

DATE: September 2, 2008
TO: James L. App, City Manager
FROM: Lisa Solomon, Chief of Police
SUBJ: Tow Service Agreement

NEEDS: For the City Council to consider replacing the Memorandum of Understanding with the Official Police Tow Service (OPTS) providers with a new Tow Service Agreement (TSA) to comply with current industry standards.

- FACTS:**
1. In 1987 the City of Paso Robles entered into a Memorandum of Understanding with Pete Johnston Chevrolet-Pontiac-Oldsmobile-Buick-Cadillac and Alliance Automotive setting forth terms and conditions for Official Police Tow Service (OPTS).
 2. In 2004 the City of Paso Robles made revisions to the Memorandum of Understanding with the OPTS providers. These revisions updated practices relative to liability, fees, and minimum response times. Pete Johnston Chevrolet-Pontiac-Oldsmobile-Buick-Cadillac and Alliance Automotive, the only two tow companies to meet all the requirements set forth in the proposed MOU, agreed to these revisions.
 3. The Police Department has recently received numerous requests from local tow companies that would like to apply to become an official tow service provider for the City of Paso Robles.
 4. A review of the current MOU revealed the need to revise the entire document to meet current practices and industry standards.
 5. Pete Johnston Chevrolet-Pontiac-Oldsmobile-Buick-Cadillac and Alliance Automotive, the current tow service providers for the City of Paso Robles, have had opportunity to review the proposed TSA and tentatively agree to all provisions therein.
 6. The City Attorney and Risk Manager for the City of Paso Robles have also reviewed and approve the proposed TSA.

**ANALYSIS &
CONCLUSION:**

The current MOU for Official Police Tow Service (OPTS) is severely deficient in many aspects of current industry standards and practices associated with City Tow Service Agreements. The Police Department has updated the document to address many areas not previously detailed. The new agreement better protects the City of Paso Robles against claims and liability issues. It also gives the City the authority to regulate the conduct of the business, agree on a rate structure, mandate vehicle and business inspections, and establish enrollment periods.

**FISCAL
IMPACT:** None.

- OPTIONS:**
- a. Adopt the attached resolution to replace the existing MOU with the Official Tow Service Providers with the new Paso Robles Tow Service Agreement.
 - b. Amend, modify or reject the above option.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
EL PASO DE ROBLES APPROVING A NEW TOW SERVICE AGREEMENT (TSA)
TO REPLACE THE EXISTING MEMORANDUM OF UNDERSTANDING
WITH OFFICIAL POLICE TOW SERVICE PROVIDERS (OPTS)**

WHEREAS, the Police Department of the City of El Paso de Robles has had numerous requests from local tow companies to become official tow service providers for the City of Paso Robles; and

WHEREAS, a new Tow Service Agreement has been created to properly address current industry standards and practices associated with City tow service contracts; and

WHEREAS, Pete Johnston Chevrolet-Pontiac-Oldsmobile-Buick-Cadillac and Alliance Automotive, the current tow service providers for the City of Paso Robles, have had the opportunity to review the proposed Tow Service Agreement and tentatively agree to provisions therein; and

WHEREAS, the City Attorney and Risk Manager for the City of Paso Robles have also reviewed and approve the proposed TSA; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of El Paso de Robles does approve the new City of Paso Robles Tow Service Agreement which replaces the Memorandum of Understanding with the Official Police Tow Service (OPTS) providers.

APPROVED AND ADOPTED by the City Council of the City of El Paso de Robles this 2nd day of September, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Frank R. Mecham, Mayor

Attest:

Deborah Robinson, Deputy City Clerk

City of Paso Robles

Tow Service Agreement

September 2008

TABLE OF CONTENTS

ELEMENT	PAGE
1. TOW AREAS	3
2. ROTATION LISTS	4
3. ABANDONED VEHICLES	4
4. TOW OPERATORS	5
5. BUSINESS RECORDS.....	6
6. FINANCIAL INTEREST.....	7
7. RESPONSE TO CALLS	7
8. STORAGE FACILITY	8
9. TOW TRUCK DRIVERS	10
10. TOW TRUCK CLASSIFICATIONS.....	11
11. GENERAL EQUIPMENT SPECIFICATIONS	11
12. INSPECTIONS	12
13. RATES	13
14. COLLUSION.....	16
15. INDEMNIFICATION AND INSURANCE	16
16. ANNUAL MEETINGS.....	18
17. DEMEANOR AND CONDUCT	18
18. COMPLIANCE WITH LAW	19
19. COMPLIANCE WITH TSA.....	20
20. DISCIPLINARY ACTION	20
21. TERMS OF DISCIPLINARY ACTION	21
22. HEARING/APPEAL	22
23. MIDTERM REVIEW.....	22
24. ADVERTISING	22
25. CANCELLATION.....	23
26. OPERATOR APPROVAL.....	23

**CITY OF PASO ROBLES
PASO ROBLES POLICE DEPARTMENT
TOW SERVICE AGREEMENT**

This Tow Service Agreement (TSA) contains rules and regulations that a company agrees to comply with in order to receive a rotation tow listing with the Paso Robles Police Department (PRPD). Participation in the PRPD Rotation Tow Program is voluntary. Compliance with all of the terms and conditions of the TSA is mandatory for tow companies participating in the Rotation Tow Program. An operator, by agreeing to participate in the program, does not establish a contractual relationship with the PRPD and is not acting as an agent for the PRPD or the City of Paso Robles when performing services under the TSA.

An operator must have a current TSA with the California Highway Patrol (CHP) and be in good standing with the Templeton, CA CHP tow district to qualify for participation in the PRPD TSA. If the TSA between the operator and CHP is cancelled by either party then the TSA between the operator and the PRPD will also be immediately cancelled.

The TSA will be renewed every year during the annual meeting between the PRPD and the operator. The City of Paso Robles will only accept new operator applications during the month of January of each year.

The TSA is under the direct supervision of the City Council of the City of Paso Robles. The City Council may delegate supervisory responsibility to the Chief of Police or his / her designee.

1. TOW AREAS

- A. The PRPD Chief of Police shall establish each class of tow truck to facilitate the distribution of calls and meet the needs of the PRPD with regards to response time and availability of tow services. The PRPD Chief of Police shall determine the maximum acceptable response time, enrollment period, reasonable rates, minimum number of trucks, and any applicable addendum.
- B. Exceptions to compliance with the TSA shall not be authorized by verbal agreement. Any exception shall be documented in writing as an addendum to the TSA.
- C. An operator shall have a business office and storage facility located within the City of Paso Robles unless this requirement is waived by an addendum from the PRPD Chief of Police.
 - 1) The PRPD Chief of Police may establish a maximum radius for the location of a business office from which an operator may provide service for the City of Paso Robles.

2. ROTATION LISTS

- A. Nothing in the TSA shall prohibit the PRPD Chief of Police, supervisor or officer on scene from requesting a specific tow company when, in his/her opinion, the necessary resources to clear a hazard as expeditiously as possible are not available from the tow company currently at the top of the rotation tow list.

In such an instance, the selected company would then go to the bottom of the rotation tow. Tow companies on the same list that were bypassed would remain in the same order until their selection for a rotation tow for which they are qualified.

- B. A call to an operator shall constitute one turn on the list and the operator shall then be moved to the bottom of the list. This includes instances 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 the request is canceled due to excessive response time.
 - 1) If it is determined the operator is not needed and the request is canceled by the PRPD, up to and including arrival at the scene and standby time which does not result in a tow, there shall be no charges, and the operator will be placed back at the top of the list
 - 2) If the towing request is canceled by the vehicle's registered owner or agent prior to the operator taking possession of the vehicle, there shall be no charges for towing. The operator shall immediately contact the PRPD and advise them of the cancellation. The operator will then be placed back at the top of the list.
- C. If two or more operators are called to the same incident, distribution of the vehicles shall be at the discretion of the PRPD supervisor or officer in charge.

3. ABANDONED VEHICLES

- A. Operators shall remove abandoned vehicles from City streets without charge to the City of Paso Robles. City shall identify the abandoned vehicles and the towing of these vehicles will not constitute a rotation tow. Each operator will take turns as the company designated to remove abandoned vehicles.
- B. The operator designated by City to tow abandoned vehicles agrees to remove up to twenty-five (25) abandoned vehicles as required by the PRPD. When an operator has towed twenty-five (25) abandoned vehicles, City shall designate another operator on the rotation list to remove abandoned vehicles.
- C. If a company is asked to tow an abandoned vehicle out of turn, the company will respond for the convenience of the PRPD, keeping the documentation to be

credited towards the company's quota count at its next turn on the rotation. This process will ensure all operators receive a fair share of customer paid rotation tows.

- D. Abandoned vehicles will, if at all possible, be towed Monday through Friday, between 8:00 am and 5:00 pm.
- E. Abandoned vehicles ordered towed from private property by the PRPD will be billed to the City at the following rates:
 - 1) \$45.00 for regular towing, including storage and all related costs.
 - 2) \$60.00 for difficult tows requiring the use of dollies, including storage and all related costs.

4. TOW OPERATORS

- A. Operators applying for a rotation tow listing must have a minimum of three (3) verifiable years of 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. PRPD shall determine whether an operator meets the above criteria, based on evidence provided to the PRPD.
- B. Operators and owners who do not meet the three year verifiable for-hire towing experience may be considered for a position on the PRPD rotation tow list if operator employs a qualified manager, as determined by the PRPD. As used herein, a "qualified manager" means a manager who:
 - 1) has had three years verifiable tow experience.-
 - 2) has the authority to conduct all company business, sign the TSA (CHP 234), Operator/Driver Information (CHP 234F), and the Application for Rotation Tow Listing (CHP 234A).
 - 3) shall ensure proper release of vehicles and property, completion and filing of lien paperwork, and handling of other tow business related documents.

If the manager ceases to be employed by the company, the TSA will be terminated automatically until a new qualified manager is approved by the PRPD.

- C. An operator's place of business shall have a sign that clearly identifies it to the public as a tow service. The sign shall have letters that are clearly visible to the public from the street. The sign shall be visible at night.
- D. Business hours shall be posted in plain view to the public. Offices staffed with only one employee may be closed for one hour at lunch. A sign shall be posted

explaining the reason for closure. The sign shall have a phone number where a request will result in an immediate response to release property or vehicles.

- E. For the purpose of the TSA, “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, Labor Day, Lincoln’s Birthday, Washington’s Birthday, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day.
- F. Operators shall have all tow truck drivers who will handle PRPD rotation tow operations, participate in an annual, random drug testing program.
- G. Operators shall have a Carrier Identification (CI) number and valid Motor Carrier Property (MCP) permit.

5. BUSINESS RECORDS

- A. The operator shall maintain records of all tow services furnished. The records shall be maintained at the 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. At the operator’s primary office, business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing (if applicable) and non-PRPD tows shall also be maintained.
- C. The PRPD may inspect all operator records without notice during normal business hours.
- D. PRPD shall be permitted to make copies of business records at the operator’s place of business, or to remove business records for the purpose of reproduction. The PRPD shall provide a receipt for any (original) record removed from the operator’s place of business.
- E. Records shall be maintained and available for inspection for a period of two years, plus the current term, of this TSA.
- F. Failure of the operator to comply with the inspection requirements shall be cause for suspension.

6. FINANCIAL INTEREST

- A. No operator or applicant shall be directly involved in the towing-related business of any other operator or applicant within the City of Paso Robles.
- B. Storage facilities 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. Operators may not charge on a vehicle-by-vehicle basis. Facilities shared by operators shall be physically separated and secured from each other. The Chief of Police may waive this requirement if deemed appropriate and in writing as an addendum to the TSAs with the affected operators.
- C. The sale or transfer of the controlling interest in the ownership of an operator company shall immediately terminate the TSA. A new owner may apply for a rotation tow listing at any time during the remainder of the current TSA term, regardless of the enrollment period.
- D. 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. This provision applies to the operator working in any capacity within any tow business or operating any tow business, and to the tow business itself, even if operated under new ownership.
- E. No operator or applicant shall share with or lend to any other operator or applicant on the PRPD rotation tow list any of its equipment (excluding equipment which may be unavailable due to repairs or equipment replacement).

7. RESPONSE TO CALLS

- A. The operator shall respond to calls 24 hours a day, seven days a week, within the maximum response time of twenty (20) minutes. This maximum response time must be met at a minimum of ninety-five percent (95%) of the time. The response times will be averaged to determine if the operator is meeting this requirement. The operator shall respond with a tow truck of the class required to tow the vehicle specified by the PRPD. The operator shall advise PRPD dispatch, at the time of notification, if it is either unable to respond or unable to meet the maximum response time. If, after accepting the call, the operator is unable to respond or will be delayed in responding, the PRPD dispatcher will notify the on duty supervisor.
 - 1) A failure to respond to perform required towing or service and/or repeated failures to meet maximum response time requirements shall constitute failure to comply with the terms and conditions of this TSA.

- 2) The Chief of Police may take immediate disciplinary action, as set forth in Section 20 below, for any violation of the requirement to respond within the maximum response time.
 - 3) When an operator will be temporarily unavailable to provide services due to a pre-planned or scheduled activity, the operator shall notify a PRPD supervisor at least 24 hours prior to the date services will be unavailable, noting the dates and times of the unavailability.
- B. The tow operator, or operator's employees responding to a call, shall perform the requested towing or service unless the requested equipment is inadequate for the service to be performed.
- C. Only tow truck personnel and equipment requested shall respond to a PRPD call. An operator shall not respond to a PRPD call assigned to another operator or re-assign a call to another tow operator, unless requested to do so by the PRPD.
- 1) Nothing precludes an assigned operator from responding to an incident to ascertain if additional assistance or equipment is required. The operator shall not charge for any personnel or equipment that is not necessary and/or was not requested to perform the required service.
 - 2) There may be times when an operator who receives an assignment may require the assistance of an additional operator at the scene. If approved by the scene manager, an operator may request that a specific operator be called for assistance. The request for such assistance shall be routed through the PRPD.
 - 3) There may be times when an operator, without being called, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and the officer requests assistance in clearing the roadway. In such a case, the operator may be requested to move the vehicle to a safe location, as directed by the officer, and then leave. There shall be no charge for this assistance and the assistance provided shall not change the operator's place in the rotation.

8. STORAGE FACILITY

- A. The operator shall be responsible for the security of vehicles and property at the place of storage. At a minimum, a fenced or enclosed, secured area shall be provided. This area must be reasonably lighted during hours of darkness. The operator is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles.
- B. The operator shall maintain a physical location within two (2) miles of the geographic boundaries of the City of Paso Robles and abide by all laws that

govern a business within the City or the jurisdiction in which it operates. The Chief of Police must approve of the physical location as it relates to potential criminal activity, accessibility to customers and Police Department personnel.

- C. The operator shall obtain approval from the PRPD prior to removal of any property from a stored or impounded vehicle. This includes the removal of property by the tow operator and/or its employee to a secured area within the business. A receipt shall be provided for the removed property, with a copy placed in the stored vehicle. The requirement to obtain approval from the PRPD prior to removal of property may be waived by the Chief of Police if it is determined proper safeguards and procedures have been utilized by the operator.
 - 1) This requirement shall not be waived in cases where a vehicle has been impounded for evidence or investigation.
 - 2) The operator shall release personal property from an impounded/stored vehicle at the request of the vehicle's registered owner or agent. No lien shall attach to any personal property in or on the vehicle pursuant to Section 22851(b) of the California Vehicle Code.
 - 3) Personal property is considered to be items which are not affixed to the vehicle. Personal property from a stored vehicle shall be released to the current registered owner or the owner's authorized agent upon demand and without charge during normal business hours. A gate fee may be charged for returning property after normal business hours, weekends, and state holidays. The maximum hourly charge for non-business hours releases shall be one-half the hourly tow rate charged for initially towing the vehicle, or less pursuant to Section 22851(b) VC.

- D. The primary storage facility shall normally 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/or personal property shall be released at the primary storage facility, unless the vehicle's registered owner or agent consents to such release from the secondary storage facility.
 - 1) Prior to the utilization of new storage facilities that were not listed on the application for rotation tow listing, the operator shall furnish the address and obtain approval from the Chief of Police.
 - 2) Secondary storage facilities shall be located reasonably close to the main business office.

- E. Tow operators shall maintain sufficient storage spaces.

- F. Employees shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.
- G. The release of vehicles shall be conducted in accordance with PRPD procedures. The Chief of Police shall ensure that proper provisions are in place for the release of all impounded vehicles. Tow companies shall respond for after-hours release of vehicles when requested by the current registered owner or owner's authorized agent.

9. TOW TRUCK DRIVERS

- A. The operator shall ensure tow truck drivers responding to calls initiated by the PRPD have completed an approved tow truck driver training program within the past five (5) years. Documentation of completed tow truck driver training program shall be submitted with the Tow Operator/Driver Information (CHP 234F).
- B. Tow drivers shall perform all towing and recovery operations in the safest and most expedient manner possible. 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.
- C. All tow truck drivers and owner/operators shall be enrolled in the Employer Pull Notice (EPN) program.
 - 1) Upon the addition of new drivers, an operator will be granted a maximum of 30 days to enroll drivers in the EPN.
 - 2) Employer Pull Notices shall be kept on file, signed, and dated by the operator.
- D. The operator shall maintain a current list of drivers.
- E. The operator shall provide a current list of 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 drivers upon implementation of this TSA.
- F. Uniforms: PRPD rotation tow drivers shall wear an identifiable uniform (either shirt and pants, or coveralls) displaying the company and driver names while engaged in PRPD rotation tow operations.
- G. Safety Vests: PRPD rotation tow drivers shall wear a safety vest or reflectorized clothing, meeting Occupational Safety and Health Administration (OSHA) requirements.

10. TOW TRUCK CLASSIFICATIONS

- 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 (VC), Title 13 of the California Code of Regulations (Title 13), the specifications contained in this TSA, and in a manner consistent with industry standards and practices.
 - 1) All tow trucks shall have recovery and wheel lift capabilities meeting the specifications contained in this TSA and the most recent electronic version of the Tow Truck Inspection Guide (CHP 234B).
 - 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**.
- B. A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck may be cause for immediate suspension of the TSA. 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.
- C. There shall be one class of tow truck covered under this TSA. The Chief of Police may require more than one tow truck if rapid response for congestion relief is required.
 - 1) Class A - Light Duty
 - a) An operator shall maintain a minimum of two tow trucks which have a manufacturer's GVWR of at least 14,000 pounds. After June 30, 2006, Class A 4-wheel drive tow trucks with a GVWR of less than 14,000 lbs may be listed as special equipment on the Rotation Tow Listing Application (CHP 234A). These tow trucks shall be used only for recoveries requiring the use of 4-wheel drive.
- D. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment should be used when appropriate.

11. 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. Towing Limitations: The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the front axle weight ratings (FAWR) or rear axle weight ratings (RAWR).
- C. Identification Labels: Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.
- D. 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 cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.
- E. Control/Safety Labels: All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

12. INSPECTIONS

- A. The operator shall provide for not less than one annual inspection of all tow trucks by the CHP. The operator shall not dispatch a tow truck that has not been inspected and approved by the CHP. The PRPD will ask for a proof of the inspection during the annual meeting or during the initial application period.
- B. The annual inspection shall consist of a Level One inspection (CHP 407F, Safetynet Driver/Vehicle Inspection Report) conducted by a commercial enforcement officer and a tow truck inspection (CHP 234B, Tow Truck Inspection Guide) conducted by either a commercial enforcement officer or traffic officer. Upon successful completion of the inspection, a Commercial Vehicle Safety Alliance (CVSA) decal shall be issued.

- C. If 80 percent 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.
- D. Special Equipment: Any special equipment listed on the Rotation Tow Listing Application, CHP 234A, shall be accounted for during the annual inspection or when additional equipment is added.

13. RATES

- A. Fees charged for calls originating from the PRPD shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. The reasonableness of the fees charged will be determined in the following manner:
 - 1) The operator may submit two retail hourly rates to the PRPD: One rate for calls originating during normal business hours and one rate for calls originating after business hours. The Chief of Police shall determine the validity and reasonableness of all submitted rates (e.g., storage, non-skilled labor, special equipment.).
 - a) Validity will be based upon factors such as: telephone quotes, invoices, posted rates, charges to retail customers, etc. Any submitted rate in excess of an operator's usual customary retail rate quoted over the phone, posted in the company office will be considered invalid and will not be accepted.
 - b) Reasonableness shall be determined as compared to other rates. An operator who submits a rate that is determined to be excessive shall be allowed to re-submit rates only once. If the re-submitted rate is excessive, the operator shall be disqualified until the next open enrollment period.
 - 2) In an effort to remain competitive in the open market, the operator may lower retail rates at any time by notifying the PRPD. When an operator lowers the retail rate, that retail rate becomes the new approved rate. Operators may only raise rates during enrollment period or upon approval after a midterm review.
 - 3) Any operator who charges rates above the submitted rates for a PRPD call shall be in violation of the TSA and subject to disciplinary action.
- B. The rate for towing shall be computed from portal to portal when a vehicle is towed to the operator's storage yard. Time expended shall be charged at a rate not to exceed the hourly rate. Time expended in excess of the minimums shall

also be at the hourly rate in no more than one-minute increments. There shall be no additional charges for mileage, etc.

- 1) The operator shall base towing charges upon the class of vehicle being towed, regardless of the class of truck used, except when vehicle recovery operations require a larger class truck.
 - 2) Portal to portal is defined as follows: Service shall start at the time of departure from the place of business or point of dispatch, 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.
- C. Rates for a service call (out-of-gas, lockouts, tire changes, etc.) shall be from portal to end of service. The operator may charge up to a thirty 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. Charges for periods over thirty minutes may be charged in no more than one-minute increments. Fuel charges for gasoline dispensed on out-of-gas service calls shall be at the prevailing market rate.
- D. Service calls related to City of Paso Robles vehicles, or Police Department impounds not being stored at an operators facility, shall be charged at the following rates:
- 1) Vehicles towed within the City of Paso Robles limits - \$50.00
 - 2) Vehicles towed from outside the City of Paso Robles limits – See rate schedule outlined in section C above.
- E. The approved schedule of rates charged by the operator shall be available in the tow truck, and shall be presented upon demand to the persons for whom the tow services were provided, its agent, or any PRPD officer at the scene.
- F. The charge for after-hours release shall be no more than one-half the hourly rate, and shall only be allowed on weekends, holidays, and outside normal business hours.
- G. There shall be no additional charge for moving (e.g., driving, towing, pushing, utilizing a forklift) a stored vehicle from inside an operator's storage yard to the front of the business establishment.
- H. No operator or employee shall refer to any rate as required or established by the PRPD.

I. Fees for Special Operations

- 1) Fees shall be reasonable and consistent with industry standards for similar operations. Charges in excess of thirty minutes may be charged in no more than one-minute increments.
- 2) Operators shall submit a mark-up rate (percentage of the cost to the operator) for rental equipment and specialized labor not otherwise listed on the application.
- 3) If an operator performs a service for which a required rate was not submitted and approved by the PRPD, the operator shall only be entitled to charge for the actual cost of that service plus 10 percent.

J. Rate requirements represent the maximum an operator may charge on a PRPD call. An operator is not precluded from charging less when deemed appropriate by the operator. These requirements shall not be construed as requiring a charge if an operator would not normally charge for such service.

K. Storage Fees

- 1) The operator shall submit proposed storage fees for inside and outside storage to the Chief of Police. Based upon the average of the proposed fees submitted by those applying for rotation, the Chief of Police shall determine the validity and reasonableness of the fees for inside and outside storage. Fees for inside storage shall be charged only when inside storage is requested by the PRPD, registered owner, legal owner, insurance company, or when the inside storage can be justified by the tow operator.
- 2) The operator shall display in plain view at all cashier stations, a sign as described in Section 3070 of the Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.
- 3) Vehicles stored 24 hours or less shall be charged no more than one day storage.
- 4) Storage of vehicles in combination may be charged a per vehicle rate except for dollies, con-gear, vehicle on a car carrier/trailer, etc. Dollies and con-gear may be charged a storage rate not to exceed Class A storage fees.
- 5) In the event the PRPD accepts liability for a tow, no charge will be made for storage fees to the City of Paso Robles, another person or business.

14. 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 PRPD, the motoring public, or other operators.

- B. A finding by the PRPD 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 the rotation tow lists for the current term, plus three years.

15. INDEMNIFICATION AND INSURANCE

- A. To the full extent permitted by law, Operator shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this agreement. All obligations under this provision are to be paid by Operator as the City incurs them.

Without affecting the rights of City under any provision of this agreement or this section, Operator shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties of the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Operator will be all-inclusive and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Operator acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the Sole fault of City.

Operator agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-operator, sub tier operator or any other person or entity involved by, for, with or on behalf of Operator in the performance of this agreement. In the event Operator fails to

obtain such indemnity obligations from others as required here, Operator agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Operator and shall survive the termination of this agreement or section.

- B. Operator shall, at its own cost, provide insurance as described herein and ensure that all sub-operators provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VI or better, or as otherwise approved by City.

Insurance shall include the following (or broader) coverage:

1. Insurance Services Office Commercial General Liability coverage “occurrence” form CG 0001 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. Insurance Services Office form number CA 0001 or equivalent covering Automobile Liability, including non-owned and hired automobile liability with a minimum of \$1,000,000 per accident.
3. On-Hook Coverage/Cargo – Insuring the vehicle in tow with limits of \$100,000.
4. Garage Keeper Liability – Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of \$500,000.
5. Workers’ Compensation insurance complying with California workers’ compensation laws, including statutory limits for workers’ compensation and an Employer’s Liability limit of \$1,000,000 per accident or disease.

Liability insurance policies required to be provided by Operator hereunder shall contain or be endorsed to contain the following provisions:

1. City, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the Work or related to the Contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 2010 with an edition date prior to 2004, or its exact equivalent.
2. General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Coverage will not be limited to City’s vicarious liability.

3. Liability coverage shall be primary and non-contributing with any insurance maintained by City.
4. Evidence of coverage (including workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after 30 days' prior written notice has been given to City.
5. Operator agrees to deposit with City within fifteen days of Notice to Proceed of the Contract certificates of insurance with required endorsements.
6. There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Operator hereunder. Any failure, actual or alleged, on the part of City to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of City. City has no additional obligations by virtue of requiring the insurance set forth herein.

16. ANNUAL MEETINGS

The Chief of Police or the Chief's designee shall conduct, at a minimum, one annual meeting to discuss issues concerning the tow rotation. All meetings shall be mandatory for the operator or operator's designee wishing to apply or remain on rotation. The PRPD shall give the operator 30 days written notice of these meetings. At the annual meeting the TSA will be renewed with signatures from both the operators and the Chief of Police or his/her designee.

17. DEMEANOR AND CONDUCT

- A. While involved in PRPD rotation tow operations or related business, the tow operator and/or employees 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/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 and/or drug use.
 - 6) Appearing at the scene of a PRPD rotation tow call with the odor of an alcoholic beverage emitting from the driver's or employee's breath. The operator/tow truck driver shall submit to a preliminary alcohol screening test upon demand of the PRPD.

- B. All PRPD-related tow service complaints received or initiated by the PRPD against a tow operator or tow operator's employees will be accepted and investigated in a fair and impartial manner. The tow operator and/or employees shall cooperate with PRPD investigators during the course of an investigation. The operator will be notified in writing of the results of any investigation.
- C. Should the filing of criminal charges be a possibility, the PRPD will conduct the investigation to conclusion or assist the lead investigating agency and, if warranted, request prosecution.

18. COMPLIANCE WITH LAW

- A. The tow operator and employees shall, at all times, comply with federal, state, and local laws and ordinances.
 - 1) In the event of a minor traffic violation by a rotation tow truck driver which is known by the PRPD, the tow operator shall be advised of the violation by the PRPD. The tow operator will be granted the opportunity to take necessary steps to ensure that the driver complies with the law. Any subsequent traffic violations may be cause for disciplinary action against the operator and/or the involved employees, asset forth in Section 20 below. Any flagrant traffic violation may be cause for immediate disciplinary action against the operator and/or the involved employees.
- B. Any conviction of the operator or employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug, or moral turpitude should be cause for suspension or removal of the employee or operator or denial of operator application, or termination of the TSA.
- C. An operator or employee arrested/charged for a violation involving any of the above crimes may be suspended until the case is adjudicated.
- D. The provisions contained in Element 18, Demeanor and Conduct, do not preclude the PRPD from taking appropriate enforcement or administrative action for any violations of law. Complaints for violations of the law not normally investigated by PRPD will be referred to the agency with investigative jurisdiction.
- E. Nothing herein shall be deemed to prohibit the PRPD from immediately suspending, terminating, or denying an application of any operator or employee whose conduct, in the opinion of the Chief of Police, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the TSA (e.g., registered sex offender.)

19. COMPLIANCE WITH TSA

- A. The operator agrees, as a condition of inclusion on the rotation tow list, to comply with the terms and conditions of the TSA. Furthermore, the operator agrees that failure by the operator or the operator's agent to comply with these terms and conditions shall be cause for written reprimand, suspension, or termination from the PRPD rotation tow lists.
- B. Alleged violations of the TSA will be investigated by the PRPD. The operator will be notified in writing of the PRPD's findings within 30 calendar days of the conclusion of the investigation.

20. DISCIPLINARY ACTION

- A. The Chief of Police shall take disciplinary action against operators for violations investigated and confirmed or sustained. Unless otherwise noted, the Chief of Police shall determine the period of suspension of the TSA. The Chief of Police shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this TSA.
- B. Records of operator violations shall be retained by the PRPD for 36 months.
- C. A violation of the equipment requirements related to safety shall be cause for immediate suspension of the TSA. The suspension will remain in effect until the period of suspension is completed and the CHP has conducted an inspection and concluded the operator is in compliance.
- D. A violation of the GVWR and safe loading requirements of a tow truck may be cause for immediate suspension of the TSA. 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 of the TSA. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof to the PRPD that reimbursement has been made to the aggrieved customer.
- F. PRPD personnel, as well as tow company operators and their employees, shall not accept gratuities pursuant to Section 12110 VC.
- G. Any unsatisfactory rating based upon any safety violation of the Biennial Inspection of Terminals (BIT) Program shall be cause for suspension of the TSA. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof of compliance with the BIT requirements. Any unsatisfactory rating may be cause for suspension. Failure of the operator to

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 will result in a suspension. The suspension will remain in effect until the period of suspension is completed and the operator has presented proof of the reimbursement.

- H. Sending a tow truck driver for whom a CHP 234F (Tow Operator/Driver Information) has not been submitted on a PRPD call shall be cause for suspension (this would also include those drivers dispatched by the tow operator's business) of an operator's TSA. The suspension shall remain in effect until the period of suspension is completed and the operator has submitted a CHP 234F, current EPN Program report, and documentation of completion of an approved tow truck driver training program for that driver to the PRPD.
- I. Allowing an inexperienced tow truck driver to respond to PRPD rotation tow calls shall be cause for suspension of the operator's TSA. Documentation of a tow driver's training does not indicate a sufficient level of competence.
- J. Failure of the operator to maintain the minimum insurance requirements set forth in the TSA will immediately nullify the TSA.
- K. Failure of the operator or employee to comply with Element 18, Demeanor and Conduct, and/or Element 19, Compliance with Law, may be cause for suspension of the TSA, in the sole discretion of the Chief of Police.
- L. If the operator's TSA has been suspended for one year or more, the operator shall be required to comply with all terms and conditions of the then-existing TSA at the time of the reinstatement. A condition to any reinstatement shall be that Operator's equipment comply with all equipment specifications contained in the then-existing TSA.

21. TERMS OF DISCIPLINARY ACTION

- A. Except as specifically stated in the TSA, minor 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 – 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 TSA.

Note: In lieu of termination, the PRPD may impose suspensions for longer periods, if deemed appropriate.

- B. Violations of the terms and conditions of the TSA 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.

When considering punitive action for a major violation of the TSA, the Chief of Police may take into consideration all major and minor violations that occurred within 36 months prior to the date of the current violation.

22. HEARING/APPEAL

- A. In the event the PRPD serves the operator with notice of disciplinary action, the operator may request a hearing within seven (7) calendar days by submitting a request in writing to the Chief of Police. If a hearing is requested, it shall be held as soon as practicable. The hearing shall be conducted by the Chief of Police or designee, and the operator shall be entitled to present all relevant facts and circumstances in support of the operator's position. The operator shall be further entitled to present testimony of at least one qualified person. The operator shall be notified in writing of the Police Chief's decision(s) within ten (10) business days after completion of the hearing. The Police Chief's decision shall not be subject to any further administrative appeal.
- B. A suspension 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 public or who continue to violate the terms and conditions of this TSA. 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 PRPD Chief of Police shall be final, and the suspension shall take effect upon written notification to the operator by the Chief of Police.

23. 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 that there is a legitimate and substantial change in conditions or law affecting the majority of the operators within the City of Paso Robles.
- B. A midterm review, when granted by the Chief of Police, will not automatically authorize a change in the terms and conditions of the TSA.

24. ADVERTISING

The operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the PRPD.

25. CANCELLATION

This TSA may be canceled by either party by giving a 30 day written notice to the other party.

26. 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. I further agree to indemnify, defend, and save harmless the City of Paso Robles, its officers, agents, and employees from any and all claims and losses accruing or resulting to the operator in connection with the performance of the TSA, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the operator in the performance of this TSA. The operator, and the agents and employees of the operator, in the performance of this TSA, shall act in an independent capacity and not as officers or employees or agents of the City of Paso Robles. The terms of this TSA (2008-2009 TSA) will become effective:

_____ and end _____.
 Date Date

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