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CITY OF MYRTLE BEACH
COUNTY OF Horry
STATE OF SOUTH CAROLINA

AN ORDINANCE GRANTING
A FRANCHISE TO PROVIDE
TOWING AND STORAGE
SERVICES WITHIN THE
CITY OF MYRTLE BEACH,
SOUTH CAROLINA

WHEREAS, pursuant to the exercise of its police power the City is responsible for the identification, towing, preservation, storage and disposal of abandoned, derelict, wrecked, inoperable or disabled motor vehicles from the streets, public rights-of-way, and other public and private property within its territorial limits, as well as motor vehicles that are reported stolen; are subject to confiscation and forfeiture; seizure as evidence; or which are determined to constitute a public nuisance; and

WHEREAS, the City has determined that the delivery of towing and storage service can be provided most effectively and efficiently through the grant of a franchise;

NOW, THEREFORE, IT IS HEREBY ORDAINED THAT a non-exclusive franchise is granted to provide towing and storage services to the City according to the terms and conditions set forth in the attached franchise agreements.

This ordinance shall take effect immediately upon adoption.

JOHN RHODES

ATTEST;

JOAN GROVE, CITY CLERK

1st Reading:

2nd Reading:

5 **WHEREAS**, pursuant to the exercise of its police power the City is responsible for the identification,
6 towing, preservation, storage and disposal of abandoned, derelict, wrecked, inoperable or disable motor
7 vehicles from the streets, public rights of way, and other public and private property within its territorial
8 limits, as well as motor vehicles that are reported stolen; are subject to confiscation and forfeiture; seizure
9 as evidence; or which are determined to constitute a public nuisance; and

10
11 **WHEREAS**, the City had determined that the delivery of these services can be provided most effectively
12 and efficiently through the grant of a non-exclusive franchise; and

13
14 **WHEREAS**, the City Council, by Ordinance duly adopted on _____ has authorized the City
15 Manager to execute this franchise for the seven companies that replied to the City's Requests for Proposal,
16 provided however, that signatures to this agreement and compliance with the requirements of this franchise
17 must be in affixed and in place by midnight, _____ to qualify to accept calls at 12:01 a.m.
18 _____.

19
20 **NOW, THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE**
21 **BEACH** and _____, in consideration of the foregoing premises and mutual
22 promises of each, the parties agree as follows:
23

24 The City of Myrtle Beach grants to, a non-exclusive franchise to provide towing, recovery, preservation,
25 storage and disposal services on and over the streets, public rights-of-way and other public and private
26 property for a period of five (5) years, beginning on April 1, 2017 and ending on March 31, 2022 subject to
27 the following terms and conditions:
28

29 Definitions: For the purposes of this Agreement, the following terms, phrases, words, and their derivations
30 shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

- 31
- 32 a. "Abandoned Vehicle" means: a Motor Vehicle required to be registered in this State, if operated
33 on a public highway in this State, that is left unattended on a highway for more than forty-eight
34 hours, or a Motor Vehicle that has remained on private property or other public property for a
35 period of more than seven days without the consent of the owner or Person in control of the
36 property.
37
 - 38 b. "Affiliated Person: means:
39 1. any Person having, a direct or indirect Controlling Interest in the
40 Company; or
41 2. any person in which the Company has, a direct or indirect, controlling interest; or
42 3. any Person, directly or indirectly, controlling, controlled by or under common control with the
43 Company
44
 - 45 c. "Agreement: means: this franchise agreement including all appendices and exhibits thereto, and all
46 amendments and modifications thereof.
47
 - 48 d. "City" means: the City of Myrtle Beach, South Carolina, its officials, officers, employees, agents,
49 contractors or designees.
50
 - 51 e. "Company" means: a business entity properly organized, licensed or permitted under applicable
52 federal, state and local law and includes all directors, officers, partners, officials, principles,
53 employees, agents, contractors or designees and shall be for the purposes of this contract known as
54 Company.
55
 - 56 f. "Confiscation" means: seizure and forfeiture of private property as a consequence of criminal

- 1 conviction or a pleas of "Nolo Contendere", or because possession or use of the property was in
2 violation of State or Federal Law.
3
- 4 g. "Control" or Controlling Interest" means: working control in whatever manner exercised,
5 including, without limitation, working control through ownership or management of the Company.
6
- 7 h. "Derelict Vehicle" means: a Motor Vehicle required to be registered in this State if operated on a
8 public highway in the State:
9 1. whose certificate of registration has expired and the registered owner no longer resides at the
10 address listed on the last certificate of registration on record with the South Carolina
11 Department of Motor Vehicles; or
12 2. whose motor or other major parts have been removed so as either to render the Motor Vehicle
13 inoperable or the operation of which would violate South Carolina Code of Laws, Section 56-
14 5-4410; or
15 3. whose manufacturer's serial plates, motor vehicle identification numbers, license number
16 plates, and any other means of identification have been removed so as to nullify efforts to
17 locate or identify the registered owner; or
18 4. whose registered owner of record disclaims ownership or releases his right thereto; or
19 5. which is more than eight years old and does not bear a current registration.
20
- 21 i. "Effective Date" means: the date on which the Agreement takes effect.
22
- 23 j. "Expiration Date" means: the date on which the Agreement expires or such other date which is
24 specified as the date of expiration pursuant to a revocation, or termination of the Franchise.
25
- 26 k. "Franchise" means: the right and privilege granted by City to Company to provide Services
27 pursuant to the terms of the Agreement, City Code of Ordinances and State law.
28
- 29 1. "Gross Franchise Revenue" means: all franchise revenue, as determined in accordance with
30 generally accepted accounting principles, which is received by Company or any Affiliated Person,
31 which is derived from providing Services to the City or the public pursuant to the grant of a
32 franchise.
33
- 34 m. "Motor Vehicle" means: any device in, upon or by which any Person or property is or may be
35 transported or drawn upon any public highway, Public Right of Way or public or private property.
36 Motor Vehicle shall not include any device propelled solely by human power or which is used
37 exclusively upon stationary rails or tracks.
38
- 39 n. "Official" means: any City official, law enforcement or code enforcement officer.
40
- 41 o. "Person" means: any natural person or any association, company, firm, partnership, joint venture,
42 corporation, governmental entity, or other legal entity.
43
- 44 p. "Public Nuisance" means: a condition or property which is determined by an Official to be
45 offensive to public order; detrimental to property values or community appearance; obstructs or
46 interferes with the enjoyment of adjacent property or premises; is hazardous or injurious to the
47 public health, safety or welfare; or which requires an expenditure of public resources which are of
48 a greater frequency, intensity and duration than other conditions or properties of similar situation.
49
- 50 q. "Public Right of Way" means: the surface, air space above the surface, and area below the surface
51 of any public street, highway, lane, path alley, sidewalk, avenue, boulevard, drive concourse,
52 bridge, tunnel, park, parkway, waterway, strand, dock, bulkhead, pier, easement or other public
53 property within the Service Area.
54
- 55 r. "Service Fees" means: allowable costs of towing, recovering, preserving, storing and any other
56 charges authorized by the grant of a franchise.

- 1 s. "Services" means: the towing, recovery, preservation, storage, release or disposal of Motor
2 Vehicles, debris clean up and disposal and all administrative and operational functions attendant
3 thereto.
- 4
- 5 t. "Service Area" means: within the city limits of the city of Myrtle Beach.
- 6
- 7 u. "State" means: the State of South Carolina.
- 8
- 9 v. "State Law" means: the South Carolina Code of Law, as amended.
- 10
- 11 w. "Stolen Motor Vehicle" means: a Motor Vehicle that has been reported stolen by its owner to a
12 police officer of the State, and where a report has been accepted and carried on the records of the
13 sheriff, chief of police or department as a stolen vehicle.
- 14
- 15 x. "Tow Report" means: a preprinted form documenting a request for Services which records the
16 status of the Motor Vehicle, the circumstances of and justification for its removal the physical
17 condition of the Motor Vehicle and any personal property contained in the Motor Vehicle.
- 18

19 Purpose: To obtain Services for Motor Vehicles owned or operated by the City; other Motor Vehicles as
20 defined herein; and to ensure the delivery of prompt and efficient Services to the City and the public.

21

22 Police Power: All rights and privileges granted herein are subject to the police power of the City to adopt
23 and enforce ordinances and regulations necessary to promote the health, safety and general welfare of the
24 public. Expressly reserved to City is the right to adopt, in addition to the provisions of this Agreement and
25 existing City ordinances and regulations and state and federal statutes, such additional ordinances and
26 regulations as the City may find necessary in the exercise of its police power.

27

28 Grant of Authority: Subject to this Agreement and applicable law, the City hereby grants to the Company
29 the non-exclusive right and privilege to provide Services over the Public Rights-of-Way, and other public
30 and private property within the territorial limits of the City. City expressly reserves the right to grant other
31 franchises, on the same subject matter and terms and conditions. This Agreement does not grant any
32 privilege or convey any rights other than those expressly provided herein.

33

34 Scope of Service: Services shall be performed when requested by the City, and shall include requested
35 Services for: City owned or operated Motor Vehicles; abandoned and derelict Motor Vehicles as defined in
36 State Law; vehicles subject to confiscation and forfeiture under State law; stolen, wrecked, disabled or
37 inoperable Motor Vehicles; and any other Motor Vehicle determined to constitute a Public Nuisance.

38

39 Term of Service: The franchise term shall be for a period of five (5) years beginning on the Effective Date
40 and ending on the Expiration Date specified herein.

41

42 Renewal: The City reserves the right to grant or deny renewal of this Franchise.

43

44 Franchise Fee: Company shall pay the City five percent (5%) of the Gross Franchise Revenue, due and
45 payable no later than March 31st of the year following each expired franchise year during the term hereof.
46 Company shall be afforded a ten (10) day grace period for payment of its Franchise Fee, after which time a
47 ten percent (10%) late fee will be assessed and any unpaid amounts will accrue interest at a rate of eighteen
48 percent (18%) per annum, compounded daily. A failure by the Company to pay any franchise fee, late fee
49 or accrued interest within thirty (30) days shall be deemed a material breach of this Agreement and grounds
50 for revocation of the franchise.

51

52 Service Hours: The Company shall provide Services, notwithstanding any provision of state law releasing
53 a Company of any obligation beyond normal business hours, to the City and the public Twenty-four (24)
54 hours a day seven (7) days a week. Company shall respond to a request for the release of any Motor
55 Vehicle from its service facility within thirty (30) minutes.

1 Service Procedures: Motor Vehicles that are subject to confiscation and forfeiture shall be towed to the
2 City's Equipment Maintenance Compound, 3231 Mr. Joe White Avenue. Motor Vehicles that have been
3 reported stolen or which have been designated, as evidence shall be towed to either the Myrtle Beach
4 Police Department Annex Building, 3341 Corsair Street or Company's service facility per the directions of
5 the Official on scene. All other Motor Vehicles shall be towed to Company's service facility and secured
6 therein until claimed by the owner of other Person entitled to lawful possession of the Motor Vehicle, or if
7 unclaimed, until lawful disposal of the Motor Vehicle has been effected by the Company in accordance
8 with State Law. Except in the case of a wrecked Motor Vehicle, a Tow Report shall be completed for all
9 Motor Vehicles for which Services are provided. Upon completion of the Tow Report by the Official it
10 shall be reviewed for accuracy and signed b the Official and Company representative at the scene. The
11 white copy shall be retained by the Official. The pink copy shall be maintained by the Company and the
12 canary copy shall be given to the owner/operator of the Motor Vehicle, or if the owner/operator of the
13 Motor Vehicle, or if the owner/operator is not present at the scene, it shall be placed inside the Motor
14 Vehicle. Motor Vehicles shall not be moved from the scene until the Tow Report has been completed and
15 its removal authorized by the Official. The Tow Report shall set forth the following minimum information:

- 16 a. Status: Abandoned/Derelict/Confiscated/Stolen/Evidence/Nuisance.
- 17 b. Year, Make, Model and body style of Motor Vehicle, if applicable
- 18 c. Vehicle Identification Number (VIN), if applicable.
- 19 d. License Plate Number and State, if applicable.
- 20 e. Detailed description of the physical condition of the Motor Vehicle to include any damage,
21 missing parts or accessories and such other information as will accurately describe the Motor
22 Vehicle at the time of the tow.
- 23 f. Itemized list of all personal property contained in the Motor Vehicle as well as any personal
24 property removed by the Company or Official for preservation and safekeeping.

25
26 Owner/Operator Request: Nothing in this Agreement shall be construed to require the owner/operator or a
27 Motor Vehicle involved in a vehicular accident within the territorial limits of the City to utilize the Services
28 of Company. The owner/operator may use any tow operator of his or her choice or, if the owner/operator
29 options to use Company's Services, to require Company to tow the Motor Vehicle to a location other than
30 Company's service facility. Company understands that the City will assume no financial liability for such
31 Services, and that the owner/operator shall be solely responsible for the payment of all fees and charges for
32 Services rendered by Company.

33
34 Motor Vehicle Releases: Company shall, upon receipt of proof of ownership or right of possession and the
35 payment of authorized Service Fees applicable to the Motor Vehicle, release the Motor Vehicle to is owner
36 or other Person entitled to lawful possession there of. Company shall affect the release of Motor Vehicles
37 during all service hours, and shall provide the Person taking possession of the Motor Vehicle an itemized
38 invoice specifying all Service Fees pain and record and maintain for the term of this Agreement, plus three
39 (3) years, the following information for each Motor Vehicle release:

- 40 a. Date and time of release.
- 41 b. Motor Vehicle year, make, model, body style and VIN, if applicable.
- 42 c. License plate number and state, if applicable.
- 43 d. Name, address, driver license number and state as well as the residence and business telephone
44 number of the Person taking possession of the Motor Vehicle.
- 45 e. Written justification/evidence that Person is lawfully entitled to possession of the Motor Vehicle.

46
47 Disposition of Unclaimed Motor Vehicles: Company understands that the City is vested with the authority
48 and responsibility to: declare a Motor Vehicle to be Abandoned or Derelict; pursue confiscation and
49 forfeiture of a Motor Vehicle; seize a Motor Vehicle for evidentiary purposes; take custody of a stolen
50 Motor Vehicle; declare a Motor Vehicle a Public Nuisance; remove a wrecked, disabled or inoperable
51 Motor Vehicle from, the public right of way or other public or private property; and to ensure the lawful
52 disposal of such Motor Vehicles in accordance with applicable State Law.

53
54 Non-Discrimination: Company shall not deny Service or otherwise discriminate against any individual in
55 violation of the Constitution of the United States or the State of South Carolina, or in violation of any rule,
56 regulation, stature, or ordinance of City, the State of South Carolina or the United States.

1 Service Response Time: Except as provided herein, Company shall respond to a location in the Service
2 Area where Services have been requested within thirty (30) minutes receipt of notice from the City.
3 Services for City vehicles disabled more than twenty-five (25) miles outside of the Service area shall be
4 provided within a reasonable time after notification given the travel time to the location of the disable
5 vehicle. However, in no event shall services for such City vehicles be completed more than twelve (12)
6 hours after request by the City. Services requested for removal of Motor Vehicles from private property
7 shall be scheduled as soon as possible, but in no case shall the requested Services be completed more than
8 twenty-four (24) hours after request by the City. Company agrees that City Requests for Services shall be
9 given priority over any other requests for service, and that Company's first available service equipment
10 shall be dispatched to a City request.

11
12 Service Quality: Company shall ensure that sufficient qualified personnel are available during all service
13 hours to meet the demand for Services. Company shall maintain a State of South Carolina, Department of
14 Motor Vehicles Report for each wrecker operator, which shall be updated annually. Each wrecker operator
15 shall be properly licensed by the State and have a minimum of one (1) years experience in towing and
16 recovery work or comparable training and education. Company shall insure that its personnel are
17 uniformed, neat, and clean and conduct themselves in a courteous, responsible manner. Company personnel
18 providing services shall be identified by a Company issued picture identification card, which shall be
19 laminated and displayed on the employee's uniform during all service hours.

20
21 Service Equipment: All service equipment and accessories shall be modern, commercially manufactured,
22 and in good mechanical condition. Company service equipment may only utilize amber strobe lighting after
23 arrival at the service location and while actively performing towing or recovery services, and may not be
24 used by Company as an emergency vehicle. Company's service equipment is prohibited from using a siren
25 in the performance of it obligations. Service equipment shall be equipped with reliable two-way
26 communications. The use of answering services, call forwarding or pagers to receive service request from
27 the City is prohibited, nor may Company monitor City communications channels for the purpose of
28 providing Services. Company understands that a City request for Services will be made via telephone or
29 facsimile and agrees to provide sufficient telecommunications capacity to ensure reliable, prompt and
30 responsive delivery of Services during all service hours.

31
32 Service Facilities: Company shall operate and maintain a business office and storage facility located within
33 the Service Area to ensure the efficient administration of its responsibilities and the proper, safe and secure
34 preservation and storage of Motor Vehicles until such are claimed by the owner, or other person or entity
35 entitled to lawful possession of the Motor Vehicle, or are otherwise lawful disposed of. Motor Vehicles
36 shall not be staged or stored at any locations other than the Company's storage facility. Re-tows of Motor
37 Vehicle towed pursuant to a request by the City are prohibited unless prior written approval is provided by
38 the City, the owner or Person entitled to lawful possession of the Motor Vehicle. Company service facilities
39 shall comply with all applicable building and zoning codes and meet or exceed the following specifications:

40
41 a. Business Office

42
43 Clearly identified by permitted signage displaying Company name and telephone number

44
45 One (1) public pay phone.

46
47 A legible schedule of all Service Fees shall be posed in plain view of the public.

48
49 b. Storage Facility

50
51 Clearly identified by permitted signage displaying Company name and telephone number.

52
53 One (1) public pay phone

54
55 A legible schedule of all Service Fees shall be posted in plain view of the public.

56

1 Large enough to permit the secure storage of thirty (30) Motor Vehicles providing a two (2') foot
2 buffer around each Motor Vehicle.

3
4 Fully illuminated during evening hours to ensure public safety and security of stored Motor Vehicles.

5
6 Fully enclosed by a solid fence or wall of not less than five (5') feet nor more than six (6') feet in height
7 that screens the storage facility and Motor Vehicles contained therein from public view. The enclosure
8 and screening shall be maintained in good condition and damage or deterioration shall be repaired
9 within seventy-two (72) hours.

10
11 Service Fees: Pursuant to Company's response to the City's request for proposals and the provisions of this
12 Agreement, the below listed charges are the only service fees authorizes to be charges by Company for
13 Services under this Agreement.

14
15 a.

16 **Class A Wrecker/Roll-back Wrecker:**

17 Tow	\$ _____ per tow
18 Recovery Work	\$ _____ per hour
19 Mileage (outside service area)	\$ _____ per mile
20 No tow fee	\$ _____ per tow
21 Decoupling	\$ _____ per call
22 Vehicle storage (after 1st 12 hours)	\$ _____ per 24 hours
23 Extra time at scene	\$ _____ per hour*

24
25
26 b. **Class D Wrecker:**

27	
28 Tow	\$ _____ per tow
29 Recovery Work	\$ _____ per hour
30 Mileage (outside service area)	\$ _____ per mile
31 No tow fee	\$ _____ per call
32 Decoupling fee	\$ _____ per call
33 Vehicle storage (after 1st 12 hours)	\$ _____ per 24 hours
34 Extra time at scene	\$ _____ per hour*

35
36 * 1st hour on scene included in cost of tow.

37
38 Protection of Motor Vehicles and Personal Property: Company's liability for any Motor Vehicle and all
39 personal property contained therein shall commence at the time Company's service equipment is hooked
40 onto the Motor Vehicle. Company shall be solely responsible for the preservation of the Motor Vehicle and
41 personal property, and shall be accountable while such is stored at Company's service facility, or until
42 Company's service equipment is disconnected from the Motor Vehicle upon it delivery to an alternate
43 designation location. Company may elect to remove personal property from a Motor Vehicle stored at its
44 service facility for safekeeping. Personal property so removed shall be documented on the Tow Report.
45 Disposition of personal property shall be in accordance with State law. Company's liability for the Motor
46 Vehicle and personal property contained therein shall end when the owner or Person lawfully entitled to
47 possession of the Motor Vehicle or personal property takes custody thereof. In the event of a complaint of
48 missing or stolen personal property or damage to the Motor Vehicle, Company agrees to fully cooperate
49 with any law enforcement investigation pertaining to the complaint, including making Company personnel
50 available to the investigating officer as requested. Company agrees to fully abide by the laws of general
51 application regarding vehicles for hire in Chapter 23 of the Code of Laws.

52
53 Insurance: Company shall, at its sole expense, obtain insurance coverage to insure the Company and the
54 City against liability in each of the following areas:

- 55 a. Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence
- 56 combined single limit for Bodily Injury, Property Damage including coverage for

- 1 premises/operations, contractual liability, and products/completed operations. This policy if
2 insurance shall be written in an "occurrence" based format.
- 3 b. Garage Liability. The company shall obtain garage liability insurance, which provides coverage in
4 the amount of at least one million dollars (\$1,000,000) per occurrence, combined single limit, for
5 bodily injury and property damage arising from or occurring in connection with the Services
6 provided pursuant to this Agreement.
- 7 c. Garage Keepers Legal Liability. The company shall carry Garage Keepers Legal Liability
8 insurance with limits of not less than one hundred fifty thousand (\$150,000) dollars per
9 occurrence.
- 10 d. On Hook and Cargo Legal Liability. Company shall carry On Hook/Cargo Legal Liability with
11 limits no less then (\$100,000) dollars per occurrence.
- 12 e. Automobile Liability. Company shall obtain automobile liability insurance which provides
13 coverage in the amount of at least one million dollars (\$1,000,000) per occurrence, combined
14 single limit, for bodily injury and property damage arising from or occurring in connection with
15 the use of an automobile by the Company or any Person acting on behalf of the Company in
16 connection with Services provided pursuant to this Agreement.
- 17 f. Workers' Compensation and Employers' Liability. Company shall obtain workers' compensation
18 and employers' liability insurance, which provides coverage in the amount of at least five hundred
19 thousand dollars (\$500,000.00) for bodily injury by disease per employee or by accident per
20 employee.

21
22 Period of Insurance: The insurance policies required herein shall be maintained by Company during the
23 term of this Agreement and any renewal period.

24
25 Terms of Insurance: The insurance policies shall comply with the following conditions:

- 26
27 a. Named Insured. The City shall be included as a "Named Insured" on the general liability, garage
28 keepers' liability and automobile liability insurance policies. Endorsement of the City as named
29 insured on any Company insurance policy shall not prohibit or in any way limit the right of the
30 City to make claim against the Company or to be compensated, recover damages, or obtain
31 reimbursement pursuant to any insurance policy.
- 32
33 b. Cancellation. All insurance policies required in this Agreement shall include the following
34 endorsement issued by the insurance company: "It is hereby understood and agreed that this
35 insurance coverage shall not be canceled or non-renewed for any reason until thirty (30) days prior
36 written notice of cancellation or non-renewal has been provided by the insurance company to the
37 "Named Insured. "
38
- 39 c. Replacement Coverage. The company may not cancel or permit the lapse of any required
40 insurance policy without providing evidence to the City that Company has obtained replacement
41 insurance complying with the requirements of this Agreement not later than ten (10) days prior to
42 cancellation or non-renewal of the policy in question.
- 43
44 d. Company Insurance is Primary. The insurance policies provided by Company shall be primary to
45 any insurance policy or program of self-insurance maintained by the City, which shall be
46 considered excess and on contributing.
- 47
48 e. Deductible or Self-Insured Retention. The Company shall be solely responsible for the payment,
49 satisfaction or assumption of any deductible or self-insured retention stipulated in any insurance
50 policy required to be provided by this Agreement.
- 51
52 f. Insurance Certificates. Upon execution of this Agreement, Company shall provide the City with a
53 certification of insurance, acceptable to the City, demonstrating that the insurance coverage
54 required herein has been obtained and is in effect. Company shall also provide a
55 certificate of insurance for all renewal policies not later than ten (10) days prior t the policy's
56 effective date.

- 1
2 g. Contractor or Subcontractor Insurance. Company shall require all contractors and subcontractor to
3 procure and maintain the insurance coverage equivalent to that specified herein. Contractors and
4 subcontractors shall provide Company a certificate of insurance as evidence of compliance with
5 this requirement.
6
7 h. Insurer Licensing and Rating. All insurance companies providing coverage to Company, City and
8 any contractor of subcontractor shall be licensed to do business in the State and have an A.M. Best
9 rating of "A-" or better.

10
11 Insurance Coverage Adjustment: In response to changing circumstance or loss exposures, the City reserves
12 the right to modify the insurance coverage, limits of liability, policy endorsements and policy terms
13 required in this Agreement. The City will provide written notice to the Company, which outlines such
14 changes and allow Company a reasonable period of time in which to comply with the new requirements.
15 However, in no event shall Company compliance period be longer than thirty (30) days.

16
17 Performance Bond: Company shall obtain and maintain during the entire term of this Agreement, at its
18 sole cost and expense, and file with City a corporate surety bond of a surety company authorized to do
19 business in the State of South Carolina, to guarantee the faithful performance by Company of all of its
20 obligations under this Agreement. Such performance bond shall be in the amount of Ten Thousand Dollars
21 and No Cents (\$10,000.00).

- 22
23 a. Conditions. The performance bond shall provide, but not be limited to the following conditions:
24
25 1. There shall be recoverable by City, jointly and severally from the principal and surety, all
26 fines and penalties due to City and any and all damages, losses, costs and expenses
27 suffered or incurred by City resulting from the failure of the Company to comply with one
28 or more provisions of this Agreement. Such losses, costs and expenses shall include, but
29 not be limited to, reasonable attorney's fees and other legal, consulting and auditing
30 expenses.
31 2. Not less than thirty (30) days prior notice to City shall be provided of surety's or
32 company's intention to cancel, materially change, or not to renew the bond.
33
34 b. Forfeiture. The total amount of the performance bond shall be forfeited in favor of City in the
35 event:
36
37 1. Company abandons this franchise or any material part thereof at any time during the term
38 hereof.
39
40 2. There is any change in ownership or control of Company without prior written approval of
41 City.
42
43 3. The franchise is revoked as provided herein.
44

45 Liability, Indemnification, Hold Harmless, Duty to Defend, Relationship of Parties: The Company
46 specifically agrees to be civilly responsible for the acts or omissions of its own employees, agents, and
47 officials, should any claim, loss, administrative proceeding, common pleas suit or equity proceeding,
48 damage, cause of action, liability, cost or expense (including attorney's fees and witness costs) arise from
49 the performance of duties or obligations contemplated herein. The City shall not be liable for any liability
50 of the Company, any Affiliated Person of any other Person, arising out of or in connection with the
51 Company's performance or non-performance of its obligation under this Agreement. The Company
52 assumes the liability inherent in the acts contemplated herein. Should a claim or action be made against the
53 City on the Company's acts or omissions from the performance of duties or obligations contemplated
54 herein, the Company agrees to legally defend the City upon demand and without reservation upon notice,
55 and to indemnify and hold harmless the City, should it suffer loss or damage, from and against any and all
56 awards, liabilities, costs, suits, penalties, claims or judgments including attorney's fees and cost, arising out

1 of or in connection with the Company's performance or failure to perform any of its obligations under this
2 Agreement. This agreement creates a contractual relationship between the parties, and is not intended to
3 create the relationship of third party beneficiary toward a specific member of the public or the public at
4 large, master/servant, principal/agent, employer/employee, partnership or joint venture, or any other
5 relationship recognized by law or equity where one party could be deemed responsible or held accountable
6 for the debts, acts or omissions of the other in conduct of their business. Further, this Agreement is not
7 intended to create a relationship whereby performance by the non-governmental entity would constitute
8 "state action" for any purpose whatsoever.
9

10 Liability Not Limited: The liabilities and indemnification obligations of the Company set forth herein shall
11 not be limited to the extent of insurance coverage provided pursuant to this Agreement, except to the extent
12 necessary to avoid duplicate recover from or payment by the Company or its insurer.
13

14 Licenses and Permits: The Company shall obtain, at its sole expense, all applicable licenses, including
15 business license, penalties and other authorization necessary to provide the Services required herein.
16

17 Taxes and Other Fees: Nothing in this Agreement shall be construed to limit the authority of the City, the
18 State or any governmental entity to impose any tax, fee, or assessment of general applicability on the
19 Company or any Affiliated Person. The Company shall be obligated to pay all taxes, assessments, and other
20 fees which may be imposed on the Company's business or activities or which may be imposed as a result of
21 this Agreement. However, Gross Franchise Revenue, as defined herein, shall not be subject to business
22 license taxation by the City. All other gross revenue of the Company shall be subject to business license
23 taxation as provided in the City Code of Ordinances. The Company shall keep the Public Right of Way and
24 other public property free and clear of all liens, including mechanics' liens and any other liability resulting
25 from its performance or non-performance under the terms of this Agreement
26

27 Contractors and Subcontractors: All Company contractors and subcontractors providing Services pursuant
28 to this Agreement shall be subject to the approval of the City and be properly licensed and permitted,
29 trained, experienced and qualified to perform Services for which it has contracted. Company's contractors
30 and subcontractors shall not be permitted to delivery more than 10% of the Services requested by the City
31 pursuant to this Agreement. Company's contractor and subcontractor personnel shall meet or exceed the
32 service quality criteria set forth in this Agreement and their service facilities shall be located within the
33 Service Area defined herein. The Company shall be responsible for any act or omission of any contractor or
34 subcontractor and shall promptly, upon notice, correct any such act or omission.
35

36 Books and Records: The Company shall maintain complete and accurate books of account, files and
37 records related to Company operations and business activities arising out of this Agreement
38

39 City's Right of Inspection, Review and Audit: The City shall have the right to inspect, review and audit, at
40 Company's service facility, during normal business hours, upon seventy-two (72) hours notice to Company,
41 all records, whether in printed or electronic form, which pertain to the Company's performance of its
42 obligations under this Agreement, and all related business activity. Subjects to be considered shall include
43 but not be limited to: Compliance with this Agreement and applicable law; Company's performance;
44 financial records and reporting; Company's service facilities and equipment; books and records; complaint
45 and resolution logs; receipts; maps; plans; accounting statements; financial statements; contracts; service
46 logs; and records of requests for service whether held by the Company, any Affiliated Person or any other
47 Person, who has Control or a Controlling Interest, or any management or other authority over Company or
48 any part thereof, by contract or any other arrangement. The Company shall not deny access to any records
49 on the basis of a claim by the Company that such records contain proprietary information. Company
50 acknowledges that all records related to this Agreement shall be considered public records subject to the
51 provisions of the South Carolina Freedom of Information Act.
52

53 Proprietary Information: It shall be the sole responsibility of the Company to establish the proprietary
54 nature of any information or records maintained pursuant to this Agreement. The City shall, to the extent
55 permitted by State law, notify the Company of any request by a third party for information which the
56 Company has designated as proprietary at least five (5) days prior to disclosure of such information to a

1 third party.

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3 Penalties: If Company fails to observe any of its obligations City may assess Company, and Company
4 agrees to pay to City a monetary penalty in accordance with the Schedule of Penalties set forth below. Such
5 assessment shall not constitute a waiver by City of any other right or remedy in may have under this
6 Agreement, or under applicable law, including, without limitation, its right to recover from Company and
7 its sureties such additional damages, losses, costs, and expenses as may have been suffered or incurred by
8 City by reason of or arising out of Company's breach of this Agreement.

9 a. Disposition: Amounts received by City as penalties assessed against Company, may be used by
10 City for any purpose it deems fit.

11
12 b. Schedule of Penalties: The following monetary penalties shall apply, and the Company's liability
13 therefore shall accrue from the date the violation began:

- 14
15 1. Failure to respond or late response to a service request
16 Complaints, course or pattern of conduct evidencing incompatibility \$50 each
17 2. Failure to maintain Company's insurance \$200 each day
18 3. Failure to maintain performance bond \$200 each day

19
20 c. City Waiver: City retains the right to waive any of the above penalties. Such determination shall be
21 within the sole discretion of the City, except that City shall grant such a waiver where extenuating
22 circumstances result from an act of nature, force majeure or other reason beyond the control of
23 Company. A decision by the City to waive any penalty shall apply only to that instance and shall
24 not be construed as a waiver of any future penalty or other rights the City has under the terms of
25 this Agreement.

26
27 d. Further Recourse: In addition to the foregoing penalties, upon the failure, refusal or neglect of
28 Company to provide any Services or other act required by law or by this Agreement to be properly
29 completed as prescribed by this Agreement, City may cause such Services or other act to be
30 performed or completed in whole or in part, and upon so doing shall submit to Company an
31 itemized statement of the costs thereof. Company shall, within thirty (30) days after receipt of
32 such statement pay to the City the entire amount thereof.

33
34 Revocation of Franchise: In addition to all other rights and powers of City by virtue of this Agreement,
35 City may revoke the franchise and all rights and privileges of Company hereunder in the event Company
36 either:

37 a. Substantially violates any material provision of this Agreement or any rule, order or determination
38 of City made pursuant hereto where such violation remains for a period of thirty (30) days
39 following notice to Company that a material breach is deemed to exist; or

40
41 b. Attempts to evade any material provision of this Agreement or practices any fraud or deceit upon
42 City; or

43
44 c. Establishes a pattern or course of conduct of late arrivals, no shows, complaints about the
45 administration of the franchise, or other indicia of an incompatible working relationship in the
46 discretion of the Manager; or

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48 d. Accumulates, within a period of six consecutive months, penalties imposed under this Agreement,
49 in an amount exceeding \$2,500 in the aggregate; or

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51 e. Any conviction, guilty plea, or plea of nolo contendere, or equivalent plea, of the Company, any
52 Officer of the Company, any Affiliated Person or any other Person who Controls or who has a
53 Controlling Interest in Company and its operations, of any felony, including bribery or fraud, or
54 three (3) or more convictions within a consecutive twelve (12) month period of South Carolina,
55 Code of Law, Section 56-19-840, arising out of or in connection with this Agreement or any
56 business, operation, or activity of the Company; or

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- f. Any material misrepresentation in connection with any representation or warranty contained in Company's response to the RFP, this Agreement or negotiation or modification of this Agreement; or
- g. Occurrence of any event which indicates the likelihood of foreclosure on or suspension of Company's business, including the assignment of any or all property material to the performance of Company's obligations hereunder for the benefit of creditors or the designation of a receiver or similar official.

Remedies: In the event the Company fails to comply with a material provision of this Agreement, the City shall:

- a. Provide Company written notice of the breach.
- b. Company shall, not later than fifteen (15) days after receipt of notice from the City, provide a written response to the City which: (i) presents facts demonstrating that the breach has been cured; (ii) presents facts to refute or excuse the breach; or (iii) propose as method and schedule to cure the breach.
- c. Upon receipt of the Company's written response determine (i) whether the Company has failed to comply with a material provision of the Agreement; (ii) whether such failure is excusable; or (iii) whether the Company has cured or is moving to cure the breach or has proposed an acceptable method and schedule for curing the breach.
- d. Upon a determination that the Company failed to comply with a material provision of this Agreement, such failure is not excusable, and the Company has not cured the breach or proposed an acceptable method and schedule for curing the breach, the City Manager will schedule a public hearing before City Council for the purpose of terminating this Agreement. Such public hearing shall be held on not less than thirty (30) days notice, at which all interested parties are afforded an opportunity to be heard.

Assignment or Transfer: Company may not assign or transfer, in whole or in part, its rights, privileges, or obligations under this Agreement without the prior written consent of the City.

Notices: Notices provided for in this Agreement shall be in writing, delivered by hand or sent via certified mail, return receipt requested to the parties at the following addresses, or such other address as the parties may, from time to time, designate in writing:

City: City Manager
P.O. Box 2468
Myrtle Beach, South Carolina 29578

Company:

Amendment or Modification: This Agreement shall not be amended or modified except by written instrument executed in the same manner as this Agreement.

Governing Law and Venue: This Agreement shall be governed in all respects by the law of the State of South Carolina and shall be subject to the jurisdiction of the Fifteenth Judicial Circuit, Horry County, South

1 Carolina.

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4 WITNESS the due execution hereof this _____ day of _____, 2017.

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7 In the presence of:

CITY OF MYRTLE BEACH

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By: _____
John G. Pedersen, City Manager

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16 In the presence of:

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By: _____

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