

AGENDA ITEM NO. 1 E
COUNCIL MEETING 04/08/10
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

April 8, 2010

FROM: JERRY P. DYER, POLICE CHIEF
Police Department

BY: SHARON SHAFFER, Deputy Chief
Support Division Commander

SUBJECT: AUTHORIZE AND APPROVE AN EXTENSION OF THE NON-EXCLUSIVE TOW FRANCHISE AGREEMENT BETWEEN THE CITY OF FRESNO POLICE DEPARTMENT AND CURRENT ROTATIONAL TOW OPERATORS

RECOMMENDATIONS

The Police Department recommends that the City Council authorize and approve an extension of the 2007-2009 Non-Exclusive Tow Franchise Agreement ("TSA") between the City of Fresno Police Department and current rotational tow operators.

EXECUTIVE SUMMARY

The 2007-2009 TSA expired on August 5, 2009. A 60-day extension was signed on August 6, 2009, by the City of Fresno Police Department and current rotational tow operators. An additional extension was signed and due to expire on March 31, 2010. Another extension is being requested until September 30, 2010. Due to recent budget cuts and employee layoffs, the Police Department and the City Attorney's Office are reviewing the TSA and anticipate significant changes will be made, including more administrative participation by the tow companies. New provisions will be added that will enable the Police Department to better audit the tow operators and enforce the terms of the TSA. The extension is needed to allow adequate time to research and draft these revisions.

BACKGROUND

The Police Department has an established list of tow operators who are used, on a rotational basis, to transport vehicles impounded during police operations. The Fresno Police Department generates approximately 18,000 to 20,000 impounds and tows per year.

The Non-Exclusive Tow Franchise Agreement establishes maximum fees that tow operators are allowed to charge customers; however, it applies only to tow companies who elect to participate in the program and affects only those vehicles impounded by the Police Department. It does not serve to oversee or regulate a tow operator's business with non-City entities.

The Non-Exclusive Tow Franchise Agreement was established in 2004 because the Police Department was not able to recover the costs of the program. At that time, 40 percent of owners did not claim their vehicles and did not pay the Police Department's administration fee. The fee is paid by the tow companies for the privilege of participating on the City's tow rotation list, and to cover the Department's administrative costs.

Since 2004, the Agreement has been renewed annually or biannually. The City is currently reviewing the Agreement as multiple changes are being made to its form and content, as referenced above. In addition, the City is researching all fee schedules related to the TSA.

Report to City Council
Extension to Non-Exclusive Tow Franchise Agreement
April 8, 2010
Page 2

FISCAL IMPACT

None anticipated.

JPD:SS:AH:vg
3/24/10

Attachment: Non-Exclusive Tow Franchise Agreement 2007-2009

City of Fresno
Non-Exclusive Franchise Agreement
for
Fresno Police Department
Tow Services Agreement

This Non-exclusive Franchise Tow Service Agreement, hereinafter referred to as ("Agreement"), is entered into this 6 day of August, 2007, at Fresno, California, between the City of Fresno, a municipal corporation ("City") and Tow City, a sole proprietorship (the "Tow Operator"). This Agreement contains rules and regulations that Tow Operator agrees to comply with in order to be placed and maintained on the rotation tow list with the Fresno Police Department (FPD). Participation in the FPD Rotation Tow Program is voluntary. Compliance with all terms and conditions of the Agreement is mandatory for tow companies participating in the FPD Rotation Tow Program. The rendering of services by a Tow Operator under the provisions of the Agreement does not make the Tow Operator an agent of FPD or City. FPD is a department of the City and delegated the responsibility of operating the City's Rotation Tow Program. FPD shall appoint and delegate to an individual the responsibility for administration of the Rotation Tow Program which is defined herein as the "Tow Coordinator".

1. TERM OF AGREEMENT

- A. Unless terminated early in accordance with the Agreement, the terms and conditions of this Agreement will be effective for a period of two years beginning August 6, 2007 and ending August 5, 2009.

2. ROTATION LISTS

- A. FPD shall maintain a rotation tow list to ensure an equitable distribution of calls. A call to the Tow Operator shall constitute one turn on the list after which the operator shall be moved to the bottom of the list. When the Tow Operator is unable to answer the phone, is unable to respond, is unable to perform the required service, they will forfeit that tow and be placed on the bottom of the rotation list. When the Tow Operator refuses to respond or provide service, or is canceled due to an excessive response time, the Tow Operator shall be removed from the rotation tow list for one rotation, thereby forfeiting any right to its next tow. In the event the Tow Operator fails to cancel a request for tow services within 10 minutes of notification by FPD, or arrives beyond the allowed 30 minutes, or 45 minutes for peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday thru Friday), the Tow Operator will be responsible for the contract compensation rate of \$40.00 and will be placed at the bottom of the rotation. (It is the Tow Operator's responsibility to coordinate with dispatch to ascertain the location of the FPD officer and tow site.)

If it is determined that the Tow Operator is not needed and is canceled by FPD, up to and including upon arrival at the scene, there shall be no charges and the Tow Operator will be placed back at the top of the rotation list. FPD shall maintain separate lists for specialized towing needs.

- B. If two or more tow truck drivers are called to the same incident, distribution of the vehicles shall be at the discretion of the FPD officer in charge of the scene.
- C. FPD may direct Tow Operator to move vehicles to help clear a roadway or for lifesaving operations. Tow Operator shall provide the assistance as directed and will not be entitled to additional compensation for this assistance. The assistance provided shall not change the Tow Operator's place in the rotation.
- D. FPD conducts special operations (coordinated through the Traffic Bureau) throughout the year that requires tow companies at the location of the special operation. Tow Operators on the rotation tow list that are in good standing (as defined within this section) with the FPD may be invited to participate in these operations on condition that they are willing to remain with the special operation until its conclusion. "Good standing" shall mean that the Tow Operator has not violated, or is not in violation, of the terms of this Agreement or the provisions of the Fresno Municipal Code. Denial of a Tow Operator's opportunity to participate in any special operation may be appealed pursuant to Fresno Municipal Code section 6-1912. All special operations tows will be subject to the provisions of this Agreement.
- E. Tow Operator's tow truck driver(s) will not be permitted to drive a vehicle from an FPD rotation call or special operation. Any exceptions must be at the direction of the FPD officer.

3. TOW TRUCK CLASSIFICATIONS

- A. Tow vehicles shall be rated at a minimum of the 14,000 lb. Gross Vehicle Weight Requirement (GVWR) capacity. Each vehicle shall be maintained in compliance with the provisions of the California Vehicle Code sections 24605, 25253, 25300, 27700 and 27907. Effective January 1, 2007 Tow Operator will be required to operate flat bed carrier tow trucks.

4. TOW TRUCK DRIVERS

- A. The Tow Operator shall ensure that tow truck drivers responding to calls initiated by FPD are qualified and competent employees of the Tow Operator. The Tow Operator shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through FPD rotation. Tow truck drivers shall be at least 18 years of age and shall possess the proper class license and certificates for the towed and towing vehicle. Class A licenses must be endorsed to allow operation of special vehicle configurations and special cargoes.
- B. The Tow Operator shall provide a current list of his/her tow truck drivers and employees to FPD upon implementation of this Agreement. The Tow Operator shall immediately notify FPD upon any change in driver or employee status, including the addition of any new driver(s) or employee(s), or the deletion of any driver(s) or employee(s). Before any new driver or employee works for any Towing Operator on the FPD rotation list, the new driver or employee must first pass a criminal background and driving record check performed by FPD and any

drivers must be enrolled in the Pull Notice Program as required by the Vehicle Code. The Tow Operator will be notified in writing upon FPD's approval of any new driver or employee. Thereafter, the new driver or employee will be qualified to work for or perform tows from the rotation tow list on behalf of the Tow Operator. Failure to obtain prior approval of a driver or employee will result in disciplinary action.

Tow Operators shall, at a minimum, maintain the following information for each employee:

- 1) Full legal name
 - 2) Date of birth
 - 3) California driver's license number
 - 4) Copy of valid medical certificate (if required)
 - 5) Job title and description
 - 6) Current home address
 - 7) Current home phone number
 - 8) Type(s) of truck(s) the driver(s) has/have been trained to operate
 - 9) Current Pull Notice as required by California Vehicle Code section 1808.1.
- C. Upon determination of new drivers, the Tow Operator will be granted a maximum of 30 days to enroll the driver in the Pull Notice Program. Pull Notices shall be kept on file, signed, and dated by the Tow Operator. The Tow Coordinator may require the Tow Operator to provide copies of the Pull Notice Reports.
- D. All tow truck drivers and Tow Operators shall be enrolled in the Pull Notice Program as defined in California Vehicle Code section 1808.1 et seq.
- E. Insurance must be maintained and kept current by the Tow Operator and a copy of an insurance certificate sent to the Tow Coordinator prior to its due date. If insurance is not current and a copy of the insurance certificate is not received by the Tow Coordinator, the Tow Operator will immediately be removed from the rotation until a current certificate is provided. The Tow Coordinator will not contact a Tow Operator prior to removal. It is the Tow Operator's responsibility to ensure the current information is received by the Tow Coordinator's office prior to the due date.
- F. If the Tow Operator, or any of its drivers or employees, has been removed, suspended or disciplined by another contracted agency (i.e., California Highway Patrol or Fresno Sheriff's Office), it is required that Tow Operator notify the Tow Coordinator immediately. Nothing herein shall be deemed to prohibit FPD from immediately suspending any operator or employee whose conduct, in the opinion of the Tow Coordinator, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a violation of the Agreement.

5. RATES

- A. Rates for towing services provided to FPD for non-consensual tows shall be in accordance with Fresno Municipal Code section 6-1909(j). Fees charged for response to non-consensual tows originating from FPD shall not exceed \$145.00

per hour. Notification of any tows where more than 1 hour is charged must be in writing and sent to the Tow Coordinator via facsimile or personal delivery within 24 hours, otherwise, any charge over \$145.00 will be void. Storage fees shall not exceed the FPD approved rates that are \$30.00 per day for outside storage and \$35.00 per day for inside storage. A gate fee of no more than one-half the hourly rate may be charged for the release of a vehicle after 5:00 p.m. on weekdays, or any time on weekends or holidays if Tow Operator is not normally open for business on weekends or holidays. There shall be no additional charge for using dollies. The Tow Operator shall notify Tow Coordinator(s) of any additional fees for specialized equipment, and provide a copy of listed rates for specialized equipment. Rates for the use of specialized equipment shall follow state standards as established by the California Highway Patrol.

1. Inside storage may only be charged when one of the following circumstances exists:
 - a) FPD authorized the vehicle to be stored inside as evidence.
 - b) FPD authorizes the storage.
 - c) When requested by the registered owner, legal owner, or insurance company.
 - d) If the Tow Operator chooses to store the vehicle inside for safekeeping, they may only charge the outside rate, unless approved by Tow Coordinator prior to release.
 2. Contract compensation rate. During the term of this Agreement, the Tow Operator shall pay City, as consideration for the non-exclusive franchise right to perform City generated tows pursuant to this Agreement, a franchise fee in the sum of \$40.00 per tow of any vehicles towed in accordance with this Agreement. Unless otherwise provided herein, all franchise fees are due and payable to City pursuant to this Agreement and shall be paid within 30 days from the date of invoice. If the Tow Operator shall fail to make any payment when due, then the Tow Operator shall be immediately removed from the rotation tow list until proof that all monies have been paid in full is provided to the Tow Coordinator's Office.
 3. There will be no \$40.00 referral fee on vehicles towed by the City of Fresno Parking Controllers or Code Enforcement. The referral fee is for FPD rotational tow vehicles only.
- B. If Tow Operator charges rates in excess of \$145.00 per hour for a FPD rotation call, the Tow Operator shall be in violation of this Agreement and subject to suspension or removal from the rotation tow list for a period of time to be determined by the Tow Coordinator.
- C. The Tow Operator shall display in plain view at all cashier stations, a sign as described in Section 3070 of the California Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate. A notice advising that

all valid credit cards and cash are acceptable means of payment shall be conspicuously displayed in that portion of the storage facility office where business is conducted with the public.

- D. The Tow Operator may charge storage in accordance with California Civil Code section 3068.1 et seq. The Tow Operator must submit to the Tow Coordinator a copy of posted business days and hours. Should Tow Operator's business days and hours change, a copy shall be submitted to Tow Coordinator within 24 hours. Tow Operators shall post in a clearly visible and conspicuous location its hours of operation and an after hours telephone number.
- E. The Tow Operator shall be able to properly conduct a lien sale as outlined in Division 11, Chapter 10, Article 2, beginning with Section 22851 of the California Vehicle Code. Tow Operator must get approval from the FPD Chief of Police or the Chief's designee prior to placing a lien on any vehicle held for evidence purposes. There shall be no lien fee charge on a vehicle redeemed prior to 72 hours. Failure to comply with this section will result in disciplinary action in the form of a suspension or removal from the rotation tow list as determined by the Tow Coordinator.
- F. Persons operating or in charge of any storage facility where vehicles are stored shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner's agent claiming the vehicle pursuant to California Vehicle section 22651.1. Appropriate credit card equipment must be located on the premises and available for immediate processing from each tow truck. A person operating or in charge of any tow truck or storage facility who refuses to accept a valid bank credit card in the field or at the storage yard shall be liable to the registered owner of the vehicle for four times the amount of the towing and storage charges. In addition, a person operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change for a reasonable monetary transaction. Credit charges for towing and storage services shall comply with Section 1748.1 of the California Civil Code.
- G. A copy of the schedule of rates charged by the Tow Operator shall be available in each of the tow trucks, and shall be presented upon demand to the person(s), or his/her agent, for whom the tow services were provided, or to any FPD officer at the scene. The Tow Operator shall make available for inspection and copying his/her rate approved by the local agency, California Highway Patrol, if any, within 24 hours of a request without a warrant to law enforcement, the California Attorney General, Fresno County District Attorney, or City Attorney.
- H. The Tow Operator will possess a working fax machine that will meet the following specifications: Plain paper fax reception, 600 dpi copy quality, a minimum of 25 pages of memory, and a 150 sheet paper tray. The Tow Operator must also have a dedicated phone line for the fax machine on its premises. Fax machines shall be available to receive faxes 24 hours a day, 7 days a week, 365 days a year.

6. RESPONSE TO CALLS

- A. The Tow Operator pursuant to this Agreement shall be available on a 24 hour, 7 days a week basis. A reasonable response time is 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 thru Friday, when the required response time will be extended to 45 minutes or less. Tow Operator shall be available to release stored vehicles on a 24 hour, 7 days a week basis. Response time to the Tow Operator's office shall be within the time frame required for a normal FPD rotational call.
- B. Pursuant to Fresno Municipal Code section 6-1908, the Tow Operator shall not assign any calls. In the event a Tow Operator is unable to respond or will be delayed in responding, the requesting FPD communications operator shall be notified immediately. Any violations will result in removal from the list pursuant to Fresno Municipal Code section 6-1911(c).
- C. Failure to respond to perform the required towing or service or repeated failures to meet the minimum requirements shall constitute failure to comply with the terms and conditions of this Agreement and may result in disciplinary action. The Tow Coordinator may take immediate disciplinary action for any violation of the requirement to respond within the maximum time.
- D. When the Tow Operator will be temporarily unavailable to provide services due to a preplanned or scheduled activity, the Tow Operator shall notify the Tow Coordinator at least 24 hours prior to the date that services will be unavailable noting the times and dates of unavailability. Tow Operator shall make provisions for vehicles to be released during its absence.

7. STORAGE FACILITIES

- A. Provisions shall be made for adequate security of vehicles and property at the place of storage pursuant to Fresno Municipal Code section 6-1909(d). A minimum six-foot fence or enclosed area shall be provided for outside storage. Storage lot size shall be a minimum of 5000 square feet, or have room for 20 vehicles, and be in compliance with the Fresno Municipal Code. The primary storage facility shall be at the same location as the business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and any personal property shall be released at the primary storage facility or place of business (when the primary storage facility and the place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the respective vehicle or property. The location of the proposed storage facility must be 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. The Tow Operator shall not employ nor allow any person to loiter around the storage facility or the Tow Operator's place of business that has been convicted of a crime of moral turpitude or has been convicted of a felony.
- B. The Tow Operator shall release personal property from an impounded vehicle at the request of the vehicle owner or his/her agent. There shall be no charge for

the release of personal property during normal business hours. Tow Operators may charge an "after hours" release fee for property released after normal business hours. The fees charged shall be consistent with the "after hours" vehicle release provisions, and shall not charge more than one-half the hourly rate, as provided in California Vehicle Code section 22851(B). Field call responses are mandatory on weekends, holidays, and outside normal business hours, provided the vehicle's current registered owner or owner's authorized agent are available for return of personal property. Payment for an after-hours release of property may be required at the time of release.

- C. Personal property is considered to be items located within the stored vehicle that are not affixed to the vehicle, including but not limited to, papers, transportable cellular telephones, pull-out radios, portable radios, portable stereo equipment, clothes, luggage, tools, etc.
- D. The Tow Operator shall provide a receipt, with a copy placed in the stored vehicle and a copy to FPD, whenever any item is removed from a stored vehicle and taken to another place of storage.
- E. Prior to the utilization of new storage facilities not listed on the application for rotation tow listing, the Tow Operator shall furnish the address of the new storage facility and obtain the Tow Coordinator's approval.
- F. For the purposes of this Agreement, "normal business hours" shall not be less than 8:00 a.m. to 5:00 p.m., Monday thru Friday, except for the following City recognized holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day.

8. 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:

- (i) 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 (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of not less than the following:

- \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury

(ii) 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.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) 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.

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.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar 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 not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Tow Operator shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile 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 and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and 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. Tow Operator shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

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, and all payments due or that become due to Tow Operator shall be withheld 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.

9. INSPECTIONS

- A. The Tow Operator shall arrange with FPD for inspection for new or replacement tow trucks prior to placing them in service. FPD may conduct additional inspections without notice during normal business hours before or during any special operations. Re-inspection of any tow truck which fails an inspection shall be arranged with the Tow Coordinator. Failure to pass re-inspection shall be cause for the disqualification of the tow truck from use on FPD tows.

10. FINANCIAL INTEREST

- A. Tow Operator shall not be directly involved in the towing-related business of any other tow operator or applicant doing business within the incorporated limits of City.
- B. Storage facilities owned by a tow operator, and shared with another tow operator, shall only be approved if the tow operator owner charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof. Facilities shared by tow operators shall be physically separated and secured from each other. Tow Operator shall comply with this provision, unless the FPD Chief of Police or his/her designee deletes this requirement from the FPD Rotation Tow Program if deemed appropriate in his/her sole discretion.
- C. The sale or transfer of the controlling interest by Tow Operator in its company shall immediately terminate the Agreement. A new owner may apply for a rotation tow listing at any time during the remainder of the current Agreement term, regardless of the open enrollment period.
- D. During the time of any suspension or termination, the terminated or suspended Tow Operator 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.

11. DEMEANOR AND CONDUCT

- A. While involved in FPD rotation tow operations or related business, the Tow Operator and his/her employee(s) shall refrain from any act(s) of misconduct, including, but not limited to, any of the following:
 - 1. Rude or discourteous behavior directed towards FPD personnel or citizens for whom service is provided. "Rude or discourteous behavior" shall mean any act that would insult, aggravate, disturb or frustrate a person of reasonable sensibilities, which act(s) shall include, but are not limited to, using profanity or foul language, manifesting an uncooperative or angry demeanor, performing acts of vandalism, failing to respond to questions in a courteous and professional manner, intentionally misrepresenting rates or tow procedures or attempting to manipulate rates or tow procedures at the detriment of a citizen or FPD personnel.

2. Below standard service, selective service, or refusal to provide service which the Tow Operator is or should be capable of performing.
 3. Any act of sexual harassment or sexual impropriety.
 4. Unsafe driving practices.
 5. Exhibiting any objective symptoms of alcohol or drug use while performing tow service for FPD.
 6. Appearing at the scene of an FPD rotation tow call with the odor of an alcoholic beverage emitting from the driver's or employee's breath or person. The respective Tow Operator or tow truck driver shall submit to a preliminary alcohol screening test upon demand of FPD.
- B. The Tow Operator and/or tow truck driver shall submit to a preliminary alcohol screening test upon demand of FPD, while answering a call originating from the FPD rotation tow list. Any positive test will result in the loss of the tow by that tow company, and may result in removal from the rotation tow list.
 - C. All FPD related tow service complaints received by FPD against the Tow Operator or his/her employee(s) will be accepted and investigated in a fair and impartial manner. As a result of the investigation, FPD may initiate disciplinary action as deemed appropriate. The Tow Operator shall be notified of the results of any investigation.
 - D. Should any allegations of a criminal violation be made against the Tow Operator or his/her employee(s), the FPD will conduct the investigation to conclusion or assist the lead investigating agency and, if warranted, request prosecution.
 - E. Any violation of this Agreement or any terms of Fresno Municipal Code section 6-1910 or 6-1911 is cause for suspension or removal, if deemed appropriate by FPD.

12. COMPLIANCE WITH LAW

- A. The Tow Operator and his/her employee(s) shall, at all times, comply with federal, state, and local laws and ordinances.
- B. The Tow Operator shall have a City of Fresno business license, which must have all past due as well as current fees paid in full. The Tow Operator, and its drivers and employees will comply with all Federal and State laws along with City of Fresno ordinances and zoning requirements.
- C. In the event of a traffic violation(s) committed by the Tow Operator's tow truck driver(s) which is observed by the FPD, the Tow Operator shall be advised of the violation(s) and any enforcement action taken. The Tow Operator shall take necessary steps to ensure that his/her driver(s) are in compliance with the law. Any subsequent traffic violation(s) may be cause for disciplinary action against the Tow Operator and/or the involved employee(s).

- D. Any traffic violation(s) as defined in Division 11 of the California Vehicle Code, that occurred during actual operation of a motor vehicle may be cause for immediate disciplinary action against the Tow Operator and/or the involved employee(s) as appropriate.
- E. The provisions contained in Section 12 of this Agreement, Compliance with Law, do not preclude FPD from taking appropriate enforcement or administrative action for any violation(s) of law.
- F. Any past or present conviction of the following crimes by the Tow Operator may be cause for removal of the Tow Operator from the rotation tow list:
 - 1. A conviction involving a stolen or embezzled vehicle or any felony;
 - 2. Fraud;
 - 3. Stolen or embezzled property;
 - 4. A crime of violence;
 - 5. A crime of moral turpitude;
 - 6. A drug related offense;
 - 7. Any crime that requires registration with the State of California as a sex or arson offender;
 - 8. Misdemeanor or felony driving while under the influence of alcohol or a drug; or
 - 9. Any outstanding warrant issued by any court of law whether local, state or federal in the United States.
- G. Any past or present conviction of the following crimes by an employee of a Tow Operator may be cause for removal from the rotation tow list:
 - 1. A conviction involving a stolen or embezzled vehicle or any felony;
 - 2. Fraud;
 - 3. Stolen or embezzled property;
 - 4. A crime of violence;
 - 5. A crime of moral turpitude;
 - 6. A drug related offense;
 - 7. Any crime that requires registration with the State of California as a sex or arson offender;

8. Misdemeanor or felony driving while under the influence of alcohol or a drug; or
 9. Any outstanding warrant issued by any court of law whether, local, state or federal in the United States.
- H. The Tow Operator, and each of its employees and drivers, will be required to pass a background check. Tow drivers must pass a background check prior to being placed on the list for rotational tows. The Tow Operator, and each of its employees and drivers, will be required to submit a completed employee information form to the FPD Chief of Police or the Chief's designee. Any driver who drives must be insured by the Tow Operator's company. In the event that Tow Operator utilizes a driver not insured by his/her company for an FPD tow, Tow Operator may be subject to disciplinary action.
- I. Any person required by the State of California to register as a sex or arson offender shall have no involvement with the public as it relates to the towing, releasing of vehicles, or collecting of monies of any FPD rotational tow.
- J. Any tow drivers that obtain four or more violation point counts in a 12 month period, six or more violation point counts in a 24 month period or eight or more violation point counts in a 36 month period, as referred to in California Vehicle Code section 12810.5, shall not be allowed to participate in any tows as part of the FPD rotational tow list.

13. DISCIPLINARY ACTION

- A. The FPD Chief of Police or his/her designee shall take disciplinary action against the Tow Operator and/or its employees/agents for violations investigated and confirmed or sustained. Unless otherwise noted, the FPD Chief of Police or his/her designee shall determine the period of suspension. The FPD Chief of Police or his/her designee shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement.
- B. Records of violations shall be retained by FPD for at least 36 months.
- C. A violation of the equipment requirements related to safety shall be cause for immediate suspension. The suspension will remain in effect until the period of suspension is completed and FPD has conducted an inspection and concluded the Tow Operator is in compliance.
- D. A violation of the GVWR and safe loading requirements of a tow truck may be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when in tow.
- E. A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension or removal determined by the FPD Chief of Police or his/her designee. A police report will be filed listing the victims and the over charges. The police report may be submitted to the Fresno County District

Attorney's Office for review to determine if there is sufficient evidence for a criminal case.

- F. FPD personnel shall not be offered gratuities and requests for gratuities shall not be honored by Tow Operator, or its employees, associates, or agents. A violation of this section shall be cause for suspension or termination.
- G. Failure of the Tow Operator or its employee(s) to comply with Sections 11 and 12 (Demeanor and Conduct, and Compliance with the Law) of this Agreement, may be cause for suspension if deemed appropriate by the FPD Chief of Police or his/her designee.
- H. Failure of the Tow Operator to comply with the inspection requirements of this Agreement will result in a suspension. The suspension will remain in effect until this period of suspension is completed and the Tow Operator has complied with the inspection requirement.
- I. Failure of the Tow Operator to send tow truck drivers on FPD calls who are qualified and competent employees shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and the Tow Operator has presented proof to the FPD that the driver is qualified and competent.
- J. Failure of the Tow Operator to maintain the minimum insurance requirements set forth in this Agreement will immediately nullify the Agreement. The Tow Operator will be subject to an additional suspension for failure to notify FPD in advance of the insurance policy expiration or cancellation.
- K. Failure of the Tow Operator to satisfy a court order (including administrative orders by the administrative hearing officer or orders by the City Council) mandating reimbursement to the vehicle or property owner for the damage or loss that occurred while the vehicle was in his or her custody will result in a suspension or removal from the rotations tow list. The period of the suspension shall be determined by the FPD Chief of Police or his/her designee. The suspension will remain in effect until the period of suspension is completed and the Tow Operator has presented proof of reimbursement to the vehicle or property owner.
- L. A tow truck driver who is arrested for a misdemeanor driving under the influence of alcohol or drugs will be immediately removed from the rotation tow list.
- M. If the Tow Operator is serving a suspension for one year or more, the Tow Operator shall be required to comply with all terms and conditions of the current tow franchise agreement at the time of the reinstatement. Thus, so called "grandfather clauses" shall not apply to a Tow Operator who is suspended for a one year period or more. There will be no approval of equipment that is not in compliance with the equipment specifications contained in the tow franchise agreement in effect at the time of reinstatement.

14. TERMS OF DISCIPLINARY ACTION

A. Except as specifically stated in the Agreement, minor violations of the terms and conditions of the Agreement may be cause for disciplinary action in the following manner:

1. First violation within a 12 month period – letter of reprimand.
2. Second violation within a 12 month period – 1 to 30 day suspension.
3. Third violation within a 12 month period – 60 to 90 day suspension.
4. Fourth violation within a 12 month period – termination of the Agreement.*

*Note: In lieu of termination, FPD may impose additional suspensions for longer periods if deemed appropriate.

B. Violations of the terms and conditions of the Agreement that are subject to suspension for the first violation are categorized as major violations. Any subsequent or continuing major violation may be cause for termination.

1. When considering disciplinary action for a major violation of the Agreement, the Tow Coordinator may take into consideration all major and minor violations that occurred within 36 months prior to the date of the current violation.
2. Termination shall be invoked if, in the Tow Coordinator's judgment, continued participation in the FPD Rotation Tow Program by the affected Tow Operator may result in a hazard to the public safety or welfare, or the Tow Operator has been convicted of a crime listed in Section 12F of the Agreement.
3. In lieu of termination, FPD may impose additional suspensions for longer periods, if deemed appropriate.

C. Nothing herein shall be deemed to prohibit FPD from immediately suspending any operator or employee whose conduct, in the opinion of the Tow Coordinator, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the Agreement.

D. All felony convictions not specifically addressed under this Agreement shall result in permanent disqualification from the FPD rotation tow list.

E. The existence of three misdemeanor convictions as set out in Sections 12F and 12G of this Agreement shall result in permanent disqualification from the FPD rotation tow list.

F. All misdemeanor convictions addressed under Sections 12F and 12G of this Agreement shall result in a five year suspension from the Rotation Tow Program.

- G. The respective Tow Operator or employee shall be disqualified from working on FPD's rotation tow list if the Tow Operator or employee has a conviction of any felony violations which occurred within the previous 7 years.
- H. The respective Tow Operator or employee shall be disqualified for a proven history of convictions for driving under the influence of alcohol or drugs. This shall include three misdemeanor convictions of DUI within the previous 7 years or any consecutive year DUI conviction.
- J. The following convictions shall result in a 10 year removal from the rotation tow list ("PC" refers to California Penal Code and "VC" refers to California Vehicle Code):

- PC §261.5 – Statutory Rape
- PC §273(a) – Cruelty to Child
- PC §273(d) – Infliction of corporal punishment of child which results in traumatic conditions
- PC §450 – Arson
- PC §453 – Possession of Fire Bomb
- PC §459 – Burglary
- PC §470 – Forgery
- PC §477 – Counterfeiting Money
- PC §484(e) – Theft of Access Card (i.e. bank, phone or credit card)
- PC §484(f) – Forgery of Access Card or Signature
- PC §484(g) – Fraudulent Use of Access Card
- PC §§487 and 489 – Grand Theft (including theft of firearm)
- PC §496 – Receiving Stolen Property
- PC §503 – Embezzlement
- VC §2800 – Evading a Peace Officer
- VC §10851 – Vehicle Theft
- VC §20001 – Hit & Run Collision Causing Injury or Death

15. NOTICES

- A. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof. It is the Tow Operator's responsibility to inform the Tow Coordinator of any changes of address or contact information. Notice to the Tow Operator, its employee or agent shall be deemed properly delivered when sent to the Tow Operator's address on record with the Tow Coordinator.

16. WAIVER

- A. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent

breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

17. GOVERNING LAW AND VENUE

A. This Agreement shall be governed by, and construed and 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 Fresno County, California.

18. SEVERABILITY

A. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

19. INTERPRETATION

A. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning

B. If either party is required to commence any proceeding or legal action to enforce or interpret 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.

20. EXHIBITS

A. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

21. EXTENT OF AGREEMENT

A. Each party acknowledges that he/she has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and the Tow Operator.

22. MAINTENANCE OF RECORDS

- A. The Tow Operator shall maintain records of all tow services performed pursuant to this Agreement. The records will be maintained at the Tow Operator's place of business. Invoices shall at a minimum include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.
- B. The Tow Operator shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing, and non-FPD tows.
- C. FPD may inspect all Tow Operator records without notice during normal business hours.
- D. The Tow Operator shall permit FPD to make copies of business records at its place of business, or to remove business records for the purpose of reproduction. FPD shall provide a receipt for any (original) records removed from the place of business.
- E. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement.
- F. Failure of the Tow Operator to comply with the inspection requirements shall be cause for suspension.

23. INDEPENDENT CONTRACTOR

- A. In the furnishing of services provided for herein, the Tow Operator and his/her employee(s) are acting as an independent contractor. Neither the Tow Operator, nor any of its officers, associates, agents, or employees shall be deemed an employee of the City of Fresno for any purpose.

24. NON TRANSFERABILITY

- A. This Agreement is personal to the Tow Operator and there shall be no assignment by the Tow Operator of its rights or obligations under this Agreement without the prior written approval of City. Any attempted assignment by the Tow Operator, its successors or assigns, shall be null and void unless approved in writing by City. Further, the Tow Operator shall not subcontract this agreement to another person, pursuant to Fresno Municipal Code section 6-1908.

25. HEADINGS

- A. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provision of this Agreement.

26. APPEALS

- A. Fresno Municipal Code section 6-1912 provides the following: Any applicant denied placement on the rotation list or permanently removed from the rotation list or any person suspended or temporarily removed from the rotation list, shall have the right to appeal such order under the provisions of Chapter 1, Article 5, of the Fresno Municipal Code. If no appeal is filed within the time prescribed, the action of the FPD Chief of Police or his/her designee shall be final. Notwithstanding any provision within Chapter 1, Article 5 of the Fresno Municipal Code, any person denied placement, permanently removed, suspended or temporarily removed from the rotation list shall not be entitled to participate in any tows or be placed on the rotation list until such time as the City's Chief Administrative Officer determines they are entitled to be placed back on the rotation list.

27. INDEMNITY

- A. Tow Operator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and 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 volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents or volunteers. This section shall survive termination or expiration of this Agreement.

28. INCONSISTENCY

- A. In the event of any inconsistencies in the provisions of this Agreement and Article 19 of Chapter 6 of the Fresno Municipal Code, the Fresno Municipal Code shall govern and control.

///

///

///

///

///

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

Tow Operator:
Tow City,
a sole proprietorship

Signature

Owner

Signature

(559)251-6770

Phone Number

City:
City of Fresno,
a municipal corporation

Signature

Chief of Police
Fresno Police Department

(559) 621-2222

Phone Number

No signature of City Attorney required.
Standard Document #FPD 2.0 has been
used without modification, as certified by
the undersigned.

By: _____
Greg Garner
Captain
Fresno Police Department

Rae R. Burton

Date

Date

1380 N. Sierra Vista, Fresno, CA 93703

Business Address

Jerry P. Dyer

Date

2323 Mariposa Mall, Fresno, CA 93721

Business Address