary criminal history information regarding Operator from the California Department of Justice and Federal Bureau of Investigation as pursuant to California Vehicle Code section 2432.3. Upon request by City, Operator agrees to provide all information needed to obtain this information, including Operator's fingerprints. Operator agrees that Operator shall pay the cost of fingerprinting and the processing of the request for summary criminal information. Operator further agrees that every agent and employee of Operator who will provide services under this Agreement shall successfully undergo a background investigation before providing or continuing any services hereunder.

B. Operator shall notify City of any arrest and/or conviction of Operator or Operator employee, prior to the beginning of the next work shift of that person. The failure to make this notification will be cause for suspension of Operator's services or termination of this Agreement by City.

C. Assigned Traffic Personnel shall be notified immediately by Operator upon a Tow Truck driver's separation from employment with Operator.

D. Operator shall require that all Tow Truck drivers providing services under this Agreement participate in a controlled substance and alcohol testing ("CSAT") program prior to the provision of services.

1. Tow Truck drivers requiring a Class A, Class B, or commercial Class C license (endorsed for hazardous materials transportation) shall participate in a CSAT program as defined in the Code of Federal Regulations, title 49, Parts 40 and 382.

2. Tow Truck drivers not required to possess a Class A, Class B, or commercial Class C licenses shall be enrolled in a CSAT program substantially similar to the requirements in subsection 1 above.

3. Operator shall ensure selection pools for commercial and noncommercial licensed drivers are maintained separately.

4. A Tow Truck driver possessing a non-commercial driver's license who has a positive test result shall meet the same reinstatement requirements as a driver required to possess a commercial driver's license.

E. Operator and Tow Truck drivers shall be enrolled in the Employer Pull Notice ("EPN") Program with the California Department of Motor Vehicles. Operator shall provide to City a current list of drivers and a copy of the current EPN Program report, or in the case of a newly hired Tow Truck driver, proof of enrollment in the EPN Program.

1. Operator shall enroll new drivers in the ENP Program within 30 days of hire.

2. Pull notices shall be kept on file, signed, and dated by Operator.

F. Operator shall notify City immediately upon notification of any sanctions against it or its termination from any law enforcement agency rotation. Failure to make this notification will be cause for suspension of services or termination of this Agreement by City.

G. Operator shall have a Carrier Identification (CA) number and a valid Motor Carrier Property (MCP) permit. The MCP documentation shall be provided to City during the Franchise Agreement for Vehicle Tow Services enrollment period. The expiration of Operator's MCP permit and/or suspension of the MCP, pursuant to California Vehicle Code section 34623, shall result in the immediate suspension of services or termination of this Agreement by City.

H. Operator shall ensure all drivers comply Title 13, sections 1212 through 1218 of the California Code of Regulations, including Section 1213 pertaining to drivers' duty records.

#### **SECTION 4. TOW TRUCK CLASSIFICATIONS**

A. Operator shall equip and maintain Tow Trucks in accordance with the requirements set forth in Attachment A, and in a manner consistent with industry standards and practices. Operator shall equip and maintain a minimum of two trucks and one car carrier in Classes A, B, C or D. These trucks shall be equipped to tow car trailers and boat trailers.

B. All Vehicle Recovery Operation vehicles shall have recovery, wheel lift, and an extendable/retractable boom meeting the specifications herein.

1. Class D Tow Trucks used exclusively for salvage and recovery operations are not required to possess wheel lift capabilities.

2. A Class B Tow Truck with a 14-ton boom rating, that has been previously inspected and approved by the City and owned by Operator since January, 2009, may remain on rotation, subject to approval following annual inspections.

3. Car carriers are exempt from the recovery, wheel lift and boom capability requirements. However, the car carrier must be an additional unit and shall not be used for recovery.

C. A violation of the manufacturer's gross vehicle weight rating (GVWR) and/or safe loading requirements of a Tow Truck may be cause for immediate suspension of services by City. Violations include exceeding the Tow Truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, and not maintaining 50 percent of the Tow Truck's unladen front axle weight on the front axle when towing.

D. There are four (4) classes of Tow Trucks that may be used to provide services under this Agreement.

1. Class A - Light Duty. Operator shall maintain a minimum of one Tow Truck with a manufacturer's GVWR of at least 14,000 pounds. Class A 4-wheel drive Tow Trucks with a GVWR of less than 14,000 pounds shall be used only for recoveries requiring the use of 4-wheel drive.

2. Class B - Medium Duty. Operator shall maintain at least one Tow Truck with a manufacturer's GVWR of at least 33,000 pounds. The truck shall be equipped with air

brakes and tractor protection valve or device, and be capable of providing and maintaining air to towed vehicles.

3. Class C - Heavy Duty. Operator shall maintain at least one three-axel Tow Truck with a manufacturer's GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining air to towed vehicles.

4. Class D - Super Heavy Duty. Operator shall maintain at least one three-axle Tow Truck with a manufacturer's GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining air to towed vehicles, except where the truck is used exclusively for salvage and recovery operations.

## **SECTION 5. GENERAL EQUIPMENT SPECIFICATIONS**

A. Tow Truck and Car Carrier Classifications: Tow Truck and car carrier classifications are based on the truck chassis GVWR and the classification system used by the American Trucking Association (ATA) and truck manufacturers. Tow Truck and car carrier classifications shall meet all applicable state and federal standards.

B. Identification Labels: Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.

C. Recovery Equipment Rating: The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

1. The recovery equipment shall have a higher load capacity than the performance ratings.

2. Winches shall conform to or exceed the specifications set forth by the Recovery Equipment Rating, Society of Automotive Engineers (SAE) Handbook, SAE J706.

3. All ratings for wire rope and chain assemblies are for the undamaged assembly condition. All wire rope and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.

D. Control/Safety Labels: All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

## **SECTION 6. TOW TRUCK DRIVERS**

A. All of Operator's Tow Truck drivers shall attend and pass a certified tow truck driver training course meeting the requirements of the California Highway Patrol. Each certified Tow Truck driver shall maintain a current and valid certificate. Operator shall ensure that Tow Truck drivers performing services under this Agreement are qualified and competent drivers. Tow Truck drivers shall be at least 18 years of age and possess the following minimum Class Driver's Licenses:

1. Class A Tow Truck - A valid Class C (3) license, or a valid Class A (1) license with valid medical certificate.
  2. Class B Tow Truck - A valid Class A (1) license with valid medical certificate.
  3. Class C Tow Truck - A valid Class A (1) license with valid medical certificate.
  4. Class D Tow Truck - A valid Class A (1) license with valid medical certificate.
- B. Class A (1) licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes.
- C. Operator shall maintain a current list of drivers and provide a current list to City. Operator shall notify City within seven days of the hiring of any new drivers.
- D. Operator shall provide a copy of the Tow Truck drivers' training certificates to City within seven days of any hiring of new drivers.
- E. Operator shall maintain the following information for each driver:
- Full Name
  - Date of Birth
  - California Driver's License Number
  - Copy of valid medical certificate (if required)
  - Job Title/Description
  - Current Home Address
  - Current Home Phone Number
  - Types of trucks the driver is trained to operate
  - A copy of the Tow Truck driver's training course certificate
- F. Tow Truck drivers are not eligible to drive for the City until successfully undergoing background investigations, provided, that drivers may operate in a "trainee" status with a certified driver pending the return of the results of the background investigation.
- G. Any conviction of an employee of Operator involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony or misdemeanor driving under the influence of alcohol or drugs, moral turpitude, or a violation of Section 13377(a) of the California Vehicle Code may be cause for immediate removal of the employee by Department from the driver list. The refusal by Operator to promptly remove any such employee, or a conviction for any of these offenses by Operator or a principal of Operator, may be cause for the suspension and/or termination of this Agreement by City.
- H. **UNIFORMS:** Tow Truck drivers shall wear an identifiable uniform displaying Operator's name while engaged in City tow operations. A name identification badge shall be worn at all times while conducting tow operations. The badge must be officially issued by Santa Rosa Police Department with a photograph of the driver. If at any time an unauthorized driver is found to be operating a Tow Truck while providing services under this Agreement, Operator's services will be suspended by City for seven days. All rotation Tow Truck drivers shall wear the federally mandated traffic safety vests or reflectorized uniform shirts while engaged in tow services.
- I. **PERSONAL APPEARANCE:** Tow Truck drivers shall present a professional image, including good personal hygiene, clean, un-torn uniforms and no offensive or excessive body art or piercings.

J. **DEMEANOR AND CONDUCT:** While involved in City tow services or related business, Operator and its agents and employees shall refrain from all acts of misconduct including, but not limited to:

1. Rude or discourteous behavior;
2. Lack of service, selective service or refusal to provide service which can be performed;
3. Any act of moral turpitude, sexual harassment or sexual impropriety;
4. Unsafe driving practices;
5. Exhibiting any objective symptoms of alcohol or drug use.

K. If Operator or employee of Operator displays any signs of impairment (alcohol, prescription or illegal drugs) at the scene of a call for service, Operator or employee of Operator agrees to preliminary screening by law enforcement. Operator or employee of Operator who refuses to submit to preliminary testing may be removed from the Rotational Tow List or may result in the suspension of services or termination of this Agreement by City.

## **SECTION 7. COMPLIANCE WITH FRANCHISE AWARD**

In executing this Agreement, Operator agrees to and shall abide by all requirements of Santa Rosa City Code Chapter 6-84 as the same may be amended from time to time.

## **SECTION 8. FRANCHISE FEES**

Operator shall pay to City any franchise fee established by City. However, in the event City establishes or increases an established franchise fee during the term of this Agreement, Operator may, notwithstanding any other provisions of this Agreement, unilaterally terminate this Agreement and forfeit the granted franchise upon giving City thirty (30) days written notice of termination. In such case, Operator shall only be responsible for the proportion of the franchise fee due prior to termination.

## **SECTION 9. FRANCHISE FEE PAYMENT**

A. On or before September 1 of each year, Operator shall pay to City the annual franchise fee for the forthcoming year. The fee shall be set in accordance with the provisions of Santa Rosa City Code Chapter 6-84 and by resolution of the City Council. The fee per operator shall be determined by dividing the total franchise fee established by City Council by the total number of Franchisees.

B. City will send Operator an invoice specifying the franchise fee on or before August 1 of each year. The fee shall be due and payable within thirty (30) days of receipt by Operator.

C. Failure to remit the franchise fee to City when due shall result in the imposition of a late fee of two-percent (2%) per month until paid. If Operator fails to pay the franchise fee for more than (90) ninety days after the due date, City shall have the option to terminate this Agreement or remove Operator from the tow rotation until the franchise fee is paid.

D. Operator shall pay all required franchise fees to:

City of Santa Rosa

Finance Department  
P.O. Box 1673  
Santa Rosa, CA 95402

**SECTION 10. MISCELLANEOUS SERVICES**

Operator agrees to provide miscellaneous services upon the Department's request that are not included in the scope of the services provided under the franchise. Such services may include towing of vehicles requested by different divisions within the Department, such as calls for lock-outs or undercover operations. The City agrees to pay for approved services by Operator at the rate of \$130.00 per hour. The total compensation payable to Operator for the services provided under this Section shall not exceed the sum of \$5,000.00. The City's Chief Financial Officer is authorized to pay all proper claims under this Section from Charge Number 170902-5321.

**SECTION 11. RATES**

A. Fees charged for all tow service calls originating from the Department shall be reasonable, valid and not in excess of the rates established by City. These rates are as follows:

\$200.00	Hourly Rate
\$55.00/day	Inside Storage Rate
\$55.00/day	Outside Storage Rate

B. Rate requirements represent the maximum Operator may charge on a City call. Operator is not precluded from charging less when deemed appropriate by Operator.

C. Operator shall refund any charges in excess of the rates established in Section 11 A upon demand by City.

D. Operator may only request rate changes during the enrollment period or at the annual mandatory meeting. The Assigned Traffic Personnel shall then review the rates based upon charges for similar services, rates adopted by other public agencies, and rates of other tow operators.

E. Charges for towing calls shall be computed from Time of Call to End of Service and charged at the established hourly rate for a minimum period of one hour. All time spent on a call in excess of one hour shall be charged in fifteen-minute increments. Operator may not impose any additional charges, such as mileage, labor, etc.

1. Any secondary towing requested by an Interested Party, such as towing from Operator's storage to a different location, is subject to negotiation between Operator and the Interested Party.

F. Fees for special services

1. Upon completion of any special services using Class B, C, or D Tow Trucks for Vehicle Recovery Operations or Load Salvage Operations, Operator shall submit the Interested Party's invoice to the Assigned Traffic Personnel for approval.

a. Hourly rates for special services shall be approved with the Assigned Traffic Personnel. Charges in excess of thirty minutes shall be charged in fifteen-minute increments. Fees shall be reasonable and consistent with industry standards for similar services, such as recovery of a vehicle hauling load that has been spilled, or the off-loading and reloading of a load from an overturned vehicle.

b. Regardless of the class of Tow Truck, charges shall not be more than the class of vehicle towed or serviced, except when Vehicle Recovery Operations require a larger class of truck.

c. Hourly rates shall be approved by Assigned Traffic Personnel for auxiliary or contracted equipment, e.g. airbags, converter gear/dolly, additional trailer and contracted labor.

G. Charges for After-Hours release of a vehicle or Personal Property shall not exceed one-half of established hourly rate.

H. Storage fees. Operator shall display a sign in plain view at all cashiers' stations, as described in California Civil Code section 3070, disclosing all storage fees and charges in effect, including the maximum storage rate.

I. Owners of vehicles stored 24 hours or less shall be charged no more than one day of storage pursuant to California Civil Code section 3068.1(a).

1. If the vehicle is released from storage after 24 hours has lapsed, charges may be allowed on a full calendar-day basis for each day of storage, or portion thereof, pursuant to Section 3068.1(a).

2. Storage of vehicles in combination, such as a vehicle on a dolly, con-gear, vehicle carrier/trailer, etc, being towed by a vehicle, should be charged per vehicle, excluding the carrier, etc.

J. The schedule of rates charged by Operator shall be available in the Tow Truck and shall be presented upon demand to person(s) for whom the services are provided, or the law enforcement officer at the scene.

## **SECTION 12. RESPONSE TO CALLS**

A. Operator agrees to timely respond to calls for service when called by City.

B. Assigned Traffic Personnel will approve rates payable to Operator for the removal and disposition of larger vehicles, as outlined in Attachment C, on a case by case basis. When these vehicles are not being towed for Vehicle Code sections 22669(a) or 22669(d), and Operator has the appropriate equipment to the vehicle, Operator shall tow vehicle in question. The disposal of any garbage and hazardous materials in such vehicles is the responsibility of Operator.

C. Operator shall respond to calls for service from the Department 24 hours a day, seven days a week. Operator's Response Time shall not exceed 30 minutes where the call for service occurs between the hours of 6:00 a.m. and 6:00 p.m. and shall not exceed 40 minutes with respect to all other calls. The failure to meet the maximum Response Time on three or more occasions within a 30 day period may result in suspension of Operator's services or termination of this Agreement by City.

D. At the time of a call for service, Operator shall advise the Department if Operator is unable either to respond or to meet the maximum Response Time.

E. If, after accepting the call, Operator is unable to respond or will be delayed in responding, Operator shall immediately notify the Department.

F. Only an appropriately licensed driver shall respond with a properly equipped Tow Truck of the class required to tow the vehicle. Driver shall have the license and applicable license endorsements in his possession.

G. Operator shall notify the Department at least 24 hours in advance when it will be unavailable to perform services hereunder, noting the times and dates of the unavailability.

H. Tow Truck drivers may not respond to calls accompanied by any individual not employed by Operator and may not respond with animals in their possession.

I. Operator will not intentionally arrive at a scene requiring a tow unless requested by Department.

J. All questions and disputes regarding the Rotation Tow List shall be referred in writing to the Assigned Traffic Personnel during Business Hours.

K. Operator shall remove or clean from the scene of the collision any liquid, glass, or debris from the scene, excluding flammable substances. Failure to do so will result in a request for Operator to return to the scene to complete the clean-up. Repeated complaints that Operator has failed to comply with this Section may result in suspension or termination of this Agreement by City.

### **SECTION 13. STORAGE FACILITY**

A. Operator's primary storage facility shall be located at Operator's business address. Any additional storage facilities identified in Attachment B may also be used by Operator. Operator shall provide prior notice of the use of a new or secondary storage facility for inspection and approval by City prior to use. There shall be no charge for any additional distance traveled to and from new or secondary locations.

B. Operator shall maintain an office at the listed business address. That office shall be staffed by an employee during Business Hours. Any change in the location of the office shall have the prior written approval of City.

C. Operator shall provide security for vehicles and Personal Property at all storage facilities. At a minimum, a permanent securely fenced or enclosed area of adequate size shall be provided for the proper storage of vehicles.

D. Storage facilities shared by Operator with other business establishments shall be physically separated and secured from one another.

E. Vehicles with open windows or roofs (excluding vehicles with major damages from collisions), shall be stored inside to protect the interior of the vehicles from adverse weather conditions. Where no inside storage is available, the vehicle shall be covered with a tarp. Operator is responsible for the care, custody, and control of any Personal Property in towed and stored vehicles.

1. Operator shall release Personal Property from a lien vehicle upon demand by the Interested Party pursuant to California Vehicle Code section 22851(b).

2. A receipt shall be provided to Interested Party by Operator for removed Personal Property and a copy placed in the stored vehicle. This procedure shall also apply to the removal of Personal Property by Operator to a secured area.

F. Business Hours shall be posted in plain view to the public.

G. Operator employees shall be trained to competently conduct business transactions related to towing, storage and the release of vehicles and property.

H. An Impounded Vehicle shall be released only upon written authorization from the Department.

1. In the event an Interested Party of an Impounded Vehicle signs over the title of the vehicle to Operator in lieu of towing and storage fees prior to the end of the 30 day impound (14602.6 CVC impound), Operator shall keep the vehicle in impound for the remainder of the 30 days. At the end of the 30-day impound period, Operator will be required to obtain a "no fee" release from City in order to take full custody of the vehicle.

2. There shall be no fee charged for recovery of Personal Property from an Impounded Vehicle by the Department. The only fees that may be charged to a person authorized by the Department to obtain Personal Property from an Impounded Vehicle are After-Hours charges, if applicable.

I. A vehicle that is not impounded shall be released upon request of the Interested Party pursuant to California Vehicle Code section 22850.3. Operator shall advise the Interested Party of any and all related additional fees.

#### **SECTION 14. INSURANCE**

A. Operator shall maintain in full force and effect, all of the insurance coverage described in this Section. Maintenance of the insurance coverage as set forth in this Section is a material element of this Agreement and a material part of the consideration provided by Operator in exchange for City's agreement hereunder. Failure by Operator to (1) maintain or renew coverage, (2) provide City notice of any changes, modifications, or reductions in coverage, or (3) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Operator, whereas City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Operator to maintain required insurance coverage shall not excuse or alleviate Operator from any of its other duties or obligations under this Agreement. The following are the insurance

requirements for this Agreement:

1. Business Automobile Liability (as required by California Vehicle Code section 16500.5) - Bodily injury and property damage with a combined single limit of not less than \$1 million. These minimum standards are to include owned, non-owned, and hired auto coverage.
2. Uninsured Motorist - Legal minimum, combined single limit, stated in writing on certificate.
3. On-Hook Coverage - Insuring the vehicle in tow with limits based on the size of the Tow Truck.
  - a. Class A Tow Truck \$ 50,000
  - b. Class B Tow Truck \$100,000
  - c. Class C Tow Truck \$200,000
  - d. Class D Tow Truck \$250,000
4. Garage liability includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.
5. Garage keeper's liability shall be the same minimum as on-hook coverage for vehicles in the care, custody, and control of Operator in the storage yard.
6. Workers' Compensation Insurance as required by the State of California and Employee's Liability Insurance of \$1 million.
7. Operator shall furnish City with a separate page titled Additional Insured Endorsement (AIE) as evidence that the insurance required is in effect. The certificate shall name the "City of Santa Rosa, its officers, agents, and employees" as additional insured's by endorsement under the policy and shall provide that the coverage shall be primary coverage as to such additional insured. The AIE will list insured's business name, policy number and effective dates.

## **SECTION 15. INDEMNITY**

A. Operator (the "Indemnifying Party") agrees to pay and shall indemnify, defend and hold City, including any person at any time serving as an official, officer, employee, volunteer, attorney, or agent of the City, (any such person is hereinafter referred to as an "Indemnified Party" and collectively as "Indemnified Parties") harmless from and against any and all claims, liabilities, fines, losses, damages, costs, expenses, including attorneys' fees and/or costs, litigation and court costs, amounts paid in settlement, and amounts paid to discharge defendants, suits and judgments of any kind whatsoever, whether in contract, tort or strict liability, brought, claimed or rendered against any Indemnified Party (collectively, "Claims"), including, but not limited to, claims, liabilities, fines, losses, damages, costs, expenses, suits and judgments arising out of or in connection with this Agreement, regardless of responsibility for negligence. Provided, however, that such indemnification of the Indemnified Parties by Operator shall not include indemnification of any Indemnified Party for liabilities caused by the sole active negligence or willful misconduct of such Indemnified Party.

B. The obligations of Operator pursuant to this Section shall survive termination or expiration of this Agreement.

## **SECTION 16. INSPECTIONS**

A. Tow Truck Inspections.

1. Annual Inspections. City shall have the right to inspect all Tow Trucks annually. Annual inspections will be conducted by Assigned Traffic Personnel in coordination with CHP inspections. Tow Trucks shall pass Level One inspections with California Highway Patrol (CHP 407F, Safetynet Driver/Vehicle Inspection Report) prior to a Department inspection. All of the equipment listed on Attachment A shall be on the truck during the inspection.

2. Other inspections. At the written request of Operator, City will inspect a Tow Truck within seven calendar days of the request unless sooner inspection is warranted. The Assigned Traffic Personnel may conduct additional inspections without notice to Operator during Business Hours.

3. City will conduct no more than one reinspection of Tow Trucks that fail inspection. Operator will be provided written notification of inspection failure. Operator may thereafter request a determination meeting from Assigned Traffic Personnel. Operator shall not dispatch a Tow Truck that has not passed inspection.

B. Business Site Inspections:

1. City may inspect the storage facility at any time during normal Business Hours without notice to Operator. Failure to maintain the facility at an acceptable level of cleanliness or safety may result in the suspension or termination of this Agreement by City.

2. Lien sale records of vehicles towed or stored under this Agreement shall be available to City for review. No lien sale fee may be charged when any vehicle is released prior to 72 hours. Lien sale fees shall comply with California Vehicle Code section 22851.12.

3. Operator shall also maintain all records of tow services, including a description of vehicles towed, time, location of calls, and total itemized costs of towing and storage. City may inspect, without notice, Operator's records during Business Hours. Records shall be maintained and available for inspection for a period of four years from the date of the service provided.

## **SECTION 17. FINANCIAL INTEREST/SALE OF BUSINESS**

A. Operator may not hold a financial interest in the business of any other Franchisee. A financial interest includes ownership, membership or management in the other business or common ownership or use of any of its property, tow trucks or equipment.

B. The sale and/or transfer of assets in Operator's business shall immediately terminate this Agreement unless otherwise agreed in writing by City.

**SECTION 18. ANNUAL MEETINGS**

City will conduct an annual mandatory meeting with Operator to discuss the Agreement. City will give Operator 30 days written notice of the meeting. If Operator fails to attend the annual meeting, Operator may be suspended from the Rotation Tow List.

**SECTION 19. COMPLIANCE WITH LAW**

- A. Operator shall at all times comply with Federal, State, and local laws and ordinances.
- B. Operator, and its agents and employees, may not accept gifts or gratuities in connection with the provision of services hereunder.

**SECTION 20. COMPLIANCE WITH FRANCHISE AGREEMENT**

- A. Operator shall comply with each and every term and condition of this Agreement. Failure by Operator or its employees to comply with the terms and conditions of this Agreement, including but not limited to any violation of equipment requirements, safe loading requirements or matters related to safety, as well as overcharging or failure to maintain proper licenses may be cause for suspension or termination of this Agreement by City. Any conduct endangering the public or bringing discredit on City will also be a basis for suspension or termination of this Agreement by City, in City's reasonable discretion.
- B. All service complaints initiated or received by City against Operator or its employee(s) will be accepted and investigated in a fair and impartial manner. Operator will promptly assist and cooperate with the investigation. Upon City's determination that Operator or its employees are in violation of this Agreement, City may take appropriate action.

**SECTION 21. DETERMINATION MEETING**

Operator may request a meeting in writing within three (3) business days of receipt of any notice of action taken by City. The request must be received by City within three business days of receipt of the notice. The Assigned Traffic Personnel shall set a meeting within ten business days from receipt of the request. Each party shall be allowed to present information to the Assigned Traffic Personnel regarding the appropriateness of the action taken by City.

**SECTION 22. TERM OF FRANCHISE AGREEMENT; TERMINATION FOR CONVENIENCE**

- A. This Agreement terminates on August 31, 2015, unless sooner terminated by City as provided herein. The City may, in its discretion, extend this Agreement annually for up to three successive one year terms upon written notice to Operator.
- B. City shall have the right to terminate this Agreement for convenience upon not less than ninety (90) days written notice to Operator.

**SECTION 23. EQUIPMENT SPECIFICATIONS AND COST ATTACHMENTS**

Attachment A contains a listing of Tow Truck equipment specifications and requirements applicable to all Operators. Attachment B contains approved additional storage facilities of Operator. Attachment C contains negotiated vehicle cost criteria. Attachment A, B and C are incorporated herein as though set forth in full.

**SECTION 24. NOTICES**

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City:

Operator:

Michael R. Numainville  
Sergeant  
Traffic Bureau  
Santa Rosa Police Department  
965 Sonoma Avenue  
Santa Rosa, CA 95404

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice given as provided here will be deemed given the business day after the notice is mailed to either of the persons listed above.

**SECTION 25. INDEPENDENT CONTRACTOR**

The parties intend that Operator, in performing services herein specified, shall act as an independent contractor and shall have control of its services and the manner in which is the services are performed. Operator shall be free to contract for similar services to be performed for other parties while under this Agreement with City. Operator is not considered to be an agent or employee of City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by City for its employees.

**SECTION 26. ENTIRE AGREEMENT**

This Agreement is the entire Agreement between the parties.

**SECTION 27. MODIFICATION**

This Agreement shall not be modified except in writing executed by all parties.

**SECTION 28. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

A. Operator hereby represents and warrants to City that it is (a) is a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Operator hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement

binding on Operator in accordance with the terms hereof.

B. If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

C. City of Santa Rosa and Operator have each caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

Operator:

CITY OF SANTA ROSA  
A Municipal Corporation

\_\_\_\_\_  
[Insert legal name and entity, as applicable]

By \_\_\_\_\_  
Name

By \_\_\_\_\_  
Name

\_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM  
City Attorney

By \_\_\_\_\_  
Name

By \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

City Business Tax # \_\_\_\_\_

Taxpayer # \_\_\_\_\_