CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

----------x **CONSENT ORDER**

DEPARTMENT OF CONSUMER AFFAIRS

Complainant,

-against- **NOH # 05331992**

PERFORMANCE AUTOMOTIVE & TOWING INC. **License # 1226183**
73-15 ELIOT AVENUE
QUEENS, NY 11379

Licensee/Respondent.

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PERFORMANCE AUTOMOTIVE & TOWING INC. ("Respondent") acknowledges that the New York City Department of Consumer Affairs ("the Department") duly served Respondent with a Notice of Hearing charging Respondent with violating § 2-378(i) and § 1-16 (a) of Title 6 of the Rules of the City of New York ("6 RCNY" or "the Rules").

1. Respondent enters into this Consent Order ("CO") with the Department to resolve this matter without the necessity of a hearing.

2. The acceptance of this CO by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representations to the contrary.

INJUNCTIVE RELIEF

3. Respondent shall comply with all laws and rules applicable to tow company licensees in the City of New York, including, but not limited to Titles 19 and 20 of the New York City Administrative Code ("the Code").

4. For every tow performed under the authority of the following: Directed Accident Response Program ("DARP"), Rotation Tow ("ROTOW"), the Arterial Towing Program, and the authority to remove vehicles improperly parked on private property ("Private Property Tow"), Respondent shall maintain records in accordance with the requirements set forth in 6 RCNY § 2-378, except to the extent that this CO imposes additional requirements. In entering this CO, Respondent understands that it is responsible for all recordkeeping requirements set forth in the Rules that are not explicitly set forth in this CO.

a. Respondent shall comply with 6 RCNY § 2-378(a), by strictly maintaining its electronic records according to the instructions in the Tow Electronic Record Keeping Instructions ("Tow Instructions") attached to this CO as Exhibit A.

b. For DARP and ROTOW tows, Respondent shall comply with 6 RCNY § 2-378(b)(3) (DARP) and § 2-378(c)(3) (ROTOW) by making an electronic record of the same information that it is required to maintain in abound record book and by entering the information electronically, in English, in the Excel spreadsheet attached as Exhibit B and available on the Department's website **http://www.nyc.gov/consumers,** no later than one business day after the occurrence of the event it is recording.

COMPLIANCE

5. Respondent shall submit to the Department, along with the executed CO, an executed Electronic Record Keeping Affirmation (the "Affirmation") affirming that it will maintain electronic records in compliance with § 2-378(i). (The Affirmation is attached to this CO as Exhibit C.)

6. Respondent shall submit to the Department on or by April 3, 2014, the following records covering a twenty (20) consecutive day period beginning on March 1, 2014 and ending on March 31, 2014:

   a. DARP Tows:

      i. A CD-ROM containing the required electronic records as described in 6 RCNY § 2-378(g)(5). Respondent shall produce records to the Department in the format indicated in the Tow Instructions.

   b. ROTOW Tows:

      i. A CD-ROM containing the required electronic records as described in 6 RCNY § 2-378(g)(5). Respondent shall produce records to the Department in the format indicated in the Tow Instructions.

   c. Arterial Tows:

      i. A CD-ROM containing the required electronic records as described in 6 RCNY § 2-378(g)(5). Respondent shall produce records to the Department in the format indicated in the Tow Instructions.

d. Private Property Tows:

i. A scanned PDF copy of the trip record as required by § 19-169.1(f) of the Code; and

ii. A scanned PDF copy of the signed receipt provided to each person who paid removal and storage charges, as required by § 19-169.1(h) of the Code; and

iii. A scanned PDF copy of every written contract between owner of property and Respondent as required by § 19-169.1(c) of the Code for the same thirty (30) day period; and

iv. A CD-ROM containing the required electronic records as described in 6 RCNY § 2-378(g)(5). Respondent shall produce records to the Department in the format indicated in the Tow Instructions.

7. Upon written demand by the Department, Respondent shall provide to the Department, within ten (10) days of the demand, any other documents or records that the Department deems necessary to ascertain compliance with this CO. This provision shall not relieve Respondent of any other obligations imposed by the Department's laws or rules.

8. Upon notification from the Department, Respondent shall appear at the Department for a review of Respondent's compliance with the terms of this CO and such other matters as the Department, in its discretion, deems appropriate. Respondent shall produce such records as the Department may request at the scheduled meeting.

CONSEQUENCES OF BREACH

9. Respondent shall pay a fine of $1000 for any breach of any provision of this CO. Specific breaches of this CO shall, in addition to a breach of this CO, constitute independent and separate violations of any applicable laws and rules. If the same conduct gives rise to both a breach of this CO and a breach of the applicable laws and rules, Respondent shall pay two (2) penalties: a $1000 fine for breach of the CO and the maximum penalty for violation of the applicable law or rule.

10. Respondent will pay a penalty of $1000 for submitting any false statement in the Affirmation.

11. Non-payment or untimely payment of the settlement fine shall constitute a breach and violation of this CO.

12. Respondent's failure to produce any of the documents or records required by this CO and/or applicable laws and rules shall constitute prima facie evidence that Respondent has failed to maintain those records and that Respondent is not in compliance with the terms of the CO and applicable record keeping laws and rules.

13. Respondent's failure to produce any of the documents or records as required by paragraph 6 of this CO will be the basis for automatic revocation of Respondent's license.

FINES

14. Respondent shall pay a fine of $1000 due upon execution of this CO.

WAIVER OF APPEALS

15. Respondent waives any right to a hearing, appeal of or any challenge of the facts alleged by the above-referenced violation under §§ 20-104 and 20-105 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, §§ 7801-7806, in any forum.

MISCELLANEOUS

16. Nothing in this CO shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Code.

Agreed to by Respondent

By: PERFORMANCE AUTOMOTIVE & TOWING INC.

Signature Date 2/25/2014

Accepted for the NYC Department of Consumer Affairs

By: [redacted]

Signature Date 02/25/14

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24-hour Citizen Service Hotline, or by going online to www.nyc.gov/consumers.