

**AGREEMENT BETWEEN THE CITY OF BREA AND  
BREA TOWING SERVICE, LLC TO PROVIDE  
OFFICIAL POLICE TOW SERVICES**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 201\_ between the City of Brea, a municipal corporation, by and through the Brea Police Department ("CITY") and Brea Towing Service, LLC ("TOWING COMPANY"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. SERVICES** The CITY hereby retains TOWING COMPANY to provide timely and professional towing and storage services for vehicles, in accordance with the provisions of this Agreement, when a representative of the Brea Police Department or other authorized CITY representative requests towing services.

**2. NON-EXCLUSIVE FRANCHISE TO PROVIDE OFFICIAL POLICE TOW SERVICES.**

Section 5.240.030 of the Brea City Code requires every towing company performing official services to possess a franchise granted by the CITY pursuant to Chapter 5.240 of said Code. In furtherance thereof, this Agreement shall serve as the required franchise unless and until its termination or expiration. As a franchisee, TOWING COMPANY shall serve as an Official Police Tow Service Provider for the CITY. Depending on the TOWING COMPANY's ranking on the CITY's tow rotation list, TOWING COMPANY shall have the right during the term of this Agreement to receive calls from the CITY to provide towing and storage services for vehicles which are involved in accidents, are disabled, abandoned or impounded for evidence, are impeding the flow of traffic or are otherwise subject to being towed and stored at the direction of the CITY. TOWING COMPANY's priority on CITY's tow rotation list shall be established pursuant to CITY's Policy and Specifications Applicable to Official Vehicle Towing and Storage Service Providers ("Tow Policy" hereinafter), attached hereto as Exhibit "A". The Tow Policy may be modified by the CITY following not less than thirty (30) days prior, written notice to TOWING COMPANY, and thereafter this Agreement shall be deemed modified by replacing the previous Tow Policy with the amended Tow Policy. The amended Tow Policy shall replace the previous Tow Policy as Exhibit "A" hereto.

**3. TERM**

Unless sooner terminated as provided herein, the term of this Agreement is four (4) years. Prior to the expiration of the foregoing term, and provided the TOWING COMPANY is not then in breach of this Agreement, the CITY's authorized representative may twice extend this Agreement for an additional two (2) years on the same terms and conditions.

**4. ABILITY TO PERFORM**

The TOWING COMPANY shall at all times have sufficient towing equipment and storage yard capacity, as required by the Tow Policy and/or the Towing Ordinance, to perform the obligations set forth in this Agreement. The storage yard shall be in full compliance with any applicable zoning and building requirements. The TOWING COMPANY shall, at all times, possess a valid CITY Business License.

## **5. TRAINING/ABILITY – QUALIFICATIONS**

A. The TOWING COMPANY's drivers and other personnel (collectively "employees") must be sufficiently trained and shall provide safe and proper service.

B. All drivers shall possess the proper class of driver's license required to perform their duties according to Section 12520(a) of the California Vehicle Code. The TOWING COMPANY's owner(s)/operators shall participate in the Employer Pull Notice Agreement through the Department of Motor Vehicles. The TOWING COMPANY is required to notify the Brea Police Department ("Department") Traffic Unit Supervisor of any Pull Notices received about any of its drivers.

C. The TOWING COMPANY's drivers shall present a neat, clean and professional appearance. Drivers shall at all times wear uniform type pants and shirt as described in the Tow Policy, and shall otherwise conduct themselves as required by the Tow Policy.

D. Should any TOWING COMPANY employee appear at the scene of a tow call with the odor of alcohol, such employee shall submit to a preliminary alcohol-screening test upon demand by a Brea Police Officer.

## **6. COMPLIANCE WITH TOW POLICY**

The TOWING COMPANY and each and every employee thereof shall, at all times when providing services pursuant to this Agreement, comply fully with all provisions of the Tow Policy. Any failure to comply with the Tow Policy shall constitute a breach of this Agreement and grounds for suspension or revocation of this franchise, and/or reduction in position of priority on the CITY's tow rotation list.

## **7. COMPLIANCE WITH TOWING ORDINANCE**

The TOWING COMPANY and each and every employee thereof shall, at all times when providing services pursuant to this Agreement, comply fully with all provisions of the CITY Towing Ordinance, Chapter 5.240 of the Brea City Code, as the same may be amended from time to time. Any failure to comply with the CITY Towing Ordinance shall constitute a breach of this Agreement and grounds for suspension or revocation of this franchise,

imposition of liquidated damages, and/or reduction in ranking on, or removal from, the CITY's tow rotation list.

#### **8. RESPONSE TIMES**

The TOWING COMPANY shall respond to Brea Police Department calls twenty-four (24) hours a day, seven days a week, including holidays, with maximum response times as set forth in the Tow Policy.

#### **9. FRANCHISE FEE**

The franchise fee payable to the City by the TOWING COMPANY as required by the CITY Towing Ordinance shall be in such amount as established by resolution of the Brea City Council, and as may be amended from time to time following notice to the TOWING COMPANY.

#### **10. SIGNS AND ADVERTISING**

The TOWING COMPANY shall not display any signs or advertising material which indicates that his/her business is an official towing service or police storage facility of the CITY without the express written permission from the Chief of Police.

#### **11. INDEMNITY**

The TOWING COMPANY shall be bound by the indemnification provisions set forth in Section 5.240.150 of the Brea City Code.

#### **12. INSURANCE**

Without limiting the TOWING COMPANY's indemnification of the CITY as provided in this Agreement, the TOWING COMPANY shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, insurance coverage as set forth in the Tow Policy and the Towing Ordinance.

### **13. RISK**

The TOWING COMPANY shall be responsible for damage to or theft of the vehicles and other property towed and stored by the TOWING COMPANY, its employees or agents. Any and all claims, demands or liability arising out of or encountered in connection with this Agreement shall be borne by the TOWING COMPANY.

### **14. TERMINATION**

A. The CITY may terminate this Agreement, for any reason or no reason, on sixty (60) days written notice to the TOWING COMPANY. Prior to the effective date of termination, the TOWING COMPANY shall continue to fulfill all of its obligations under this Agreement. If the Agreement is terminated by the CITY, and provided TOWING COMPANY is not then in breach, the TOWING COMPANY shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and the TOWING COMPANY shall have no other claim against the CITY by reason of such termination. Notwithstanding the foregoing, the CITY may immediately suspend this Agreement, pending further action, when determined by the Chief of Police to be necessary in order to more fully protect the public health and safety.

B. The TOWING COMPANY may terminate this Agreement only for a material breach and if the City fails to cure the breach within sixty (60) days following written notice from the TOWING COMPANY.

### **15. GENERAL PROVISIONS**

#### **A. Independent Contractor**

At all times during the term of this Agreement, the TOWING COMPANY shall be an independent contractor and shall not be an employee of the CITY. The CITY shall have the right to control the TOWING COMPANY only insofar as the results of the TOWING COMPANY's services rendered pursuant to this Agreement; however, the CITY shall not have the right to control the means by which the TOWING COMPANY accomplishes services rendered pursuant to this Agreement.

#### **B. Required Licenses and Permits**

The TOWING COMPANY represents and warrants to the CITY that the TOWING COMPANY has all licenses, permits, qualifications and approvals that are legally required for the TOWING COMPANY to perform the services required under this Agreement pursuant to Vehicle Code Section 12804.9. The TOWING COMPANY represents and warrants to the CITY that the TOWING COMPANY

shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for the TOWING COMPANY to perform the services.

C. No Agency

Except as the CITY may specify in writing, the TOWING COMPANY shall have no authority, express or implied, to act on behalf of the CITY as an agent in any capacity whatsoever. The TOWING COMPANY shall have no authority, express or implied, pursuant to this Agreement, to bind the CITY to any obligation.

D. Assignment

The TOWING COMPANY shall not assign any right or obligation pursuant to this Agreement without the prior written consent of the City Council. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect and constitute a default under this Agreement. The sale or transfer of controlling interest in a company shall constitute an assignment within the meaning of this Agreement.

E. Standard of Performance

The TOWING COMPANY shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent towing company providing the kinds of services in which the TOWING COMPANY is engaged in the geographical area in which the TOWING COMPANY is operating.

F. No Employee Financial Interest

No employee of the CITY shall have any direct or indirect financial interest in the TOWING COMPANY.

G. Compliance with all Laws and Regulations

The TOWING COMPANY shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The TOWING COMPANY shall at all times observe and comply with all such ordinances, laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the TOWING COMPANY to comply with this section.

H. Notices

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii)

mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To CITY:      City of Brea  
                    Police Department  
                    1 Civic Center Circle  
                    Brea, CA 92821  
                    Attention: Chief of Police

To TOWING COMPANY:  
                    Brea Towing Service, LLC  
                    509 W. Lambert Road  
                    Brea, CA 92821

I.      Time of Essence

In the performance of this Agreement, time is of the essence.

J.      Authority to Execute

The persons executing this Agreement on behalf of the TOWING COMPANY warrants and represents that he or she has the authority to execute this Agreement on behalf of the TOWING COMPANY and has the authority to bind the TOWING COMPANY to the performance of its obligations hereunder.

K.      Integrated Agreement

This Agreement and Exhibit "A" (Tow Policy) hereto constitute the entire agreement between the parties with respect to the subject matter herein. No representation or promise not expressly set forth herein shall be binding or have any force or effect. In the event of any conflict between this document, the Tow Policy, or the Towing Ordinance, the provisions of the Towing Ordinance, then the Tow policy, shall govern.

L.      Governing Law and Venue

The provisions of this Agreement shall be governed by the laws of the State of California. Venue for any legal action shall be the Superior Court of the County of Orange, California.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF BREA**

\_\_\_\_\_  
Mayor

ATTEST:

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

\_\_\_\_\_  
TOWING COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Two corporate officers are required to sign this Agreement.]**