

City of Merced
2018 — 2019
TOW SERVICE
AGREEMENT
June 2018

TABLE OF CONTENTS

ELEMENT	PAGE
1. TOW ROTATION.....	3
2. ROTATION LISTS	3
3. TOW OPERATORS.....	4
4. TOW OPERATOR'S BUSINESS	7
5. FINANCIAL INTEREST.....	9
6. RESPONSE TO CALLS	9
7. STORAGE YARD	11
8. TOW TRUCK DRIVERS	13
9. TOW TRUCK CLASSIFICATIONS	15
10. GENERAL EQUIPMENT SPECIFICATIONS.....	17
11. INSPECTIONS	18
12. RATES	20
13. COLLUSION.....	24
14. INSURANCE.....	25
15. INDEMNITY.....	27
16. INDEPENDENT CONTRACTOR.....	27
17. ANNUAL OPEN ENROLLMENT/MEETINGS.....	28
18. DEMEANOR AND CONDUCT.....	28
19. TOW COMPLAINTS.....	29
20. COMPLIANCE WITH LAW.....	29
21. COMPLIANCE WITH TSA.....	30
22. DISCIPLINARY ACTION.....	31
23. TERMS OF DISCIPLINARY ACTION	32
24. HEARING/APPEAL.....	33
25. MIDTERM REVIEW.....	34
26. ADVERTISING.....	34
27. CANCELLATION.....	35
28. TERM OF AGREEMENT.....	35
29. OPERATOR APPROVAL.....	36

**City of Merced
Police Department
TOW SERVICE AGREEMENT**

This Tow Service Agreement ("TSA") contains terms and conditions that a company agrees to comply with in order to receive and maintain a rotation tow listing with the City of Merced Police Department (hereinafter interchangeably referred to as "MPD" or "City"). Participation in the MPD Rotation Tow Program is voluntary and is not intended to be a main source of income. An operator, by agreeing to participate in the program, does not establish a contractual relationship with the MPD or the City, and is not acting as an agent for the MPD or the City when performing services under the TSA. Exceptions to compliance with the TSA shall not be authorized by verbal agreement. Any exceptions shall be documented as a written addendum to the TSA by the MPD Lieutenant or Sergeant who has been designated the authority to make such exceptions by the Chief of Police.

1. TOW ROTATION

- A. The Chief of Police for the City of Merced shall establish tow rotations for each class of tow truck to facilitate the distribution of calls and meet the needs of the MPD with regards to response time and availability of tow services.

2. ROTATION LISTS

- A. A call to an operator shall constitute one turn on the list and the operator shall be moved to the bottom of the list.
 - 1) This includes when the operator fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is canceled due to excessive response time.
- B. If it is determined the operator is not needed and is canceled by the MPD, up to and including arrival on scene and standby time which does not result in a tow, there shall be no charges and the operator shall be placed back at the top of the list.
- C. If the operator responds to a MPD call and is canceled by the vehicle's registered owner or agent, prior to the operator taking possession of the vehicle, there shall be no charge and the operator shall be placed back at the top of the list.
 - 1) Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun (Section 3068.1(a) of the California Civil Code (hereinafter referred to as "CC") and Section 22851(a)(1) of the California Vehicle Code (hereinafter referred to as "CVC")).

- 2) Whenever a vehicle owner returns to a vehicle that is in possession of a towing company prior to the removal of the vehicle, the owner may regain possession of the vehicle from the towing company if the owner pays the tow company the towing charges incurred at the time service is concluded (Section 22851(a)(2) CVC).

Note: Simply attaching a cable to or blocking a vehicle does not constitute recovery or load salvage operations.

- D. Nothing in the TSA shall prohibit the on scene supervisor, from requesting a specific tow company when, in their opinion, the necessary resources to clear a hazard are not available from the tow company currently at the top of the rotation tow list.

- 1) In such an instance, the selected company would then go to the bottom of the list and those tow companies which were by-passed would remain in the same list order.

- E. Nothing shall prohibit a Class B, C, or D operator from maintaining a position on a lighter class rotation list, provided the tow truck meets the equipment specifications for that class of operation.

- 1) Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class tow truck.

3. TOW OPERATORS

- A. Operators applying for the rotation tow program shall have a minimum of three (3) verifiable years for-hire towing experience, as an owner or principal, prior to the final filing date of an enrollment period in order to qualify for a rotation tow listing.

- 1) The three (3) verifiable years' for-hire experience shall be decided by the MPD.

- B. Operators and owners who do not meet the three (3) verifiable years' for-hire towing experience, may be considered if a full-time manager is employed who possesses three (3) verifiable years for-hire tow experience, as an owner, principal or full-time manager.

- 1) The three (3) verifiable years' for-hire experience, as an owner, principal, or full-time manager shall be decided by the MPD.

- C. Management experience shall be decided and qualified by the MPD as follows:
- 1) The designation of “manager” implies general power and permits reasonable inferences that the employee so designated is invested with the general conduct and control of their employer’s business.
 - 2) An individual who has charge and control of a business and is vested with a certain amount of discretion and independent judgment.
- D. If the manager ceases to be employed by the company, the TSA shall be immediately suspended until a new manager with the required years of for-hire experience is approved by the MPD. Operators are obligated to report a change in manager to the Chief of Police or the designated MPD Lieutenant / Sergeant within 24 hours of a change in management/manager.
- E. All operators, managers, and tow truck drivers, involved with the MPD Rotation Tow Program, shall be fingerprinted annually for the purpose of conducting criminal history inquiries.
- 1) Any operator, manager, or tow truck driver who separates from the rotation tow program, in excess of one year, shall be fingerprinted upon reapplication for the purpose of conducting a criminal history regardless of prior criminal history clearances.
 - 2) An operator shall notify the MPD of any arrest and/or conviction of a tow truck driver, manager, or the operator, prior to the beginning of the next work shift.
 - a) Failure to make notification should be cause for disciplinary action.
 - 3) The designated MPD Lieutenant/Sergeant shall be notified immediately by an operator upon a manager’s or tow truck driver’s separation from the rotation tow program.
- F. Operators shall have all tow truck drivers involved with MPD rotation tow operations participate in a controlled substance and alcohol testing (CSAT) program.
- 1) Drivers requiring a Class A, Class B, or commercial Class C license (endorsed for hazardous materials transportation) shall participate in a CSAT program as defined in the Code of Federal Regulations, Title 49, Parts 40 and 382.

- 2) Drivers not required to possess a Class A, Class B, or commercial Class C license shall be enrolled in a CSAT program consistent with the requirements outlined in Section 1 above.
 - 3) The operator shall ensure selection pools for commercial and non-commercial licensed drivers are maintained separately.
 - 4) A driver possessing a non-commercial driver license who returns with a positive test result, which includes medicinal or recreational use of marijuana, shall meet the same reinstatement requirements as a driver required to possess a commercial driver license.
 - 5) The operator shall provide a current list of all drivers and proof of enrollment in the CSAT program to the MPD Lieutenant / Sergeant during the enrollment period.
 - 6) Upon the addition of a new driver, an operator shall be granted a maximum of 30 days to enroll the driver in a CSAT (or consistent) program and provide proof to the MPD Lieutenant / Sergeant.
- G. The operator shall provide a current list of all drivers and proof of enrollment in a CSAT and/or program consistent with the requirements as outlined in Section 1, to the MPD Lieutenant / Sergeant during the enrollment period.
- H. The operator, manager, and all tow truck drivers shall be enrolled in the Employer Pull Notice (EPN) program.
- 1) The operator shall provide a current list of managers and drivers, and a copy of the current EPN report, or in the case of a newly hired tow truck driver, proof of enrollment in the EPN program, for all managers and drivers to the MPD during the enrollment period.
 - 2) The operator's signed and dated EPN report shall be kept on file in the operator's office.
 - 3) Upon the addition of new managers or drivers, an operator shall be granted a maximum of 30 days to enroll drivers in the EPN.
- I. Operators shall have a Carrier Identification (CA) number and a valid Motor Carrier Property (MCP) permit. MCP documentation shall be provided to the MPD during the enrollment period.
- 1) The expiration of an operator's MCP and/or suspension of the MCP, pursuant to CVC Section 34623, shall result in the immediate suspension of the tow operator, as well as additional disciplinary action which may be imposed by the MPD Lieutenant / Sergeant.

- J. Operators shall have a sufficient number of drivers in order comply with hours-of-service. All drivers shall comply with intrastate and/or interstate hours of service pursuant to Title 13, Sections 1212 and 1212.5 of the California Code of Regulations.
 - 1) Operators shall ensure their drivers' record of duty status complies with Title 13, Section 1213 CCR.
- K. The operator shall maintain a current list of drivers available for inspection any time by MPD.
 - 1) When a driver is no longer employed by the operator, the operator shall immediately notify the MPD Lieutenant / Sergeant.

4. TOW OPERATOR'S BUSINESS

- A. An operator's place of business shall have a sign which clearly identifies it to the public as a tow service.
 - 1) The sign shall have letters which are clearly visible to the public from the street and shall be visible at night.
- B. Business hours shall be posted in plain view to the public.
- C. An operator's place of business shall have posted in plain view to the public the "Towing Fees and Access Notice" and copies of notice readily available to the public pursuant to Section 22651.07(a)(1)(A) CVC.
 - 1) The "Towing Fees and Access Notice" shall be a standardized document plainly printed in no less than 10-point type and shall contain the required language pursuant to Section 22651.07(d) CVC.
- D. An operator's place of business shall be sufficiently staffed to allow customers to talk face-to-face with a tow company's owner, manager, or employee during normal business hours.
 - 1) Normal business hours shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for the following state recognized holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day.

Note: When the MPD is closed in observance of a holiday, the tow operator may also be closed.

- E. If an operator's place of business is staffed with only one employee, the business office may be closed for a maximum of 30 minutes for lunch and the following shall apply:
- 1) A sign shall be posted which reflects a lunch closure and a phone number where a request by a vehicle's owner/agent shall result in an immediate response to release property or a vehicle.
 - 2) Response to the office shall be within the time frame required for a normal MPD Class A tow.
 - 3) The lunch closure must be during normal lunch hours.
- NOTE: For the purposes of this TSA, normal lunch hours are between 11:00 a.m. and 2:00 p.m.
- F. The operator shall maintain records of all tow services furnished at the operator's primary office (Note: printable electronic records are acceptable).
- 1) Invoices shall contain the required itemized information pursuant to Section 22651.07(e) CVC.
 - 2) Itemized invoices shall contain a distinct notice upon the invoice stating "Upon Request, you are entitled to receive a copy of the "Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type pursuant to 22651.07(a)(1)(B)(3) CVC.
- G. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, driver's record of duty status (intrastate and/or interstate), and Federal Communication Commission licensing (if applicable), and non-MPD tows.
- H. The MPD may inspect all operator records relating to compliance with the TSA without notice during normal business hours.
- I. Operators shall permit the MPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction.
- 1) The MPD shall provide a receipt for any record removed from the place of business.
- J. An operator shall maintain business records for a period of two (2) years, plus the current term of this TSA, and shall make them available for inspection.

- 1) Failure of the operator to comply with the aforementioned inspection requirements shall be cause for disciplinary action as set forth in subsection 22 of this TSA

5. FINANCIAL INTEREST

- A. No operator or applicant shall be directly involved in the towing-related business of any other operator or applicant within the MPD Tow Rotation.
- B. The sale or transfer of the controlling interest in a tow company shall immediately terminate this TSA.
 - 1) A new owner may apply for the rotation tow program at any time during the remainder of the current TSA term, regardless of the enrollment period.
- C. No operator or applicant shall share equipment with any other operator or applicant involved with the MPD rotation tow list (excluding equipment which may be unavailable due to repairs, equipment replacement, or the operator is involved in the Salvage and Recovery List).

6. RESPONSE TO CALLS

- A. The operator shall respond to calls 24 hours a day, seven (7) days a week, within the maximum response time limits established by the MPD.
 - 1) The maximum response time to a rotational call shall be thirty (30) minutes from the time the operator receives the call from MPD.
- B. An operator or tow truck driver shall respond with a properly equipped tow truck of the class required to tow the vehicle, perform vehicle recovery (e.g., rollover, down embankment, etc.), provide service (e.g., fuel, flat tire change, etc.), and be in possession of the appropriate class of driver's license, applicable endorsements, and permits.
 - 1) Any applicable permits (e.g., load variance, oversize,) shall be valid and maintained in the tow truck.
- C. The operator shall advise MPD dispatch, at the time of notification, if they are either unable to respond or unable to meet the maximum response time.
 - 1) If, after accepting the call, the operator is unable to respond or will be delayed in responding, the operator shall immediately notify the MPD Communications Center.

- D. A failure, or refusal, to respond to towing or service calls, and/or repeated failures to meet maximum response time requirements, without justification, shall result in disciplinary action as set forth in Subsection 22 of this TSA. (This includes refusing to respond for junk vehicle calls. The validity or the justification for failure to respond to calls shall be determined by the MPD in its sole discretion.)
- E. If service, other than towing, recovery, and load salvage, is canceled by the vehicle's registered owner or agent; no lien shall arise for the service unless the operator has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Section 3068 (a) of the Civil Code.
 - 1) The operator shall not attempt to take possession of a vehicle in order to establish a lien for any non-towing services performed, or initiated and subsequently canceled.
- F. Nothing shall prohibit a Class B, C, or D tow truck from maintaining a place on a lighter class rotation tow list, provided the tow truck meets the equipment specifications for that class of operation.
 - 1) Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class tow truck.
- G. On scene supervisor(s) may authorize an operator to dispatch more than one tow truck to a multiple vehicle collision scene in response to a rotation tow call.
- H. If two or more operators are called to the same incident, distribution of the vehicles shall be at the discretion of the MPD officer and/or the on scene supervisor.
- I. When an operator will be temporarily unavailable to provide services due to a preplanned or scheduled activity, the operator shall notify the MPD communications center at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.
- J. Only tow truck personnel and equipment requested shall respond to a MPD call (e.g., tow truck driver bringing significant others, family members, friends, pets, etc. is not allowed).
 - 1) Exception would be responding a tow truck driver trainee with an approved rotation tow truck driver and only if a CHP 234F, Tow Operator/Driver Information, has already been submitted for the trainee to the MPD.

- K. An operator/tow truck driver shall not respond to a MPD call assigned to another operator or re-assign a call to another tow operator, unless requested to do so by the MPD.
 - 1) Nothing would preclude the assigned operator/tow truck driver from responding to an incident to ascertain if additional assistance or equipment is required.
- L. There shall be no additional charge for any personnel or equipment, which is not necessary to perform the required service.
- M. There may be times when the operator/tow truck driver assigned the initial call may require assistance from an additional operator/tow truck driver.
 - 1) In such case, the assigned operator/tow truck driver may, with the concurrence of the scene manager, request a specific operator/tow truck driver for additional assistance.
 - 2) The operator/tow truck driver's approved request shall be routed through the MPD.
- N. There may be times when an operator/tow truck driver, who was not called to the scene, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and the on-scene officer requests assistance in clearing the roadway.
 - 1) In such a case, the operator/tow truck driver may be requested by the officer to move the vehicle to a safe location and leave it.
 - 2) There shall be no charge for this assistance and the assistance provided shall not change the operator's place in the rotation.
 - a) Violations of Section 22513 CVC shall result in disciplinary action as set forth in Section 22 of this TSA.
 - 3) If the operator/tow truck driver is requested to provide service at the scene resulting in a tow, the service shall constitute one turn and that company will be moved to the bottom of the list.

7. STORAGE YARD

- A. The operator shall be responsible for the safekeeping and prevention of vandalism of all vehicles and contents, which are stored or impounded by the MPD.
 - 1) At a minimum, a permanent securely fenced or an enclosed storage area of an adequate size shall be provided for the proper storage of vehicles.

- B. The primary storage yard shall be at the same location as the business address.
 - 1) Stored/impounded vehicles shall be at the primary storage yard.
 - 2) This requirement may only be waived by a written addendum from the MPD Lieutenant / Sergeant with justification.
- C. A secondary storage yard shall be located reasonably close to the main business office.
 - 1) There shall be no charge to the vehicle's owner/agent for towing a vehicle from a secondary storage yard to the primary storage yard.
- D. Tow operators shall maintain sufficient storage spaces.
 - 1) A secondary storage yard shall only be utilized if the primary storage yard is full.
 - a) This requirement may be only waived by a written addendum from the MPD if grounds exist to justify the waiver in the discretion of the MPD or designated MPD Lieutenant /Sergeant.
- E. A storage yard owned by an operator and shared with another operator shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof.
- F. A storage yard shared by operators, or any other business establishment(s) regardless if owned by the operator or not, shall be physically separated and secured from each other. (Which includes business records related to the tow company.)
- G. Prior to the utilization of a new storage yard, which was not listed on the CHP 234A, Rotation Tow Listing Application, the operator shall obtain approval from the designated MPD Lieutenant / Sergeant.
- H. An operator's employee shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.
- I. Upon approval from the MPD, the operator or their employee shall release personal property from a vehicle, which has been stored/impounded by the MPD at the request of the vehicle's registered owner or agent pursuant to Sections 22851(b) and 22651.07 of the CVC.
 - 1) A receipt shall be provided for the removed personal property, with a copy placed in the stored/impounded vehicle.

- a) This procedure shall also apply to the removal of property by the tow operator and/or their employee to a secured area within the business.
- J. Personal property and/or the vehicle shall be released at the primary storage yard.
 - 1) Personal property or a vehicle release from a secondary storage yard shall only be granted if it is acceptable to the vehicle's registered owner or agent.
 - a) Personal property is considered to be items which are not affixed to the vehicle. Personal property includes, but is not limited to, papers, cell phones, pull-out radios, clothes, luggage, tools, etc.
- K. No fee shall be charged for the release of personal property during normal business hours pursuant to Sections 22851(b) and 22651.07(c)(1) of the CVC.
 - 1) The maximum charge for a non-business hours release shall be one-half the hourly tow rate charged, or less, for initially towing the vehicle pursuant to Section 22851(b) of the CVC.
 - 2) No lien shall attach to any personal property in or on the vehicle pursuant to Section 22851(b) of the CVC.
- L. The operator shall keep a written record of every vehicle stored/impounded for a period longer than 12 hours pursuant to Section 10650(a) of the CVC.
 - 1) The record shall contain the name and address of the person storing or requesting the tow, the names of the owner and driver of the vehicle (if ascertainable), and a brief vehicle description (make, model, license plate number, and any vehicle damage) pursuant to Section 10650(b) of the CVC. All records shall be kept for one year from the commencement of storage and shall be open to inspection by any peace officer. Upon termination of the storage, a statement shall be added to the record as to the disposition of the vehicle, including the name and address of the person to whom the vehicle was release and the date of such release.

8. TOW TRUCK DRIVERS

- A. The operator shall ensure tow truck drivers responding to calls initiated by the MPD are competent and have completed a Tow Service Agreement Advisory Committee ("TSAAC") approved tow truck driver training program.
 - 1) The TSAAC approved tow truck driver training course list is contained in Attachment A of this TSA.

- a) Acceptable hands-on tow truck driver training programs shall be approved by the TSAAC. (On-line testing/certification will not be accepted.)
- 2) All drivers shall provide documentation that they have completed Traffic Incident Management training in accordance with the Federal Highway Administration.
- 3) Documentation of completion of an approved tow truck driver-training program within the past five (5) years shall be submitted along with the CHP 234F
 - a) A CHP 234F shall include all convictions of felonies and misdemeanors.
 - b) Tow truck driver training documentation shall be for the appropriate class of tow truck (e.g., a Class D driver shall have heavy duty tow driver's training documentation).

Note: A certificate for a higher level of training will be acceptable for all lower levels of tow trucks.

 - c) All operator, managers and drivers shall be provided with written notification regarding the reason(s) for denial of an operator, manager, or driver's CHP 234F within 30 days.
 - d) A failure to disclose any felony and/or misdemeanor convictions shall be cause for denial of a CHP 234F and is a misdemeanor pursuant to section 20 and 31 CVC.
- B. Completion and/or documentation of a tow truck driver's training does not indicate a sufficient level of competence.
- C. Tow truck drivers shall perform all towing and recovery operations in the safest and most expedient manner possible.
- D. Tow truck drivers shall be at least 18 years of age and shall possess the proper class of license and endorsements for the towed and towing vehicle.
- E. Uniforms: MPD rotation tow drivers shall wear an identifiable uniform (either shirt and pants, or coveralls) displaying the company and driver's names while engaged in MPD rotation tow operations.
- F. Personal Appearance: MPD rotation tow drivers shall represent a professional image. An unacceptable representation would include: unbathed, excessively dirty/torn uniform, body art, visible body piercing, etc.

- G. Safety Garments: MPD rotation tow drivers **shall** wear appropriate warning garments (e.g., vests, jackets, shirts, retro reflective clothing) during daylight and hours of darkness in accordance with California Code of Regulations, Title 8, Section 1598. If the tow truck driver is working on a Federal-aid highway, the operator **shall** comply with the guidelines contained in the Federal Code of Regulations, Title 23, Highways, Chapter 1, Federal Administration, Department of Transportation, Part 634, Worker Visibility, which requires high-visibility personal protective clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004.
- H. Any felony or misdemeanor conviction of the operator or employee involving: stolen or embezzled vehicles and/or other property, including receiving stolen vehicles and/or other property, fraud related to the towing business, a crime of violence, a drug related offense,, or a crime of moral turpitude shall be cause for suspension or removal of an operator/employee, denial of an operator/employee's application, or termination of the TSA.

9. TOW TRUCK CLASSIFICATIONS

This section contains important information regarding the tow truck classifications required under this TSA. As such, you are required to initial each paragraph of this subsection in the box on the right hand side below each numbered subparagraph to acknowledge that you have read and understood these requirements and that you agree to abide by the requirements set forth below. Should you have any questions about the contents of this subdivision, please ask the designated MPD Sergeant.

- A. An operator shall equip and maintain tow trucks covered under the TSA in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations ("CCR"), the specifications contained in this TSA, and in a manner consistent with industry standards and practices.

I understand and agree to this provision

☐

- B. All recovery vehicles (wreckers) shall have an extendable/retractable boom meeting the specifications contained in this TSA and the most recent electronic version of the CHP 234B, Tow Truck Inspection Guide.
- 1) Class D tow trucks used exclusively for salvage and recovery operations are not required to possess wheel lift capabilities.
 - 2) An operator who has a car carrier is exempted from the recovery, wheel lift, and boom capability requirements. However, the car carrier must be an additional unit and **shall not be used for recovery**.

- 3) An auto-loader without an extendable/retractable boom is an additional unit and **shall not be used for recovery**.

- a) For purposes of the TSA, recovery is defined as a vehicle which is overturned, down an embankment, or otherwise not upright on its wheels.

I understand and agree to this provision

☐

- C. A violation of the gross vehicle weight rating ("GVWR") and/or safe-loading requirements of a tow truck should 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 towing.

I understand and agree to this provision

☐

- D. There are four (4) classes of tow trucks covered under this TSA.

1) **Class A - Light Duty**

- a) An operator should maintain a minimum of one tow truck which has a manufacturer's GVWR of at least 14,000 pounds.

(1) After June 30, 2006, Class A 4-wheel drive tow trucks with a GVWR of less than 14,000 pounds may be listed as special equipment on the CHP 234A, Rotation Tow Listing Application. These tow trucks shall be used only for recoveries requiring the use of 4-wheel drive.

2) **Class B - Medium Duty**

- a) An operator should maintain a minimum of one tow truck with a GVWR of at least 33,000 pounds. The truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.

3) **Class C - Heavy Duty**

- a) An operator should maintain at least one three-axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

4) **Class D - Super Heavy Duty**

- a) An operator should maintain at least one three-axle tow truck with a GVWR of at least 54,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

(1) If this class of tow truck is used exclusively for salvage and recovery operations, there is no requirement for providing and maintaining continuous air to the towed vehicle.

I understand and agree to this provision

☐

10. GENERAL EQUIPMENT SPECIFICATIONS

- A. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis GVWR and the classification system used by the American Trucking Association (“ATA”) and truck manufacturers. Tow truck and car carrier classifications shall meet all applicable state and/or federal standards.
- B. Identification Labels: Each piece of towing equipment shall have a manufacturer’s label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.
- C. Recovery Equipment Rating: The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).
- 1) The structural design of the recovery equipment must have a higher load capacity than the performance ratings.
- 2) Winches shall conform to or exceed the specifications set forth by the Recovery Equipment Rating, Society of Automotive Engineers (“SAE”) Handbook, SAE J706.
- 3) All ratings for wire rope and chain assemblies are for the undamaged assembly condition. All wire rope and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (“OEM”) for the equipment.
- D. Control/Safety Labels: All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

11. INSPECTIONS

This section contains important information regarding the inspection rights, frequency and requirements mandated by this TSA. As such, you are required to initial each paragraph of this subsection in the box on the right hand side below each numbered subparagraph to acknowledge that you have read and understood these requirements and that you agree to abide by the requirements set forth below. Should you have any questions about the contents of this subdivision, please ask the designated MPD Sergeant.

- A. The MPD will be utilizing the CHP to conduct all open enrollment inspections for this TSA. All tow companies, regardless if they are applying for CHP's TSA, shall have all their tow trucks inspected during the Merced Area CHP open enrollment inspections.

- 1) The MPD may conduct additional inspections without notice during normal business hours.

I understand and agree to this provision ☐

- B. The operator shall not dispatch any tow truck which has not been inspected by CHP and approved by the MPD.

- 1) The MPD shall inspect a tow truck within thirty (30) days of a request from an operator prior to use in the Rotation Tow Program.
- 2) The MPD may request the CHP to conduct additional inspections for them.

I understand and agree to this provision ☐

- C. The annual inspection shall consist of the following:

- 1) A tow truck inspection (CHP 234B, Tow Truck Inspection Guide) conducted by the California Highway Patrol during their open enrollment tow truck inspections.
- 2) A level One inspection (CHP 407F, Safetynet Driver/Vehicle Inspection Report) conducted by a commercial enforcement officer or Area tow officer with the assistance of a motor carrier specialist or commercial inspection specialist by the California Highway Patrol during their annual open enrollment tow truck inspections.
- 3) Tow trucks arriving for inspection shall be properly equipped as outlined on the CHP 234B, and ready for immediate response for service.

- a) Operators or tow truck drivers found exchanging equipment with other tow truck drivers during inspections shall be subject to disciplinary actions.

I understand and agree to this provision

☐

- D. If two (2) or more CVC requirements on the CHP 234B, Page one, receive a failing mark, the inspected truck has failed the initial annual inspection and shall count against the 50 percent failure rate. An "Out of Service" violation on a CHP 407F shall count as a failure of the initial annual inspection.

- 1) Other than the two (2) or more CVC requirements, a tow truck may fail based on additional failed items outlined on the CHP 234B.

I understand and agree to this provision

☐

- E. If 50 percent or more of the operator's tow trucks fail the initial annual inspection, the operator's application shall be denied and the operator may reapply during the next open enrollment period.

- 1) The operator whose trucks have successfully passed the initial annual inspection, by more than 50 percent but still have some tow trucks which failed, shall be allowed one re-inspection for those failed tow trucks.

I understand and agree to this provision

☐

- F. The intent of these inspections is to ensure operators are involved in an ongoing safety maintenance program for their tow trucks. The annual inspection is not intended to find out what needs to be repaired/replaced on an operator's tow truck. A tow truck responding to a MPD call shall be properly equipped and operating in a safe condition.

I understand and agree to this provision

☐

- G. Tow trucks that fail the CHP initial annual inspection cannot be appealed to the MPD. Tow truck operators/owners must follow CHP procedures for any and all appeals related to tow truck inspections.

I understand and agree to this provision

☐

- H. Special Equipment

- 1) To properly and safely tow, service, or recover the wide variety of vehicles being operated on the highway, a towing procedure may require the use of special equipment specifically designed for the purpose. This

special equipment shall be listed on the operator's CHP 234A, Rotation Tow Listing Application, and should be used when appropriate.

- 2) All special equipment listed on the CHP 234A shall be accounted for during the annual inspection or when additional equipment is added.
- 3) Any special equipment which requires certification/inspection of the equipment and/or operator (e.g., cranes, forklifts, etc.), the applicable and current certification/inspection document(s) shall be provided to the MPD at the time of enrollment or as equipment is added by an operator.

I understand and agree to this provision. . . . ☐

- I. Operators shall provide a current copy of their California Air Resource Board Certificate of Reported Compliance Truck and Bus Regulation commencing July 1, 2020.

12. RATES

- A. Fees charged for calls originating from the MPD shall be reasonable, valid, and not in excess of those rates charged for similar services provided in response to requests initiated by a public agency or private person.
 - 1) Reasonableness shall be determined as compared to other similar rates.
 - 2) Validity shall be based upon the following: telephone quotes, invoices, posted rates, and charges to retail customers, etc.
- B. Based upon the average of the proposed fees submitted, the Chief of Police, or his designee, shall determine the reasonableness and validity of all submitted rates (i.e., storage, nonskilled labor, special equipment, etc.).

NOTE: Non-skilled labor is defined as work which requires no special training or experience for performing the work adequately.

- C. An operator who submits a rate which is determined by the Chief of Police, or his designee, to be unreasonable and/or invalid shall be allowed to re-submit rates only once.
 - 1) If the re-submitted rate is determined to be unreasonable and/or invalid, the operator shall be disqualified from participating in that class for which the rate was unacceptable, or charge for services in which the rate was submitted, until the next enrollment period.
 - 2) An operator shall be provided with written notification regarding the disqualification within 30 days.

- D. Rate requirements represent the maximum an operator may charge on a MPD call per hour.
 - 1) An operator is not precluded from charging less when deemed appropriate by the operator.
 - 2) These requirements shall not be construed as requiring a charge if an operator would not normally charge for such service.
- E. Any operator who charges rates above the submitted rates for a MPD call shall be subject to disciplinary action.
- F. In an effort to remain competitive in the open market, the operator may lower retail rates at any time by notifying the MPD.
 - 1) When an operator lowers the retail rate, that retail rate becomes the operator's new approved rate.
- G. A valid bank credit card or cash payment shall be accepted for payment of storage and/or towing pursuant to Sections 22651.1 and 22651.07(c)(4) of the CVC.
 - 1) A surcharge shall not be imposed upon a cardholder who elects to use a credit card for payment, as a result of a rotation call, pursuant to Section 1748.1 of the CC and section 22651.07(c)(4) of the CVC.
- H. The approved schedule of rates charged by the operator shall be available in the tow truck, and shall be presented upon demand to the vehicle owner/agent for whom the tow service was provided or any MPD officer at the scene.
- I. There shall be no additional charge for moving (i.e., driving, towing, pushing, utilizing a forklift) a stored/impounded vehicle from inside an operator's storage yard to the front of the business establishment.
- J. Operators may only raise rates during the enrollment period or upon approval after a midterm review has been initiated by the MPD.
- K. Tow Rates
 - 1) The rate for towing should be computed from portal to portal when a vehicle is towed to the operator's storage yard.
 - a) Portal to portal is defined as follows: Time shall start from either the point of dispatch or upon departure from the place of business, whichever is closer to the location of the call, and shall end at the

estimated time of return to the place of business or completion of the call, if another call is pending, whichever is shorter.

- 2) The time expended for towing a vehicle back to the operator's storage yard should be charged at a rate not to exceed the hourly rate.
 - a) Time expended in excess of the hourly rate shall be calculated in no more than one-minute increments.
 - b) There shall be no additional charges for mileage, etc.
- 3) A clear, itemized, and detailed explanation of any additional service that caused the time to exceed one hour shall be documented on the invoice pursuant to Section 22651.07(e)(7) of the CVC.
- 4) The operator may submit two retail hourly tow rates to the MPD Sergeant: One rate for calls originating during normal business hours and one rate for calls originating after business hours.
- 5) The operator shall base charges for the class of vehicle being towed or serviced, regardless of the class of tow truck used. When vehicle recovery operations require a larger class tow truck, the higher rate may be charged during the recovery process.

L. Service Call

- 1) The operator may charge up to a 30-minute minimum per call for any service which is performed when the vehicle operator or agent is present and the vehicle is not stored at the direction of an officer or returned to the operator's storage yard.
- 2) Rates for a service call (out-of-gas, lockouts, tire changes, etc.) should be from portal to end of service.
- 3) Charges in excess of a 30-minute service call may be charged in no more than one-minute increments.
 - a) A clear, itemized, and detailed explanation of any additional service that caused the time to exceed one hour shall be documented on the invoice pursuant to Section 22651.07(e)(7) of the CVC.
 - b) If the service cannot be performed safely at the vehicle's location, the vehicle may be moved to safe location to perform the service at the service call rate.

- 4) Fuel charges for gasoline dispensed on out-of-gas service calls shall be at the prevailing market rate.
 - a) In lieu of dispensing gasoline, the tow driver may tow the vehicle to a safe location or gas station at the service call rate.

M. Storage Fees

- 1) A vehicle stored/impounded for 24 hours or less shall be charged not more than one day storage pursuant to Section 3068.1(a) of the CC.
 - a) If the vehicle is released from storage after 24 hours has lapsed, charges may be allowed on a full calendar-day basis for each day of storage or part thereof pursuant to Section 3068.1(a) CC.
- 2) Storage of vehicles in combination should be charged a per vehicle rate except for dollies, con-gear, vehicle on a car carrier/trailer, etc.
 - a) Dollies and con-gear, not in combination, may be charged a storage rate not to exceed Class A storage fees.
- 3) Inside storage fees shall only be charged when inside storage is requested by the MPD, registered owner, legal owner, insurance company, or when the inside storage can be justified by the tow operator.
- 4) The operator shall display in plain view at all cashiers stations, a sign as described in Section 3070(d)(2)(E) of the CC, disclosing all storage fees and charges in force, including the maximum storage rate.

N. Lien Fees

- 1) If a vehicle has been determined to have a value exceeding four thousand (\$4000.00), pursuant to Section 22670 of the CVC, the lien shall be satisfied pursuant to section 3071 CC (See Section 3074 of the CC).
- 2) The lien holder may charge a fee for lien sale preparation not to exceed seventy dollars (\$70.00), for a vehicle valued at four thousand dollars (\$4000.00) or less and not to exceed one hundred dollars (\$100.00) for a vehicle valued at greater than four thousand dollars (\$4000.00) (Section 3074 of the CC).
 - a) These charges may commence when the lien holder requests the names and addresses of all persons have an interest in the vehicle from the Department of Motor Vehicles (Section 3074 of the CC)

- b) Not more than 50 percent of the allowable fee may be charged until the lien sale notifications are mailed to all interested parties and the lien holder or registration service agent has possession of the required lien processing documents (Section 3074 of the CC).
- c) This charge shall not be made in the case of any vehicle redeemed prior to 72 hours from the initial storage (Section 3074 of the CC).

13. COLLUSION

- A. An operator and/or applicant shall not conspire, attempt to conspire, or commit any other act of collusion with any other operator or applicant for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the TSA that would bring about any unfair condition which could be prejudicial to the MPD, the motoring public, or other operators.
- B. A finding by the MPD that any operator or applicant has been involved in collusion shall be cause for denial of an application or shall nullify the TSA. Any operator or applicant found to be involved in any act, or attempted act of collusion, shall be disqualified from participation on all MPD rotation tow lists for the current term plus three years.

14. INSURANCE

- A. The operator shall obtain, pay for, and maintain in full force and effect during the term of this TSA all policies of insurance required hereunder with an insurance company 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:
 - 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 or CA 00 05 and include coverage for "bodily injury," "broad form property damage," and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), and contractual liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - 2) Uninsured Motorist- Legal minimum, combined single limit.
 - 3) Business Automobile Liability insurance which shall be on the most current version of the Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01 and include coverage for "garage keepers legal liability," "on-hook liability," and "cargo liability" with limits of not less than \$1,000,000 per occurrence including:

a) On hook or cargo insurance insuring the vehicle in tow with a max deductible of \$1,000 and the limits based on the size of the tow truck as follows:

- Class A tow truck \$50,000
- Class B tow truck \$100,000
- Class C tow truck \$200,000
- Class D tow truck \$250,000

b) Garage keepers liability with the following limits:

10 or fewer vehicles:	Minimum limit \$100,000 Maximum deductible \$1,000
11-25 vehicles:	Minimum limit \$250,000 Maximum deductible \$1,000
26-50 vehicles	Minimum limit \$500,000 Maximum deductible \$1,000
Over 50 vehicles:	Minimum limit \$1,000,000 Maximum deductible \$1,000

c) Workers' Compensation insurance as required under the California Labor Code.

B. The above mentioned 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 in coverage. Such notice shall be provided to the City Clerk at the following address:

City of Merced
Attn: City Clerk
678 West 18th Street
Merced, California 95340

In the event any policies are due to expire during the term of this TSA, the 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, the operator shall file with City a new certificate and all applicable endorsements for such policy(ies).

- C. The Commercial General Liability and Business 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 policies of insurance shall be endorsed so the operator's insurance shall be primary and no contribution shall be required by City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. The operator shall have furnished City with the certificates and applicable endorsements for ALL required insurance mentioned herein prior to the operator's commencement of tow operations under this TSA including, but not limited to, an endorsement evidencing the City, its officers, officials, agents, employees and volunteers are additionally insured under the policy. The operator shall furnish City with copies of the actual policy(ies) upon City's request at any time during the term of this TSA or any extension thereof, and this requirement shall survive termination or expiration of this TSA.
- D. If at any time during the life of this TSA or any extension, the operator fails to maintain the insurance required herein in full force and effect, all operations called for in this TSA shall be discontinued immediately, and all payments due or that become due to the operator shall be withheld until notice is received by City that the required insurance mentioned herein has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City.
- E. Failure of operator to maintain the minimum insurance requirements set forth in this TSA shall be sufficient cause for City to immediately terminate this TSA. In such instance, the tow operator will be removed from the tow rotation list.

15. INDEMNITY

The operator shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of the operator or the operator's officers, employees, volunteers, and agents during performance of this TSA, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of the operator or its employees, subcontractors, or agents, or by the quality or character of the operator's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused solely by the gross negligence of the City. It is understood that the duty of the operator to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this TSA does not relieve the operator from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this TSA and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this TSA and by way of his or her initials below, the

operator acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

I have read the foregoing indemnity provision and understand its contents.

I agree to the provisions of this section

☐

16. INDEPENDENT CONTRACTOR

It is expressly understood that the operator is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. The operator shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should the operator desire any insurance protection, the operator is to acquire same at its expense.

In the event the operator or any employee, agent, or subcontractor of the operator providing services under this TSA is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, the operator shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of the operator or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

17. ANNUAL OPEN ENROLLMENT/MEETINGS

- A. The MPD Lieutenant / Sergeant shall conduct, at a minimum, one (1) annual open enrollment meeting to discuss the forthcoming TSA term and issues concerning the rotation tow program.
 - 1) The MPD shall provide a 30-day written notice of the meeting to operators currently approved for the rotation tow program and to those new operators expressing interest.
 - a) The written notice shall be sent via certified mail, hand delivered, or electronically delivered with confirmation received by MPD within 24 hours, or next business day.
 - 2) If an operator or operator's designee fails to attend the annual open enrollment meeting, the operator's application for the forthcoming TSA term shall be denied.
 - a) The operator shall be provided with written notification of the denial and may re-apply during the next open enrollment.
- B. Any subsequent meetings, outside the open enrollment meeting, shall be mandatory for the operator or operator's designee.

- 1) The MPD shall give a 30-day written notice, if practical, of the meeting.
- 2) Failure to attend a meeting shall result in disciplinary action as set forth in Subsection 22 of this TSA.

18. DEMEANOR AND CONDUCT

- A. While involved in MPD rotation tow operations or related business, the tow operator and/or employee(s) shall refrain from any acts of misconduct including, but not limited to, any of the following:
- 1) Rude or discourteous behavior.
 - 2) Lack of service, selective service, or refusal to provide service which the operator is 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.
 - a) The operator/tow truck driver shall submit to a preliminary alcohol-screening test upon demand of the MPD if an odor of an alcoholic beverage is detected upon his/her person.
 - 6) Any acts of discrimination based on a protected group.

19. TOW COMPLAINTS

- A. All MPD related tow service complaints received or initiated by the MPD against a tow operator or tow operator's employees shall be accepted and investigated in a fair and impartial manner.
- 1) The tow operator and their employees shall cooperate with MPD investigators during the course of an investigation.
- B. Alleged violations of the TSA shall be investigated by the MPD Lieutenant / Sergeant.
- C. The operator shall be notified in writing of the findings within 30-days of the conclusion of any investigation.

- D. Should the filing of criminal charges be a possibility, the MPD shall conduct the investigation to conclusion or assist the lead investigating agency and request prosecution if warranted.
- E. Complaints for violations of the law not normally investigated by MPD shall be referred to the agency with investigation jurisdiction.

20. COMPLIANCE WITH LAW

- A. The tow operator and employees shall, at all times, comply with federal, state, and local laws and ordinances.
- B. Any felony or misdemeanor conviction of the operator or employee involving: stolen or embezzled vehicles and/or other property, including receiving stolen vehicles and/or other property, fraud related to the towing business, a crime of violence, a drug-related offense, driving while under the influence of alcohol or drugs, or a crime of moral turpitude shall be cause for suspension or removal of an operator/employee, denial of an operator/employee's application, or termination of the TSA.
- C. MPD personnel, as well as tow operators and their employees, shall neither be offered nor accept gratuities pursuant to Section 12110(a) of the CVC.
- D. No tow operator or their employees shall accept any gratuities from a repair shop for the delivery of a vehicle, not owned by the repair shop or tow company, for the purpose of storage or repair pursuant to Section 12110(c) of the CVC.
- E. An operator shall satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the operator's custody.
- F. An operator or employee arrested/charged for a violation involving any of the above crimes should be suspended until the case is adjudicated.

21. COMPLIANCE WITH TSA

- A. The operator agrees, as a condition of inclusion in the rotation tow program, to comply with the terms and conditions of the TSA. Furthermore, the operator or operator's agent agrees that failure to comply with these terms and conditions shall be cause for disciplinary action (i.e., written reprimand, suspension, termination, or denial of an application as set forth in Subsection 22 of this TSA).
- B. A violation of the equipment requirements related to safety shall be cause for immediate suspension.
 - 1) The suspension shall remain in effect until the suspension period is

completed and the MPD has inspected the equipment and concluded the operator is in compliance.

- C. A violation of the GVWR and/or safe loading requirements of a tow truck may be cause for disciplinary action.
 - 1) This includes exceeding the tow truck's GVWR, front axle weight rating ("FAWR"), rear axle weight rating ("RAWR"), maximum tire weight ratings, or not maintaining 50 percent of the tow truck's laden front axle weight on the front axle when in tow.
- D. A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension.
 - 1) The suspension shall remain in effect until the suspension period is completed and proof of reimbursement to the aggrieved customer has been provided to the MPD.
- E. Any unsatisfactory terminal evaluation rating issued by the Motor Carrier Safety Unit ("MCSU") shall be cause for suspension.
 - 1) The suspension shall remain in effect until proof of a satisfactory compliance rating from the MCSU has been provided to the MPD.
- F. Allowing an incompetent tow truck driver to respond to a MPD call shall be cause for disciplinary action of the operator.
- G. An operator responding a tow truck driver to a MPD call (i.e., those drivers dispatched by the tow operator's business) who have not been approved by the MPD, shall be cause for disciplinary action of the operator:
- H. Tow operators and/or tow drivers shall not record (i.e., videotape or photograph) a scene unless it is for official use by the tow company for business related reasons.
 - 1) The on-scene investigating officer or incident commander shall make the determination when a tow operator may record a scene for tow related business reasons.
 - 2) In the event a tow operator is determined to be in violation of this provision, they will immediately surrender any such recording device to an officer of the Merced Police Department.

22. DISCIPLINARY ACTION

- A. The MPD Lieutenant / Sergeant shall take disciplinary action against an operator for violations investigated and sustained. Furthermore, the operator agrees that

failure by the operator, or their agent, to comply with these terms and conditions shall be cause for disciplinary action (i.e., written reprimand, suspension, denial of an application, or termination from the MPD Rotation Tow Program. (See Section 2424(d) of the CVC.)

- 1) The MPD Lieutenant / Sergeant shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this TSA.
- B. Nothing shall preclude the MPD from taking the appropriate enforcement or administrative action for any violations of law.
- C. Nothing herein shall be deemed to prohibit the MPD in its sole discretion from immediately suspending, terminating, or denying an application of any operator or employee for any of the following:
 - 1) Whose conduct, in the opinion of the MPD, is deemed to be a danger to the motoring public (e.g., registered sex offender, acts of violence, fraud).
 - 2) A violation of equipment requirements, related to safety.
 - 3) Who has engaged in conduct constituting a flagrant violation of the TSA.
- D. Records of violations shall be retained by the MPD for 36 months, plus the current TSA.

23. TERMS OF DISCIPLINARY ACTION

- A. Violations of the terms and conditions of the TSA may be cause for disciplinary action in the following manner:
 - 1) First violation within a 12-month period – letter of written reprimand.
 - 2) Second violation within a 12-month period – one 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 TSA.

NOTE: Nothing may preclude the MPD Lieutenant / Sergeant from imposing a suspension for a first violation pursuant to Element 20. Disciplinary Action, Item C.

- B. Violations of the terms and conditions of the TSA which warrant suspension for the first violation are categorized as major violations. Any subsequent or continuing major violation may be cause for termination.

- 1) In lieu of termination, the MPD Lieutenant / Sergeant may impose additional suspensions for longer periods, if deemed appropriate.
 - 2) When considering disciplinary action for a major violation of the TSA, the MPD Lieutenant / Sergeant should take into consideration all violations which have occurred within 36 months prior to the date of the current violation.
- C. A terminated or suspended operator, and/or the tow business 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.
- 1) This provision applies to the operator working in any capacity within any tow business or operating any tow business, even if operated under new ownership.
- D. If the operator is serving a suspension, the operator shall be required to have complied with all terms and conditions of the current TSA at the time of reinstatement.
- E. An operator shall comply with all the terms of the suspension (i.e., restitution to victims, court orders) prior to reinstatement or reapplication.

24. HEARING/APPEAL

- A. A hearing shall be granted, upon an operator's request, within ten (10) calendar days, for any of the following circumstances:
- 1) Operator is served with disciplinary action.
 - 2) Denial of an operator's rotation tow application (CHP 234A,) or an operator/driver application (CHP 234F).
- B. The MPD shall provide written notification to the operator requesting a hearing indicating acknowledgement of the hearing request and a hearing date assigned.
- C. A hearing shall be held as soon as practicable.
- D. The hearing shall be conducted by an MPD Sergeant, and the operator shall be entitled to present all relevant facts and circumstances in support of the operator's position.
- 1) The operator shall be entitled to present testimony of at least one qualified person (i.e., representation by counsel or attorney).

- E. The operator shall be notified in writing of the MPD Sergeant's decision(s) within ten (10) business days of the date of completion of the hearing.
- F. Upon receipt of the Sergeant's written hearing decision, if the operator is dissatisfied with the MPD Sergeant's decision(s), the operator may appeal by submitting a written request to a designated MPD Lieutenant within ten (10) calendar days.
- G. The appeal shall be conducted by the MPD Lieutenant or his or her designee and shall be held as soon as practicable.
- H. The Lieutenant shall provide written notification to the operator requesting an appeal indicating acknowledgement of the appeal request and an appeal date assigned.
 - 1) The operator shall have the same rights as afforded at the Sergeant's level.
 - 2) The operator shall be notified in writing of the Lieutenant's decision(s) within ten (10) business days of the appeal.
 - 3) The MPD Lieutenant's decision(s) shall be subject to no further administrative appeal.
- I. Disciplinary action shall not take effect until the hearing and appeal process has been exhausted, with the exception of operators whose conduct is deemed to be a danger to the motoring public or who continue to violate the terms and conditions of this TSA.
- J. If an operator fails to request a hearing or appeal within the specified time or fails to appear at a scheduled hearing or appeal, the action taken by the MPD Sergeant shall be final and the disciplinary action shall take effect upon written notification to the operator by the MPD Sergeant.

25. MIDTERM REVIEW

- A. The purpose of this section is to provide a process for a midterm review of the terms and conditions of the TSA in the event there is a legitimate and substantial change in conditions or law affecting the majority of the operators within MPD Tow Rotation.
- B. A midterm review, when granted by the Chief of Police or designee, will not automatically authorize a change in the terms and conditions of the TSA.
 - 1) If a midterm review is announced by the Chief of Police or designee, it is the responsibility of the MPD to conduct a review of the conditions which

initially caused the request to be communicated and to determine if the change is justified.

26. ADVERTISING

The operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the MPD or the Department of Motor Vehicles.

27. CANCELLATION

This TSA may be canceled by either party by providing written notice to the other party.

28. TERM OF AGREEMENT

This Agreement shall be in effect from July 1, 2018, through June 30, 2019, unless sooner cancelled or terminated by the City.

This Agreement is dated for convenience this ____ day of _____ 2018, and shall not be effective for an Operator until the Operator has completed application procedures, provided proof of the required insurance coverage and has executed the "Operator Approval."

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: William Finener 6/12/18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

29. OPERATOR APPROVAL

I certify that all drivers operating under this Tow Service Agreement (TSA) are qualified and competent. I further certify that I have read and understand this TSA and agree to abide by all the provisions. The terms of this TSA (2018-2019 TSA) will become effective:

_____ and end _____
Date Date

Signature		Typed Name	
Company	Title	Date	
Business Address		Phone Number	
Motor Carrier Permit Number			

ATTACHMENT A

TOW SERVICE AGREEMENT ADVISORY COMMITTEE APPROVED TOW TRUCK DRIVER TRAINING COURSES

Automobile Club of Southern California
3333 Fairview Road
Costa Mesa, CA 92626
Contact: Rob Wade at (714) 885-1333
E-mail: wade.robert@caaa-calif.com

California Tow Truck Association
3050 Beacon Blvd.
West Sacramento, CA 95691
Contact: 800-874-2860
E-mail: president@ctta.com

International Institute of Towing & Recovery (Instructor Led / Self Study Course)
700 12th Street NW, Suite 700
Washington, DC 20005
(888)392-9300
Contact: Peter Fuerst at 415-859-1889
E-mail: pfuerst1@comcast.net

Randy Resch
21020 Fog Ridge
Alpine, CA 91901
Telephone: (619) 807-3173
E-mail: rreschran@gmail.com

Tow Pros, LLC
4615 East Brundage Lane
Bakersfield, CA 93307
Contact: Ken Kay at (661) 979-0747
E-mail: kktowman@towpros.com

WreckMaster Incorporated
P.O. Box 473
Lewiston, NY 14092
Telephone: (800) 267-2266
E-mail: www.WreckMaster.com

AAA Northern California-Nevada-Utah (NCNU)
1900 Powell Street
Emeryville, CA 94608
Contact: Esther Hauser
Telephone: (510)596-3830
E-mail: Esther.Hauser@goAAA.com