

FIRST AMENDMENT TO VEHICLE TOW SERVICE FRANCHISE AGREEMENT

This First Amendment to Vehicle Tow Service Franchise Agreement ("First Amendment") is hereby entered into on this 9th day of February, 2017 by and between the CITY OF CATHEDRAL CITY, a California municipal corporation, ("City") and MOHICA TOWING INC., a California corporation ("Contractor"), as follows:

RECITALS

- A. On or about January 15, 2014, City and Contractor entered into a Vehicle Tow Service Franchise Agreement ("Agreement") after soliciting proposals through a competitive selection process.
- B. Section 2 of the Agreement provided for a three (3) year initial term, with the City having the unilateral option to extend the term twice for three (3) years each time.
- C. On or about November 22, 2016, the City notified Contractor that it intended to exercise the first of the two options, extending the term of the Agreement to January 15, 2020.
- D. Pursuant to Section 5 of the Agreement, Contractor notified City that it desired to enter into good faith negotiations to adjust its fees, rates, and service charges upon City's exercise of the first option.
- E. The City desires to amend the Agreement to increase the franchise fees to allow for full cost recovery of actual and reasonable costs associated with the administration of the towing program consistent with Vehicle Code section 12110.
- F. The Agreement requires the City Council to approve any adjustments to the fees, rates, and service charges to be charged by Contractor.
- G. The City and Contractor entered into good faith negotiations regarding the terms and conditions of the Agreement, and this First Amendment reflects the mutual agreement of the parties.
- H. On February , 2017, the City Council approved this First Amendment and authorized the City Manager to execute the First Amendment.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this First Amendment which modifies and amends the Agreement as follows:

1. FEES PAYABLE TO CITY.

- (a) Section 3(B) is amended to read as follows:

"B. The total amount of franchise fees that CONTRACTOR shall pay to CITY in advance during the initial term of this AGREEMENT is the amount of \$32,193.17 for the first year of this AGREEMENT which amount shall increase by 3% in Year 2 to \$33,158.96 and 3% in Year 3 to \$34,153.73. In Year 4 the franchise fee shall increase by \$12,000.00 to \$46,153.73, in Year 5 the franchise fee shall increase by an additional \$4,000.00 to \$50,153.73, and in Year 6 the

franchise fee shall increase an additional \$4,000.00 to \$54,153.73. In addition, for vehicles impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6, CONTRACTOR shall pay to CITY on a monthly basis the following amounts:

- Vehicles released to the owner at or after 30 days: \$345
- Vehicles released to the owner before 30 days: \$11.50 per day
- Vehicles sold by CONTRACTOR:
 - Sale price is \$985 or more: \$345
 - Sale price is between \$600 and \$984.99: 25% of sale price goes to CITY
 - Sale price is less than \$600: \$0

For the purposes of this section, the sale price of the vehicle shall be the amount for which the CONTRACTOR sold the vehicle less the CONTRACTOR's towing and lien fees.

Attached hereto as Exhibit "A" and incorporated herein by this reference is a summary of an estimate of the of the actual and reasonable costs incurred by CITY in connection with the towing program and the parties hereto agree that said costs are reasonable estimates, and that the franchise fee and vehicle impound fees contained herein do not exceed these reasonable costs."

- (b) Section 3(D) is amended to delete the last sentence.
- (c) Exhibit "A" to the Agreement is replaced with Exhibit "A" to this First Amendment.

2. RATES CHARGED BY CONTRACTOR.

- (a) Section 4(A)(2) of the Agreement is amended to read as follows:

"(2) Even when tow and storage services are specifically requested by CITY, CONTRACTOR acknowledges that it shall charge vehicle owners only for its tow and storage services incurred pursuant to the terms and provisions of this AGREEMENT. It is specifically acknowledged by CONTRACTOR that the vehicle owner shall be solely responsible for such charges. Except as provided for in Section 6(E)(1)(A)(2), CONTRACTOR shall not hold CITY liable for any tow or storage services incurred pursuant to and during the term of this AGREEMENT even when such services are requested by CITY. "

- (b) Section 6(E)(1) of the Agreement is amended to read as follows:

"(1) Scope of Responsibility:

It shall be CONTRACTOR's responsibility to perform the following tasks for CITY. The performance of said tasks shall be at no cost to CITY unless expressly stated otherwise:

- a. Tow and store vehicles as requested by CITY including, but not limited to, the following:
 1. Vehicles taken into custody by the POLICE DEPARTMENT.
 2. Any and all vehicles requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT, including CITY owned vehicles, up to two hundred (200) miles round-trip beginning at the departure location of the tow truck.
 - i. If a Special Duty or Heavy Duty Tow Truck is required to tow a CITY owned vehicle, CONTRACTOR may charge CITY \$250 per hour, with a one hour minimum, for the towing service.
 - ii. Any towing of a CITY owned vehicle beyond two hundred (200) miles will be towed at the rate of \$5.00 per mile.
 3. Vehicles abandoned in public places or on public property or private property within the jurisdiction of CITY so long as requested to be towed and/or stored by the POLICE DEPARTMENT or the CODE COMPLIANCE DEPARTMENT pursuant to their enforcement powers of the law.
 4. Vehicles seized and impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6.
 5. Vehicles requested to be towed and/or stored pursuant to CITY's Vehicle Abatement Program as more fully described below.
- b. Remove all debris resulting from vehicle accidents, including sweeping;
- c. Perform all necessary work preliminary to towing vehicles such as removing vehicles from ditches, righting vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required to enable the towing of certain vehicles; and
- d. Perform all requested and necessary towing, battery jump start, and tire change services on City-owned vehicles at the City's request."
- (c) Exhibit "B" to the Agreement is replaced with Exhibit "B" to this First Amendment.
- (d) Section 6(F)(1)(k) is amended to delete the final sentence.

3. **GENERAL PROVISIONS.**

- (a) **Remainder Unchanged.** Except as specifically modified and amended in this First Amendment, the Agreement remains in full force and effect and binding upon the parties.
- (b) **Integration.** This First Amendment constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this First Amendment.
- (c) **Authority.** The persons executing this First Amendment on behalf of the parties hereto warrant that they are duly authorized to execute this First Amendment on behalf of said parties.
- (d) **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this First Amendment.
- (e) **References.** All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this First Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

CITY OF CATHEDRAL CITY:

MOHICA TOWING, INC.

Charles P. McClendon, City Manager

Jesse Mojica

2-9-17

ATTEST:

Gary Howell, City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS TYPE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On _____, 2017
before me, _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared _____
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

CAPACIT(IES) CLAIMED BY SIGNER(S)

Signer's Name: _____

- " Individual
" Corporate Officer

Title(s)
" Partner(s) " Limited
" General
" Attorney-In-Fact
" Trustee(s)
" Guardian/Conservator
" Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT "A"

SUMMARY OF ANNUAL PROGRAM COSTS

A) Facilities and Infrastructure

(1) Building - 2.5% of Operating costs of \$389,368	\$9,734
(2) Information Systems Expense – 4% of City's total information Systems Expenditures (\$733,047)	\$29,322

Total Incurred Facilities and Infrastructure costs **\$39,056**

B) Professional Services

(1) Legal Expenses for contract, consulting and litigation 15 hours - @\$245.00 per hour = \$3,675/3	\$1,225
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C) Personnel Costs – Administrative (Fully Benefitted per hour cost) Based on 900 Vehicles Towed in Fiscal Year

(1) Police Officer - 675 hours @ \$110	\$74,250
(2) Dispatcher – 450 hours @ \$78	\$35,100
(3) Records Clerk – 450 hours @ \$73	\$32,850
(4) Sergeants – 75 hours @ \$146	\$10,950
(5) Chief of Police – 10 hours @ \$250.00	\$2,500
(6) Deputy Chief of Police* – 20 hours @ \$206 per hour	\$4,120
(7) Commander - 40 hours @ \$170 per hour	\$6,800
(8) Administrative Office Coordinator – 20 hours @ \$94	\$1,880
(9) Management Analyst – 48 hours @ \$115	\$5,520

Total Incurred Administrative Personnel Costs **\$165,470**

D) Materials and Supplies

(1) Total Incurred forms, supplies and postage costs	\$1,000
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Summary of Incurred Costs

1) Facilities and Infrastructure	\$39,056
2) Professional Services	\$1,225
3) Personnel Costs Administrative	\$165,470
4) Materials and Supplies	\$1,000

Grand Total Incurred Costs \$206,751

E) Revenue Received

Annual Revenue Received for Storage and Impound Releases and Lien Sales from Tow Contracts	\$73,500
Incurred Costs of \$206,751 – Revenue Received \$73,500 =	\$133,251
Franchise Fee for two operators \$133,251/2	\$66,625.50

F) 30 Day Impound Vehicles – Additional Incurred Costs

- 1) Additional Tow Hearing Expense – 100 hearings at one hour per
Hearing for Sergeant's salary and benefits \$146 (fully benefitted
Per hour) \$14,600
- 2) Mobile Data Computer System Expense - \$60,850 per year at 33%
Vehicle storage and impound related emphasis \$20,080
- 3) Incurred cost per 30 day impound per year at 100 impounded vehicles
\$34,680 (\$14,600 + \$20,080) divided by 100 impounded vehicles results
in a cost of \$345 per vehicle impounded for 30 days.

Note: Line items that are struckthrough above are estimated actual and reasonable costs incurred by CITY that CITY has determined not to pass through to CONTRACTOR.

EXHIBIT "B"

Chart of Tow Fee Schedules

The following rate structure shall apply for all towing and storage services requested by the Police Department and Code Compliance Division, except those services requested by City employees for City-owned vehicles which shall be subject only to the charges in Section 6(E)(1)(A)(2) of the Agreement. The hourly rates below are calculated on a "door to door" basis, and charges commence when the tow truck is dispatched to the scene and conclude when the tow truck returns to the storage yard.

A. Basic Hourly Tow Rate: Class A Tow Truck 2017 - \$195
2018 - \$205
2019 - \$215
One hour minimum

- 1) The base hourly rate per tow shall apply to all towed passenger vehicles and trucks rated at less than ten thousand (10,000) pounds gross vehicle weight. This rate also applies to difficult removal work involving the remove of vehicles from deep ditches or flood control channels or separating two entangled vehicles.

B. Special Duty Hourly Tow Rate: \$250
One hour minimum

- 1) The special duty hourly rate shall apply when a four wheel drive tow truck is necessary for off-road recovery of vehicles. The hourly rate

C. Heavy Duty Hourly Tow Rate:

1) *Two Axel Category:* Class B Tow Truck \$300
One hour minimum

- a. The two (2) axel hourly rate shall apply to all towed vehicles with a rate capacity of ten thousand (10,000) pounds gross vehicle weight to, but not including, vehicles with thirty (30,000) pounds gross vehicle weight.

2) *Three (3) Axel Category:* Class C and D Tow Trucks \$400
One hour minimum

- a. The three (3) axel hourly rate shall apply to all towed vehicles with a rate capacity of thirty (30,000) pounds gross vehicle weight or more.

- 3) The hourly rate for all heavy duty towing (two and three axels) includes difficult removal of vehicles, up righting overturned vehicles, and the use of special equipment and preparation prior to towing.

D. Charges for Related Services:

1) Lock Out, Tire Change, Jump Start:

\$90

- a. The standard charge for opening locked vehicles, tire change and jump start is ninety dollars (\$90) when no towing is involved. If towing is involved, there shall be no additional charge for these services.

2) Dolly:

- a. There is no additional charge for the use of dolly in the towing service.

3) After Hours Release Fee:

- a. There shall be an after-hours gate fee of ninety dollars (\$90) for anyone desiring release of a vehicle at any time other than normal business hours.

E. Storage Fees: (Per Day)

1) Motor cycles, passenger cars
and trucks 20' or less

Outside Storage:	2017	\$62 per day
	2018	\$67 per day
	2019	\$72 per day
Inside Storage:		\$100 per day

2) Trailers 15' or less

Outside Storage: \$50 per day

3) Trucks, trailers and other
vehicles 20' to 30'

Outside Storage \$80 per day

4) Trucks, trailers and other
vehicles 30' or more

Outside Storage \$90 per day

- 5) Storage fees are charged per calendar day, not on a rolling 24 hour basis. The first daily fee per vehicle is incurred four hours after drop off at the storage facility. Thereafter, a full day's storage fee will be charged for each calendar day, or part thereof, that the vehicle is stored at Contractor's facility.
- 6) In addition to the daily storage fees above, Contractor may charge a fee of \$345 for all vehicles impounded pursuant to Vehicle Code Sections 14602.6 and 14607.6. Such fees shall be passed through to the City in satisfaction of Contractor's obligations under Section 3(B) of this Agreement.

F. Lien Fee:

Contractor shall charge lien fees in compliance with Civil Code Section 3074, which are presently \$70 for vehicles with a value of \$4,000 or less or \$100 for vehicles valued at

over \$4,000. No lien fee shall be charged if the vehicle is redeemed within seventy-two hours of initial storage.

G. Additional Conditions:

- 1) The above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered. Such towing charges shall include the clearing and clean-up of an accident site as may be required by the Police Department;
- 2) There shall be no additional charge for righting an overturned passenger car or a light pick-up truck if towing is involved;
- 3) There shall be no additional charge for disconnecting a drive shaft where required for towing;
- 4) There shall be no charge to City for the storage of a vehicle that has been seized as evidence in a pending investigation.
- 5) From time to time, the City may request Contractor waive its fees in the event that a vehicle is erroneously stored. When so requested by a sworn supervisor (sergeant or above) of the City's police department, Contractor shall waive all fees and report the waiver to a Commander in the City's Police Department as soon as is feasible thereafter.