

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF INTENTION BY THE COUNCIL OF  
THE CITY OF FRESNO, CALIFORNIA, TO ESTABLISH  
NON-EXCLUSIVE TOWING OPERATION FRANCHISES  
AND SET A DATE FOR PUBLIC HEARING

RESOLVED, BY THE City Council of the City of Fresno, California, that:

WHEREAS, pursuant to Article XIII of the Charter of the City of Fresno, proceedings for the establishment of non-exclusive towing franchises may be instituted by the legislative body by Resolution of Intention to adopt an Ordinance granting the franchises; and

WHEREAS, this Council, as a legislative body of the City of Fresno (“City”), hereby determines that it is in the best interest of the City that this Council institute proceedings for the establishment of non-exclusive towing franchises pursuant to the Charter in order to facilitate the placement of towing operators on the City of Fresno Police Department’s Tow Truck Rotation List; and

WHEREAS, in the event the non-exclusive towing franchises are established, it is the intention of the City to place each of these non-exclusive franchise towing operators on a Rotation List to facilitate and assist the City in towing vehicles consistent with Article 17, Chapter 9 of the Fresno Municipal Code (“Code”).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The above recitals are true and correct.
2. Numerous non-exclusive towing franchises are proposed to be

established under the terms of Article XIII, "Franchises" of the City Charter.

3. The City Council hereby finds and determines that the grant of non-exclusive towing franchise for Police generated tows to those towing operators identified on Exhibit "A," attached hereto and incorporated herein, is in the public interest. The franchises granted herein are awarded, for a period of 3 years from the date of final passage of the franchise Ordinance, provided that the provisions of this Resolution, Non-Exclusive Franchise Agreement, and the Code have been agreed to in writing by the Grantee and the Grantee has executed the Non-Exclusive Franchise Agreement and the City received and approved the insurance and documents required by such agreement.
4. The grant of these non-exclusive franchises will be expressly subject to the provisions of Article 17, Chapter 9 of the Code and compliance with all terms and conditions of the Non-Exclusive Franchise Agreement and performance standards adopted by the City Police Chief.
5. All Grantees shall during the term of their franchise pay to the City the franchise fee set forth from time-to-time by Council Resolution, as well as all other applicable taxes, fees and charges payable by the Towing Operators.
6. The Police Chief is hereby authorized to adopt rules for towing operators regarding standards for service, hours of operation, etc., to insure that the purposes of the grant of these non-exclusive franchises are achieved.

7. The form of the Non-Exclusive Franchise Agreement attached hereto as Exhibit "B" is incorporated by reference and is hereby approved. The Police Chief is authorized to execute the same on behalf of the City. The Police Chief is further authorized to execute amendments to such Non-Exclusive Franchise Agreement consistent with the purpose and intent of the franchise ordinance, subject to review and approval by the City Attorney's Office.
8. A public hearing on the granting of these non-exclusive franchises shall be held at 10:00 a.m., or as soon thereafter as practical on Thursday, October 23, 2014, at the regular meeting of the City Council, Fresno City Hall, 2600 Fresno Street, Fresno, California 93721. The hearing may be continued from time to time as permitted by the Code.
9. At the time and place set forth in this Resolution for the public hearing, any interested person may appear and be heard, and the testimony of all interested persons for or against the granting of non-exclusive towing franchises will be heard and considered. Any protest may be made either orally or in writing. All written protests shall be filed with the City Clerk on or before the time fixed for the public hearing, and written protest may be withdrawn in writing at any time prior to the conclusion of the hearing.
10. The City Clerk is hereby directed to publish a Notice ("Notice") of the hearing as defined in Section 1301 of the Charter of the City of Fresno, in the form required by the Charter, within fifteen (15) days of the passage of this Resolution, in a newspaper of general circulation within the City. Said

Notice shall be published at least ten (10) days prior to the date of the hearing.

- 11. At the conclusion of the hearing, if the Council determines to grant non-exclusive towing franchises, it shall adopt an ordinance granting the franchises on the terms and conditions specified in this Resolution.

\* \* \* \* \*

STATE OF CALIFORNIA )
COUNTY OF FRESNO ) ss.
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of October, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2014
Mayor Approval/No Return: \_\_\_\_\_, 2014
Mayor Veto: \_\_\_\_\_, 2014
Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC
City Clerk

BY: \_\_\_\_\_
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_
Mary Anne B. Tooke [Date]
Deputy

Attachments: Exhibit A
Exhibit B

**EXHIBIT "A"****FPD NO PREFERENCE ROTATION TOW LIST  
QUICK REFERENCE**

(Reminder \*Have vehicle owners call office FIRST to find out exact storage location)

Name	Storage Address	Zip Code	Phone	FAX	Owner
76 Towing	1805 N. Lafayette #102	93705	486-7033	486-8230	Richard McCracken
A&R Towing	3282 W. Lansing Way	93722	225-9364	226-4924	Alice Frantzich
Ace Towing	1420 N. Hughes *PO Box 26645	93728 93729	222-4236	442-0448	Ace Avedisian
Action Towing	2822 E. California	93721	498-9999	498-9949	John Decicco
Ark Towing	1420 N. Hughes *4770 N Ila	93728 93705	222-7609	224-0709	Craig Frantzich
B&K Towing	3208 W. Lansing	93722	226-4233	226-0653	Janice Barnes
Bauers Auto	103 N. Thorne	93706	233-9121	233-9046	Ed Mason/ Sharon Bauers-Mason
Budget Towing	4066 E. Church	93725	283-2090	268-1015	Donald Bartlett
Bulldog Towing	1805 N. Lafayette #101	93705	486-7038	486-8230	Kevin McCracken
C&K Towing	3229 W. Lansing Way *PO Box 9637	93722 93793	226-0140	243-9860	Ryan Reeves
Custom Towing	1420 N. Hughes *42485 Ranger Circle Way – Coarsegold	93728 93614	287-5133	486-0100	Kenneth Johnson
D&B Towing	4619 E. White *5375 N. McCall, Clovis	93702 93619	255-4981	297-7778	Robert Barnes
D&K Towing	4568 E. Home	93703	251-8270	255-9278	David Boyko
Dennis Towing	1801 Sacramento	93721	226-8219	268-2264	Dennis Avedisian
Discount Towing	1326 N. Jackson	93703	229-2700	455-1824	Roy Johnson
Econo Towing	1523 N. Maple	93703	456-9310	456-9314	Robert Kodman
Ed-Nic Towing	4533 E. Floradora	93702	252-2541	252-4629	Horace (Jay) Bruno
Fortney Towing	2501 N. Business Park	93727	292-1114	292-9535	Debra Fortney
Frontier Auto	4784 E. Carmen	93703	974-0465	452-1575	Chris Clark
Herndon Towing	5030 E. Jensen	93725	431-3334	431-5535	James D. Deatherage
Johnson Bros	2622 W. McKinley	93703	226-0629	268-0755	Shaun Johnson
Kevin's Towing	3223 W. Saginaw	93722	227-7930	227-7940	Kevin Barnes
Lamona Towing	2740 E. Jensen	93706	237-9159	497-6640	Doug Dunbar
Mike's Towing	4549 E. Pine	93703	251-2361	251-2948	Mike Dockstader
Nelly's Towing	631 N. Maple	93702	273-6619	237-1467	Juan Flores
Ray's Towing	1463 N. Maple	93703	251-5244	252-2228	Ray & Monte Evans
RR-M Reyna	1811 E. Hedges	93703	485-8236	485-6233	Raul Reyna
Robinsons Towing	1830 E. University	93703	233-9185	266-2541	Larry Andres
RR-M Reyna	4625 N. Golden State	93722	275-4823	275-9985	Raul and Sue Romo
Rons Towing	3252 W. Lansing Way	93722	277-9364	226-4925	Ron Frantzich
Steve's Towing	2005 W. Hedges	93728	224-1370	264-4625	Miguel A Valdovinos
Thrifty Towing	3456 E. Church	93725	259-3663	353-2446	Robert Bartlett
Tips Automotive	2914 Phillip, Clovis	93612	227-4840	346-1848	Jeff Banks
Tow City	1380 N. Sierra Vista	93703	260-6416	251-6771	Rae Burton
Walt's Towing	1820 E. University	93703	307-2804	233-8843	Tiffany Lawley

\* mailing address

## EXHIBIT "B"

### CITY OF FRESNO NON-EXCLUSIVE FRANCHISE TOW AGREEMENT FOR FRESNO POLICE DEPARTMENT

This Non-exclusive Franchise Tow Agreement (TSA) is entered into effect on the "effective Date" set forth below, at Fresno, California, between the City of Fresno, a municipal corporation (City) and [Tow Operator Name], [Legal Identity] (the Tow Operator).

This Agreement, including all attachments, contains rules and regulations that a tow company agrees to comply with in order to participate in the tow operations of the City of Fresno Police Department (FPD). Participation in the FPD Rotation Tow Program (Tow Program) is voluntary. Compliance with all of the terms and conditions of the Agreement is mandatory for tow companies participating in the Tow Program. A Tow Operator, by agreeing to participate in the Tow Program, is not acting as an agent for FPD or City when performing services under this Agreement.

#### **1. Governing Law and Venue**

This Agreement shall be governed by, and construed enforced in accordance with, the laws of the State of California excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be the County of Fresno, California.

#### **2. Entire Agreement**

This Agreement, its attachments and exhibits, when accepted by the Tow Operator either in writing or commencement of performance hereunder, contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein. No exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

#### **3. Amendments**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on City unless authorized by City in writing.

#### **4. Assignment or Sub Contracting**

The terms, covenants, and conditions contained herein shall apply to the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or subcontracted by Tow Operator without the express written consent of City. Any attempt by Tow Operator to assign or subcontract the performance or any portion of this Agreement without the express written consent of City shall be invalid and shall constitute a breach of this Agreement.

**5. Patent/Copyright Materials/Proprietary Infringement**

Unless otherwise expressly provided in this Agreement, Tow Operator shall be solely responsible for obtaining a license or other authorization to use any patented or copyrighted materials in the performance of this Agreement. Tow Operator warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Tow Operator agrees that, in accordance with the more specific requirement below, it shall indemnify, defend and hold City and City Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

**6. Non-Discrimination**

In the performance of this Agreement, Tow Operator agrees that it will comply with the requirements of section 1735 of the California Labor Code and not engage nor permit any Tow Operators to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Tow Operator acknowledges that a violation of this provision shall subject Tow Operator to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, section 1720 et seq. of the California Labor Code.

**7. Termination**

In addition to any other remedies or rights it may have by law, City has the right to terminate this Agreement without penalty immediately with cause and either party may terminate after thirty (30) days written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Agreement or any misrepresentation or fraud on the part of the Tow Operator. Exercise by City of its right to terminate the Agreement shall relieve City of all further obligation.

**8. Consent to Breach Not Waiver**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

**9. Remedies Not Exclusive**

The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either party to any other remedies provided by law.

**10. Independent Tow Operator**

Tow Operator shall be considered an independent Tow Operator and neither Tow Operator, its employees nor anyone working under Tow Operator shall be considered an agent or an employee of City. Neither Tow Operator, its employees nor anyone working under Tow Operator, shall qualify for workers' compensation or other fringe benefits of any kind through City.

## **11. Performance**

Tow Operator shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to City's satisfaction. Tow Operator shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by Tow Operator under this Agreement. Tow Operator shall: perform all work diligently, carefully, and in a good and workman-like manner; furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of City required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, be fully responsible for all work performed by sub-Tow Operators.

## **12. Indemnification**

- A) Tow Operator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Tow Operator, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Tow Operator's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.
- B) If Tow Operator should subcontract all or any portion of the work to be performed under this Agreement, Tow Operator shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.
- C) This section shall survive termination or expiration of this Agreement.

## **13. Insurance**

- A) Throughout the life of this Agreement, Tow Operator shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:
  - 1) COMMERCIAL GENERAL LIABILITY insurance which shall be on the most current version of Insurance Services Office (ISO) Commercial



General Liability Coverage Form CG 00 01 and include insurance for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.

- 2) GARAGEKEEPERS LEGAL LIABILITY insurance which shall include coverage for vehicles in the care, custody, and control of the Tow Operator with limits of liability of not less than \$120,000 per occurrence for property damage.
  - 3) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be on the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto) with limits of not less than \$1,000,000 per accident for bodily injury and property damage.
  - 4) ON-HOOK/CARGO insurance which shall include coverage for vehicles in tow with limits of liability based on the size of the tow truck, which are as follows:
    - a) Class A/B tow truck.....\$120,000
    - b) Class C tow truck.....\$200,000
    - c) Class D tow truck.....\$300,000
  - 5) WORKERS’ COMPENSATION insurance as required under the California Labor Code and EMPLOYERS’ LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.
- B) Tow Operator shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tow Operator shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance and approved by the City’s Risk Manager or his/her designee. At the option of the City’s Risk Manager, or his/her designee, either:
- 1) The insurer shall reduce or eliminate such deductibles or self-insured retention as respects City, its officers, officials, employees, agents and volunteers; or
  - 2) Tow Operation shall provide a financial guarantee, satisfactory to City’s Risk Manager, or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

- C) The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) calendar days written notice in favor of City of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide ten (10) calendars day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, Tow Operator shall provide a new certificate and all applicable endorsements evidencing renewal of such policy prior to the expiration date of the expiring policy(ies) to the Chief of Police, or his/her designee, and the City's Risk Division. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Tow Operator shall file with the Chief of Police, or his/her designee, and the City's Risk Division, a new certificate and all applicable endorsements for such policy(ies).
- D) The General Liability, Automobile Liability and Garagekeepers Legal Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Tow Operator's insurance shall be primary with respect to the City, its officers, officials, employees, agents and authorized volunteers with no contribution required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and authorized volunteers. Tow Operator shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement.
- E) The fact that insurance is obtained by Tow Operator shall not be deemed to release or diminish the liability of Tow Operator, including, without limitation, liability under the indemnity provisions of this Agreement. City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tow Operator. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tow Operator, its principals, officers, agents, employees, persons under the supervision of Tow Operator, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.
- F) Upon request of City, Tow Operator shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
- G) If at any time during the life of the Agreement or any extension, Tow Operator fails to maintain the required insurance in full force and effect, all

work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

- H) If Tow Operator should subcontract all or any portion of the work to be performed, Tow Operator shall require each subcontractor to provide insurance protection in favor of the City, its officer, officials, employees, agents and authorized volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors certificates and endorsements shall be on file with the Tow Operator and City prior to the commencement of any work by the subcontractor.

#### **14. Bills and Liens**

Tow Operator shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Tow Operator shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Tow Operator shall promptly procure its release and indemnify, defend, and hold City harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

#### **15. Change of Control**

Tow Operator agrees that if there is a change or transfer in ownership or control of the Tow Operator's business prior to completion of this Agreement, unless such change or transfer is to "immediate family" as defined in Fresno Municipal Code (FMC) section 3-101(e) and approved in writing by the Chief of Police, or his/her designee, such change or transfer shall terminate this Agreement. This includes but is not limited to changes in: Corporate Board Members, Managers, Directors, Treasurer, Trustees, or ownership interests. All changes or transfers to "immediate family" must be approved by the Chief of Police, or his/her designee, prior to such change or transfer in order for the Tow Operator to remain on the tow services list. Final written approval or disapproval for the change or transfer in ownership or control will be given by the Chief of Police or his/her designee. All "immediate family" members involved in the potential transfer and operation of the Tow Operator shall be required to undergo a background check, review, and "Livescan" fingerprint screening. The "immediate family" members involved in the change or transfer of ownership or control must also possess and keep current all licensing certificates and insurance as required in this Agreement. The "immediate family" members who will operate or otherwise be legally responsible for the Tow Operator will be required to execute a new TSA.

- A) Tow Operator owners shall be directly involved in the day-to-day operations of their business and shall not be directly involved in the towing-related business of any other tow company on, or applicant for, the Tow Rotation List. Co-mingling of operations, business, offices, board members, and finances is strictly prohibited.
- B) If terminated or suspended, Tow Operator and/or its owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the

duration of the suspension or termination. This section applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

- C) Tow Operator shall not share equipment with any other tow company on, or applicant for, the Tow Rotation List, excluding equipment which may be unavailable due to repairs or when there is a need for equipment replacement and written approval is obtained from the Chief of Police or his/her designee.

**16. Force Majeure**

Tow Operator shall not be in breach of this Agreement caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Tow Operator gives written notice of the cause of the delay to City within thirty-six (36) hours of the start of the delay and Tow Operator avails itself of any available remedies.

**17. Confidentiality**

Tow Operator agrees to maintain the confidentiality of all City and City-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement. All such records and information shall be considered confidential and kept confidential by Tow Operator and Tow Operator's staff, agents and employees.

**18. Compliance with Laws**

Tow Operator represents and warrants that services to be provided under this Agreement shall fully comply, at Tow Operator's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations, including, but not limited to those issued by City in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by City. Tow Operator acknowledges that City is relying on Tow Operator to ensure such compliance (collectively Laws). Tow Operator agrees that it shall defend, indemnify and hold City and City Indemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of Laws.

**19. Pricing**

The Agreement price shall include full compensation for providing all required services in accordance with the Scope of Work attached to this Agreement, and no additional compensation will be allowed therefore, unless otherwise provided for in this Agreement. Tow Operator shall pay the City Franchise Fees as listed in Attachment "B", or "City Administrative / Franchise Fees", in accordance with Paragraph 25 of Attachment "A".

**20. Terms and Conditions**

Tow Operator acknowledges that the undersigned has read and agrees to all terms and conditions included in this Agreement.

**21. Severability**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**22. Calendar Days**

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

**23. Attorney Fees**

If either party is required to commence any proceeding or legal action to enforce any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable Attorney’s fees and legal expenses.

**24. Interpretation**

This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

**25. Authority**

The parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**26. Employee Eligibility Verification**

Tow Operator warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Tow Operator shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Tow Operator shall retain all such documentation for all covered employees for the period prescribed by the law. Tow Operator shall indemnify, defend with counsel approved in writing by City, and hold harmless, City, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Tow Operator or City or both in connection with any alleged violation of any Federal or

State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**27. Additional Terms and Conditions**

- A) **Term of Agreement:** This Agreement shall commence on December 28, 2014, and shall be effective for three (3) years from that date, unless otherwise terminated by City.
  
- B) **Fiscal Appropriations:** This Agreement is subject to and contingent upon applicable budgetary appropriations being made by the City for each year during the term of this Agreement. If such appropriations are not forthcoming, the Agreement will be terminated without penalty. Tow Operator acknowledges that funding or portions of funding for this Agreement may also be contingent upon the receipt of funds from, and/or appropriation of funds by City. If such funding and/or appropriations are not forthcoming, or are otherwise limited, City may immediately terminate or modify this Agreement without penalty.
  
- C) **Conflict of Interest (Tow Operator):** Tow Operator shall exercise reasonable care and diligence to prevent any actions or conditions that result in a conflict with the best interest of City. This obligation shall apply to Tow Operator, Tow Operator's employees, agents, relatives, and third parties associated with accomplishing the work hereunder. Tow Operator's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of City.
  
- D) **Tow Operator Work Hours and Safety Standards:** Tow Operator shall ensure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and City safety and health regulations and laws.
  
- E) **Orderly Termination:** Upon termination or other expiration of this Agreement, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the Agreement. In addition, each party will assist the other Party in orderly termination of this Agreement and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.
  
- F) **Reprocurement Costs:** In the case of default by Tow Operator, City may procure the service from other sources and, if the cost is higher, Tow Operator will be held responsible to pay City the difference between the Agreement cost and the price paid. City may make reasonable efforts to obtain the prevailing market price at the time such services are rendered. This is in addition to any other remedies available under law.

- G) **Authorization Warranty:** Tow Operator represents and warrants that the person executing this Agreement on behalf of and for Tow Operator is an authorized agent who has actual authority to bind Tow Operator to each and every term, condition, and obligation of this Agreement and that all requirements of Tow Operator have been fulfilled to provide such actual authority.
- H) **Notices:** Any and all notices permitted or required to be given hereunder shall be deemed duly given (1) upon actual delivery, if delivery is by hand; or (2) upon delivery by the United States mail if delivery is by postage paid registered or certified return receipt requested mail; or (3) through electronic means such as, email or the Dispatch & Tracking Solutions Software System (DTS).
- I) **Data – Title to:** All materials, documents, data or information obtained from City data files or any City medium furnished to Tow Operator in the performance of this Agreement will at all times remain the property of City. Such data or information may not be used or copied for direct or indirect use by Tow Operator after completion or termination of this Agreement without the express written consent of City. All materials, documents, data or information, including copies, must be returned to City at the end of this Agreement.
- J) **Usage:** No guarantee is given by City to Tow Operator regarding usage of this Agreement. Usage figures, if provided, are approximate, based upon the last usage. Tow Operator agrees to supply services and/or commodities requested, as needed by City, at prices listed in the Agreement, regardless of quantity requested.
- K) **Tow Operator’s Records:** Tow Operator shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Tow Operator in accordance with generally accepted accounting principles. These records shall be stored at the Tow Operators principal place of business for a period of three (3) years after final payment is received by City.
- L) **Audits/Inspections:** Tow Operator agrees to permit City’s authorized representative (including auditors from a private auditing firm hired by City) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Tow Operator for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. City reserves the right to audit and verify Tow Operator’s records before or after final payment is made.

Tow Operator agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. Tow Operator agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Tow Operator agrees to include a similar right to City to audit records and interview staff of any sub-Tow Operator related to performance of this Agreement.

- M) Should Tow Operator cease to exist as a legal entity, Tow Operator's records pertaining to this Agreement shall be forwarded to the Chief of Police or his/her designee.

**28. Disputes-Agreement**

- A) The Parties shall deal in good faith and attempt to resolve potential disputes informally.
  - 1) Tow Operator shall submit to the Chief of Police, or his/her designee, a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Agreement, unless City, on its own initiative, has already rendered such a final decision.
  - 2) Tow Operator's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, Tow Operator shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Agreement adjustment for which Tow Operator believes City is liable.
- B) Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Tow Operator agrees to diligently proceed with the performance of this Agreement. Tow Operator's failure to diligently proceed shall be considered a material breach of this Agreement.
- C) Any final decision of City shall be expressly identified as such, shall be in writing, and shall be signed by the City Hearing Administrative Officer, or Chief of Police, or his/her designee, as applicable. If City fails to render a decision within ninety (90) days after receipt of Tow Operator's demand, it shall be deemed a final decision adverse to Tow Operator's contentions. City's final decision shall be conclusive and binding regarding the dispute unless Tow Operator commences action in a court of competent jurisdiction.

**29. Breach of Agreement**

The failure of the Tow Operator to comply with any of the provisions, covenants or conditions of this Agreement shall be a material breach of this Agreement. In such event the City may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement, undertake any of the individual actions or any combination of the following actions:



- 1) Afford the Tow Operator written notice of the breach and ten calendar days or such shorter time that may be specified in this Agreement within which to cure the breach;
- 2) Suspend and/or remove Tow Operator from the rotation;
- 3) Terminate the Agreement immediately, without any penalty.

The Parties hereto have executed this Agreement.

**TOW OPERATOR:**

By: \_\_\_\_\_ Title: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**TOW OPERATOR\*:**

By: \_\_\_\_\_ Title: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

\*If a corporation or limited liability company, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. **In the alternative, a single signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

**CITY OF FRESNO,**

A municipal corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Jerry Dyer, Chief of Police

APPROVED AS TO FORM  
 DOUGLAS T. SLOAN  
 City Attorney

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Deputy

ATTEST:  
 YVONNE SPENCE, CMC  
 City Clerk

By:: \_\_\_\_\_ Date: \_\_\_\_\_  
 Deputy

## **ATTACHMENT A SCOPE OF WORK**

### **1. Scope of Work**

Tow Operator shall perform the towing, and storage of vehicles as directed by the City, and in addition, such other services as provided in this Scope of Work, and shall provide necessary storage facility, tow vehicles, labor, materials, equipment, machinery, and tools. The Tow Operator shall comply with all State laws and regulations, applicable to tow units and impound, towing, storage, selling or junking of vehicles. Tow operators must follow all guidelines set forth by equipment manufactures recommendations as to their use and care of all towing related equipment. All permits and licensing fees as specified under California Vehicle Code (CVC) sections 34620 through 34624 shall be in full force and effect at all times during this Agreement. Any violation of this section will be considered a material breach of the Agreement and may result in immediate termination of this Agreement.

### **2. Towing Services and Duties**

It shall be the duty of the Tow Operator, when so directed by the City, to provide prompt tow service for vehicles which are taken into custody by the City. This includes vehicles involved in collisions or disabled by any other cause, abandoned in public places or on private property. Vehicles impounded for evidence, impeding the flow of traffic, or which for any other reason, are within the jurisdiction of the FPD. As required by law, Tow Operators are to remove from the street all debris resulting from said collisions and to clean the immediate area of such street (CVC section 27700(a)(1)). It shall also be the duty to provide for the safety and security of those vehicles and the contents thereof. These duties are inherent to the job and are to be included in the price of the basic tow bill.

The tow truck operator shall provide a business card to the registered owner or driver for the vehicle being towed. The business card shall contain the name, address and phone number of the tow company as well as the link to the vehicle search system in DTS as follows: [www.findmytow.com](http://www.findmytow.com)

Tow truck operators and/or drivers will not be permitted to drive an impounded or recovered stolen vehicle or vehicle intended for storage from a FPD rotation call or special operation. Any exceptions must be at the direction of the FPD officer in charge of the scene and should be limited to repositioning the vehicle to allow for towing.

The City has designated two (2) tow companies for evidence impound tows and no other rotation tow company shall maintain custody over these vehicles at any time. If an officer impounds a vehicle for evidence and a non-preference rotational tow is dispatched, it is the responsibility of the tow driver to verify with the officer on scene as to whether a vehicle is to be held for evidence. If it is determined that the vehicle is to be held for evidence, the tow driver must immediately notify the officer on scene that the company is not authorized to handle evidence impounds and an evidence tow company shall be dispatched. Tow Operator shall then contact the Tow Unit on the

same business day, or within the next business day if such tow occurs after regular business hours. Acceptance of an evidence tow by a non-designated evidence tow company will result in disciplinary action and full financial responsibility for all tow and storage fees for each violation.

If terminated or suspended, Tow Operator and/or owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the duration of the suspension or termination. This provision applies to the Tow Operator working in any capacity within any tow business or operating any tow business and to the tow business even if operated under new ownership.

Tow Operator shall not share equipment with any other tow company on, or applicant for, the Tow Rotation List, excluding equipment which may be unavailable due to repairs or when there is a need for equipment replacement and written notice has been obtained from FPD.

### **3. Special Operations**

FPD conducts special operations coordinated through the Traffic Bureau throughout the year that requires tow companies at the location of the special operation. Tow companies on the Tow Rotation List that are in good standing with FPD may be invited to participate in these operations, provided they are willing to remain with the special operation until its conclusion and forfeit any rotational tow calls (FPD, California Highway Patrol, or other) received during the duration of the operation. "Good standing" shall mean that Tow Operator has not violated, or is not in violation of the terms of this Agreement, the provisions of the FMC, State, or Federal law. All special operations tows will be subject to the provisions of this Agreement. Tow Operator shall respond to a special operation with a flatbed tow truck with the capability of towing (2) vehicles. No ride alongs will be allowed on any special operations unless the ride along is the Tow Owner or a Tow Driver who is in training and has been approved by FPD.

### **4. Signage and hours of Operation**

The storage yard or business office shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street and must be visible at night. All storage facilities must be accessible to City personnel twenty-four (24) hours per day and seven (7) days per week. The Tow Operator will provide customer service twenty-four (24) hours per day and seven (7) days per week for the release of vehicles.

Tow Operator shall provide at least one person at a call station to respond and release vehicles within thirty (30) minutes. Tow Operator shall maintain all signage required pursuant to CVC sections 22850.3 and 22651.07 and include an after-hours contact phone number for Tow Operator.

### **5. Response Time**

Tow Operator shall respond to calls twenty-four (24) hours a day, seven (7) days a week, within the maximum response time limits as established by the Chief of Police or his/her designee. A reasonable response time is thirty (30) minutes or less, except during peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., (Monday

through Friday), when the required response time will be extended to forty-five (45) minutes or less. Tow Operator shall respond with a tow truck of the class required to tow the vehicle specified by the DTS System.

## **6. Non-Response**

The Tow Operator shall update the DTS System at the time of dispatch to a tow rotation request. If the Tow Operator is either unable to respond or unable to meet the maximum response time, the tow operator shall immediately update the DTS System accordingly. If, after accepting the call, the Tow Operator is unable to respond or will be delayed in responding, the Tow Operator shall immediately update the DTS system accordingly.

To decline or refuse to respond will be considered a non-response. Each non-response will be immediately documented in the DTS System. Each non-response will be logged by the DTS System and reviewed by the City. If the fault for the non-response is attributed to other than the Tow Operator, the Tow Operator will be placed back in the rotational list and called at the next opportunity in line.

One such breach, determined to be the fault of the Tow Operator, will be grounds for written reprimand which may be subsequent to a meeting between the Tow Operator and the City. A second breach may be grounds for a (30) thirty-day suspension of this Agreement. A third violation will be considered a material breach of the Agreement and may result in immediate termination of this Agreement.

In the case of suspension or termination, all vehicles then in storage at the time of the suspension or termination remain protected under this Agreement as City's impounds and the Tow Operator is so bound. The City will have the option to remove and/or transfer stored vehicles.

When a Tow Operator will be temporarily unavailable to provide services due to preplanned/scheduled activity, such as a vacation, maintenance, medical leave, etc., the Tow Operator will notify City in writing via the DTS system at least forty-eight (48) hours in advance. City reserves the right to deny these requests to maintain adequate service levels for tow operations. Failure to notify the City will be considered a non-response and a material breach of this agreement.

## **7. Storage Responsibilities**

It shall be the duty of the Tow Operator to provide impound and other storage service for all vehicles as directed by the City. The Tow Operator shall be responsible for all vehicles, accessories and equipment thereon and all personal property therein stored by Tow Operator. It shall be the Tow Operators' duty to protect such stored vehicles, accessories, equipment, and property against all loss or damage by fire, theft or other causes. The Tow Operator will have available for review by City personnel, all permits and proof of compliance to all local zoning, special use, conditional use and special requirements, laws and regulation. It is the responsibility of the Tow Operator to ensure vehicles are stored in a secured facility.

## **8. Size and Location of Storage Facility**

The tow yard shall be located within the City of Fresno's "Metropolitan Area." Metropolitan area is defined as within the borders of Copper Avenue to the north, American Avenue to the south, DeWolf Avenue to the east, and Chateau Fresno to the west. Tow Operator shall be responsible for the security of vehicles and property at the place of storage. At a minimum, a six (6) foot fence or enclosed secured area is required for outside storage. A minimum of 5,000 square feet, or room for twenty (20) vehicles, shall be provided. All tow yards located with the City of Fresno shall be in compliance with the FMC, current Directors Class #208 and shall follow the current Development and Resource Management Department's Policy and Procedure C-002. If the tow facility is located outside the City of Fresno, the tow operator is required to provide written proof that the yard is in compliance with the authorizing jurisdiction. Tow Operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The storage facility and business office will be located at the primary storage yard and shall be maintained in a functional, clean and orderly fashion. The facility shall have a telephone, on-site fax machine and the necessary computer equipment to properly run DTS software and to send and receive email.

In the event of criminal activity at a storage facility, the City may require the Tow Operator to take measures to assist in preventing such crimes. These measures could include, but are not limited to: the yard being illuminated during darkness, with security type lighting, to such a degree that visual observation of the entire yard may be accomplished at all times, improved fencing and/or security patrols.

All vehicles stored or impounded as a result of a tow ordered by the City shall be towed directly to a towing service storage lot unless the City, or in the case of a citizen's assist, a person legally in charge of the vehicle, requests that it be taken to some other location.

All vehicles towed as a result of action taken by the City will be stored at the Tow Operator's principal place of business unless directed otherwise by the City's Tow Coordinator. Vehicles stored at an auxiliary storage facility will be considered a breach of this Agreement. The Tow Operator shall not remove personal property from a stored vehicle. If the registered owner removes personal property from a stored vehicle, the Tow Operator will maintain documentation of such and will require a signed receipt from the registered owner for property released. The Tow Operator shall immediately notify the City if any contraband, weapons or hazardous materials are found in the vehicle(s).

#### **9. Enclosed Facility**

The Tow Operator may maintain, without charge to the City or any other person, separate and enclosed garage facilities no less than 1,000 square feet of clean working space. The facility must be constructed to include a roof and at least four walls of substantial design to withstand the elements and protect the vehicles from the weather. The facility should have a concrete floor and sufficient lighting. This inside facility must be located at the Tow Operator's primary storage yard. This inside facility is not required to qualify for the City's rotation, however, when inside storage is

requested for a particular vehicle, the next Tow Operator in line meeting the needs of the City's request will be used.

**10. DTS Requirements**

Tow Operator shall utilize the most recent, updated and upgraded DTS software program, to dispatch and track, via a web-based Internet connection. Tow Operators will be required to enter the towed vehicle information as instructed by the City. At no time will a vehicle be released, subject to lien, or junked from impound without all required data fields being entered into the DTS system by the Tow Operator. The Tow Operator shall clearly identify and enter into DTS the name of the person to whom the vehicle was actually released. All City tow requests shall be made utilizing this program. Failure at any time to have the DTS program in full operation shall cause the immediate removal of the Tow Operator from the tow rotation and be grounds for immediate termination by City. Tow Operator must enter into a separate agreement, or license for the DTS software program with the owner of that proprietary software. The City shall not provide the DTS software program, any licensing or sub-licensing thereof or any intermediary services for the procurement by Tow Operator of the DTS software program. This Agreement shall not be executed by the City until Tow Operator has demonstrated to the City's satisfaction compliance with the requirements set forth herein. Tow Operator shall be liable for all fees, charges, prices, rates and service charges required from DTS. DTS shall be utilized in "real time" and all entries should reflect as such. Invoices shall be used from DTS when releasing vehicles and be pursuant to section 22651.07 of the CVC. The only Tow Operator personnel authorized to utilize and access DTS are those that have fully complied with the provisions set forth in Section 12, "Tow Operator Personnel" of this Agreement. If the Tow Operator is not in FULL compliance with the above stated requirement, the Tow Operator will be removed from the City towing rotation. In the event that DTS fails to provide software services, or the City elects to utilize a new software provider, the Tow Operator will be required to use the replacement towing software system. If that occurs, all references to DTS in this Agreement shall instead be interpreted as references to the new software program.

**11. Official Notification by City Regarding Tow**

Official notification by City regarding tow services is considered any form of written, email, verbal instructions or notifications received from an authorized City employee or electronic notice from the DTS program. If the Tow Operator receives verbal instructions or notifications from a City employee the Tow Operator must respond to City, by 5:00 p.m. (PST) on the next business day.

**12. Tow Operator Personnel**

A.) Conduct

The Tow Operator shall perform the services required of it in an ethical, orderly manner, endeavoring to obtain and keep the confidence of the public. At no time will the Tow Operator or its agent or any employee of the Tow Operator exhibit any of the following behavior: rudeness, or otherwise being uncooperative, argumentative, threatening, incompetent or acting in a dangerous manner with any City employee, or with any member of the public. The City reserves the right to cancel an individual tow assignment, if in the opinion of the City, the Tow

Operator is acting in a rude, uncooperative, argumentative, threatening, incompetent or dangerous manner. The City also reserves the right to cancel an individual tow assignment if in the opinion of the City the Tow Operator is likely to damage the vehicle for which the tow service was called. Other examples of unacceptable behavior include but are not limited to: profanity, abusive language, disconnecting telephone calls for public inquiries regarding a tow, threatening, aggressive, or assertive language, failure to provide timely information or documents in response to a public or City inquiry, lack of respect to any City personnel or member of the public, destruction or damaging of evidence, failure to comply with the reasonable request of a member of the public, failure to release vehicle in a timely manner, failure to make appointment for release of vehicle during evening or weekend hours, failure to promptly be on site at time of appointment for release of vehicle during evening or weekend hours, impeding an investigation or any other conduct which the City deems unprofessional.

If the Tow Operator is found to be in violation of this conduct clause, the City will cancel the Tow Operator and request the next Tow Operator in rotation. Any such behavior as set forth above shall be considered a material breach of this Agreement and may be grounds for immediate suspension or immediate termination by the City, without penalty.

**B.) Personnel Appearance**

Tow Operators shall be required to furnish their employees with a distinctive company uniform. Each uniform shall have the firm's name, as well as the employee's name, in a conspicuous place. The tow company's name and driver's first name shall be clearly visible at all times, meaning that protective or inclement weather outer garments must meet this standard. Each employee shall have sufficient uniforms so as to maintain a neat, clean appearance at all times. Minimum requirements for uniforms include a shirt, long pants, and appropriate safety shoes. All drivers shall be in uniform before any towing or service operation begins. No wording, designs, photos, gestures, or anything that could be considered offensive or obscene to the general public shall be displayed by the Tow Operators or on any part of the uniform. Dress standards are required in order to project a professional and positive image to the public.

All employees must be neat, clean and well groomed in appearance. In order to ensure a professional appearance, all tattoos must be concealed by operators while working. Personnel will be required to conceal any tattoos with gloves, collars, long sleeves, or by other means acceptable to the City. Facial tattoos of any variety are not permitted. No facial piercings shall be worn while on duty.

Drivers shall wear safety vests or reflectorized clothing that conforms to Occupational Safety and Health Administration (OSHA) requirements. Alternatively, the OSHA safety requirements may be incorporated into the uniform, jacket, or rain gear, as long as these items are worn as the outermost garment.

**C.) Unlawful Activity**

The Tow Operator or its employees shall not be involved, nor shall the Tow Operator or its employees become involved in any agreement or activity whether verbal, written or conveyed in any other manner, any activity or business venture which may be construed as unlawful. If the City deems the involvement to be unlawful, the City may immediately terminate this Agreement.

The Tow Operator shall not provide any direct or indirect commission, gift or any compensation to any person or public or private entity, in consideration of arranging or requesting the services of a tow truck as provided in section 12110 of the CVC.

No Tow Operator will be involved or solicit any compensation of any kind including but not limited to involvement with any other company or business that might result in income or consideration as a result of any activity initiated by the City.

An example of such a prohibited involvement could include but is not limited to: financial reimbursement by auto-body repair business for referrals, or towing directly from the scene of a collision to the auto-body shop without prior unsolicited approval or request by the registered owner, driver or insurance company representative of the damaged vehicle; kickback to or from a security company or homeowner's association for "finding" or towing a vehicle from a location, whether private property, public, off street parking facility or a public roadway. Violation of this provision shall be grounds for immediate termination by City, without penalty.

D.) Personnel Licenses

Tow Operators providing services under this Agreement, including tow truck drivers, dispatchers and other office personnel, will have sufficient knowledge, experience and capability to ensure safe and proper discharge of their service responsibilities. It will be the responsibility of the Tow Operator to ensure that all of its personnel will be properly licensed in accordance with sections 12500, 12520, and 12804.9 of the CVC. All tow truck drivers and tow truck operators shall be enrolled in the "Pull Notice" program as defined in CVC section 1808.1 et seq.. Drivers must complete a CHP approved Tow Operator Course every five (5) years and copies of completion of the course shall be sent to the City. All Tow Operators and personnel shall have no criminal record which would preclude them from being placed in a position of trust while in the service of a law enforcement agency or any crime listed below under the heading of "Criminal Record."

E.) Fingerprints

All owners and employees who have not previously submitted their "LiveScan" fingerprint samples shall submit their "LiveScan" fingerprint samples, at their own expense, through the City prior to being awarded this Agreement, for the purposes of verifying their criminal history with the Department of Justice.

Failure to provide information regarding the identity of the owner, employee, or anyone else with a financial interest in the Tow Operator will result in termination



of this Agreement. The Tow Operator will provide the City with information regarding any change in employee status immediately and update DTS to reflect such changes. Failure to comply may result in further disciplinary action, and will be considered a breach of this Agreement.

After execution of this Agreement, no person shall be employed by the Tow Operator or perform any service under this Agreement until the background record check and "LiveScan" is completed and approved by the City and said employee has received their identification badge from the City.

Notwithstanding the foregoing, Tow Operators and owners that have towed for the City under the previous Tow Service Agreement and have completed a new background and "LiveScan" check will be allowed to continue to tow for the City until such time as the results of the background and "LiveScan" submissions are reviewed and approved by the City.

Any employee of the Tow Operator that has left employment with said Tow Operator and returned and been rehired must complete an additional background check before performing services pursuant to this Agreement

F.) Criminal Record

A conviction of anyone with a financial interest in the Tow Operator, or any employee of the Tow Operator, including but not limited to any of the following offenses, may be cause for denial of application or termination of this Agreement:

- Any crimes listed in California Penal Code section 290
- DUI-Within 5 years of the Date of Fingerprinting
- Vehicle theft
- Fraud
- Stolen Property
- Crimes of Violence
- Any felony crime relating to narcotics or any controlled substance
- Any other crimes enumerated in CVC section 2432.3
- Actively on parole or on any form of probation
- Crime of moral turpitude
- Sex, Arson, Narcotics Registrant
- Other felony conviction

The City is not required to provide any reason, rationale or factual information in the event it elects to deny application or remove any of Tow Operator's personnel from providing services for the City under this Agreement. Tow driver or employee applicants denied under this section may appeal to the Chief of Police or his/her designee. All decisions by the Chief of Police, or his/her designee, are final.

In the event the Tow Operator or employee is convicted or is under investigation, the Tow Operator may be given the opportunity to replace that employee without prejudice to the Agreement. Nothing shall prohibit the City from removing,

suspending or terminating the Agreement. It will be the responsibility of the Tow Operator to provide the City with updated information regarding any illegal activity, arrest(s) or conviction of any Tow Operator and/or employee. For the purpose of this section, any conviction or plea of guilty or nolo contendere, even to any lesser-included offense, are considered convictions. Failure to provide information regarding the identity of the employee, or anyone else with a financial interest in the Tow Operator will result in termination of the Agreement. Failure to provide information to the City of any information regarding the conviction of any of the above crimes may also result in termination of the Agreement.

G.) Identification Badges

Each tow truck driver or employee of the Tow Operator shall wear, in plain view an identification badge, authorized and issued by the City to that employee, while on any call for service where the City is involved. If a tow truck driver responds to a scene without his authorized name badge, the tow truck driver will be dismissed from the scene and the next Tow Operator in rotation will be called. Failure to carry an identification badge will be considered a violation as stated in Section 31, "Disciplinary Action," of this Agreement. The purpose of these badges will be to identify those employees of the Tow Operator who have been fingerprinted by the City and have passed the record check by the Department of Justice.

All identification badges are the property of the City and will be returned by the Tow Operator to the City within forty-eight (48) hours of an employee's separation. Tow Operator will provide a current list of all staff including drivers, dispatchers, etc. Anytime there are any changes to this list, the City is to be notified by the next business day and provided with an updated and current list.

**13. Tow Operator Licensing and Certification**

All licensing and certifications required by Federal, State and local authorities shall be maintained current and valid at all times as required in CVC sections: 34507.5, 34600 et seq, 34620, and 12111, and sections 7231 et seq, of the California Revenue and Taxation code. Failure to have any required license or certification, including any driver who fails to have an appropriate class of license, may be grounds for immediate termination by City without penalty.

**14. Inspection**

All real property and improvements thereon, and all vehicle facilities, equipment and materials used by the Tow Operator in the performance of the services required herein shall be open to inspection by the City or its authorized representative, and will be subject to no less than one annual inspection. Additional inspections may be conducted without notice during normal business hours. Inspections may include, but are not limited to, all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Tow Operator for the purpose of auditing or inspecting any aspect of performance directly related to this Agreement. In the event that the City determines that the real property and improvements thereon are insufficient, derelict or fail to meet the requirements as called out in this Agreement, this Agreement may be terminated by City immediately, without penalty.

## **15. Vehicle and Equipment Requirements**

Tow vehicles will be maintained in compliance with sections 24605, 25253, 25300, 27700 and 27907 of the CVC. Tow vehicles will be of at least 14,000 lbs. GVWR with dual rear wheels, with the ability to tow two (2) vehicles, or a vehicle and/or a trailer. Tow vehicles must have two-way communication capabilities and the ability to communicate and connect with the DTS System at all times. The Tow Operator shall have equipment capable of towing from off-road areas, towing from underground facilities, and recovery services with an adjustable boom with at least five tons of lifting capacity. In addition to the conventional wheel lift towing capabilities, the Tow Operator shall maintain at least one or more flatbed or rollback trucks with a minimum of fifty (50) feet of cable, and the required safety equipment. Unless otherwise specified by the City, all Tow Operators shall respond to a tow service request with a flatbed or rollback truck as specified above. At the discretion of the tow operator, a wrecker may be used to respond to a tow service request. If for any reason the Tow Operator is unable to complete the tow service request with the wrecker, the Tow Operator will not be placed back on the top of the rotation list and a new Tow Operator will receive the tow service request.

A 3-axle or 25-ton truck is not required equipment. However, Tow Operators that possess this equipment will be placed on a heavy-duty tow rotation list.

All trucks must have the required emergency lighting, portable stop and tail lamps, a broom, shovel, fire extinguisher (rating 4-B, C), a utility light, reflective triangles, a large pry-bar, covered trash cans with approved absorbent, rags, unlocking equipment, dollies (boom trucks), chains, and/or tie downs.

Wheel lift trucks will maintain at least 100 feet of cable and all safety equipment as required by the manufacturer.

Tow vehicles must have a cable winch of sufficient size and capacity to retrieve vehicles that have gone off traveled portions of roadways into inundated areas or other inaccessible locations. Winches must have visible ID tags designating the model, make, serial number, and rated capacity.

All tow trucks used in City tows will be subject to a yearly inspection. This does not preclude the City from conducting random inspections throughout the year.

## **16. Vehicle Identification**

Tow vehicles shall display identification signs in compliance with section 27907 of the CVC. The Tow Operator shall not display any sign or advertising material that indicates that his tow vehicles are an official police service of the City.

## **17. Charges and Fees to be collected from Registered Owners**

All rates and charges shall be conspicuously posted in the office and in all tow vehicles. These rates shall quote complete charges and fees with no additional fees to be added at a later date. These rates will be available for review by City personnel and/or the person for whom tow service is provided. All fees collected shall be itemized and invoiced in DTS in accordance to section 22651.07 of the CVC. It will be

the Tow Operator's responsibility to collect his bill for service, and the City will not be responsible in any way for these charges. Storage fees will be calculated on the calendar day except the first 24-hours which is counted as a single day in accordance with California Civil Code (CCC) 3068.1 (see Attachment B). All fees listed on the DTS invoice will be received in the form of major credit card, debit card, or cash. All fees collected, both City and Tow Operator fees, must be invoiced through the DTS system prior to release and at the time of payment. No credit card fees will be charged pursuant to CVC section 22651.1 and CCC section 1748.1 for any portion of the fees. The City reserves the right to change all payment methods during the term of this agreement.

#### **18. Lien Fees**

At no time shall the City be charged a lien fee on a towed or impounded vehicle. No lien shall be attached to any vehicle that has been impounded by the City until after seventy-two (72) hours from the time of storage as listed in the DTS system have passed pursuant to section 22851.12 of the CVC. All lien transactions must be entered into the DTS system by Tow Operator. Vehicles sold at lien sale shall abide by all laws relating to lien sales. A vehicle held in impound by the City for thirty (30) days, shall not be sold at lien until such time as is considered reasonable to allow the registered owner time to pay for and pick up the vehicle before it is sold at lien, but under no circumstances before the thirty-fifth (35<sup>th</sup>) day after storage.

The Tow Operator shall abide by all applicable statutes and ordinances concerning disposal of unclaimed vehicles, including but not necessarily limited to CVC sections 22670; 22851; 22851.1; 22851.2; 22851.3; 22851.4; 22851.6; 22851.8; 22851.10, 22851.12 and 22852.5.

As described in CVC section 22856, liability for despoliation of evidence shall not arise against the Tow Operator that sells any vehicle at, or disposes of any vehicle after, a lien sale, as long as the Tow Operator can show written proof that he was notified in writing by the City that the vehicle would not be needed as evidence in a legal action. This proof may exist in the form of an official release in the DTS System or any other written conveyance signed by a member of the City prior to the official, written release of the vehicle.

#### **19. Reasonableness and Validity of Fees**

Fees charged to the registered owner or any other person for response to calls originating from the City shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. During the term of this agreement, the City shall conduct an annual review each December of towing and storage fees of comparable cities and adjust rates set forth in Attachment B by the first week of January of the following year.

#### **20. Towing Operation**

All tows performed under this Agreement will be included in the flat rate charge as described in Attachment B. No additional charges shall be charged without prior approval from the City and written notice is provided in the DTS System. Any unapproved charges received outside the DTS System will result in immediate termination of this Agreement and removal from the rotation list.

The Tow Operator shall base towing charges upon the class of vehicle being towed regardless of the class of the truck used, except when vehicle recovery operations require a larger class truck. The Tow Operator may refer to the tow truck classes and weight ratings as defined by the Towing & Recovery Association of America (TRAA) vehicle identification guide.

**21. Service Call Rotation and Fees**

The City shall establish a separate rotation list for Tow Operators willing to respond to service requests (out of gas, lockouts, tire changes, etc.) Rates for a service requests shall not exceed one-half the flat rate charge for a light duty truck response.

**22. Gate Fees**

No gate fees may be charged between 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding State recognized holidays as listed below:

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Cesar Chavez Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

An after hours gate fee may be charged at all other times. The gate fee is not to exceed fifty percent (50%) of the flat rate charge for a light duty tow and may be charged to the vehicle's owner for releases or personal property recovery that occurs outside normal business hours (excluding lien fees, storage fees, taxes, or other additional fees.) The Tow Operator is responsible for assuring that proper gate fees are charged in accordance with this section. Over charging gate fees will be considered a major violation as outlined in Section 30.

All towing and storage fees charged by the Tow Operator are the responsibility of the vehicle's owner and are not the responsibility of the City. The exception would be evidentiary impounds made at the direction of City personnel.

**23. Cancelled Tow**

The City shall not be liable to pay the Tow Operator or anyone else any charge or other fee for a call that does not result in a chargeable service being rendered by Tow Operator ("Dry Run"). The cancelled Tow Operator shall be placed back on the top of the rotation list and will receive the next tow in rotation.

#### **24. Towed in Error**

In the event the City determines that an error has occurred in impounding a vehicle, it shall be immediately released to the registered owner without charge and the Tow Operator will be placed back on the top of the rotation list and will receive the next tow in rotation. In addition, the Tow Operator will be given one extra tow on the rotation list. Additional extra tows may be given at the discretion of the Tow Unit.

#### **25. Release Fees**

California law authorizes the recovery of funds required to enforce certain provisions of the CVC and promote traffic safety on public roadways. This authorization falls under CVC section 22850.5 and further authorized by City resolutions. These resolutions are open to public view at the City and/or City offices and are on file with the City's Traffic Bureau. The Tow Operator will collect fees on the behalf of the City from the registered owner, legal owner or agent of an impounded car.

A City administrative / franchise fee will be charged for the release of a vehicle that has been impounded by the City. Fees will be established by an independent consulting firm to determine the City's costs associated with impounding vehicles in accordance with CVC sections 22850.5 and 12110(b). All vehicles impounded will be charged an administrative / franchise fee for the release of the vehicle. This fee will be established and attached to each vehicle in the DTS System. The City's administrative fees will be collected at the time of the release by the Tow Operator. The Tow Operator will pay the City's franchise fees equivalent to the City's administrative fees for every vehicle that is not picked up by the owner or agent. The Tow Operator will pay the City's administrative / franchise fees for every City vehicle that was towed during the preceding month and will pay the City no later than 12:00 p.m. on the 15<sup>th</sup> of the following month, regardless of the disposition of the vehicle. In the event that the 15<sup>th</sup> of the month falls on one of the State recognized holidays listed in Section 22 above, or a weekend, the City's administrative/franchise fee must be paid by 12:00 p.m. on the following business day. Tow Operators who fail to submit the City's administrative / franchise fees to the City by the 15<sup>th</sup> day of each month will be immediately suspended from rotation until all fees are received, and will be subject to appropriate disciplinary action and civil recourse. The City will keep a strict accounting of these fees through the DTS System and frequent audits will take place to ensure accurate and timely payment of collected City administrative / franchise fees. The fee will be listed as an item on the owner's / agent's DTS contractor invoice.

#### **26. Unauthorized Release**

Unauthorized release of an impounded vehicle, accidental or otherwise, having evidentiary value, not officially released by the City, and determined to be the fault of the Tow Operator, will result in the issuance of a major violation as set forth in this Agreement. The determination of such fault will be the responsibility of the City.

#### **27. Release of Multi-Day Impounds**

A vehicle impounded with a multiple day hold may only be released prior to the impound period with written authorization by the City in the DTS System. The DTS System will automatically schedule the release of an impounded vehicle.

### **28. Release of Vehicles**

Vehicles may only be released through the DTS System. Once the DTS System authorizes the release of a stored or impounded vehicle, it is the Tow Operator's responsibility for the vehicle's release. The Tow Operator is hereby granted authority to release to the registered owner, legal owner, or authorized representative, pursuant to section 22850.3 of the CVC. At the time of release, the Tow Operator shall have the registered owner, legal owner, or authorized representative taking possession of the vehicle sign a release indicating that they are properly licensed and insured to drive a motor vehicle.

### **29. Disciplinary Action**

The Chief of Police, or his/her designee, shall take disciplinary action against Tow Operators for violations investigated and sustained. Unless otherwise noted, the Chief of Police, or his/her designee, will determine the period of suspension and shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement. The City shall retain record of violations for at least the term of this Agreement.

### **30. Major violations**

Major violations include any chargeable offense under Federal, State, Local Law and significant violations of this Agreement. Such violations shall result in suspension or immediate termination of this Agreement. The Chief of Police, or his/her designee, reserves the right to impose longer periods of suspensions or immediate termination, if deemed appropriate in his/her sole discretion. The Chief of Police, or his/her designee, reserves the right to remove a Tow Operator from the tow rotation during the investigation of a major violation. A reinstatement from suspension for a major violation will result in a five hundred dollar (\$500.00) fee. Suspension will not be lifted until the reinstatement fee is received by the Chief of Police or his/her designee. In addition, a major violation may also result in the Tow Operator's employee being removed from participation in this Agreement. Examples of major violations include, but are not limited to:

- Physical assault, against public and/or law enforcement
- Verbal abuse against public and/or law enforcement
- Resisting arrest
- Tow Truck Driver under the influence of alcohol or illegal drugs
- Charging rates that exceed those listed in Attachment B
- Vehicle released without authorization
- Unauthorized access to storage yard
- Theft
- Mishandling of vehicles stored as evidence
- Unauthorized driver responding to call
- Failure to provide information or change of status on any Tow Operator employee or staff
- Substantiated private party impound complaints
- Any Felony/Misdemeanor arrest
- Refusal to take a rotational tow
- Failure to utilize the DTS System for all City towing related matters

- Repeated late or nonpayment of City franchise fees
- Failure to properly secure storage yard
- Failure to obey a lawful order by law enforcement

### **31. Minor violations**

Minor violations will be given to the Tow Operator in the form of a documented warning for the first violation. The second violation will be in the form of a documented reprimanded and a one hundred dollar (\$100.00) fine. Repeated minor violations during the term of the Agreement may be treated as a major violation, and the Tow Operator will be suspended or terminated from this Agreement. A reinstatement from suspension will result in a five hundred dollar (\$500.00) fee. Suspension will not be lifted until the reinstatement fee is received by the Chief of Police or his/her designee. Examples of minor violations include, but are not limited to:

- Late payment of City franchise fees
- Tow truck drivers not wearing City issued I.D. cards/ proper uniform
- Unauthorized arrival time in excess of thirty (30) minutes, or forty-five (45) minutes during peak hours
- Repeated rejection of dispatched calls
- Other violations of this Agreement not considered a major violation by the Chief of Police or his/her designee
- Unauthorized ride-a-long
- Failure to respond to customers' needs
- Failure to maintain proper equipment
- Failure to clean up at a collision scene
- Vehicle code infractions

### **32. Hearing/Appeal**

Tow Operator must have a legal existing interest in the tow operation or entitlement subject to the City order, citation, decision or determination to have standing to appeal a decision by the Chief of Police or his/her designee. An appeal that fails to identify the appellant's standing may be rejected as defective.

In the event FPD serves Tow Operator with disciplinary action amounting to anything less than a suspension resulting from a minor violation, the Tow Operator may request a hearing within fifteen (15) calendar days by submitting an appeal in writing to the Chief of Police, or his/her designee, through the Tow Unit.

In the event FPD serves Tow Operator with disciplinary action amounting to a suspension for thirty (30) days or less resulting from a minor or major violation, the Tow Operator may request a hearing within fifteen (15) calendar days by submitting an appeal in writing to the Chief of Police, or his/her designee, through the Tow Unit. Upon receipt of a written request for an appeal, and at the discretion of the Chief of Police, or his/her designee, the Tow Operator may be allowed to continue rotational tows until the final disposition of the appellate hearing.

In the event FPD serves Tow Operator with disciplinary action amounting to a suspension in excess of thirty (30) days, or termination of the TSA, the Tow Operator



may request a hearing within fifteen (15) calendar days by submitting an appeal in writing to the Administrative Hearing Officer by way of the City Manager's Office. The written appeal shall be in compliance with FMC sections 1-407 and 9-1712. Notwithstanding any provision within Chapter 1, Article 4 of the FMC, any person who appeals a suspension in excess of thirty (30) days, or a termination of the TSA shall not be entitled to placement on the Tow Rotation List or to participate in tows until such time as any appeal hearing has been concluded and the Administrative Hearing Officer finds that no grounds for a suspension in excess of thirty (30) days, or a termination of the TSA has been established. Tow Operator's remedy shall be limited to reinstatement on the tow rotation list in such case and no other compensation or consideration will be allowed.

**ATTACHMENT B**  
**TOW FEES**

Flat price per vehicle per call:

Light Duty Tow/Flatbed	\$ 184.00/Each
Medium Duty Tow	\$ Average CHP Rates Apply
Heavy Duty Tow	\$ Average CHP Rates Apply

Water Recovery: \$ Average CHP Rates Apply

Technology Fee:

DTS Software Fee per Vehicle Towed \$ Charge listed in DTS Contract and DTS System

Storage Rates:

Passenger cars	\$ 45.00/per day
Motorcycles	\$ 45.00/per day
Trucks or Trailers	\$ Average CHP Rates Apply

Inside Storage Rates:

Passenger cars	\$ 55.00/per day
Motorcycles	\$ 55.00/per day
Trucks or Trailers	\$ Average CHP Rates Apply

**Gate Fee:** No gate fees may be charged between 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding State recognized holidays as listed in the Agreement.

An after hours gate fee may be charged at all other times. The gate fee shall not exceed fifty percent (50%) of the flat rate charge for a light duty tow and may be charged to the vehicle's owner for releases or personal property recovery that occur outside normal business hours (excluding lien fees, storage fees, taxes, or other additional fees).

Non-tow service calls (out of gas, lockouts, and flat tires) shall not exceed one-half the flat rate charge for a light duty truck response.

City of Fresno Administrative / Franchise Fees:

Vehicle Collision Blocking a Roadway	\$ 60.00
Illegally Parked / Abandoned Vehicle	\$116.00
Unlicensed Driver / Expired Registration	\$189.00
Arrested / Suspended Driver	\$266.00
DUI Driver	\$450.00

***All fees listed on the DTS invoice will be received in the form of major credit card, debit card or cash. No credit card fee will be charged pursuant to CVC section 22651.1 and CCC section 1748.1.***