

**FRANCHISE AGREEMENT**  
**FOR**  
**VEHICLE TOWING AND STORAGE SERVICES**  
**BETWEEN**  
**THE CITY OF SAN FERNANDO**  
**AND**  
**BLACK & WHITE TOWING, INC.**  
**DATED DECEMBER 12, 2019**

**FRANCHISE AGREEMENT FOR  
VEHICLE TOWING AND STORAGE SERVICES**

**THIS FRANCHISE AGREEMENT FOR VEHICLE TOWING AND SECURE STORAGE SERVICES (THE "AGREEMENT") IS MADE AND ENTERED INTO THIS 12TH DAY OF DECEMBER, 2019, BY AND BETWEEN THE CITY OF SAN FERNANDO, A CITY CORPORATION ("CITY"), AND BLACK & WHITE TOWING, INC. ("FRANCHISEE").**

**RECITALS**

A. City has a regular need for the towing and secure storage services called for in the Towing Program described hereinafter. City lacks the facilities, equipment or personnel to perform the services called for in the Towing Program and must contract for such services.

B. Franchisee represents that it possesses the facilities, equipment and personnel necessary to perform the services called for in the Towing Program and is qualified to provide such services.

C. City is authorized to enter into this Agreement pursuant to California Vehicle Code Section 12110 and San Fernando City Code Section 90-911.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter contained, City and Franchisee agree as follows:

**ARTICLE 1. AGREEMENT – PURPOSE AND CONTENTS.**

**1.1. Purpose.**

A. City regularly requires motor vehicle towing and storage services, including the removal of abandoned, stolen and damaged vehicles, occasional towing and storage of City owned vehicles and special security for vehicles held for the investigation of crimes, pursuant to various provisions of the California Vehicle and other Codes and the San Fernando City Code. Pursuant to San Fernando City Code Section 90.911, any such services performed on behalf of the City or at the request of the San Fernando Police Department are part of the "Towing Program" of the City.

B. This Agreement is intended to provide for the operation and administration of the Towing Program, and is in the vital interest of the City and is necessary for the health and welfare of its citizens.

C. Pursuant to San Fernando City Code Section 90-911, Franchisee is hereby authorized to perform Towing Program related services ("Towing Services"), as requested by the Chief of Police or his designee, subject to the terms and conditions set forth herein.

## **1.2. Documents Constituting Agreement.**

The City of San Fernando Vehicle Towing and Secure Storage Service Provisions (the "Service Provisions") is attached hereto as Exhibit A and incorporated herein by this reference. In the event of any conflict between the provisions of the Service Provisions and the provisions of this Agreement, the provisions of this Agreement shall control.

## **1.3 Definitions**

- A.** The term "City" shall refer to the City of San Fernando, and its duly authorized employees, agents, assignees, or designees.
- B.** The term "Franchisee" shall refer to Black & White Towing, Inc. and its duly authorized employees, agents, assignees, or designees.
- C.** The term "Agreement" shall refer to the Vehicle Tow Service Franchise Agreement entered into by and between the CITY and FRANCHISEE.
- D.** The term "Contract Administrator" shall refer to the City Manager or designee.
- E.** The term "Vehicle Code" shall refer to the State of California Vehicle Code.
- F.** The term "Police Department" shall refer to the CITY's Police Department.

## **ARTICLE 2. AGREEMENT AND TERM.**

### **2.1. Incorporation of Recitals.**

The recitals set forth in full above constitute a material part hereof, and are hereby incorporated by reference as though fully set forth herein.

### **2.2. Award of Agreement.**

City hereby awards Franchisee the non-exclusive right to provide Towing Services, as the same are more particularly described in Section 2.3, pursuant to the terms set forth in this Agreement and any and all applicable provisions of the San Fernando City Code (the "SFCC"). Franchisee shall have, throughout the term of this Agreement, the non-exclusive right to provide Towing Services to City within the corporate boundaries of City as the same now exist, and within any territory City hereafter annexes during such term, except to the extent that Towing Services within such annexed territory would be unlawful or violate the legal rights of another person.

### **2.3. Scope of Services.**

Franchisee shall provide Towing Services and secure storage services as more particularly described in the Services Provisions attached hereto as Exhibit A and incorporated herein by this reference.

### **2.4. Effective Date.**

This Agreement shall be effective on the date that both parties have executed this Agreement, provided that said date is no later than thirty (30) days after the date the City Council, by resolution, approves this Agreement. This Agreement is further contingent upon the filing by Franchisee with the City Clerk of the fully executed Agreement.

### **2.5. Term.**

The term of this Agreement shall commence at the time of the Effective Date, and shall continue thereafter for five (5) consecutive years. This Agreement shall expire and terminate at the end of the Term unless earlier terminated as provided in Section 2.6 herein.

#### **2.5.1 Renewal.**

Reserved for future use.

### **2.6. Suspension and Termination of Agreement.**

This Agreement may be suspended and/or terminated by the parties before the expiration of the then current term only as follows:

**2.6.1. Suspension and/or Termination by City.** City may suspend and/or terminate this Agreement under any of the following circumstances:

(a) **For Convenience.** City may terminate this Agreement, without cause, at any time by providing Franchisee with one hundred twenty (120) calendar days written notice of City's intent to terminate the Agreement. Upon receipt of such notice from City, Franchisee agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Franchisee, Franchisee shall be paid for Towing Services satisfactorily rendered to the last working day the Agreement is in effect, and Franchisee shall have no other claim against City by reason of such termination.

(b) **For Fraud.** City may, in its sole discretion, terminate this Agreement in the event that any of the representations and warranties made by Franchisee in its Proposal or under this Agreement are, or at any time during the term of this Agreement become, materially false or inaccurate. City shall, within thirty (30) calendar days of discovery of fraud or misrepresentation, give notice to Franchisee, in accordance with the procedures of subsection 4.4 of this Agreement, of any suspected materially false or inaccurate representations or warranties made by Franchisee. Franchisee shall have thirty (30) calendar days to provide City with sufficient information showing it has not made any materially false or inaccurate representations or



warranties in its Proposal or under this Agreement; absent such information, this Agreement shall be terminated at the conclusion of the 30-day period.

(c) **For Default.** Subject to the limitations hereafter provided, City may terminate this Agreement for cause if Franchisee:

(i) Fails to provide the equipment, services or personnel required by this Agreement, including the Service Provisions;

(ii) Fails to pay the Franchise Fee in a timely manner;

(iii) Assigns or transfers this Agreement, any part thereof or any interest therein without the prior written consent of the City; or

(iv) Otherwise breaches the provisions of this Agreement, the Services Provisions or any related documents.

Notwithstanding the foregoing, City may not exercise its rights pursuant to this paragraph unless and until City provides Franchisee written notice of such default in accordance with the procedures set forth in Section 4.4 herein, and Franchisee fails to cure such default within thirty (30) days of receipt of said notice.

**2.6.2. Termination by Franchisee.** Franchisee may terminate this Agreement, without cause, at any time, by providing City with one hundred twenty (120) days written notice of Franchisee's intention to terminate. Said notice of termination shall clearly set forth the effective date of the termination and shall be delivered to City as set forth in Section 4.4 of this Agreement. Upon the effective date of Franchisee's termination of this Agreement, Franchisee shall relinquish any and all rights it may have under this Agreement, and shall relinquish and lose its status as a provider of Towing Services to City. Notwithstanding the foregoing, termination of this Agreement under this provision shall not release Franchisee from any obligations under this Agreement that, by their express terms, survive termination.

## **2.7. Conflicts with San Fernando City Code.**

**2.7.1. Conflicts.** All provisions of the SFCC applicable to the performance of this Agreement are hereby incorporated by reference as though set forth in full, and form part of the terms and conditions of this Agreement. In the event any conflict arises between the terms and conditions of this Agreement and the provisions of the SFCC, the terms of this Agreement shall prevail.

**2.7.2. Application of Amendments.** Should the SFCC be amended, revised, superseded, or otherwise changed after the effective date of this Agreement, in a manner that would materially affect the terms and conditions of this Agreement, said amendment, revision or change shall not apply to this Agreement without Franchisee's written consent.

## **ARTICLE 3. FRANCHISE FEES AND ADMINISTRATION.**

### **3.1. Franchise Fees.**

**3.1.1. Franchise Fees.** Franchisee shall pay to City on a quarterly basis the franchise fees authorized by City Council pursuant to San Fernando City Code section 90-911 and all resolutions authorized thereby. The Franchise Fee, as of the Commencement Date, is \$45.00 per vehicle towed, as adopted by the City Council in Resolution 7970 on December 2, 2019.

**3.1.2. Franchise Fee Adjustment.** In the event the City Council increases the Franchise Fee, it shall allow a commensurate increase in the rates charged by Franchisee. The intent of the parties is that any increase in the Franchise Fee be passed through directly to the owners of the towed vehicles. Any change in the rates charged by Franchisee as a result of a change in the Franchise Fee shall require prior approval of the City Council and shall be made pursuant to section 4.12 of this Agreement.

### **3.2. Schedule of Payment.**

**3.2.1. Payment of Franchise Fees.** The first Franchise Fee payment shall be due January 15, 2020, and shall cover the period from the date of this Agreement until December 31, 2019. Thereafter, the Franchise Fee shall be payable monthly, pursuant to the provisions of Section I(Z) of the Service Provisions. Each such payment shall be accompanied by an accounting, substantially in the form attached hereto as Exhibit B, which sets forth the number of vehicles towed during the preceding quarter.

**3.2.2. Effect of Accepting Payment.** No acceptance of any payment by City shall be construed as an accord that the amount is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Franchisee for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates a franchise fee underpayment, Franchisee shall pay to City the amount of the underpayment within ten (10) days of receipt of written notice from City that such is the case.

**3.2.3. Remittance.** All Franchise Fee payments shall be remitted to City at the following address:

Finance Department  
City of San Fernando  
117 Macneil Street  
San Fernando, California 91340

### **3.3. Administration.**

**3.3.1. Designation of Representatives.** Each party shall designate a representative to serve as that party's primary contact for the administration of this Agreement at all times during the term hereof. City hereby designates the Chief of Police or

designee as the City Representative. Franchisee hereby designates Robert Ordelleide, President, as the Franchisee Representative.

**3.3.2. Franchisee Representative.** The Franchisee Representative shall be principally responsible for Franchisee's obligations under this Agreement and shall serve as the principal liaison between Franchisee and City. The Franchisee Representative shall be authorized to act in Franchisee's behalf with respect to the services specified herein. The Franchisee Representative shall remain responsible during the term of this Agreement for directing all activities of Franchisee and devoting sufficient time to personally supervise the services hereunder. Designation of another representative by Franchisee shall not be made without the prior written consent of City. Unless otherwise specified herein, approval of the Franchisee Representative required hereunder shall be deemed the approval of the Franchisee.

**3.3.3. City Representative.** The City Representative shall be the primary contract administrator for City. It shall be the responsibility of the Franchisee Representative to assure that the City Representative is kept informed of the progress of the performance of Towing Services, and Franchisee shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, approval of the City Representative required hereunder shall be deemed the approval of the City.

## **ARTICLE 4. GENERAL PROVISIONS.**

### **4.1. Insurance.**

Franchisee shall, at its sole cost and expense, procure and maintain in full force and effect, throughout the term of this Agreement, inclusive of any renewal term granted by City, insurance that complies with all of the requirements of Section I(K)(1) of the Service Provisions, incorporated hereto by reference.

### **4.2. Indemnification.**

The indemnification provisions set forth under Section I(K)(2) of the Service Provisions are incorporated hereto by reference and shall set forth Franchisee's indemnification duties and obligations under this Agreement.

### **4.3. Assignment or Transfer Prohibited.**

The reputation, capability and identity of Franchisee are important and material factors in the award of this franchise. Accordingly, Franchisee shall not assign, sell, subcontract, or otherwise transfer any of its obligations, rights, benefits, or other interests it may have under this Agreement to any other person or entity without the prior written consent of City to such transfer or assignment. City may, in its sole discretion, withhold consent to any sale, assignment, or other transfer of this Agreement with or without cause, and may solicit new proposals for the Towing Program. City's consent to a transfer or assignment shall neither relieve Franchisee of its obligations under, nor alter the terms of, this Agreement. For the purposes of this section, the sale, assignment, or other transfer from any person or group of persons collectively having an interest

of fifty percent (50%) or more in Franchisee (whether by means of ownership of stock, partnership interests, tenancy, or otherwise) to any other person or entity shall be deemed an assignment subject to the provisions of this section. Any attempted or purported assignment, sale or other transfer by Franchisee without the prior written consent of City shall be null, void and of no effect.

#### **4.4. Notices.**

Any notice authorized or required to be given by this Agreement shall, unless otherwise specified in this Agreement, be served by personal delivery or by depositing such notice in the United States mail with first-class postage prepaid, addressed to the person and addresses listed below for each party, unless written notice is provided by either party as to a change of address for that party:

**City:** Chief of Police  
San Fernando Police Department  
910 First Street  
San Fernando, California 91340  
Phone: (818) 898-1250  
Fax: (818) 361-3697

*with a copy to:*  
City Manager  
City of San Fernando  
117 Macneil Street  
San Fernando, CA 91340  
Phone: (818) 898-1200  
Fax: (818) 361-7631

**Franchisee:** Black & White Towing, Inc.  
10857 San Fernando Road  
Pacoima, CA 91331  
Attn: Robert Ordelleide, President  
Phone: (818) 896-9511  
Fax: (818) 896-1031

For the purposes of this Agreement, notices shall be deemed communicated as follows: (i) Notices delivered personally shall be deemed communicated as of the date of actual receipt; (ii) Notices sent via regular mail (whether by first class mail, registered mail or certified mail) shall be deemed communicated as of three (3) days after deposit thereof in the United States mail, addressed as shown on the addressee's registry or certificate of receipt; and (iii) Notices sent via Federal Express or similar courier service shall be deemed communicated two (2) days after deposit of such notices with Federal Express or similar courier or one of its agents.

#### **4.5. Authority to Enter Agreement.**

City and Franchisee warrant that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each respective party to perform the obligations and conditions imposed upon each party herein.

#### **4.6. Audit of Franchisee's Books and Accounts.**

In addition to the requirements of Section I(L) of Exhibit A, Franchisee shall make its books and records available to City during regular business hours, upon 24-hours written notice from City, for the purpose of auditing and verifying Franchisees payment of Franchise Fees and compliance with this Agreement.

#### **4.7. Severability.**

Whenever possible, each and every provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision, or portion thereof, of this Agreement, or the application of the same to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such provision, or portion thereof, shall be severed from this Agreement and shall not affect the validity of the remaining portions of this Agreement. City and Franchisee expressly declare that each would have entered into this Agreement, and each and every section and provision herein, irrespective of the fact that any one or more provisions may be declared invalid or unconstitutional.

#### **4.8. Independent Contractor.**

Franchisee is, and shall at all times remain as to City, a wholly independent contractor. Franchisee shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Franchisee shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Franchisee or any of Franchisee's employees, except as set forth in this Agreement. Franchisee agrees to pay all required taxes on amounts paid to Franchisee

under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Franchisee shall fully comply with the workers' compensation laws regarding Franchisee and its employees. Franchisee further agrees to indemnify and hold City harmless from any failure of Franchisee to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any compensation due to Franchisee under this Agreement any amount due to City from Franchisee as a result of Franchisee's failure to promptly pay to City any reimbursement or indemnification arising under this Section 4.8.

#### **4.9. No Third Party Beneficiaries.**

This Agreement, its provisions, and its covenants, are for the sole and exclusive benefit of City and Franchisee. No other parties or entities are intended to be, nor shall be considered, beneficiaries of the performance by either party of any of the obligations under this Agreement.

#### **4.10. No Waiver.**

Any failures or delays by City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by City in asserting any of its rights and remedies shall not deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

#### **4.11. Time of the Essence.**

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

#### **4.12. Modification and Amendment.**

This Agreement may not be modified, supplemented, or amended, except by written agreement signed by each of the parties hereto.

#### **4.13. Binding on Successors and Assigns.**

This Agreement, and each and every covenant, obligation, and condition herein, shall be binding on and shall inure to the benefit of the successors and assigns of City and Franchisee.

#### **4.14. Institution of Legal Actions.**

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.



#### **4.15. Attorneys' Fees.**

In the event either party brings an action at law or in equity, including any action for declaratory relief, to enforce the provisions of this Agreement against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled under law.

#### **4.16. Applicable Law.**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

#### **4.17. Use of Captions.**

The use of captions to identify the various articles and paragraphs of this Agreement are solely for reference and as a matter of convenience, and in no way bind, emit, or describe the scope or intent of any provision.

#### **4.18. Interpretation.**

City and Franchisee acknowledge that this Agreement is the product of mutual, arms-length negotiation and drafting, and each party expressly represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that all ambiguities in the document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of the provisions of this Agreement.

#### **4.19. Cooperation and Further Acts.**

City and Franchisee hereby agree to execute such other instruments and to do such further acts as may be reasonably required by, or necessary to carry out, the provisions of this Agreement.

#### **4.20. Reservation of Rights.**

City and Franchisee expressly reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither City nor Franchisee waives any rights which it now or may later enjoy under applicable law, and City and Franchisee specifically reserve their rights to take full advantage of any changes in the law during the term of the Franchise.

#### **4.21. Force Majeure**

If either City or Franchisee is unable to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, inability to obtain labor, governmental restrictions, regulations or controls, civil commotion, fire or other casualty, emergency, or any other cause beyond the reasonable control of either City or Franchisee, such non-performing party shall be excused from

the performance of its obligation by the other Party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage.

#### **4.22. Incorporation by Reference**

All exhibits attached to this Agreement or documents expressly incorporated by reference shall be deemed incorporated into this Agreement by the individual reference to each such exhibit or document, and all exhibits and documents shall be deemed part of this Agreement as though set forth in full. In the event of any conflict between the express provisions of this Agreement and the provisions of any exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

#### **4.23. Integration.**

This Agreement represents the entire and integrated agreement between City and Franchisee and supersedes any prior negotiations, representations, or agreements, whether written or oral, with respect to the subject matter hereof.

### **ARTICLE 5. FRANCHISEE'S REPRESENTATIONS AND OBLIGATIONS.**

#### **5.1. Personnel.**

Franchisee represents that it has, or shall secure at its own expense, all personnel required to perform the Towing Services contemplated by this Agreement. Franchisee may associate with or employ associates or subcontractors in the performance of the Towing Services upon obtaining the prior written approval of City to such association or subcontract, but shall remain, at all times, primarily responsible for the performance of the Towing Services.

#### **5.2. Governing Requirements.**

Franchisee shall operate its tow service and shall perform all Towing Services required of it under the terms of this Agreement in full compliance with the regulations set forth in this Agreement, including the Service Provisions, and all applicable federal, state and local laws.

#### **5.3. Performance and Operational Standards.**

Franchisee shall perform the Towing Services in accordance with the standards set forth under federal, state and local law and in the Service Provisions. Franchisee shall at all times comply with such operating standards, noticing requirements and service requirements mandated under Article 1 of Chapter 10 of Division 11 of the California Vehicle Code (Vehicle Code section 22650 et seq.) including but not limited to those operating standards, noticing requirements and service requirements set forth under Vehicle Code sections 22655.5(c), 22658, and 22699. The failure to abide by such operating standards, noticing requirements and/or service requirements shall constitute an Event of Default under this Agreement.

Throughout the term of this Agreement, Franchisee shall maintain their designation as a Los Angeles Official Police Garage (OPG) and comply with all towing and storage regulations as



set forth by the Commission Investigation Division or other agency responsible for regulating OPGs.

Franchisee warrants, represents and agrees that all persons seeking the release of their vehicles from Franchisee shall not be subject to unlawful or arbitrary discrimination, including discrimination based upon sex, marital status, race, color, religion, ancestry, national origin, physical disability, sexual orientation and domestic partnership status and that Franchisee agrees that it will conduct all its business activities pursuant to this Agreement in accordance with the foregoing policy.

#### **5.4. Rates and Charges.**

Rates and charges Franchisee may charge for the removal and storage of vehicles towed by Franchisee in the performance of the towing services contemplated by this Agreement shall not exceed the rates and charges set forth in the Service Provisions.

#### **5.5 Prohibited Employment.**

In addition to all other conditions of approval, the City Council of the City of San Fernando has also conditioned approval of this Agreement on Franchisee's compliance with the following: To the fullest extent permitted by law, under no circumstances may Franchisee do any of the following during the term of this Agreement or any Renewal Term as the same are defined under Section 2.5 of this Agreement, above: (i) employ or offer employment to any person who is currently employed by the City of San Fernando; (ii) employ or offer employment to any former employee of the City of San Fernando whose employment ended or was otherwise terminated (for whatever reason) less than one year from the date the former employee is employed or offered employment by Franchisee; (iii) engage any employee of the City of San Fernando or offer to engage any employee of the City of San Fernando as an independent contractor or agent of Franchisee; and/or (iv) engage or offer to engage any former employee of the City as an independent contractor or agent of Franchisee where such engagement or offer to engage is made less than one year from the date the former employee's employment with the City of San Fernando ended or was otherwise terminated (for whatever reason).

### **ARTICLE 6. SIGNATURES.**

#### **6.1. Counterpart Originals.**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

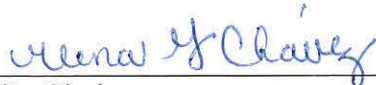
IN WITNESS WHEREOF, City and Franchisee have caused the within Agreement to be duly executed by their respective officers.

**CITY OF SAN FERNANDO**

A Municipal Corporation


  
\_\_\_\_\_  
Nick Kimball, City Manager

ATTEST:


  
\_\_\_\_\_  
City Clerk

**FRANCHISEE:**

**BLACK & WHITE GARAGE, INC.**

By:   
Name: ROBERT ORDELHEIDE  
Title: PRESIDENT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**VEHICLE TOWING AND SECURE STORAGE  
SERVICE PROVISIONS**

## **I. GENERAL PROVISIONS**

### **A. SERVICES TO BE PERFORMED**

The Franchisee shall furnish towing and storage services for vehicles seized, impounded or otherwise caused to be removed from the highways or from public or private property by the San Fernando Police Department (SFPD). Towing services shall include, but not be limited to, removal of wrecked vehicles and debris resulting from accidents, preliminary work necessary to towing, including removal of vehicles from ditches or separation of entangled vehicles, removal of vehicles for criminalistics and/or evidentiary purposes as directed by SFPD personnel, other impoundment of vehicles as directed by SFPD, and necessary service to heavy duty vehicles on the highways.

### **B. CONDUCT**

The Franchisee shall conduct business in an ethical, lawful and orderly manner so as to maintain the confidence of the community. While Franchisee is an independent contractor, each contact it has with the public may reflect upon the City. For that reason, and the inherent potential for conflict in vehicle removal and storage, Franchisee and its employees must maintain a fair, impartial, and reasonable attitude, and perform its duties in a courteous manner. Statements and actions of the Franchisee and its employees must be the result of considered judgment and absent of personal opinion or bias.

The Franchisee, when notified by the Chief of Police or his or her designee of any complaint of discourtesy by the Franchisee's employee(s), shall investigate and respond in writing to the Chief of Police or his or her designee within ten (10) calendar days of receipt of notification of the complaint. Franchisee's response shall include the results of its investigation and, if the complaint is found to be true, what measures the Franchisee took to address said complaint and prevent future complaints on the same issue.

### **C. REGULATION**

The Franchisee shall comply with all applicable, federal, state and local laws, ordinances, rules and regulations, shall make all reports required by the State of California Vehicle Code, and shall follow all rules or regulations which the SFPD may prescribe governing the conduct of Franchisee's operations under the Franchise Agreement.

### **D. COOPERATION**

Tow unit operators shall abide by the lawful decisions of all peace officers and law enforcement employees of the City of San Fernando and shall cooperate in removing and/or in impounding vehicles.

## **E. SUPERVISION**

The Franchisee shall comply with all reasonable regulations imposed by the City on the Franchisee's performance pursuant to the Franchise Agreement. The Franchisee shall further make all records, equipment and storage facilities related to Franchisee's performance under the Franchise Agreement available for periodic inspection by the Chief of Police or his or her designee to determine if the garage is in compliance with the rules and regulations of the City. Inspections may occur at any time and Franchisee shall in good faith cooperate with any City inspection of its facilities or equipment to assist the City in verifying compliance with this Agreement, the Service Requirements, other related documents and all state laws governing the performance of tow services.

## **F. PRIORITY AND RESPONSE TIME**

The Franchisee shall furnish such services as requested by the SFPD and noted in the Franchise Agreement at any time during the day or night and shall:

1. Give priority to City calls when requested;
2. Maintain sufficient personnel and equipment to provide for a maximum response time of fifteen (15) minutes, except as otherwise provided herein;
3. Notify the SFPD upon receipt of request for tow when a tow unit cannot respond immediately and give an estimated time of arrival;
4. If the Franchisee is unable to respond within the maximum response time and/or there is a potential public safety issue determined by SFPD at the site of the incident that requires immediate removal and/or relocation of a vehicle(s), then the Franchisee's identified subcontractor will be contacted by the Franchisee to immediately assist SFPD and ensure the subject vehicle(s) removal and/or relocation; and
5. The Franchisee shall provide immediate response whenever requested to respond to the scene where a child is locked in a car or other emergency of such type.
6. In the event that Franchisee receives more than one (1) tow service request from the Police Department within the same time period, Franchisee shall respond to the first request then respond to the second request unless the second request involves a vehicle accident where the disable vehicles are interrupting the flow of traffic or poses a threat to the safety of others.

## **G. ADMINISTRATION**

The Police Department shall administer the Franchise Agreement on behalf of the City and the Franchisee shall abide by the directions and decisions of Police Department personnel at the scene of a call.

## **H. SETTLEMENT OF DISPUTES**

Should there be any dispute between the Franchisee and owner of the vehicle over charges made for services rendered under the Franchise Agreement, such dispute shall be decided by the SFPD Chief of Police or his or her designee and the Franchisee shall make no demands upon the owner of the vehicle for a sum in excess of the amount determined to be reasonable by the Chief of Police or his or her designee. The Chief of Police or his or her designee may hold an administrative hearing if any party to the dispute so requests.

## **I. CITY NOT LIABLE**

Neither the City nor the SFPD shall be responsible to the Franchisee for payment of towing, removal, or storage charges. The Franchisee shall look to the owner of the vehicle for payment of applicable fees.

## **J. REPORTS TO BE MADE TO CITY**

The Franchisee shall provide the SFPD on the fifteenth (15th) day of each month with a written list of all vehicles removed or impounded during the past month pursuant to the Franchise Agreement. This list shall include vehicle owner's name and address (if known), vehicle make, license and motor number, and Police DR number. The Franchisee shall also provide at the same time, a list of all vehicles currently on the Franchisee's premises that were removed from a traffic accident site handled by the SFPD. This list shall also include vehicle license number, date of storage, reason for storage, and Police DR number, if applicable. An explanation of each tow requiring an excess of one hour shall be provided. The report shall also contain a list of the tow unit operators that were employed by the Franchisee during any period of that reporting month, the list shall contain the tow unit operator's name, operator's license number, classification, and its expiration date.

Franchisee or his/her designee shall sign the monthly report.

Franchisee shall notify the Chief of Police or his or her designee in writing of any sale or disposal of a formerly stored vehicle or vehicle part to an individual known to the Franchisee designee or his employees as a City employee.

## **K. INSURANCE AND INDEMNITY REQUIREMENTS**

1. **Insurance:** The Franchisee shall produce and maintain for the duration of the Franchise Agreement the insurance as required in this section. Franchisee shall not commence work under this Agreement until proof of all required insurance has been provided to and accepted by the City. The Franchisee shall file with the SFPD Chief of Police a policy or duly authorized certificate of public liability insurance insuring the City of San Fernando, its officers, agents and employees, against liability. Franchisee shall maintain limits no less than:

- a. Workers' Compensation Insurance: as required by the State of California, and Franchisee's liability insurance, with limits not less than \$1,000,000 each accident. The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the City for all work performed by the Franchisee under this Agreement.
- b. Garage Liability Insurance: at least as broad as Insurance Services Office (ISO) occurrence Form CA 00 05 with Broadened Coverage - Garage Endorsement (CA 25 14). Such insurance shall include coverage for liability arising out of garage operations with limits not less than \$1,000,000 each accident and \$2,000,000 in aggregate, and automobile liability coverage for owned, hired and non-owned automobiles with limits not less than \$1,000,000 each accident. The insurance shall also include Garagekeepers Liability coverage for each location the Franchisee may utilize to provide service under this contract with limits of not less than \$1,000,000 per location.
- c. As an alternative to the requirements in paragraph b above, Franchisee may provide a combination of Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01), including coverage for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate and Insurance Services Office (ISO) Form CA 00 01 covering Automobile Liability, code 1 (any auto, owned, hired and non-owned automobiles or other licensed vehicles) with limits of \$1,000,000 per accident for bodily injury and property damage. The insurance shall also include Garagekeepers Liability coverage for each location the Franchisee may utilize to provide service under this contract with limits of not less than \$1,000,000 per location.
- d. On Hook Physical Damage Liability Insurance with limits not less than \$500,000 per vehicle.
- e. Deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers or (b) the Franchisee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- f. Other insurance provisions: The policies are to contain, or be endorsed to contain, the following provisions:



- i. The Commercial General Liability policy shall be endorsed to provide that the City of San Fernando, its officers, officials, employees, and volunteers are covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Franchisee under the Franchise Agreement. Proof of this coverage must be in the form of an additional insured endorsement to the Franchisee's insurance using ISO CG 20 10 11 85 or its equivalent language. If coverage is provided in the form of a Garage Liability Policy, such policy shall be endorsed to include equivalent additional insured status to the City of San Fernando, its officers, officials, employees and volunteers.
  - ii. For any claims related to this project, the Franchisee's insurance coverage shall be primary insurance as respects the City of San Fernando, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
  - iii. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, reduced in coverage or in limits, or cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of San Fernando.
- g. Subcontractors: Franchisee shall include all subcontractors as insureds under its policies or require and verify that all subcontractors maintain insurance meeting all the requirements of this Agreement.
- h. Verification of Coverage
- i. Franchisee shall furnish the City with original certificates and endorsements, including amendatory endorsements, affecting coverage required herein. All certificates and endorsements must be received and approved by the City of San Fernando before work commences under the Franchise Agreement. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements required by these specifications at any time during the term of this contract. Neither the failure of the Franchisee to supply required proof of coverage, nor the failure of the City to approve same shall alter or invalidate the provisions of this contract.
  - ii. The Franchisee shall submit evidence of appropriate replacement or renewal coverage for all required insurance that expires or is



cancelled during the term of the Contract. Such evidence shall be provided to the City no later than 15 calendar days prior to the expiration or termination of coverage. If operator fails to maintain the required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Franchisee shall be withheld until City receives required evidence that coverage has been restored.

- iii. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- iv. All policies required pursuant to this section shall be submitted to the San Fernando City Attorney for approval as to form.

## **2. Indemnification.**

- a. Franchisee agrees to indemnify, defend and hold harmless the City, its elected officials, officers, agents and employees ("Indemnities"), at Franchisee's sole expense, from and against any and all loss, liability, penalties, forfeitures, claims, actions, suits or other legal proceedings of any kind asserted against the City, its elected officials, officers, agents, and employees arising out of the performance of Franchisee, its employees, representatives, agents, and sub operators under this agreement, excepting only such claims or actions which may arise out of sole or active negligence of the City, its elected officials, officers, agents and employees. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Franchisee, its employees, and/or authorized sub operators, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, and employees based upon the work performed by the Franchisee, its employees, and/or authorized sub operators specifically named or otherwise asserted to be liable. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Franchisee's proposal, which shall be of no force and effect.
- b. The Franchisee's obligation to defend, hold harmless, and indemnify shall not be excused because of the Franchisee's inability to evaluate liability or because the Franchisee evaluates liability and determines that the Franchisee is not liable to the claimant. The Franchisee must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City, unless this time has been extended by the City. If the Franchisee fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, as much of the money due the Franchisee by virtue of the Franchise Agreement as shall reasonably be considered necessary by the City may

be retained by the City until final disposition has been made or the claim or suit for damages, or until the Franchisee accepts or rejects the tender of defense, whichever occurs first.

- c. With respect to third party claims against the Franchisee, the Franchisee waives any and all rights of any type to express or implied indemnity against the Indemnities.
- d. Separate Counsel: City may elect to have separate legal counsel from Franchisee at any time at its sole discretion, and in such case Franchisee will pay one-half (1/2) of all fees and costs and charges for such separate legal counsel.
- e. Subcontractors: Franchisee shall require all subcontractors to enter into an Agreement containing the provisions set forth in this subsection K(2) in which Agreement the subcontractor fully indemnifies the City in accordance with this Agreement.
- f. Exception: Notwithstanding Subsections K(2)(a)-(b) above, Franchisee's obligation to indemnify, hold harmless and defend the City, its officers and employees shall not extend to any loss, liability, penalty, claim, damage, action or suit arising or resulting solely from acts or omissions constituting willful misconduct or sole negligence on the part of the City, its officers or employees.
- g. Damage by Franchisee: If Franchisee's employees or subcontractors cause any injury, damage or loss to City property, including by not limited to City streets or curbs, Franchisee shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of the City to be indemnified by Franchisee for any such injury, damage or loss. With the prior written approval of City, Franchisee may repair the damage at Franchisee's sole cost and expense.
- h. Tort Claims Act: This Agreement shall in no way act to abrogate or waive any immunities available to the City under the Tort Claims Act of the State of California.

#### **L. FRANCHISEE'S RECORDS AND BOOKS; INSPECTIONS AND AUDITS**

Franchisee shall maintain the books and records of each tow or storage as required by Vehicle Code section 10650 and any other state law or regulation and this Agreement. All records, equipment, and storage facilities shall be open to periodic inspection by the SFPD personnel or its designated representative. Any deficiencies shall be corrected as soon as practicable upon request of the SFPD. Franchisee shall permit and facilitate any inspections or audits that City may require.

Franchisee acknowledges, understands and agrees that any and all records provided to the City or otherwise maintained in compliance with Vehicle Code section 10650 may be subject to production to third-parties under the California Public Records Act (Government Code section 6250 et seq) and City reserves right to produce such records to the extent City, in its discretion, determines that such records are subject to disclosure.

#### **M. IMPOUND REPORTS**

A Franchisee tow unit operator shall sign and complete the necessary portions of the impounding employee's Impound Report. The impounding employee shall retain the original copy of the Impound Report. Franchisee shall retain a copy of the Impound Report for two years. The garage's copy of the Impound Report shall be used to record the vehicle release information in the appropriate space provided in the Impound Report.

#### **N. NOTIFICATIONS**

The Franchisee's employees while acting within the course of their employment shall cause the appropriate law enforcement agency to be notified without delay whenever they become aware of a possible crime or other activity requiring action by law enforcement personnel. The Franchisee shall notify SFPD in writing on a weekly basis of the following:

1. All vehicles originally impounded by a public agency but that have remained in storage beyond seven calendar days.
2. All vehicles originally impounded with a criminalistics/evidentiary hold, but that have remained in storage with a hold beyond seven calendar days, Franchisee shall notify SFPD on a weekly basis of all vehicles sold during the preceding week in accordance with statutorily established lien procedures.

#### **O. STORAGE**

Storage shall commence at the time the vehicle arrives at the Franchisee's storage facility. Charges for vehicle storage shall be based on a rate. The daily rate extends from midnight to midnight of the following day.

Exceptions:

1. When a release request is made within the first "hour of storage", the storage fee shall be waived.
2. Per SB 887 (1992, Lockyer), when a release request is made within 24 hours, only one day's storage shall be charged regardless of the calendar date.
3. When a release request is made between 7 p.m. and 12 a.m. (midnight), one day's storage fee shall be waived providing such release occurs within the mandatory release hours (7 a.m. to 7 p.m.,) of the following day.

**P. LIEN ON STORED VEHICLES AND LIEN SALES**

The Police Department personnel who is requesting the impound shall be responsible for establishing that "probable cause" exists to impound the vehicle in question. When "probable cause" is lost prior to a vehicle being removed to a Franchisee facility, no lien shall be attached and no fee shall be charged for the field release of a vehicle to a properly interested person.

In the event a vehicle is not claimed by its owner after Franchisee duly notifies the registered or legal owner pursuant to the relevant provisions set forth in the Vehicle Code, Franchisee shall be able to facilitate or conduct a lien sale pursuant to Vehicle Code Sections 22851 et seq. Any and all lien sales performed by Franchisee shall be done in strict compliance with all applicable laws.

Franchisee shall indemnify, defend and hold harmless, the City and City's elected and appointed officials, officers, employees, agents and volunteers from any and all liability arising out of any lien sale that Franchisee facilitates or conducts.

**Q. DISPUTES AND INJURIES**

The Chief of Police or his or her designee has the authority to settle all disputes arising from actions by the Franchisee. The decision of the Chief of Police or his or her designee shall be binding on all parties involved. Inquiries pertaining to the conduct, practices, and regulation of the Franchisee may be referred to the City of San Fernando Police Department, 910 First Street, San Fernando, California, 91340; (818) 898-1267.

**R. CITY VEHICLES**

The Franchisee shall provide, at no cost to City, routine roadside service, including but not limited to towing service, to all vehicles owned by the City of San Fernando up to and including one (1) ton rated vehicles at the request of the Chief of Police or his or her designee whenever such vehicles require such service within the City of San Fernando or within five (5) road miles of the corporate limits of the City.

**S. TRAFFIC ACCIDENT SCENE CLEANUP**

At the request of the Police Department, the Franchisee shall dispatch a tow unit to the scene of a traffic accident and shall remove all glass and debris deposited upon the roadway. Franchisee shall provide traffic accident scene cleanup services to City free of charge.

**T. FAX MACHINE**

The Franchisee shall maintain a fax machine or similar transmittal device at all times during the term of the Franchise Agreement.

#### **U. TOXIC MATERIALS**

City will not knowingly require the Franchisee to pick up, store or dispose of any toxic or hazardous materials, except for those normal fluids associated with motor vehicles.

#### **V. COST TO CITY**

Unless otherwise provided in the Franchise Agreement, any towing and storage expenses for which the City is financially responsible pursuant to the Franchise Agreement, including towing or storage of City-owned vehicles, shall be billed to the City at no more than 50% of the rate authorized by the Franchise Agreement.

#### **W. COLLECTION OF FEES**

The Franchisee shall collect all fees (including the Vehicle Release Fee) imposed by the City upon vehicles that the City causes to be towed, stored, or impounded. This money shall be paid to the City on a monthly basis.

#### **X. PERMITS AND CERTIFICATES**

The Franchisee shall secure and maintain any licenses, permits, or certificates required by federal, state and local law. The Franchisee shall secure and maintain such City business license as required by the San Fernando City Code. In addition, Franchisee shall keep informed of and comply with the requirements of all federal, state, county and City laws, ordinances, and regulations applicable to the work performed under the Franchise Agreement.

#### **Y. BACKGROUND INVESTIGATION AND FEE REQUIRED**

Prior to the award of the Franchise Agreement, the Police Department shall conduct or have conducted a background investigation of the business, its principals, and its tow truck drivers. The Franchisee awarded the Franchise Agreement shall be responsible to notify the SFPD whenever a new driver is assigned to tow requests from SFPD. All new tow drivers shall be subject to background investigation. Franchisee shall provide the names, birth dates and other necessary information on all employees of Franchisee who are performing services under this Agreement sufficient to permit the City to make background checks as required herein. Franchisee shall pay a fee of \$25.00 to the City, as set by City Council Resolution No. 7553, for each tow truck driver's background check. Franchisee shall ensure that all other fees required by any supporting agencies to complete each tow truck driver's background check

#### **Z. FRANCHISE FEES**

The Franchisee shall pay to the City on a quarterly basis the Franchise Fee authorized by City Council, pursuant to San Fernando City Code Section 90-911 and all resolutions authorized

thereby. Pursuant to Resolution No. 7302, adopted by the City Council on March 30, 2009, the Franchise Fee in effect as of the date of this Agreement is \$45.00 per vehicle towed.

The Franchise Fee payment of \$45.00 per vehicle towed shall be paid on a monthly basis with payments received no later than April 15, July 15, October 15, and January 15 of each year. Failure to make Franchise Fee and business license tax payments may be cause for termination of the Franchise Agreement.



## **II. TOWING PROVISIONS**

### **A. PLACE TO WHICH VEHICLES SHALL BE TOWED**

Any vehicle towed pursuant to the Franchise Agreement shall be taken to such place as the owner or driver of the vehicle directs. When impounded by the SFPD it shall be taken to the storage lot designated by SFPD. If neither the owner nor the driver nor SFPD specifies a destination, is unable to do so, or is not at the scene of removal, the Franchisee shall tow the vehicle to Franchisee's Primary Storage Facility. In no case shall Franchisee use coercion or pressure of any kind upon the owner or driver of a vehicle to have the vehicle towed to Franchisee's own storage yard or garage.

### **B. EVIDENCE TO BE SAFEGUARDED**

The Franchisee shall take all reasonable precautions required by the Police Department to avoid damage to any evidence or impounded vehicles such as fingerprints or stains. Vehicles taken into custody that involve such evidence shall be stored in the Investigative Hold Area, as defined hereinafter, and shall be secured from access by unauthorized persons. Vehicles stored for prints shall be protected from dust and dirt or deterioration of evidence by the sun or other elements. Vehicles taken into custody and stored by Franchisee as evidence of a crime or which are involved in a pending investigation shall be locked securely and stored in a covered area separate from all other stored vehicles and which is protected against entry by unauthorized persons. Franchisee shall be fully and exclusively responsible for any items missing from these stored vehicles and for the entrance of any individual not authorized by Franchisee to enter into said storage area.

### **C. TOWING AND STORAGE CHARGES; BILLING**

Franchisee shall charge the rates established by Official Police Garages Los Angeles ("OPGLA") for Towing and Storage, as those rates may be amended from time to time. Upon the effective date of any increase in OPGLA's rates for Towing and Storage, Franchisee's rates shall increase to match OPGLA's rates. Such an increase shall not require approval of the City Council and shall occur automatically upon the effective date of the OPGLA rate increase. The foregoing notwithstanding, Franchisee shall provide City with written notice of any increase in the OPGLA rates within seven (7) calendar days from the effective date of such increase. The most up-to-date schedule of rates shall be clearly and conspicuously posted at all of Franchisee's facilities so that members of the public are made aware of such rates. The schedule shall also indicate the effective date of such rates and a copy of the schedule shall be provided to any member of the public, including any official or employee of the City upon demand either verbally or in writing.

Towing charges commence at the time a tow unit actually proceeds to a call for service and terminate at the time the tow unit returns to the Primary Storage Facility.

Except as provided by the approved rates herein, no additional charges shall be made for special equipment or service necessary to prepare vehicles for towing.

All bills for towing and storage shall be itemized.

**D. INVENTORY**

1. A detailed written inventory of all personal property in any and all vehicles towed and/or stored and/or impounded by Franchisee shall be completed by the Police Department prior to the time of towing and/or storing the vehicle by the Franchisee. The towing operator of Franchisee shall complete and sign the appropriate section of said inventory form. A copy of the fully completed inventory form shall be given to the towing operator employed by Franchisee who shall in turn give it to Franchisee who shall retain it for as long as the vehicle is in Franchisee's possession and control.
2. Under no circumstances may a vehicle and/or personal property located in a vehicle be released by Franchisee to the vehicle owner or his/her designated representative without the express written permission from the Police Department.
3. If at any time an item of personal property is removed from a stored vehicle and placed in another location, Franchisee shall prepare a receipt of said item, place a copy of said receipt in the stored vehicle, and provide a copy of said receipt to the Police Department.
4. Franchisee agrees to indemnify, defend and hold harmless City and City's elected and appointed officials, officers, employees, agents and volunteers harmless from any damage to vehicles and/or loss or damage to personal property located inside the vehicles during Franchisee's custody and possession of said vehicles



### **III. STORAGE PROVISIONS**

The Franchisee shall provide a total storage capability of not less than 65 vehicles including five (5) vehicles within an enclosed investigative hold area. Based on future needs of the Police Department, the Franchisee shall ensure that they are able to expand total storage capability to 85 vehicles including the five (5) vehicles within an enclosed investigative hold area. The increased vehicle storage capacity can be addressed entirely on a Primary Storage Lot or through the use of Primary Storage Lot and a Secondary Storage Lot.

#### **A. PRIMARY STORAGE LOT**

The Franchisee shall at all times provide and maintain a Primary Storage Facility with a minimum storage capacity of 65 vehicles including an investigative hold area for 5 vehicles dedicated to the storage of vehicles from Police Department pursuant to the Franchise Agreement. The Primary Storage Facility shall be no more than five (5) miles from the Police Department's office building.

The storage lot, or Primary Storage Facility if more than one such lot is maintained, shall be:

1. Immediately adjacent to or contain office facilities.
2. Adequate in size to accommodate all:
  - a. "Hold" vehicles;
  - b. Late model vehicles;
  - c. Specially equipped vehicles; and
  - d. Vehicles to be released immediately to owners.
3. Entirely surfaced with either concrete or asphalt material.
4. Free of holes or areas that are decomposed or broken.
5. Clean and free of litter, debris, or weeds.
6. Include on-site lighting that provides easy visibility to all areas of the lot while eliminating spill over onto neighboring properties.
7. Sized and dimensioned to afford safe access to all vehicles.

## **B. INVESTIGATIVE HOLD AREA AND VEHICLES**

The Franchisee shall maintain an area at its Primary Storage Facility for vehicles held for criminalistic and/or evidentiary examinations, which has a minimum vehicle storage capacity of five (5) vehicles. This Investigation Hold Area shall:

1. Have a fully enclosed structure and be capable of providing protection from the natural elements.
2. Be fenced and gated (so as to prohibit entry by unauthorized persons as prescribed by the Chief of Police or his or her designee) with remote access controlled by the dispatcher.
3. All entries shall be documented to identify the vehicle seen, the person entering, and the date and time the person entered the Investigative Hold Area.
4. The Investigative Hold Area's storage capacity shall be capable of holding ten (10) vehicles at any one time.
5. The only persons authorized to enter an Investigative Hold Area are the Franchisee employees and concerned law enforcement employees.
6. Garage employees shall not remove property from vehicles being held for criminalistic and/or evidentiary purposes.
7. Vehicles stored in an Investigative Hold Area shall not be removed from the area until authorized by the responsible SFPD personnel/investigator.
8. Once an investigative hold has been released on a vehicle it shall be immediately removed from the Investigative Hold Area.
9. The date and time of removal and the removing employee's identity shall be recorded on the Franchisee records.

Vehicles being held for Vehicle Code (VC) 22651 (0) (No Current Registration); VC 22651 (P) (Unlicensed Driver); VC 22651 (i) Unpaid Parking Citations); or VC 10751 (Altered Identification Number) (hereafter referred to as "statutory holds") need not be stored in the Investigative Hold Area but shall be stored in the same manner as vehicles available for release, unless there is an additional hold for criminalistic or evidentiary examinations. Garage employees may remove unattached personal property for safekeeping when a vehicle is being held exclusively for statutory hold. Any statutorily held vehicle shall not be available for release until authorized by the concerned governmental agency employee or the Area Vehicle Coordinator.

### **C. SECONDARY STORAGE LOTS**

All Secondary Storage Facilities proposed by the Franchisee shall be inspected and approved by the Chief of Police or his or her designee prior to use. A Secondary Storage Facility is a designated location used by the Franchisee as a yard or lot for the temporary storage of impounded vehicles. All Secondary Storage Facilities shall be within five (5) miles of Franchisee's Primary Storage Facility. All Secondary Storage Facilities must be fenced for maximum security and lighted during the hours of darkness to afford illumination of all stored vehicles. Secondary Storage Facilities shall only be used to store vehicles with appraised values under One Thousand Dollars (\$1,000.00). A Secondary Storage Facility may be used for emergency temporary storage of vehicles with appraised values over One Thousand Dollars (\$1,000.00) with the prior written approval of the Chief of Police or his or her designee, but in such cases, an attendant must be on duty at the facility for security. The location where vehicles are stored within a Secondary Storage Facility shall be accurately recorded on the garage's impound records.

### **D. STORAGE OF VEHICLES**

All vehicles towed or stored by the Franchisee under the Franchise Agreement shall be kept within the Primary or Secondary Storage Lot when under direct supervision. At no time shall such vehicles be parked or stored or left standing on any public street or alley. Undamaged vehicles shall be segregated from wrecked or junk vehicles and shall be kept in the primary lot. All vehicles shall be systematically parked and sufficiently separated to preclude the probability of damage. Unobstructed access shall be provided to all stored vehicles. Vehicles shall be parked and separated to preclude the possibility of damage. Security provisions shall be implemented at all Secondary Storage Facilities to prevent the loss or theft of personal property or vehicle parts. Secondary Storage Facilities shall provide safe access to all stored vehicles and shall be kept clean and free of litter, debris, and weeds. Lighting of such lots shall be adequate to ensure required security of stored vehicles and eliminate light spill over onto neighboring properties. The Franchisee shall provide security to all primary and secondary storage facilities sufficient to reasonably preclude theft or damage to stored vehicles and as hereinafter provided.

### **E. ENCLOSING OF STORAGE AREAS**

Unless otherwise provided by applicable City regulations, all outdoor areas used for storage shall be enclosed with a solid wall, chain link or wrought iron style fence at least six (6) feet in height, having a gate or door of adequate width and equivalent height. The fence shall be covered from public view. The bottom edge of any such fence or wall, including all gates or doors, shall be maintained in such a manner as to prevent unauthorized entry. All wall or fence enclosures shall be maintained in good condition throughout the term of the Franchise Agreement; any damage shall be repaired promptly within twenty-four (24) hours of notice of such damage.

## **F. OFFICE**

The office space at the Primary and Secondary Storage Facilities shall be neat in appearance, clean and painted. A waiting area shall be provided for customers with adequate restroom and other facilities for the customers' comfort.

## **G. RESPONSIBILITY FOR VEHICLE, ACCESSORIES, AND PERSONAL PROPERTY**

The Franchisee shall be responsible for vehicles and accessories while in Franchisee's possession. The Franchisee shall also be responsible for personal property left in the vehicle at the time possession of that vehicle is taken. All property left in a vehicle should be listed on the California Highway Patrol 180 form. No articles shall be removed without first obtaining written authorization from a Police Department officer. Any articles removed for any reason shall be noted by the authorizing SFPD officer. The Franchisee shall maintain a record of the identity of all persons who have entered a stored vehicle for the purpose of accessing unattached personal property. The record shall also include the date of entry and a description of any property removed. Unattached personal property may be removed for safekeeping by garage employees, but only from available for release and statutorily held vehicles. When the Franchisee's personnel removes unattached personal property for safekeeping from a vehicle, the following shall occur:

1. Record a description of the removed property on the corresponding copy of a garage impound report.
2. Implement controls to inform Franchisee's office personnel responding to public inquiries that personal property has been removed from a vehicle.
3. Cause the property to be individually packaged and identified.
4. Provide a secure location for the storage of the property to preclude loss, theft or damage.
5. Inform properly interested persons that property has been removed and how they may obtain possession of that property.

## **H. NOTICE TO VEHICLE OWNERS AND/OR DEPARTMENT OF JUSTICE**

Franchisee shall timely notify the registered or legal owner of all vehicles towed and/or stored pursuant to this Agreement and in accordance with all relevant provisions set forth in the Vehicle Code. If the registered or legal owner of a vehicle unable to be located by Franchisee, then Franchisee shall timely notify the Department of Justice in accordance with all relevant provisions set forth in the Vehicle Code. It shall be Franchisee's sole and exclusive responsibility to timely notify each and every owner of vehicles towed and/or stored pursuant to this Agreement of the costs incurred from its services and payable to the vehicle owner.

## **I. PROTECTION AND HANDLING OF VEHICLES**

It is the responsibility of the Franchisee to protect all vehicles, vehicle parts and/or attached accessories impounded by peace officers or City law enforcement personnel until such time the vehicles have either been released to properly interested persons or have been disposed of through legal process.

Vehicle parts and/or attached accessories shall not be removed from an impounded vehicle with a criminalistic/evidentiary hold on the vehicle without the prior approval of the concerned law enforcement personnel. The Franchisee's garage employees from other impounded vehicles may remove vehicle parts and/or attached accessories for safekeeping. When the Franchisee's employee removes vehicle parts and/or attached accessories for safekeeping from a vehicle it shall:

1. Record a description of the removed vehicle parts and/or attached accessories on the corresponding copy of the garage impound report.
2. Implement controls to inform the Franchisee's office personnel responding to public inquiries that vehicle parts and/or attached accessories have been removed from a vehicle.
3. Cause the vehicle parts and/or attached accessories to be individually packaged and identified.
4. Provide a secure location for the storage of the vehicle parts and/or attached accessories to preclude loss, theft or damage.
5. Inform properly interested persons that parts and/or attached accessories have been removed and how they may obtain possession of that property.

The release of impounded vehicles that are available for release shall be the responsibility of the Franchisee. Criminalistic/evidentiary or statutorily held vehicles shall not be available for release until Police Department personnel has given written authorization to the Franchisee.

The Franchisee, at its Primary Storage Facility, shall prepare, maintain, and post in a conspicuous place, clearly visible to the public, a notice outlining procedures and the required documentation necessary for properly interested persons to obtain possession or remove unattached personal property from a stored vehicle and/or to view or photograph a stored vehicle within twenty-four (24) hours of making such a request.

Vehicle inventories, when conducted by Franchisee employees, shall only be conducted within the confines of a storage facility and in the presence of a witnessing employee.

## **J. RELEASE OF VEHICLES**

A dispatcher shall be responsible for releasing vehicles between the hours of 7 a.m. and 7 p.m., seven (7) days a week, every day of the year and may, at his or her discretion, release vehicles

between the hours of 7 p.m. and 7 a.m. Any vehicle impounded in connection with a special event, as designated by the Chief of Police or his or her designee, shall be available for release for a minimum period of four (4) hours following the conclusion of the special event. For the purposes of this provision, "special event" shall include DUI checkpoints, parades, et cetera.

#### **L. REGULATION**

Franchisee shall comply with all federal, state and local laws, ordinances, rules and regulations and shall make all reports required by the State of California Vehicle Code and shall follow all reasonable rules or regulations that the SFPD may, from time to time, prescribe governing the conduct of the Franchisee's operations under the Franchise Agreement.

#### **M. FRANCHISEE REQUEST TO CHANGE RATES AND CHARGES**

Franchisee may submit to the Chief of Police a written request for a change of rates. All requests for rate adjustment shall set forth Franchisee's current rate charges and the proposed charges. Verifiable profit or loss information may be required prior to any rate adjustment. If the City of San Fernando, in its sole discretion, decides to amend the rates for towing and storage of vehicles to a different rate than the OPGLA rates, it shall give Franchisee written notice of its intention to adopt an amended schedule and negotiate with Franchisee for a period of no less than 60 days before a new schedule is enacted. Any amended schedule of rates shall be approved by the City Council.



## **IV. STAFFING PROVISION**

### **A. SUFFICIENT PERSONNEL**

Franchisee shall have sufficient personnel on duty at all times to:

1. Receive calls from the Police Department communications center;
2. Dispatch tow units;
3. Provide security at all storage sites; and,
4. Provide such services as may be required under the Franchise Agreement

### **B. DISPATCHER**

A dispatcher shall be on duty in Franchisee's office seven (7) days a week, twenty-four (24) hours a day, every day of the year. A dispatcher shall receive calls from Police Department and its communications center, dispatch tow units, provide security for stored vehicles, and perform such other tow related services as may be required by the Chief of Police or his or her designee. A dispatcher shall be responsible for releasing vehicles between the hours of 7 a.m. and 7 p.m., seven (7) days a week, every day of the year and may, at his or her discretion, release vehicles between the hours of 7 p.m. and 7 a.m. Any vehicle impounded in connection with a special event, as designated by the Chief of Police or his or her designee, shall be available for release for a minimum period of four (4) hours following the conclusion of the special event, regardless of the time of day the special event concludes. A dispatcher and/or other Franchisee employees providing service to the public shall wear a nametag/badge with their name and/or have their first name conspicuously imprinted on their uniform. Franchisee shall be responsible to provide the nametag.

### **C. TIMEKEEPING AND DELAYS**

Franchisee shall record the following times pertaining to law enforcement and City agency tow service request by means of a time clock:

1. The time that the request for tow service is received;
2. Time that a tow unit is assigned the call for service and given the location of the requested service;
3. The time that a tow unit arrives at the location of requested service; and,
4. The time that a tow unit returns to Franchisee Facility with the vehicle.

Franchisee shall ensure that a sufficient number of tow units and tow unit operators are available at all times to meet the needs of all Police Department personnel, other law enforcement agencies, and City departments that rely upon it for tow service. Within ten (10) minutes of the receipt of a request for tow service from the Police Department or its communications center, an available, unassigned tow unit and operator shall be dispatched and shall immediately proceed to the location of the requested service. Franchisee shall advise the communications center when a tow unit cannot be dispatched within ten (10) minutes and shall give the reason why the tow unit cannot be dispatched and an estimated time of dispatch. Once dispatched, a tow unit operator shall respond to an assigned call by the most direct and expeditious route.

**EXCEPTION:** Orders to remove abated vehicles or vehicle parts from private property shall be executed by the ordered Franchisee within forty-eight (48) hours of receiving such notification.

#### **D. OPERATORS**

Franchisee shall employ no person as a tow unit operator until he or she possesses the appropriate class of California driver's license and medical certificate, if required, for the type of tow unit being operated. Tow unit operators shall wear a uniform approved by the Chief of Police or his or her designee whenever they are performing services in response to a call from the City of San Fernando. A nametag/badge identifying the operator by first name shall be worn on the operator's outer most shirt or jacket.

### **V. VEHICLES AND EQUIPMENT PROVISIONS**

#### **A. TOW UNITS RADIO EQUIPMENT**

Franchisee may equip tow units and facilities with radio equipment capable of receiving police calls, police frequency and/or local government frequencies. On those trucks that primarily operate after normal business hours, Franchisee may also have transmitting capabilities on local government frequencies for emergency contact with SFPD communications center.

#### **B. DISPATCHER'S OFFICE RADIO COMMUNICATIONS**

Franchisee dispatcher's office shall be equipped to receive "police calls." Priority shall be given to calls from SFPD or its communications center. In the event that multiple agency requests for services are received at the same proximate time, the Franchisee dispatcher shall assign response priority to the request of the most urgent nature based upon information the dispatcher has received. Franchisee tow units may be equipped to monitor "police calls" while acting within the course and scope of their designated responsibilities after obtaining a permit from the Chief of Police or his or her designee.

##### **1. Tow Trucks.**

- a. Franchisee shall maintain a minimum of two (2) with a minimum 19,500 Gross Vehicle Weight (GVW) manufacturer rated tow trucks with wheel



lift capabilities. The main winch(es) shall be either mechanically or hydraulically driven and shall have a single or combined capacity of at least four (4) tons at bare drum or one (1) wrap of cable with a minimum of one hundred feet (100') of cable. Wheel lifts shall be rated at a minimum of 4,000 pounds lift capacity.

Each such tow truck shall be equipped with a snatch block, dollies, one (1) ton floor jack and J/T hook chain assemblies.

Franchisee shall maintain a minimum of two (2) 19,500 – 26,000 GVW manufacturer rated car carrier. The main winch(es) shall be either mechanically or hydraulically driven and shall have a single or combined capacity of at least four (4) tons at bare drum or one (1) wrap of cable with a minimum of fifty feet (50') of cable.

- b. Official heavy-duty tow units will be requested by SFPD or its communication center when the vehicle to be towed possesses one or more of the following: three or more axles; a gross weight, laden or un-laden, in excess of 10,000 pounds; or a combination of commercial trailers. Franchisee may subcontract for heavy-duty tow services. The subcontractor shall meet the standards set forth in the Franchise Agreement.
- c. Franchisee shall equip and maintain all tow trucks and other vehicles owned by Franchisee in full compliance with the California Vehicle Code and the California Administrative Code, as the same now require and as they may from time to time be amended in the future, and the Service Provisions, and to obtain and pass an inspection by the California Highway Patrol, Motor Carrier Division for each tow truck.
- d. All trucks used in performing towing services under the Franchise Agreement shall conform to all requirements of the State of California Vehicle Code and shall comply with the following:
  - i. Truck bodies shall be painted and kept clean and in good repair, free of dents;
  - ii. The cab interior shall be kept clean;
  - iii. The tow truck bed shall be kept clean and equipment shall be properly mounted and maintained;
  - iv. Tail lamps, stop lamps and turn signal lamps with electrical extension cord shall be operable and shall be used on all towed vehicles; and,
  - v. Each tow vehicle shall carry the following equipment:

- (a) State approved air tank or air transfer system
- (b) Flashlight or portable light
- (c) Floor jack - 1-ton minimum capacity
- (d) Gasoline container – 2 ½ gallon minimum capacity
- (e) Lug wrench – 4-way and wrench for foreign cars
- (f) Water container – 3-gallon minimum capacity
- (g) Battery booster and cables
- (h) Axe
- (i) Sledge
- (j) Flares
- (k) Bolt cutters
- (l) Pry bar
- (m) 25 foot recovery chain
- (n) Trash can and absorbent.

**C. TOW TRUCK PARKING**

Franchisee shall at all times provide sufficient off-street parking spaces for the parking and storage of vehicles and other equipment used in the performance of the Franchise Agreement.

**D. TOW UNIT MARKINGS**

Each tow unit shall be marked as required by California Vehicle Code section 27907. Lettering shall be at least two and one-half (2 ½) inches, but not in excess of four (4) inches, in height. Tow units may be marked with an official seal of the City of San Fernando in a conspicuous place as reviewed and approved by the Chief of Police or his or her designee.

**EXHIBIT B**

**TOWING PROGRAM FRANCHISE FEE**

**BLACK & WHITE GARAGE, INC.  
QUARTERLY STATEMENT**

**CITY OF SAN FERNANDO TOWING PROGRAM**

**FRANCHISE FEE QUARTERLY STATEMENT**

**BLACK & WHITE TOWING, INC.**

REPORTING PERIOD \_\_\_\_\_

**FEE COMPUTATION**

Based on Customers within City of San Fernando

1. TOTAL NUMBER OF VEHICLES TOWED THIS QUARTER \_\_\_\_\_
2. Franchise Fee (\$45.00 X line 1) \$ \_\_\_\_\_

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**READ CAREFULLY BEFORE SIGNING**

I hereby certify under penalty of perjury under the laws of the State of California that the above information is correct and the fee calculations are true to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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