



**TOWING SERVICES
NON-EXCLUSIVE FRANCHISE
AGREEMENT**

by and between

CITY OF POMONA

and

**Carpe Carma, L.L.C dba
Pomona Valley Towing, Inc.**

Adopted by Ordinance No. 4325

Term of Agreement:

January 19, 2023 through January 18, 2026

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SECTION 1. GRANT OF FRANCHISE

A. Binding Agreement.

In consideration of the mutual promises contained herein, the City of Pomona ("City") and Carpe Carma, L.L.C. dba Pomona Valley Towing, Inc. ("Franchisee") enter into this Non- Exclusive Towing Franchise Agreement ("Agreement") and each party agrees to be bound by and comply with all of the requirements of this Agreement.

B. Grant of Non-Exclusive Franchise; Exclusions.

This Agreement grants to Franchisee a non-exclusive Tow Service Franchise, pursuant to Article VIII, Chapter 58 of the Pomona Municipal Code, which entitles Franchisee to the right and privilege to be placed on the City of Pomona's towing rotation system to provide towing services to the City. Franchisee shall furnish all personnel, equipment and supplies necessary to provide the towing services required by this Agreement, and by the Request for Proposals.

C. Other Services.

The City reserves the right to enter into Tow Service Franchise Agreements with other entities for additional towing services related to the towing rotation system or other towing services not provided for in this Agreement.

D. Towing Rotation Order - Reservation of Rights.

Franchisee shall provide towing service to City through a rotation system established by the Chief of Police, pursuant to Pomona Municipal Code Section 58-679, which states in part as follows: "The chief of police shall develop a list of the franchised tow truck operators. The franchise tow truck operator at the top of the list shall be on call to provide towing service to the city in accordance with the rotation system established by the chief of police. Once a tow truck operator completes its designated on-call service, the operator's name shall be moved to the bottom of the list, and the operator then at the top of the list shall begin its designated on-call service. A separate rotation system will be implemented for the towing of heavy-duty/recreational vehicles (RVs) that will follow the format of the rotational system implemented for other tow services. The franchised tow truck operator is required to respond while on-call for both rotation lists. Any refusal by a franchised tow truck operator to respond for an on-call rotational tow request will result in forfeiting the position at the top of the on-call rotation in addition to a franchise agreement violation report submitted to the office of the chief of police. The city may request services from a franchised tow truck operator who is not on call or who is not franchised under this article in emergencies when the city manager, chief of police or the watch commander deems an emergency to exist. Notwithstanding subsection (a) of this section, the city also reserves the right to make a special request for a particular tow operator, out of rotation, should the circumstances necessitate the request in order to

serve the best interests of the city. All franchised tow truck operators shall hold the city harmless from any mistake made in the rotation assignments.”

SECTION 2. TERM/EFFECTIVE DATE

- A.** The term of the Agreement shall be for a period of three (3) years, commencing on January 19, 2023 and ending at 12:01 a.m. on the day of January 18, 2026.
- B.** Notwithstanding the aforementioned, this Agreement may be extended, at the sole and absolute discretion of the City Council, for a minimum term of one (1) year to a maximum of three (3), three (3) -year extension periods.

SECTION 3. COMPLIANCE WITH LAWS AND REGULATIONS

Franchisee warrants that it will comply with all applicable federal, state and local laws and regulations, as they, from time to time, may be amended, specifically including, but not limited to all requirements of the California Vehicle Code, all requirements of the California Highway Patrol Tow Service Agreement and attachments, and all other applicable laws and regulations of the State of California, the County of Los Angeles, ordinances of the City of Pomona including but not limited to Article VIII, Chapter 58 of the Pomona Municipal Code and the requirements of Local Enforcement Agencies and other agencies with jurisdiction.

SECTION 4. GENERAL CONDITIONS OF FRANCHISE.

Franchisee shall comply with all of the conditions of Pomona Municipal Code Section 58-676, which includes but shall not be limited to the following:

- A.** Maintain a sign listing the rates and charges of all towing and storage services offered. Such sign shall be conspicuously placed in the office or other places where customer financial transactions take place.
- B.** Have no more than two (2) telephone numbers listed with the Police Department.
- C.** Use business-band two-way radios and shall not use a short-wave police scanner or CB radio to answer police calls.
- D.** Affix temporary markings on the windshield of all cars ordered impounded by the Police Department. In addition an operator may post a tag on the windshield of the car.
- E.** Not release any vehicle in its possession for which a storage form was completed until all State and City requirements are met. This does not apply to vehicles

legally obtained through lien sale or for which ownership is transferred to the franchisee for payment of towing and storage fees.

- F. Furnish each owner of an automobile impounded by the tow truck operator with a fully itemized billing.
- G. Implement a written policy for lien fees, whereby a lien cannot be placed upon vehicle until after 72 hours of impoundment in accordance with State law. The policy shall comply with all requirements of California Vehicle Code, §§ 22851 through 22851.12, or their successor provisions and shall be posted with the sign listing the tow rates.
- H. Have a schedule of rates available upon demand in all vehicles at all times.
- I. Not charge rates in excess of the rate schedule approved by the City Council. Requests for a rate increase shall be made in writing to the Chief of Police as needed. The Chief of Police shall review the request and make recommendations to the City Council as to whether or not increases should be granted.

SECTION 5. GENERAL CONDITIONS RELATING TO TOW SERVICES LOTS.

Franchisee shall comply with all of the conditions of Pomona Municipal Code Section 58-676 and accompanying sections that pertain to tow service lots, which include but shall not be limited to the following

- A. Franchisee shall possess a lot able to hold a minimum of seventy-five (75) vehicles on its lot. Lighting shall be sufficient to afford easy visibility to all areas of the lot. The lot must be in a commercial or industrial area in a zone for which the business use is permitted and located within the City. The business must comply with all City, County and/or State standards and must at all times possess a valid and current City business license in accordance with the Pomona City Code.
- B. Franchisee's lot must be completely enclosed with a minimum of a six-foot high fence equipped with a security device, as approved by the City's Community Development Department. Security in the lot shall be adequate to preclude theft, vandalism or damage by activity while in the carrier establishment. No stored vehicles shall be visible from any adjacent roadway. No vehicles shall be parked or stored on the public streets at any time. The business must provide off-street parking for its equipment and be able to accommodate at least four (4) additional vehicles for customer parking. In addition to the four (4) customer parking spaces, at least one (1) additional customer parking space shall be provided for handicapped parking purposes. Said handicapped parking space shall be van accessible. Storage vehicles should be secured away from customer parking and

the office area.

Franchisee must have an office and lot in the same location within the City, with a sign posted including the company name, address, phone number and hours of operation, to be clearly visible from the roadway and shall have been operating out of an office and a storage yard, meeting the requirements of this ordinance, within the City for at least two full calendar years prior to applying for and obtaining a franchise pursuant to Article VIII, Chapter 58.

SECTION 6. OPERATING HOURS; AFTER HOURS CHARGES.

Franchisee business must be open to the public at least eight hours per day, Monday through Friday.

- C. Franchisee shall not charge an after-hours fee to persons who appear to claim a stolen vehicle on a Saturday between the hours of 8 AM and 12 PM. Upon approval of the Police Department, the operator may release personal property from an impound vehicle at the request of the vehicle owner or their agent. There shall be no charge for the release of personal property during normal business hours. Operators may charge an after hours' release fee for property released after normal business hours.
- D. All vehicles towed by a franchisee pursuant to the terms of the franchise shall be stored within the City of Pomona and available for release at the premises stated in Section 5.C above.

SECTION 7. TOW ROTATION

- A. Franchisee hereby agrees to abide by the rotation system established by the Chief of Police in accordance with Pomona Municipal Code Section 58-679 and Section 1(D) herein.
- B. Franchisee shall have a driver on call twenty four (24) hours a day, seven days a week, when the carrier is at the top of the rotation list, and respond to calls within twenty (20) minutes, or forty (40) minutes for heavy duty tows. If Franchisee is unable to respond within the required time period it shall notify the Police Department that there will be an extended delay.
- C. Any refusal by a franchised tow truck operator to respond for an on-call rotational tow request will result in forfeiting the position at the top of the on-call rotation in addition to a franchise agreement violation report submitted to the office of the chief of police.
- D. When called from the top of the rotation list by the Police Department the Franchisee shall respond to the Department's call and pick up all vehicles that

have been involved in an accident or a traffic violation, unless the vehicles are needed for criminal evidence or the owner or someone designated by the owner is present and is capable of removing a vehicle or calling a tow company of his or her choice to remove a vehicle; provided the street can be cleared for safe public use, as determined by the Officer on the scene, with reasonable dispatch.

SECTION 8. EQUIPMENT.

A. General.

Franchisee shall provide an adequate number of vehicles and equipment for the services for which it is responsible under this Agreement. All equipment shall conform to the highest industry standards, shall be maintained in a clean and efficient condition and shall comply with the Provisions established in the Pomona City Code and all measures and procedures promulgated by all agencies with jurisdiction over the safe, sanitary operation of all of its equipment. The Police Department reserves the right to inspect all drivers, vehicles, equipment and yards.

B. Vehicles.

1. Franchisee shall have and maintain tow truck vehicles that are like new in appearance.
2. Franchisee shall have at least five (5) tow trucks, one (1) of which shall be a heavy-duty wrecker, or heavy-duty tilt trailer, capable of towing Class-A recreational vehicles and heavy commercial vehicles; five (5) qualified drivers each of whom shall be over the age of 18; and adequate equipment to handle police calls, impounds and storage of motor vehicles available when on top the rotation list.
3. All towing vehicles shall be equipped with the auxiliary equipment required for vehicles towing for the California Highway Patrol, in accordance with Attachment "C" of the State of California, Department of California Highway Patrol Tow Service Agreement (CHP 234 (REV. 1-98) OPI 061), or any successor Tow Service Agreement.
4. The Police Department also reserves the right to require that all towing vehicles be inspected by an automotive professional certified by the State of California Bureau of Automotive Repair, and selected by the Police Department. All vehicle inspection fees shall be borne solely by the franchisee and shall be due and payable upon presentation of the vehicle for inspection. A yearly inspection of all vehicles is required and the franchisee shall not interfere in any way with any such inspections. The towing franchisee is responsible for arranging the annual vehicle inspection with the

Police Department. Any towing vehicle that fails an inspection shall not be used to provide towing service in the City until it is repaired and passes re-inspection. In lieu of the aforementioned inspection procedures, the Chief of Police may deem the inspection procedures of the California Highway Patrol that are in effect at the time, to be sufficient to meet the requirements of this section.

SECTION 9. FAILURE TO COLLECT FEES OR CHARGES; AUDITS

Franchisee shall collect all towing or hauling and storage charges on each vehicle from the owner. In no event shall the City be liable for any such charge, and the carrier by accepting a franchise shall be considered as so agreeing. A detailed accounting of the number of released vehicles subject to the franchise fee shall be submitted with the monthly payment to the City. The right is reserved by the City to audit, at any time, any and all amounts collected by the towing carrier for hauling and storage charges. It is the responsibility of the tow carrier to maintain and to make available, as requested, sufficient documentation to support such an audit; however, in no event shall the City require documentation to be maintained by the franchisee for a period longer than three calendar years.

SECTION 10. CITY SERVICES

- A. Franchisee must tow and store police vehicles inside the City, within 10 miles of the City boundaries, and vehicles seized as evidence in criminal investigations, free of charge. The Franchisee must also tow any City vehicle, with the exception of City vehicles requiring a heavy-duty tow, within the City boundaries free of charge. Finally, the Franchisee must Tow any City vehicle requiring a heavy-duty tow, regardless of location, and any City vehicle located outside the City or police vehicle more than 10 miles from the City boundaries, at a cost equal to fifty (50%) percent of the established rate for such tows.
- B. Franchisee must provide on their lot, to the Pomona Police Department, free of charge, storage for four (4) vehicles in an inside garage for V.I.N. and mechanical inspections, as requested.

SECTION 11. FRANCHISE FEES; PAYMENT; WAIVER.

- A. Franchisee shall pay the City a franchise fee as established from time to time by the Pomona City Council. Should the franchise fee be amended by the City Council during the term of this Agreement, City shall provide Franchisee with thirty (30) days written notice of the proposed change, prior to implementation [PMC § 58-677(a)].
- B. Franchise fee payments due to City shall be computed monthly. For the purpose of the franchise fee payment computation, the applicable accounting period shall be a calendar month, unless otherwise agreed to in writing in advance by City and

Franchisee.

- C. The monthly franchise fee payments shall be due and payable on or before the 20th day of the month immediately following the month for which the franchise fee is calculated. Each payment shall be accompanied by a brief report from the Franchisee showing the basis for the computation and a written statement, signed under penalty of perjury by an officer of the Franchisee, which identifies in detail the sources and amounts of gross revenues received by the Franchisee during the month for which payment is made. No acceptance or deposit of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance or deposit of payment be construed as a release of any claim that City may have for further or additional sums payable under the provisions of Section 58-677 of the Pomona Municipal Code.
- D. Any franchise fees, which remain unpaid for more than 10 calendar days after the date specified in subsection (C) above, shall be delinquent, and shall result in a penalty equal to ten percent of the unpaid amount. Such unpaid amount shall thereafter accrue interest at ten (10%) percent per year, compounded daily, until fully paid.
- E. By accepting this franchise granted pursuant to Article VIII, Chapter 58 of the Pomona Municipal Code, the Franchisee irrevocably waives the defenses of any statute of limitation, laches, waiver or other legal or equitable doctrine of similar import or effect in any action brought by City to recover any franchise fee, interest or penalties due under Section 58-677 of the Pomona Municipal Code.
- F. By accepting this franchise granted pursuant to Article VIII, Chapter 58 of the Pomona Municipal Code, Franchisee agrees that if it challenges the right of City to collect the franchise fee provided by Section 58-677 of the Pomona Municipal Code, any relief requested by Franchisee and awarded to it by virtue of such challenge shall be prospective only, and only from the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Franchisee hereby waives any and all claims or rights to collect back from City, or obtain credit against future payment obligations, any amounts collected by City prior to the filing of the initial pleading seeking such relief. In the event the Franchisee's challenge to any franchise fee payments should result in an initial judgment in its favor, Franchisee shall continue to make all franchise fee payments in accordance with Section 58-677 of the Pomona Municipal Code pending an appeal by City. In the event the court of appeal, or trial court if City elects not to appeal, determines that City is not entitled to collect any or all of the franchise fees, City shall refund to franchisee those portions of the franchise fee which the court deems City was not entitled to collect, and which were made subsequent to the filing of the initial action by Franchisee, exclusive of interest on such amount.
- G. City shall retain the right to impose alternative forms of taxes and/or fees in the

event that the franchise fees provided for in this Agreement are no longer assessable due to a subsequent change in federal, state or local law.

SECTION 12. RECORDS; REPORTS; AUDITS.

- A.** Franchisee shall maintain all records relating to the services provided hereunder, for any period required by law and if not applicable then for such time as is customary and standard in the industry. City shall have the right, upon reasonable advance notice, to inspect, audit and copy all records relating to this Agreement and records which may be relevant in the event of a claim. Such records shall be made available to City at Franchisee's regular place of business, but in no event outside the County of Los Angeles.
- B.** City reserves the option under Article VIII, Chapter 58 of the Pomona Municipal Code and this Agreement to require Franchisee to submit, on a quarterly basis to the Police Department and not later than 20 days after the end of each quarter, response time statistics for all police tows, if City determines that there are problems related to response times for any Tow Operator. This requirement shall continue in effect until otherwise waived by City.
- C.** Franchisee shall provide additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.
- D.** City reserves the right under Agreement to conduct quarterly audits to verify the number of vehicles upon which the franchise fee is computed. In addition, Franchisee or Franchisee's designated representatives shall, upon fifteen (15) days written notice from City, make available to City its accounting records for confidential inspection and audit.
- E.** If the results of the aforementioned audit show an underpayment of less than five (5%) percent, or an overpayment, the City shall pay its own costs associated with the audit.
- F.** If the results of any audit show a franchise fee underpayment of greater than five (5%) percent, Franchisee will pay all costs associated with the audit, the total amount in error as indicated by the audit, and a penalty equal to ten percent of the amount in error. If the results of the audit show an underpayment of greater than ten (10%) percent, the Franchisee will pay the cost of the audit, the total amount in error as indicated by the audit, a penalty equal to fifty (50%) percent of the amount in error, and interest on the amount in error at the rate of ten percent per annum, compounded daily from the date the underpayment should have been paid pursuant to Section 11 subsection (C) above until the date the underpayment is paid in full.

- G. In the event the results of the audit are disputed, City may, at its sole discretion, elect to arbitrate the dispute. In the event City elects to arbitrate, City and the Franchisee shall each select an independent auditor at their own cost. The two auditors will agree upon the results of the audit. If the two independent auditors cannot agree upon the results of the audit, a third auditor will be selected by the two independent auditors to make a final determination and the cost will be split between City and Franchisee. The determination of the third independent auditor will be final.

SECTION 13. INDEMNIFICATION AND INSURANCE

A. Indemnification of City

1. Franchisee shall defend, indemnify and hold harmless City, its elected or appointed officials, officers, employees, volunteers and agents from and against any and all losses, liabilities, fines, penalties, claims, demands damages, liabilities or judgments, including attorneys' fees, arising out of or resulting in any way from City's grant of this franchise to Franchisee or Franchisee's exercise of the franchise, including the provision of services under this Agreement such as the performance of work in preparation for the towing operation, or the towing and subsequent storage and maintenance activities, unless such claim is due to the sole negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors.

B. Insurance Requirements

1. The Franchisee shall purchase and maintain such insurance as will protect the Proposer and the City against any and all claims and demands arising from the execution of the Agreement. The below minimum insurance levels are required:

General Liability:

a.	General Aggregate	\$2,000,000
b.	Products Comp/Op Aggregate	\$2,000,000
c.	Personal & Advertising Injury	\$1,000,000
d.	Each Occurrence	\$1,000,000
e.	Fire Damage (any one fire)	\$ 50,000
f.	Medical Expense (any one person)	\$ 5,000

Employers Liability:

Per Occurrence	\$1,000,000
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Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

Commercial Automobile/Truck Liability

Combined Single Limit	\$1,000,000
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Garagekeepers & Motor Truck Cargo

a.	Per occurrence	\$1,000,000
b.	Combined aggregate	\$2,000,000

2. Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-:VII or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by City's Risk Manager. Franchisee shall immediately advise City of any litigation that may affect these insurance policies.

C. Additional Insured Endorsement

1. The Franchisee's liability policies must contain an Additional Insured Endorsement with the following Provisions:
 - a. That the City, its offices, officials, employees, agents and volunteers ("Additional Insureds") are covered as insured as to liability arising out of activities performed by or on behalf of Franchisee, products and completed operations of Franchisee; premises owned, occupied or used by Franchisee; or vehicles owned, leased, hired or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
 - b. That the Franchisee's insurance policies shall be primary as respects any claims related to or as the result of the Franchisee's work. Any insurance, pooled coverage, or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or franchisees shall be non-contributory.

- c. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits during the term of the franchise except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
2. Certificates of insurance and additional insured endorsements shall be furnished to City thirty (30) days prior to the effective date of the Agreement. Refusal to submit such certificates shall constitute a material breach of the Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement.

D. Evidence and Verification of Insurance Coverage

1. Franchisee shall furnish the City with all original and additional endorsements affecting coverage required by this clause thirty (30) days prior to the effective date of commencement of services under the Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. As an alternative to the City's forms, Franchisee's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications. No work shall be done by Franchisee during any period when Franchisee is not covered by insurance as required by this Section.
2. The City shall have the right of inspection of all insurance policies required by this Agreement at any time during the term of the Agreement.
3. In the event Franchisee does any work while not covered by such insurance, the City may immediately terminate this Agreement without providing the written notice otherwise required by this agreement.

SECTION 14. CANCELLATION, SUSPENSION/REVOCATION OF FRANCHISE; DUE PROCESS.

A. Cancellation.

This Agreement shall not be cancelled, without cause, within one (1) year of its effective date; however, after one (1) year from its effective date, the City Council reserves the right to cancel this agreement without cause upon the giving of ninety (90) days' notice to the Franchisee.

B. Suspension/Revocation.

The City Council shall have the right to suspend or revoke this Agreement and to

rescind all rights and privileges associated with it at any time if:

1. The Franchisee defaults in the performance of its material obligations under Article VIII, Chapter 58 or the franchise agreement and fails to cure such default within thirty (30) calendar days after receipt of written notice of the default from the City and a reasonable opportunity to cure the default in accordance with subsection (C)(1) below; or
2. If the Franchisee fails to provide or maintain in full force and effect the insurance coverage as required by Article VIII, Chapter 58 and as set forth in the franchise agreement; or
3. If the Franchisee violates any order or ruling of any regulatory body having jurisdiction over the franchisee relative to the franchisee's tow truck business unless such order or ruling is being contested by the franchisee by appropriate proceedings conducted in good faith; or
4. If the Franchisee practices any fraud or deceit upon the City or upon persons to whom it provides tow truck service as determined by a court of law; or
5. If the Franchisee becomes insolvent, unable or unwilling to pay its debts and obligations, or is adjudged to be bankrupt. The City's revocation of the franchisee's franchise shall in no way affect any right of the City to pursue any remedy under the franchise or any other provision of law.

C. Due Process.

Prior to suspending or revoking this Agreement for cause, the City shall give the Franchisee notice and an opportunity to be heard on the matter, in accordance with the following procedures:

1. City shall first notify Franchisee of the violation in writing by personal delivery or registered or certified mail, and demand that Franchisee cure the default within a reasonable time, which shall not be less than ten days in the case of Franchisee's failure to pay any sum or other amount due to City under Article VIII, Chapter 58 of the Pomona Municipal Code or this Agreement and thirty (30) days in all other cases. If Franchisee fails to correct the violation within the time prescribed or if Franchisee fails to commence correction of the violation within the time prescribed, City shall give the franchisee fourteen (14) calendar days' written notice of a public hearing to be held before the City Council. The written notice shall specify the alleged violations supporting the recommendation for suspension or revocation of the franchise.
2. At the hearing, the City Council shall hear and consider all relevant evidence

submitted by staff and Franchisee or its agent or representative. If the City Council finds that Franchisee has committed a material breach under this Agreement or Article VIII, Chapter 58 of the Pomona Municipal Code and that Franchisee has not corrected the violation or has not diligently commenced correction of the violation after receiving proper notice in accordance with Article VIII, Chapter 58 of the Pomona Municipal Code, the City Council may suspend or revoke the franchise.

3. Notwithstanding the City Council's right to suspend or revoke a franchise, the Chief of Police shall have the right to suspend, for a period not to exceed thirty (30) days, any franchise granted pursuant to Article VIII, Chapter 58 of the Pomona Municipal Code, and to rescind all rights and privileges associated with it during the suspension period, if, Franchisee violates any provision of Chapter Article VIII, Chapter 58 of the Pomona Municipal Code, state or federal law which places the health or safety of the public in immediate danger.

SECTION 15. CITY'S ADDITIONAL REMEDIES.

In addition to the remedies set forth above, City shall have the following rights:

- A. The right to grant franchises to others to perform the services otherwise to be performed by Franchisee; and
- B. The right to obtain damages and/or injunctive relief.

Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Franchisee, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof.

SECTION 16. FRANCHISE TRANSFER; CITY CONSENT; FEES

- A. Franchisee shall not transfer, sell, hypothecate, lease, sublet, mortgage, assign or dispose of in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of Franchisee or by operation of law, without the prior written consent of the City Council. Any attempt to do any of the foregoing with respect to any of the rights herein without the consent of the City Council shall be grounds for immediate termination of the agreement and said attempt shall be considered null and void. For purpose of this Agreement, any dissolution, merger, consolidation, change in control or other reorganization of Franchisee or transfer of any stock shall be deemed a violation of this section. A change of corporate name only shall

not be deemed to be a violation of this section.

- B.** Any application for a franchise transfer shall be made in a manner prescribed by the Police Chief. The applicant for the transfer shall demonstrate to the City's satisfaction that it has the operational and financial ability to carry out the obligations of the Agreement. Franchisee shall reimburse the City for all reasonable consultants', attorneys' and staff costs directly related to the City's consideration of the application for transfer whether or not the City approves the application for transfer of the franchise. City's request for reimbursement under this Section shall be supported with evidence of the expense or cost incurred. Franchisee shall reimburse City within thirty (30 days) of receipt of City's request for reimbursement.
- C.** The City Council's approval of a transfer or assignment of the franchise granted pursuant to Article VIII, Chapter 58 shall be conditioned upon the franchisee's sale or disposal of all ownership rights in the franchised tow truck business. A tow truck operator franchisee that desires to transfer or assign its franchise, because he or she intends to sell or dispose of all interests in the tow truck business that is franchised with the City, shall make a written request for a transfer or assignment of the franchise. The written request, a non-refundable deposit of \$1,000 and the proposed sale agreement or other document evidencing disposal of the franchised tow truck business shall be submitted to the Finance Department at least one hundred and twenty (120) calendar days before the requested effective transfer or assignment date. The Finance Department and the Police Department shall investigate the proposed transferee or assignee and determine whether the transferee or assignee is qualified to serve as a tow truck operator franchisee pursuant to the criteria and requirements set forth in Article VIII, Chapter 58 and make a recommendation to the City Council. If the City Council approves the transfer, the City may impose reasonable conditions of approval.
- D.** Notwithstanding the above, Franchisee shall not be entitled to pledge, encumber, or grant any security interest in the Franchise unless the Franchisee has first notified and obtained City consent to such transaction, subject to the following conditions:

 - 1. Any consent so granted by City shall not be deemed a consent to the exercise by such pledge, encumbrance or secured party of any rights of the holder under the franchise, permit, license or other authorization unless so noted by the City.
 - 2. Any consent so granted by City shall not be deemed a consent to any subsequent transfer or assignment as referred to herein. Any such subsequent transfer or assignment shall be deemed an assignment of the franchise, permit, license or other authorization within the meaning of this section.

3. The pledge, encumbrance, or secured party shall have executed and delivered to City an instrument in writing agreeing to be bound by the provisions of the franchise, permit, license or other authorization.

SECTION 17. GENERAL PROVISIONS

A. Force Majeure.

Franchisee shall not be in default under this Agreement in the event that their towing services of Franchisee are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Pomona; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Franchisee. "Other catastrophic events" does not include the financial inability of Franchisee to perform or failure of Franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Franchisee has failed to exercise reasonable diligence. In the event a labor disturbance interrupts the towing services of Franchisee as required under this Agreement, City may elect to exercise its rights under this Agreement.

B. Independent Status.

Franchisee is an independent entity and not an officer, agent, servant or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Franchisee nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits that accrue to City employees.

C. Property Damage.

Any physical damage caused by the negligent or willful acts or omissions of employees of Franchisee to public or private property shall be repaired or replaced by Franchisee at Franchisee's sole expense.

D. Law to Govern; Venue.

This Agreement shall be governed by the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

E. Amendments.

Amendments must be in writing, duly executed by the parties.

F. Notices.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by fax number or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager and Police Chief
 City of Pomona
 505 S. Garey Avenue
 Pomona, California 91766

To Franchisee: Marc Weiss
 Carpe Carma, L.L.C dba
 Pomona Valley Towing,
 Inc.
 1731 E. Mission Blvd.
 Pomona, CA 91766

Notice may also be made to such other address as either party may from time to time designate by notice to the other, given in accordance with this Section. Notice shall be deemed effective on the date personally served or if mailed, three (3) business days from the date such notice is deposited in the United States mail.

G. Savings Clause and Entirety.

If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

H. Political Contributions.

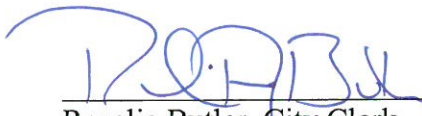
Pursuant to Pomona City Code and or other applicable legislation, Franchisee is forbidden to make any contribution to a candidate or committee of a candidate for a municipal office of the City of Pomona until completion of services to be performed under this Agreement.

I. Use of City Name.

Franchisee shall not use the words "POMONA" or "CITY" or like words in its corporate names, style of business, or on its equipment, nor shall Franchisee utilize the state words in any publication, promotion, program, etc., without the prior expressed written consent of the City of Pomona.

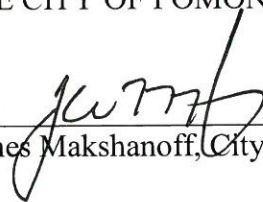
IN WITNESS WHEREOF this Agreement is entered into by the parties hereto on the dates set forth below.

ATTEST:



Rosalia Butler, City Clerk 1/10/2023

THE CITY OF POMONA:

By: 

James Makshanoff, City Manager

APPROVED AS TO FORM:



Sonia Carvalho, City Attorney

FRANCHISEE:
Carpe Carma, L.L.C. dba Pomona
Valley owing, Inc.

By: 

Title: managing member
Date: 1/17/23

Approved by City Council December 19, 2022

