

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Proceeding No. 13G-0891TO
Civil Penalty Assessment Notice No. 107145

STIPULATION AND SETTLEMENT AGREEMENT

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

A S A P TOWING & RECOVERY INC.,

Respondent.

Staff of the Public Utilities Commission (Staff) and Respondent A S A P Towing & Recovery Inc. (Respondent) (collectively Parties) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced Proceeding as a complete and final resolution of all issues that were or could have been raised in this matter.

Background

On August 2, 2013, the Commission issued Respondent Civil Penalty Assessment Notice No. 107145 (the CPAN) seeking civil penalties of \$907.50 (or \$453.75 if paid within 10 days). The CPAN alleged three violations. Count I alleged a violation of 4 *Code of Colorado Regulations* (CCR) 723-6-6509(IV), Count II alleged a violation of 4 CCR 723-6-6509(IX), and Count III alleged a violation of 4

CCR 723-6-6509(XIII). A brief explanation of each violation is set forth in the CPAN in the "Nature of Violation" column.

On August 19, 2013, Respondent tendered a \$151.25 payment to the Commission for the violation cited in Count III, which constitutes an admission of liability for this violation.

Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to the violations cited in Counts I and II of the CPAN.

2. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The Parties submit the public interest is served by assessing Respondent a reduced civil penalty of \$250.00 under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.
- b. Respondent admits the maximum level of culpability for Counts I and II.
- c. This is the first time Respondent was issued a CPAN for the violations in the CPAN.
- d. Respondent fully cooperated with Staff in resolving this matter without the need for a litigated evidentiary proceeding,

including Respondent providing Staff a copy of a template tow ticket that has been updated by Respondent to address the concerns raised by Staff in this matter.

- e. Assessing Respondent a civil penalty of \$250.00 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

3. In consideration of Respondent's admission of liability in paragraph 1, and for the reasons expressed in paragraph 2, Staff believes reducing the amount of the civil penalty for Counts I and II from \$605.00 to \$250.00 is appropriate and in the public interest.

4. The \$250 payment includes a 10% surcharge pursuant to C.R.S. § 24-34-108 and the breakout is as follows: \$227.27 is the civil penalty and \$22.73 is the 10% surcharge.

5. Respondent agrees to make the \$250 payment to the Commission within fourteen (14) days after the Commission's approval of this Agreement becomes final. For purposes of this Agreement, a final Commission decision shall mean the date when the Recommended Decision of the administrative law judge approving or modifying this Agreement becomes a decision of the Commission.

6. Respondent agrees the failure to timely pay the settlement amount as provided herein will result in Respondent being liable for the full civil penalty or \$907.50 less payments made without any further hearing or administrative or adjudicatory process.

7. Respondent agrees and stipulates the failure to complete its payment obligations as set forth in this Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration or any other form of appeal. This result will mean neither the Commission nor Staff will incur additional time and expense to prosecute the full civil penalty.

8. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this Docket, any violations for any of the Counts in which Respondent admitted liability is found, Respondent shall be liable for the full civil penalty or \$907.50 less payments made. In this event, the remaining full civil penalty will be due immediately. Respondent and Staff agree the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

9. The Parties agree all matters that were raised or could have been raised in this Docket relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

10. In the event that this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this Docket within seven (7) days of entry of

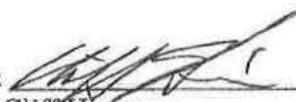
such Order. In that event, this Agreement shall be void and this matter shall be set for hearing.

EXECUTED this 20th day of November 2013.

approved as to form:

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

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