

Salinas Police Department TOW SERVICE FRANCHISE AGREEMENT

This Tow Service Franchise Agreement (“Agreement”) is entered into this 1st day of July 2021, by and between the City of Salinas, a California charter city and municipal corporation (“City”) and _____ (“Franchisee”).

RECITALS

A. Pursuant to California Vehicle Code Section 22660 and Section 20-178 of the Salinas City Code, the City has the authority to grant a franchise to a tow service Franchisee to provide towing services for the abatement and removal of abandoned, wrecked, dismantled or inoperative vehicles (including recreational vehicles and other over-sized vehicles) or parts thereof from private or public property, and to impound and provide storage of such vehicles as ordered and designated by authorized members of the Salinas Police Department.

B. The City, for the purpose of insuring the continued protection and preservation of the public health, welfare and convenience of the citizens of Salinas, desires to award a towing franchise to Franchisee for towing services within the City.

C. Franchisee desires to provide such towing services upon the terms and conditions set forth herein.

AGREEMENT

This Tow Service Franchise Agreement (as defined in Attachment A) contains rules and regulations that a company agrees to comply with in order to receive a rotation tow listing with the Salinas Police Department. Participation in the Salinas Police Department Rotation Tow Program is voluntary and not intended to be the main source of income. A Franchisee (as defined in Attachment A), by agreeing to participate in the program is not acting as an agent for the Salinas Police Department or the City of Salinas when performing services under the Agreement. Compliance with all of the terms and conditions of the Tow Service Franchise Agreement is mandatory for tow companies participating in the Salinas Police Department Rotation Tow Program. All participants in the Salinas Police Department Rotation Tow Program shall provide towing and storage services for public safety response calls regardless of the value or the size of the vehicle or vehicles to be towed and stored, and regardless of the nature of the public safety response call (including collision, DUI, abandoned vehicle abatement, and all other call for service by Police Department officials).

Attachments: For clarification purposes, many words and phrases used in this Agreement are defined in Attachment A. Attachment B contains a listing of tow truck (as defined in Attachment A) equipment specifications and equipment use requirements applicable to all tow franchisees.

1. TOWING

The Salinas Chief of Police shall establish towing procedures to facilitate the distribution of calls and meet the needs of the Salinas Police Department with regards to response time (as defined in Attachment A) and availability of tow services. Within the City, Chief of Police shall determine the maximum response time, enrollment period (as defined in Attachment A), reasonable rates, and minimum number of trucks.

2. ROTATION LISTS

- A. Within the City, Chief of Police may choose to maintain separate rotation tow lists for each category of towing or may choose to maintain a single rotation tow list to cover all categories of towing.
- B. 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 (as defined in Attachment A) require a larger class of tow truck.
- C. A call to a Franchisee shall constitute one turn on the list after which the Franchisee shall be moved to the bottom of the list. This includes when the Franchisee fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond to provide service, or is cancelled due to excessive response time. If it is determined that the Franchisee is not needed and is cancelled by the Salinas Police Department, up to and including arrival at the scene, there shall be no charges and the Franchisee shall be placed back at the top of the list.
 - 1) If the Franchisee is cancelled by the vehicle's owner or agent prior to the Franchisee taking possession (as defined in Attachment A) of the vehicle, there shall be no charges for towing. The Franchisee shall immediately contact the Salinas Police Department and advise them of the cancellation. The Franchisee shall then be placed back at the top of the list.
 - 2) If service, other than towing and recovery, has begun and is cancelled by the vehicle's owner or agent, the Franchisee may charge a minimum of one-half of the regular hourly service charge, for the time expended on the call. For purposes of cancellation, service begins when physical work on the vehicle has begun, not the response. No lien shall arise for the service unless the Franchisee has presented a written statement to the vehicle's owner or agent for the signed authorization of services to be performed.
 - a) The Franchisee shall not attempt to take possession of the vehicle in order to establish a lien for any non-towing services performed, or begun and subsequently cancelled, when not entitled to such lien by law. The Franchisee shall comply with Civil Code Section 3068.
- D. If two or more Franchisees are called to the same incident, distribution of the vehicles shall be at the discretion of the Salinas Police Department Incident Commander (as defined in Attachment A).

- E. The Salinas Police Department Incident Commander may direct a tow Franchisee to move vehicles to help clear a roadway or for lifesaving operations. Franchisees shall provide the assistance as directed. There shall be no charge for this assistance, and the assistance provided shall not change the Franchisee's place in the rotation.
- F. A Franchisee shall have a business office and storage yard within the city limits or within a ten (10) mile radius from where any vehicle is removed.
- H. Franchisees applying for a rotation listing shall have a minimum of three (3) years verifiable for-hire-towing experience, as an owner or principal, prior to the final filing date of the enrollment period in order to qualify for a Salinas Police Department rotation tow listing. This requirement may be waived by the Chief of Police where the applicant proves to the Chief of Police that it has the required experience in the industry, the financial and technical capacity to perform the work contemplated by this Agreement and has all necessary equipment. Franchisees currently on a Salinas Police Department rotation list and having less than the required three (3) years' experience are exempt from this provision.
- I. Franchisees shall not be allowed more than two (2) passes on a Police Department request for service during any calendar month, no more than three (3) passes within two consecutive calendar months, and no more than six (6) passes within six consecutive calendar months. A Franchisee who takes more than the authorized maximum number of passes during a calendar month, two consecutive calendar months, or six consecutive calendar months, will be automatically suspended from the rotation for a period of sixty (60) days. After the first thirty (30) days of suspension, the Franchisee may request a meeting with the Chief of Police to request early reinstatement which may be granted by the Chief of Police in his/her sole discretion. Notwithstanding what is otherwise provided for in this subsection, if a Franchisee passes on a Class C or a Class D tow that Franchisee will receive the next Class C or Class D call for service and will not be permitted to pass on that second call for service.
- J. Franchisees must at a minimum meet the class A requirements and must meet the following qualifications to tow under each class:
 - 1) Class A – Light Duty
 - a. A Light Duty Franchisee shall maintain a minimum of one tow truck, which as a manufacturer's GVWR of at least 14,000 pounds. Class A equipment specifications can be found in Attachment B of this Agreement.
 - b. A "trailer for hire" shall not be approved for listing as a Class A tow truck.

2) Class C- Heavy Duty

- a. A Heavy-Duty Franchisee shall maintain at least one three-axle tow truck with a GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

3) Class D- Super Heavy Duty

- a. A Heavy-Duty operator shall maintain at least one three-axle tow truck with a GVWR rating 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) The qualifications for the Heavy Duty and Super Heavy-Duty Tow List do not preclude an operator from utilizing a Class-B tow truck when the GVWR is sufficient to tow the vehicle.

K. Heavy Duty and Super Heavy-Duty franchisees will respond to Heavy Duty salvage and recovery operations with the following

- 1) At least one (1) driver shall have five (5) verifiable years for-hire salvage and recovery experience.
 - a. The five (5) year for-hire salvage and recovery experience shall be determined by SPD.
- 2) Two (2) tow trucks which shall be one (1) Class D tow truck and one (1) Class C tow truck.

3. TOW TRUCK CLASSIFICATIONS

A. A Franchisee shall equip and maintain tow truck(s) covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the specifications contained in this Agreement, and consistent with industry standards and practices.

- 1) Notwithstanding Vehicle Code Section 615, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. For the purpose of this Agreement, “a trailer for hire that is being used to transport a vehicle” shall not qualify as a primary tow truck for rotation tow lists.

- a. For purposes of this Agreement a recovery is defined as a vehicle which is overturned, down an embankment, or is otherwise not on upright on its wheels.
 - 2) A Franchisee who has a car carrier may be exempted from the recovery, wheel lift, and boom capability requirements. However, the car carrier must be an additional unit.
 - B. A violation of the Gross Vehicle Weight Rating (GVWR) and safe loading requirements of a tow truck shall be cause for immediate suspension (as defined in Attachment A) and/or other disciplinary measures. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50% of the tow truck's unladen weight on the front axle when lifting/carrying a load.
 - C. 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. A listing of service and auxiliary equipment for each classification can be found in Attachment C of this Agreement.
 - D. 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.
- 3.A. Over-Sized Vehicles.
- A. For purposes of this Agreement, the term "over-sized vehicle" means any vehicle or trailer or combination of vehicles or trailers in excess of twenty feet in length or seven feet in height, exclusive of any projecting lights or devices allowed under the California Vehicle Code. The terms "vehicle" or "trailer" shall be as those terms are defined in the California Vehicle Code and include any recreational vehicle as that term is defined in the Salinas Municipal Code and also includes any boat or other watercraft.

4. TOW TRUCK DRIVERS

- A. The Franchisee hereby agrees that all tow truck drivers responding to calls initiated by the Salinas Police Department are qualified and competent employees of its company. The Franchisee further agrees that all its tow truck drivers are trained and proficient in the use of tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through Salinas Police Department rotation. Tow truck

drivers shall be at least 18 years old and possess the following minimum class driver license:

- 1) Class A tow truck – A valid Class C license, or a valid Class A license with valid medical certificate.
 - 2) Class C tow truck – A valid Class A license with valid medical certificate.
 - 3) Class D tow truck – A valid Class A license with valid medical certificate.
- a. The Class A (1) license must be endorsed to allow operation of special vehicle configurations and/or special cargos (refer to Attachment B).

B. Potential tow truck drivers who want to be involved with the City of Salinas rotation tow program shall complete a Salinas Police Department Tow Driver Application and shall be fingerprinted for the purpose of conducting criminal history inquiries.

1. Any operator or tow truck driver who separates from the rotation tow program, in excess of one year, shall be fingerprinted for the purpose of conducting a criminal history check regardless of prior criminal history clearances (e.g., Tow Service Franchise Agreement or Salinas PD Evidence Tow Agreement).
 2. Potential new tow truck drivers shall disclose on their applications all prior criminal convictions (felony, misdemeanor, and infraction). The failure of an applicant to disclose any previous conviction shall be cause to deny the application. An applicant who fails to disclose a previous conviction shall be ineligible to re-apply for a period of one (1) year from the date the application is denied.
- 2) The Salinas PD will receive subsequent arrest/conviction notifications for all operators and tow truck drivers.
- 3) A Franchisee shall notify the Salinas Police Department tow officer of any arrest and/or conviction of a tow truck driver, or the operator, prior to the beginning of the next work shift.
- a) Failure to make notification shall be cause for disciplinary action.
- 4) The Salinas Police Department tow officer shall be notified immediately by an operator upon a tow truck driver's or manager's separation from the rotation tow program.

- C. The Franchisee shall maintain a current list of drivers and each of their qualifications and licenses.
- 1) The Franchisee shall provide a current list of its drivers to the Salinas Police Department upon execution of this Agreement. The Franchisee shall notify the Salinas Police Department of any change in driver status, including but not limited to, the addition of any new driver(s), the deletion of any driver(s), changes in licensing including, but not limited to, revocation or suspension, or changes in insurance for drivers. An updated list shall be provided to the Salinas Police Department within seven calendar days of any change in driver status.
 - 2) Franchisees, shall at a minimum, maintain the following information for each employee, which records may be inspected by Salinas Police Department during normal business hours:
 - a) Full name
 - b) Date of birth
 - c) California driver license number
 - d) Copy of valid medical certificate (if required)
 - e) Job title/description
 - f) Current home address
 - g) Current home phone number
 - h) Type(s) of truck(s) driver has been trained and instructed to operate and training received by each driver.
- D. All tow truck drivers and owner/operators shall be enrolled in the Pull Notice Program.
- 1) Upon the addition of new drivers, a Franchisee shall be granted a maximum of 30 days to enroll drivers in the Pull Notice Program.
 - 2) Pull Notices shall be kept on file, signed, and dated by the Franchisee.
 - 3) The Chief of Police may require a Franchisee to provide copies of Pull Notice Reports to the Chief of Police within one business day.
- E. All tow truck drivers shall retain at all times in his or her possession an Identification Card issued by the City. While engaged in towing activities pursuant to this Agreement, each person shall wear such Identification Card in plain sight on his or her person and shall upon demand of any City Police Officer or other City official or person to whom towing services are being provided exhibit said Identification Card. The Identification Card shall be issued by the City and shall at a minimum contain the name and date of birth of the tow truck driver; the name, business address, and telephone number of the towing company for which such tow

truck driver is employed; and a photograph of the tow truck driver. No Identification Card issued under the provisions of this section shall be used at any time by any person other than the one to whom it was issued.

1. No Identification Card shall be altered, removed or obliterated or any entry made upon such Identification Card nor shall such Identification Card be defaced in any way. Each Identification Card shall be personal and shall not be assignable or transferable.
- F. Operators shall have all tow truck drivers involved with Salinas Police Department rotation tow operations participate in a controlled substance and alcohol testing (CSAT) program. All drivers shall be enrolled by September 1, 2014.
- 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 substantially similar to the requirements as 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 shall meet the same reinstatement requirements as a driver required to possess a commercial driver license.
- G. Uniforms: Salinas Police Department rotation tow truck drivers shall wear an identifiable uniform (either shirt and pants or coveralls) displaying the company's and driver's names while engaged in Salinas Police Department rotation tow operations.
- H. Personal appearance: Salinas Police Department rotation tow truck drivers shall represent a professional appearance. An unacceptable representation would include: unbathed, excessively dirty/torn uniform, body art, visible body piercing, etc.
- I. Safety Garments: Salinas Police Department rotation tow truck drivers **shall** wear appropriate warning garments (e.g., vests, jackets, shirts, retroreflective clothing) during daylight and hours of darkness in accordance with Code of Title 8, Section 1598 CCR. 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 Highway Administration, Department of Transportation, Part 634, Worker Visibility, which requires high-

visibility personal protective safety clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004.

- J. Tow truck drivers shall perform all towing and recovery operations in the safest, fastest and most expedient manner possible.

5. RATES

- A. Fees charged for response to calls originating from the Salinas Police Department 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 shall be determined in the following manner:
 - 1) The Franchisee shall submit its retail hourly rate to the Salinas Police Department at the time of application. The Chief of Police shall determine the validity and reasonableness of the submitted rates or rate changes. The rates shall be approved prior to the Franchisee answering calls for service pursuant to this tow service agreement.
 - a) Validity shall be based upon telephone quotes, posted rates, charges to retail customers, etc. Any submitted rate in excess of a Franchisee's retail rate (as defined in Attachment A) shall be considered invalid and shall not be accepted. A Franchisee that submits an invalid rate shall not be allowed to resubmit a new rate and shall be disqualified from Salinas Police Department rotation tow listing until the next enrollment period.
 - b) Reasonableness shall be determined as compared to other rates. A Franchisee who submits a rate that is determined to be excessive shall be allowed to resubmit its rates only once.
 - 2) In an effort to remain competitive in the open market, the Franchisee may lower retail rates at any time by notifying the Salinas Police Department. When a Franchisee lowers its retail rate, that retail rate becomes the new approved Salinas Police Department rate. Franchisees may only raise rates for Salinas Police Department calls during enrollment periods or upon approval after a midterm review. Franchisees may raise rates for non-Salinas Police Department calls at anytime. Rates for Salinas Police Department calls shall remain at the lowest retail rate until the next enrollment period.
 - 3) Any Franchisee who charges rates above its retail hourly rates or submitted rates for a Salinas Police Department call shall be in violation of this Agreement and subject to disciplinary action, including but not limited to, suspension or removal from the rotation tow program.

- B. The rate for towing shall be computed from portal to portal (as defined in Attachment A). Time expended shall be charged at a rate not to exceed the hourly rate.
- 1) The Franchisee may charge up to a thirty-minute minimum per call.
 - 2) The Franchisee may charge up to a one-hour minimum per call on public safety response call (as defined in Attachment A).
 - 3) The Franchisee 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.
- C. Rates for a service call (out of gas, lockouts, tire changes, etc.) shall be from portal to end of service, and may be at the hourly rate with up to a thirty-minute minimum. Charges in excess of thirty minutes may be charged in no more than one-minute increments.
- D. Fees for Special Operations:
- 1) For special operations involving Class B and C tow trucks, the Franchisee shall submit its proposed fees for vehicle recovery operations and load salvage operations (as defined in Attachment A) to the Chief of Police at the same time and under the same conditions as other rates pursuant to Section 5.A.1 herein. Fees shall be reasonable and consistent with those for similar operations. Charges in excess of thirty minutes may be charged in no more than one-minute increments.
 - a. Hourly rates shall be established by the Franchisee and approved by the Chief of Police in advance for the following:
 - (1) Auxiliary Equipment, e.g., airbags, converter gear/dolly, additional trailers, forklifts, scoop loaders, etc.
 - (2) Contracted Equipment, e.g., airbags, converter gear/dolly, additional trailers, forklifts, scoop loaders, etc.
 - (3) Contract labor.
 - b. The Chief of Police shall determine the reasonableness of the fees for these types of operations, based upon the average of the proposed fees submitted and a comparison to industry standards for similar operations.
 - 2) Franchisees shall submit a mark-up rate (percentage of the cost to the Franchisee) for retail equipment and specialized labor not otherwise listed on the application.

- 3) If a Franchisee performs a service for which a required rate was not submitted to, and approved by, the Chief of Police, the Franchisee shall only be entitled to charge for the actual cost of that service. Example: contract labor rate not submitted, the Franchisee may only charge for the actual rate paid for the labor.
- E. The total fees charged for after hours release shall be no more than one-half the hourly rate, and shall only be allowed if there is no person on duty at the storage facility for release and a call back is required outside normal business hours.
- F. Storage Fees.
- 1) The Franchisee shall submit its proposed storage fees, for inside and outside storage, to the Chief of Police at the same time as all other rates are required to be submitted for approval. The Chief of Police shall determine the reasonableness of the fees for inside and outside storage, based upon the average of the proposed fees submitted by those applying for rotation.
 - 2) The Franchisee shall display in plain view at all cashiers' 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. Each day thereafter shall be calculated by calendar day.
 - 4) Inside storage fees shall only be charged when inside storage is requested by SPD, the registered owner, legal owner, the insurance company or when inside storage can be reasonably justified by the Franchisee.
- G. The approved schedule of rates charged by the Franchisee shall be available in the tow truck, and shall be presented upon demand to the person(s) for whom the tow services were provided, or its agent, or any Salinas Police Department officer at the scene.
- H. Rate requirements represent the maximums a Franchisee may charge on a Salinas Police Department call. A Franchisee is not precluded from charging less when deemed appropriate by the Franchisee. These requirements shall not be construed as requiring a charge when a Franchisee would not normally charge for such service. No Franchisee or employee shall refer to any rate as the minimum required or set by Salinas Police Department.
- I. Fees for Special Operations:
- 1) Fees shall be reasonable and consistent with industry standards for similar operations.

2) Franchisee who provide Super Heavy Duty recovery services may charge a minimum two (2) hour rate.

a) Time expended in excess of the two-hour minimum shall be at the hourly rate in no more than one-minute increments.

b) If a second hour is charged, the second hour shall meet the invoicing requirements pursuant to Section 22651.07(e)(7) CVC.

c) If it is determined that only one truck is required, the second truck may claim time from portal to portal and the time expended on scene until the determination was made that only one truck was needed.

J. Lien Fees

1) If a vehicle has been determined to have a value exceeding four thousand (\$4,000), pursuant to Section 22670 CVC, the lien shall be satisfied pursuant to Section 3071 CC (Section 3074 CC).

2) The lienholder may charge a fee for lien sale preparations not to exceed seventy dollars (\$70), for a vehicle valued at four thousand dollars (\$4,000) or less and not to exceed one hundred dollars (\$100) for a vehicle valued at greater than four thousand dollars (\$4,000) (Section 3074 CC).

a) These charges may commence when the lienholder requests the names and addresses of all persons who have an interest in the vehicle from the Department of Motor Vehicles (Section 3074 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 lienholder or registration service agent has possession of the required lien processing documents (Section 3074 CC).

c) This fee shall not be made in the case of any vehicle redeemed prior to the 72 hours from the initial storage (Section 3074 CC).

6. COLLUSION

A. A Franchisee and/or applicant shall not conspire, or attempt to conspire, or commit any other act of collusion, with any other Franchisee, applicant, City officer or City employee or any other person, for the purpose of secretly, or otherwise, establishing an unfair understanding regarding rates, or conditions or performance of the Agreement that would bring about any unfair condition which could be prejudicial or detrimental to the Salinas Police Department, the motoring public, or other Franchisee(s).

- 1) Examples of “collusion” include, but are not limited to: conspiracy by any Franchisee(s) to establish artificially high or low rate(s) for services performed pursuant to the Agreement, conspiracy or attempt to circumvent the midterm review process, conspiracy or attempt to obtain preference in rotational tows or in towing of specific vehicles, or any other practice that would give unfair advantage to one Franchisee over another, conspiracy or attempt to defraud members of the public.
- B. A finding by the Chief of Police that any Franchisee or applicant has been involved in collusion shall be cause for denial of an application or shall nullify the Agreement. Any Franchisee or applicant found to be involved in any act, or attempted act of collusion, shall be disqualified from participation on the rotation tow list for the current term plus three years.

7. RESPONSE TO CALLS

- A. The Franchisee shall respond to Salinas Police Department calls 24 hours a day, seven days a week, within 30 minutes. The Franchisee shall respond with a tow truck of the class required to tow the vehicle specified by the Salinas Police Department. The Franchisee shall advise Salinas Police Department dispatch, at the time of notification, if they are either unable to respond or unable to meet the maximum response time. If, after accepting the call, the Franchisee is unable to respond or shall be delayed in responding, the Franchisee shall immediately notify the Salinas Police Department Communications Center. The Franchisee shall not assign initial calls to other tow Franchisees. The Chief of Police may change required response times upon 30 days notice to all Franchisees.
- 1) A failure(s) to respond and/or repeated failure(s) to meet the maximum response time requirements shall constitute failure to comply with the terms and conditions of this Agreement. (This includes refusal to respond to abandoned vehicle calls. Justification for failure to respond to calls shall be determined by the Chief of Police or his designee.)
 - a. The Chief of Police may take immediate disciplinary action for any violation of the requirement to respond within the maximum response time.
 - b. When a Franchisee shall be temporarily unavailable to provide services due to preplanned/scheduled activity, e.g., medical leave, etc., he/she shall notify the Salinas Police Department at least 24 hours prior to the date that services shall be unavailable, noting the times and dates of the unavailability. The Franchisee shall only be allowed three passes on the rotation per month based on unavailability.
- B. The Franchisee, or its employee(s) responding to a Salinas Police Department call, shall perform the towing or service required for which he/she was called. This

requirement may be waived by the Salinas Police Department Incident Commander if the requested equipment is inadequate for the service to be performed.

- 1) Any refusal to respond or to perform the required towing or service may subject the Franchisee to disciplinary action if deemed appropriate by the Salinas Police Department.

C. A Franchisee shall not respond to a Salinas Police Department call assigned to another Franchisee unless requested to do so by the Salinas Police Department.

- 1) There may be times when the Franchisee assigned the initial Salinas Police Department call may require the assistance of an additional Franchisee at the scene. The Franchisee assigned the initial call may, subject to prior agreement with the Chief of Police, and with the concurrence of the Salinas Police Department Incident Commander, request a specific Franchisee to assist him/her. The request shall be routed to the additional Franchisee through the Salinas Police Department.
- 2) There may be times when a Franchisee, who was not called to a scene, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and a Salinas Police Department officer requests its assistance in clearing the roadway. In such a case, the Franchisee may be requested to move the vehicle to a safe location, as directed by the officer, and leave it. There shall be no charge for this assistance, and the assistance provided shall not change the Franchisee's place in the rotation.
- 3) Violations of section 22513 CVC shall result in disciplinary action.

D. Only the tow truck personnel and equipment requested shall respond to a Salinas Police Department call. (e.g., tow truck driver bringing friends, family members, significant others or pets etc., is not allowed) Additional tow truck personnel and equipment shall be at the approval of the Salinas Police Department Incident Commander. This shall not preclude the Franchisee from responding to an incident to ascertain if additional assistance or equipment is required. There shall be no charge for any personnel or equipment that is not necessary to perform the required service.

E. The Franchisee will participate in the vehicle abatement program. This includes the abatement of recreational vehicles and over-sized vehicles.

F. 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, vehicle down embankment etc.) provide service (e.g., fuel, flat tire change, etc.) and be in possession of the appropriate class of driver license, applicable endorsements, and permits.

- G. All operators shall respond to requests for the tow of recreational vehicles. If, after the operator responds to the tow location, the recreational vehicle to be towed is found to be too large for the operator's equipment, the operator is responsible for contracting another company with the appropriate equipment to perform the tow.
- 1) A Heavy Duty or Super Heavy-Duty tow operator towing for another operator under this agreement must meet the requirements of TFSA and must be approved by the Chief of Police.
 - 2) The operator who receives the rotation request is responsible for the storage of the recreational vehicle towed under this agreement and the vehicle will be stored at the operator's facility.
 - 3) If a vehicle to be towed has a sewage tank that shows no signs of leakage, the vehicle will be towed to the franchisee's storage facility. SPD will arrange for the tank to be emptied, at the city's expense, at the franchisee's storage facility.
 - 4) If a vehicle shows signs of leaking sewage, the tank will be emptied, at the city's expense, prior to being towed.
- H. The failure of a franchisee to respond to a request for a tow of a recreational vehicle will constitute a pass pursuant to Section 2 of this Agreement.
- I. A Franchisee who shows proof a tow and disposal of a recreational vehicle will receive a credit toward their annual franchisee fee according to a resolution approved by the City Council.

8. STORAGE FACILITY

- A. The Franchisee shall maintain its own storage facility and shall be responsible for the security of vehicles and property at the place of storage. As a minimum, a fenced or enclosed area shall be provided. The Franchisee is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles.
- B. The Franchisee shall obtain approval from the Salinas Police Department prior to the removal of any property from a stored or impounded vehicle and shall provide the Salinas Police Department a receipt identifying the property, with a copy placed in the stored vehicle. The requirement to obtain approval from the Salinas Police Department prior to the removal of property may be excused by the Chief of Police

if it is determined that proper safeguards and procedures are utilized by the Franchisee.

1. This requirement shall not be waived in cases where a vehicle has been impounded for evidence or investigation.
 2. Upon approval from the Salinas Police Department, the Franchisee shall release personal property from an impounded vehicle at the request of the vehicle owner or its agent.
 - a) There shall be no charge for property released during normal business hours. The fees charged for property released after hours shall be consistent with the after-hours vehicle release provisions. Personal property shall not be released without specific approval of the Salinas Police Department.
 - b) Cargo shall be released upon demand of the carrier or pursuant to a court order.
- C. 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 or place of business (when the primary storage facility and place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the vehicle and/or property.
- 1) Prior to the utilization of new storage facilities that were not listed on the application for rotation tow listing, the Franchisee shall obtain the Chief of Police's approval of the new facility and furnish the address to the Chief of Police.
 - 2) Secondary storage facilities shall be located reasonably close to the main business office.
- D. The tow Franchisee shall maintain sufficient storage spaces to meet the obligations of this Agreement.
- E. The Franchisee's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street. The sign shall be visible at night.
- 1) Business hours shall be posted in plain view to the public. Employees shall be properly trained to conduct business transactions related to towing, storage and release of vehicles/property.

- 2) Vehicles stored by the Salinas Police Department shall not be released without Salinas Police Department approval if a vehicle storage form was issued at the time the vehicle was stored.
- F. A storage yard shared by operators or any other business establishment(s) must be physically separated and secured from the other storage yard and from the other business establishment(s).
- G. Prior to the utilization of a new storage yard, the operator shall obtain the approval of the Salinas Police Department.

9. INSURANCE

- A. The Franchisee shall; throughout the duration of this Agreement, maintain the following minimum forms and limits of insurance covering all operations of the Franchisee, its agents and employees, performed in connection with this agreement:
- 1) Commercial Business Automobile Liability (as required by Section 16500.5 of the California Vehicle Code) – Bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000.00). These minimum standards are to include non-owned and hired auto coverage.
 - 2) Uninsured Motorist - One million dollars (\$1,000,000.00), combined single limit.
 - 3) On-Hook Coverage - Insuring the vehicle in tow for one million dollars (\$1,000,000.00).
 - 4) Garage Liability - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000.00).
 - 5) Garage Keepers Liability - Shall be the same minimum as on-hook coverage for vehicles in the care, custody, and control of the Franchisee in the storage yard.
 - 6) Workers' Compensation Insurance - Legal minimum requirement.
- B. All insurance companies affording coverage to the Franchisee, with the exception of worker's compensation, shall be required to add the City of Salinas, its officers, employees, agents, and volunteers as additional "insured's" by endorsement under the insurance policy. Each insurer shall stipulate that its insurance policy shall operate as primary insured for the work performed under this agreement and that no other insurance affected by the City or other named insured shall be called upon to contribute to a loss covered thereunder. The policy shall contain no special

limitations on the scope of protection afforded to the City, its officers, employees, agents, or volunteers.

- C. All insurance companies affording coverage to the Franchisee shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.
- D. All insurance companies affording coverage shall provide thirty (30) days written notice by certified mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purposes of this notice requirement, any material change prior to expiration shall be considered cancellation.
- E. Franchisee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney concurrently with the submittal of this Agreement. A statement on the insurance certificate which states that the insurance company “will endeavor” to notify the certificate holder, “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” does not satisfy the requirements of subsection D herein. The Franchisee shall ensure that the above-quoted language is stricken from the certificate by the authorized representative of the insurance company. The insurance certificate shall also state the unpaid limits of the policy.
- F. Franchisee shall provide substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the Franchisee to provide such a substitution and extend the policy expiration date shall be considered a default by Franchisee.
- G. All policies, except workers’ compensation, shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- H. Maintenance of insurance by the Franchisee as specified in the agreement shall in no way be interpreted as relieving the Franchisee of any responsibility whatever and the Franchisee may carry, at its own expense, such additional insurance as it deems necessary.

10. INSPECTIONS

- A. The Salinas Police Department shall refer Franchisees to a facility for annual inspection of all tow trucks at the expense of the Franchisee. The Salinas Police Department may conduct additional inspections without notice during normal business hours. The Franchisee shall not dispatch a tow truck for Salinas Police Department rotation that has not been inspected and approved by the California Highway Patrol and has a valid inspection sticker issued by the California Highway Patrol.

1. A copy of the CHP truck inspection form must be provided to the Salinas Police Department during the annual facility inspections.

11. BUSINESS RECORDS

- A. The Franchisee shall maintain all records of tow services furnished at its place of business.
 - 1) Invoices shall at a minimum include a description of vehicle(s), nature of service, start time, end time, location of call, and itemized costs of towing and storage.
 - 2) Records for each call shall indicate the tow truck driver's name and truck used.
- B. The Franchisee shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, FCC licensing, and non-Salinas Police Department tows.
- C. The Salinas Police Department may inspect all Franchisee records without notice during normal business hours.
- D. Franchisees shall permit the Salinas Police Department to make copies of business records at their place of business, or to remove business records for the purpose of reproduction.
 - 1) The Salinas Police Department shall provide a receipt for any original records removed from the place of business.
- E. The Franchisee shall maintain business records for a period of two (2) years, plus the current term of this agreement, and shall make them available for inspection.
- F. Failure of the Franchisee to comply with the inspection requirements shall be cause for disciplinary action if deemed appropriate by the Salinas Police Department.

12. FINANCIAL INTEREST

- A. No Franchisee or applicant shall be directly involved in the towing-related business of any other Franchisee or applicant on the Salinas Police Department rotation tow list. "Directly involved" shall mean anything in common between Franchisees or applicants with regards to any of the following:
 - 1) Business licenses;
 - 2) Insurance;

- 3) Tow truck or equipment use, rental, or ownership;
 - 4) Employees;
 - 5) Premises; or
 - 6) Performance of this Agreement.
- B. Storage facilities owned by a Franchisee, and shared by with another Franchisee, shall only be approved if:
- 1) The owner/Franchisee charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof; and
 - 2) Storage facilities shared by Franchisees shall be physically separated and secured from each other.
- C. Storage facilities leased or rented by a Franchisee shall only be approved under the following conditions:
- 1) The rental fee for the facility is paid as a flat monthly rate, rather than a per vehicle rate or combination thereof
 - 2) The Franchisee must be solely responsible for maintaining and operating the storage facility. This responsibility shall not be delegated to any third party by the Franchisee.
- D. No Franchisee or applicant shall refer calls for service to another Franchisee or applicant in contravention of the rotational tow list.
- E. The sale or transfer of controlling interest in a company shall immediately terminate an Agreement. The new owner(s) may apply for a rotation tow listing at any time during the remainder of the current Agreement term, regardless of the City's enrollment period.
- F. Any violation of this section may be cause for disciplinary action by the Salinas Police Department.

13. ANNUAL MEETINGS

- A. The Chief of Police or his/her designee may conduct meetings to discuss issues concerning the tow rotation. All meetings shall be mandatory for the Franchisee or its designee wishing to remain on rotation. The Salinas Police Department shall give the Franchisee 15 days written notice (as defined in Attachment A) of these meetings. Attendance may be excused by the Chief of Police for good cause.

14. DEMEANOR AND CONDUCT

- A. While involved in the Salinas Police Department rotation tow Franchisee or related business, the Franchisee and/or its employee(s) shall refrain from any act(s) of misconduct, to include, but not limited to, any of the following:
- 1) Rude or discourteous behavior;
 - 2) Lack of service, selective service, or refusal to provide service that the Franchisee is/should be capable of performing;
 - 3) Any act of harassment or discrimination;
 - 4) Unsafe driving practices;
 - 5) Exhibiting any objective symptoms of alcohol and/or drug use;
 - 6) Appearing at the scene of a Salinas Police Department rotation tow call with the odor of an alcoholic beverage emitting from his/her breath.
- a. The Franchisee/tow truck driver shall submit to a preliminary alcohol-screening test upon demand of the Salinas Police Department.
- B. All Salinas Police Department related tow service complaints received by the Salinas Police Department against the Franchisee or its employee(s) shall be accepted and investigated in a fair and impartial manner. The Franchisee shall fully cooperate with any such investigation. Failure of the operation to cooperate may subject the Franchisee to disciplinary action including termination. As a result of the investigation, the Salinas Police Department may initiate action as deemed appropriate. The Franchisee shall be notified of the results of the investigation.
- C. Should the filing of criminal charges be a possibility, the Salinas Police Department shall conduct the investigation to conclusion or assist the lead investigation agency and, if warranted, request prosecution.
- D. Any violation of this section may be cause for disciplinary action.

15. COMPLIANCE WITH LAW

- A. The Franchisee and its employees shall, at all times, comply with federal, state, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to the Franchisee (refer to Attachment B for selected Vehicle Code and Civil Code Sections). The Franchisee shall also comply with all Federal Department of Transportation drug and alcohol testing requirements for employees and commercial drivers. Records of compliance with such testing requirements shall be available for inspection during normal business hours. Failure to comply with such federal, state and local laws may subject the Franchisee to disciplinary action.
- 1) In the event of a minor traffic violation(s) by the tow truck driver(s) which is/are known by the Salinas Police Department, the Franchisee may be advised of the violation(s) by the Salinas Police Department. The

Franchisee shall be granted the opportunity to take necessary steps to ensure that its driver(s) drive(s) in compliance with the law unless the conduct is deemed injurious to the public health or safety. Any subsequent traffic violation(s) may be cause for disciplinary action against the Franchisee.

- 2) Any traffic violation(s) may be cause for immediate disciplinary action against the Franchisee.
- B. The provisions contained in Section 16, Compliance with Law, do not preclude the Salinas Police Department from taking appropriate enforcement or administrative action for any violations of the law.
 - C. Any conviction of the Franchisee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, a sexual 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 while involved in a Salinas Police Department rotation tow call, or moral turpitude should be cause for denial of application or termination of the Agreement.
 - D. Any conviction of an 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, a sexual offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence or alcohol and/or a drug while involved in a rotation tow call, or moral turpitude should be cause for the termination of the Franchisee from the list of current Salinas Police Department rotation Franchisees and termination of this Agreement.
 - E. Any arrest or charge for a violation by a Franchisee or employee involving any of the above crimes may be cause for suspension of the Franchisee until the case is adjudicated.
 - F. Salinas Police Department personnel, as well as tow operators and their employees, shall not be offered nor accept gratuities pursuant to Section 12110(a) CVC.
 - G. 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) CVC.
 - H. 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.
 - I. An operator or employee arrested/charged for a violation involving any of the crimes shall be suspended from the Salinas Police Department rotation until the case is fully adjudicated.

16. COMPLIANCE WITH AGREEMENT

- A. The Franchisee agrees, as a condition of inclusion on the rotation tow list, to comply with all of the terms and conditions of this Tow Service Franchise Agreement, all of which are considered material terms and conditions. Furthermore, the Franchisee agrees that failure by the Franchisee or its employees or agents to comply with these terms and conditions shall be cause for written reprimand (as defined in Attachment A), suspension, or termination from the Salinas Police Department rotation tow list(s) and termination of this Agreement. Alleged violations of this Agreement shall be investigated by the Salinas Police Department tow officer. The Franchisee shall be notified of the Salinas Police Department's findings within 30 days of the conclusion of the investigation.

17. DISCIPLINARY ACTION

- A. The Chief of Police may take disciplinary action against Franchisees for violations investigated and confirmed or sustained.
 - 1) The Chief of Police shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement and pursuant to Ordinance.
- B. Records of violations shall be retained by the Salinas Police Department for at least 36 months.
- C. A violation of the equipment requirements related to safety shall be cause for immediate disciplinary action. All suspensions are at the discretion of the Chief of Police and shall remain in effect until the period of suspension is completed and the Franchisee has presented proof of correction of the safety violation.
- D. A violation of the GVWR and safety loading requirements of a tow truck shall 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% of the tow truck's unladen weight on the front axle when lifting/carrying a load.
- E. A violation of overcharging shall be cause for suspension and/or other disciplinary action. The period of the suspension shall be determined by the Chief of Police. The suspension shall remain in effect until the period of suspension is completed and the Franchisee has presented proof to the Salinas Police Department that reimbursement has been made to the aggrieved customer(s).
- F. A violation of the Biennial Inspection of Terminals (BIT) Program requirements shall be cause for suspension. The period of suspension shall be determined by the Chief of Police. The suspension shall remain in effect until the period of suspension

is completed and the Franchisee has presented proof of compliance with the BIT requirements. Any unsatisfactory rating shall be cause for suspension.

- G. Failure of the Franchisee 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 its custody shall result in a suspension. The period of the suspension shall be determined by the Chief of Police. The suspension shall remain in effect until the period of suspension is completed and the Franchisee has presented proof of the reimbursement.
- H. Failure of the Franchisee to comply with the inspection requirements of this Agreement shall result in a suspension. The period of the suspension shall be determined by the Chief of Police. The suspension shall remain in effect until the period of suspension is completed and the Franchisee has complied with the inspection requirement.
- I. Failure of the Franchisee to maintain the minimum insurance requirements set forth in the Agreement shall be cause for immediate suspension of the Franchisee and action to terminate the Agreement for violation of a material term of the Agreement.
 - 1) The Franchisee shall also be subject to an additional suspension for failure to notify the Salinas Police Department in advance of the insurance policy expiration or cancellation.
- J. Failure of the Franchisee or employee to comply with Section 14, Demeanor and Conduct, and/or Section 15, Compliance with Law, may be cause for suspension and/or other disciplinary action if deemed appropriate by the Chief of Police.
 - 1) Minor traffic violations may be considered violations of the Agreement.
 - 2) A tow truck driver, not under the immediate supervision of the Franchisee, while on-duty and driving a tow truck, who is arrested and subsequently convicted for misdemeanor driving under the influence of alcohol and/or controlled substances, shall be subject to suspension from participating as a tow truck driver under the provisions of this Agreement. The length of suspension shall be at the Chief of Police's discretion.
- K. A terminated or suspended Franchisee and the tow business he/she owned at the time of its suspension or termination (as defined in Attachment A) shall not be eligible for a rotation listing for the duration of the suspension or termination. This provision applies to the Franchisee working in any capacity within any tow business or operating any tow business, and to the tow business, even if operated under new ownership.
- L. If the Franchisee is serving a suspension, or has been removed from consideration as a rotational tow Franchisee for any period of time, he/she shall be required to

execute and comply with all terms and conditions of the Agreement in effect at the time of the reinstatement. There shall be no approval of equipment that is not in compliance with the equipment specifications contained in the Agreement in effect at the time of reinstatement. Sections of this Agreement which are commonly referred to as “grandfather clauses” shall not apply to such a Franchisee who is suspended or who has been removed from consideration for any period of time.

- M. Nothing herein shall be deemed to prohibit the Salinas Police Department from immediately suspending any Franchisee whose conduct, or that of its employee(s), in the discretion of the Chief of Police, is deemed to be a danger to the health or safety of others or who has engaged in conduct constituting a violation of this Agreement.

18. MIDTERM REVIEW OF THE TERMS AND CONDITIONS OF THE AGREEMENT

- A. The purpose of this section is to provide a process for a midterm review of the terms and conditions of the Agreement in the event that there is a legitimate and substantial change in conditions or law affecting the majority of the Franchisees within the City, or the Salinas Police Department. Examples of conditions may include, but are not limited to:
 - 1) Substantial increase or decrease in business expenses.
 - 2) Advances in technology in the industry related to safety issues.
 - 3) Changes in law requiring the Salinas Police Department or the Franchisees to perform specific functions or operations in order to comply.
 - 4) Proposed changes to the terms and conditions of the Agreement pursuant to Subsection B below.
- B. A midterm review of the terms and conditions of the Agreement on a particular subject matter may only be granted by the Chief of Police.
 - 1) A request for a midterm review of the terms and conditions of the Agreement shall be communicated to the Chief of Police in writing, from a representative(s) of the towing industry, not merely at the request of a single Franchisee. The Chief of Police may also request a midterm review if he/she feels it is in the best interests of the motoring public, the tow industry, and/or the Department.
 - 2) Conditions indicating a need for midterm review must be substantial and must affect the entire towing industry or the Salinas Police Department. For purpose of this Agreement, the midterm review process is not intended to provide relief for a small number of Franchisees who wish to increase their rates, or change any other term or condition of the Agreement, to compensate for financial problems brought about as a result of business decisions or conditions which affect a small percentage of the industry.

- 3) A request for review shall not be processed if there are 60 days or less remaining in the term of the Agreement.
- B. A midterm review, when granted by the Chief of Police or his/her designee, shall not automatically authorize a change in the terms and conditions of this Agreement. If a midterm review is announced by the Chief of Police, or his/her designee, it is the responsibility of the Chief of Police to conduct a review of the conditions which initially caused the request to be communicated and to determine if the change is justified.
- 1) The Chief of Police, after completing the review of all pertinent issues, may authorize the Franchisees to submit their proposed changes or he/she may notify the Franchisees of changes to be implemented and direct them to comply with those changes. If, after evaluating all pertinent information, the Chief of Police authorizes or directs a change in the terms and conditions of the Agreement, or if he/she decides that a change is not justified, he/she shall notify the towing industry representative within 14 calendar days.
 - a) Franchisees shall resubmit their proposed changes in writing to the Chief of Police within seven calendar days of the date that the Chief of Police announces his/her decision. Failure to resubmit a written proposal within the specified time may result in the Franchisee forfeiting its ability to propose more equitable conditions or rates, or may be cause for disciplinary action or termination of the Agreement.
 - (1) If the proposed change affects tow rates only, Franchisees shall resubmit their proposed rates on a new application. The new application shall contain only the information pertinent to the rate proposals. When received by the Salinas Police Department, the new application shall be attached to the original application for the current term.
 - (2) The Chief of Police shall determine the reasonableness of the rate, based upon the average of the proposed rates submitted. An additional page with the new rate(s) shall be signed and attached to the original.

19. ADVERTISING

- A. The Franchisee shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the Salinas Police Department.
- 1) Examples include, “Official Salinas Police Department Tow,” “Approved by Salinas Police Department,” “Salinas Police Department Rotation Tow,” etc.

- 2) This shall not preclude the Chief of Police from implementing a system to mark and identify particular tow trucks as having passed the Salinas Police Department inspection.

B. Any violation of this section is cause for disciplinary action.

20. CANCELLATION

This Agreement may be cancelled by either party without prejudice and without cause by giving 20 days advance written notice to the other party.

21. FRANCHISE FEES.

- A. Franchisee shall pay to City a franchise fee in an amount as set forth by resolution of the City Council.
- B. Franchise fees shall be due and payable in full no later than the tenth (10th) day of each quarter. The franchisee shall pay the required franchise fee to the City's director of finance.
- C. Any franchise fees which remain unpaid after the date specified in subsection (B) above shall be delinquent and shall result in an immediate penalty equal to 10% of the unpaid amount. The unpaid amount shall thereafter accrue interest at 10% per annum until paid.
- D. In the event of the suspension or termination of a franchise, the franchisee shall forfeit any fees paid to the City. Franchisee waives any and all claims or rights to collect back from the City any amounts collected by the City pursuant to this program.
- E. The payment to the City by the franchisee pursuant to this article shall be in addition to any license fee or business tax prescribed by the City for the same period.
- F. By accepting this franchise, Franchisee irrevocably waives the defenses of any statute of limitation, laches, waiver or other equitable doctrine of similar import or effect in any action brought by the City to recover any franchise fee, interest or penalties due under this Agreement.
- G. By accepting this franchise, Franchisee agrees that if it challenges the right of the City to collect the franchise fee provided by this Agreement, any relief requested by Franchisee and awarded to it by virtue of such challenge shall be prospective only from and after the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Franchisee hereby waives any and all claims or rights to collect back from the City, or obtain credit against future payment obligations, any amounts collected by the City prior to the filing of the initial pleading seeking such relief. In the event Franchisee's challenge to any franchise fee payments should result in an initial judgment in its favor, Franchisee shall continue to make all franchise fee payments in accordance with this Agreement pending an appeal by the City. If the court of appeal, or trial court if City elects

not to appeal, determines that the City is not entitled to collect any or all of the franchise fees, the City shall refund to Franchisee those portions of the franchise fee which the court deems the City was not entitled to collect which were made subsequent to the filing of the initial action by Franchisee, exclusive of interest on such amount.

- H. The City shall retain the right to impose alternative forms of fees in the event that the franchise fees provided for in this Agreement do not adequately recover the actual and reasonable costs of the police department's towing program and/or are no longer assessable due to a subsequent change in federal, state or local law.

22. JURISDICTION.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

23. SEVERABILITY.

If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

24. NOTICES.

(A) Written notices to the City hereunder shall, until further notice by City, be addressed to:

Salinas Police Department
312 E. Alisal St
Salinas, California 93901

With a copy to:

City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

(B) Written notices to the Contractor shall, until further notice by the Contractor, be addressed to:

[Insert Notice Contact Information]

(C) The execution of any such notices by the City Manager of the City shall be effective as to Contractor as if it were by resolution or order of the City Council, and Contractor shall not question the authority of the City Manager to execute any such notice.

(D) All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

25. NONDISCRIMINATION.

During the performance of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

26. CONFLICT OF INTEREST.

Contractor warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Contractor further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Contractor shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Contractor as the result of Contractor's performance of the work or services pursuant to the terms of this Agreement.

25. HEADINGS.

The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

26. ATTORNEY'S FEES.

In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

27. RIGHTS AND OBLIGATIONS UNDER AGREEMENT.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

28. LICENSES.

If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its representatives, agents or subcontractors by federal, state or local law, Contractor warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

30. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

31. LEGAL REPRESENTATION.

Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

32. JOINT REPRESENTATION.

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

33. WARRANTY OF AUTHORITY.

Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

34. WAIVER OF RIGHTS.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more

of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

CITY OF SALINAS

Steven Carrigan, City Manager

Date

APPROVED AS TO FORM:

Christopher A. Callihan., City Attorney

Date

FRANCHISEE

Company Name

Authorized Representative

Date

Authorized Representative Name (print)

ATTACHMENT A DEFINITIONS

CHIEF OF POLICE

The Chief of Police of the City of Salinas and/or his/her designee.

BASE SERVICES

Flat tires, out of gas, lockouts, and other similar roadside services.

ENROLLMENT PERIOD

The enrollment period for purposes of this Agreement shall be the period during which a Request for Proposals has been released by the City with respect to services to be provided hereunder or the date, established by the City, on which this Agreement is signed each year by tow service providers.

INCIDENT COMMANDER

The Salinas Police Department member present at the incident that has scene management responsibilities.

LOAD SALVAGE OPERATIONS

Any operation involving the recovery of a load which has been spilled, or the off-loading and reloading of a load from an overturned vehicle performed in order to upright the vehicle.

NORMAL BUSINESS HOURS

For the purpose of this agreement, “normal business hours” shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for the following holidays: New Years Day, Martin Luther King Day, Lincoln’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Eve, and Christmas Day as recognized by the State of California and the City of Salinas.

NOTICE

All notices relating to this Agreement shall be in writing and delivered to the other party in person, via FAX, email or by US mail.

FRANCHISEE

A tow service operator that has been issued a Letter of Authorization, has signed the Tow Service Franchise Agreement, and is approved to receive Salinas Police Department referred calls. The term “Franchisee” refers to the company, its owner(s), and its manager(s) who have authority to

enter into an Agreement with the Salinas Police Department for towing services and to conduct business in accordance with the terms of this Agreement, and its employees.

PARTY OF INTEREST

Refers to the registered owner of the vehicle, or his/her agent. An agent is a party who may lawfully act on behalf of the registered or legal owner of the vehicle.

PERSONAL PROPERTY

Any item(s) that are not affixed to a vehicle, including but not limited to: papers, transportable cellular telephones, pull-out radios, portable radios, portable stereo equipment, clothes, luggage, tools, etc.

PORTAL TO PORTAL

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 the completion of the call, if another call is pending, whichever is shorter. Return to place of business includes a reasonable and verifiable amount of time required to place the tow truck back into service when unusual circumstances require additional time that are not part of normal operating procedures. (Examples: 1) 4x4 recovery in the mud: reasonable to charge for cleaning mud from truck and equipment, 2) burned car on car carrier: reasonable to charge for cleaning burn debris from carrier bed; 3) car towed from side of road on misty night and leaves mud track on bed of carrier: not reasonable to charge for cleaning of carrier bed.) For the purpose of this Agreement, "Portal to Portal" shall also mean "Portal to End of Service." The Chief of Police of the Salinas Police Department and/or his/her designee

POSSESSION

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 Civil Code [CC] and Section 22851[a][1] of the California Vehicle Code [CVC]).

PUBLIC SAFETY RESPONSE CALL

A response that results in storage of a vehicle at the direction of an officer. This does not include storage at the request of the vehicle Franchisee, registered owner, or agent.

REPRESENTATIVE

A person or group of persons appointed by the Franchisees within the City, designated to represent their interests to the Chief of Police.

RESPONSE TIME

The period of time from a Franchisee's notification by the Salinas Police Department Communications Center of a call to the arrival of the tow truck at the location requested.

RETAIL RATE

The usual customary retail rate charged by a Franchisee to individual retail customers. This is the competitive rate a company has posted in the office and quotes over the phone.

SUSPENSION

Removal of a Franchisee from the rotation tow list for a specified period of time. Suspensions may be effective immediately and may be for periods longer than the current term of the Agreement.

TERMINATION

Permanent removal of a tow Franchisee from the rotation tow list for the remainder of the term of the Tow Service Agreement and disqualification from any further participation in the Department's Rotation Tow Program. Termination may be with or without cause.

TOW TRUCK

A tow truck as defined in Section 615 of the California Vehicle Code. Also includes slide back carriers and wheel lift vehicles.

TOW SERVICE AGREEMENT

A document which sets forth the terms and conditions of an Agreement between the Franchisee and the officer representing the Salinas Police Department.

VEHICLE RECOVERY OPERATION

An operation involving the process of uprighting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle.

WRITTEN REPRIMAND

A written notice to a Franchisee which specifies any violation(s) of the Tow Service Agreement, orders corrective action, and warns of further action(s) to be taken if corrective action is not taken.

ATTACHMENT B

I. GENERAL EQUIPMENT SPECIFICATIONS AND USE REQUIREMENTS

A. Equipment Limitations

- 1) All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.

B. Towing Limitations

- 1) GVWR and not exceed either the front axle weight ratings (FAWR) or rear axle weight ratings (RAWR).
- 2) The truck must meet all applicable state and/or federal standards.
- 3) The front axle load must be at least 50% of its normal or unladed weight after the load is lifted.
- 4) Any violation of this section is cause for suspension.

C. Identification Labels

- 1) 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

- 1) 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).
 - a) The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).
 - b) Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAE J706.

- c) 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. Safety Chains

- 1) Safety chains shall be rated at no less than the rating specified by the OEM.
 - a) Two safety chains shall be used for vehicles being towed. The safety chains shall be securely affixed to the truck bed frame or wrecker boom, independent of the towing sling, bar or hitch, wheel lift or under lift towing equipment. The towed vehicle shall be secured to the towing equipment independent of the safety chains by either two chains or two straps.
 - b) Vehicles being transported on slide back carriers shall be secured by four tie-down chains or straps independent of the winch or loading cable.
 - c) All safety connections and attachments shall have a positive means, of sufficient strength, to ensure that the safety connection or attachment cannot become disengaged while in transit.

F. Control/Safety Labels

- 1) All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

G. Signs

- 1) All tow trucks shall display signs on both sides containing the Franchisee's company name, business address, and telephone number. The signs shall be permanently affixed and in compliance with the requirements of Section 27907 VC.

H. Wire Rope (Cable)

- 1) Wire rope shall be maintained in good condition. Only wire rope with swaged ends, wedge locks, or braided ends, with metal sleeves in the loops, shall be approved for use by the Salinas Police Department. Consistent with the California Code of Regulations, Title 13, Section 1305(b), wire rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are 12 or more wires broken in lay length, or where there is other visible evidence of loss of strength.

2. TOW TRUCK CLASSIFICATIONS AND EQUIPMENT SPECIFICATIONS

A. Class A Tow Truck

1. Minimum Equipment Specifications

- a) 14,000 pound GVWR chassis.
- b) 4-ton recovery equipment rating
- c) Hydraulic or mechanical winch(es).
- d) 100 foot 3/8 inch 6 x 19 cable or original equipment manufacturers (OEM) specifications.
- e) Tow chains, 5/16 inch alloy or OEM specifications, J/T hook assembly.
- f) Safety chains, 5/16 inch alloy or OEM specifications.
- g) Tow sling rating 3,000 pounds, when equipped.
- h) Wheel lift safety straps or equivalent mechanical device.
- i) All required wheel safety straps or equivalent mechanical device. All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.
- j) Tow dolly.
- k) One 3-ton snatch block.
- l) Wheel lift rating – retracted 3,000 pounds
85 inch extension 3,000 pounds
 - Measured from the center line of the rear axle of the towing vehicle to 10 inches behind the back face of the lifting bar.

B. Class A Car Carrier – One Car

1. Minimum Equipment Specifications

- a) 14,000 pound GVWR chassis.
- b) Hydraulic or mechanical winch.

- c) 50 feet 3/8 inch 6x19 cable or OEM specifications.
- d) J/T hook loading bridle/chains.
- e) Safety chains, 5/16 inch alloy or OEM specifications; four safety chains for the vehicle being transported.
- f) All required tie-down straps and safety chains shall be used as required during towing operations.

C. Class A Car Carrier – Two Cars

1. Minimum Equipment Specifications

- a) 16,001 pound GVWR chassis.
 - b) Hydraulic or mechanical winch.
 - c) 50 feet 3/8 inch 6x19 cable or OEM specifications.
 - d) J/T hook loading bridle/chains.
 - e) Safety chains, 5/16 inch alloy or OEM specifications; four safety chains for the vehicle being transported and two safety chains for the vehicle being towed.
- (1) All required tie-down straps and safety chains shall be used as required during towing operations.

D. Class C tow truck

1) Minimum Equipment Specifications

- a) 48,000 pound GVWR chassis.
- b) Air brakes w/air hookup package.
- c) 30-ton recovery equipment rating.
- d) Hydraulic or mechanical winch(es).
- e) 250 foot 3/4 inch 6x9 cable or OEM specifications.
- f) Tow chains, 5/8 inch alloy or OEM specifications.
- g) Safety chains, 5/8 inch alloy or OEM specifications.

- h) Tow sling rating 20,000 pounds.
- i) Two 12-ton snatch blocks.
- j) Under lift rating – retracted 32,000 pounds
100 inch extension * 16,000 pounds

- Measured from the center line of the rear axle to the center of the lift forks.

3. AUXILIARY EQUIPMENT

A. Required Equipment All Classes

1. Extension -- Brake and tail lamps.
2. Fire extinguisher (Approved 4-B, C rating or better).
3. Flashlight.
4. Broom.
5. Shovel.
6. Wrecking bar (large pry bar).
7. Reflective triangles.
8. Equivalent of six 30-minute flares.
9. Covered trash can(s) with absorbent.
10. Shop rags and/or paper towels.
11. Shop to truck communications (C/B and cellular phones excluded).

B. Service and Other Equipment -- (For service calls, each tow truck shall be equipped with the following service equipment):

1. Adequate emergency supply of fuel in an approved container.
2. Booster battery or hot box starting system.
3. Hydraulic jack capable of handling passenger cars and light trucks.

4. Metric and standard lug wrenches.
5. Rubber mallet/hub cap tool.
6. Lockout tools.
7. Motorcycle straps (Class A only).
8. Sledge hammer.
9. Tool kit may include:
 - a) Assorted open end wrenches; standard, 1/4 inch – 7/8 inch and Metric, 6-19 mm.
 - b) Assorted screwdrivers; Straight blade and Phillips.
 - c) Crescent wrench.
 - d) Ball peen hammer.
 - e) Pliers.
 - f) Battery and terminal cleaning tool.
 - g) Mechanic's wire.
 - h) Plastic electrical tape/duct tape.
 - i) Tire valve core tool.
 - j) Miscellaneous fuses.
 - k) Small pry bar.
 - l) Socket sets; 1/4 inch – 1 inch and 6-19 mm.
 - m) Ratchet and extensions.

C. Class A

1. Required Equipment
 - a) One 3-ton rated snatch block.

- b) Towing sling -- J/T hook tow chain assembly, a 4"x4"x48" and a 4"x4"x60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly, and safety chains.
- c) Wheel lift -- Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- d) Car carrier -- J/T hook loading bridle, a 4"x4"x48" and a 4"x4"x60" wooden crossbeam, a pair of spacer blocks, and two pairs of safety chains.

D. Classes B and C

1. Required Equipment

- a) Towing sling -- Tow chain assembly, a 4"x4"x60" and a 6"x6"x60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, and safety chains.
- b) Truck hitch -- Tow chain assembly, 4"x4"x60" and 6"x6"x60" wooden crossbeams (as necessary), aluminum tow angle(s) and safety chains.
- c) Under reach -- Assortment of lift forks/adapters, safety tie-down chain(s), and safety chains.
- d) Steering wheel clamp.
- e) Two 12-ton rated snatch blocks.
- f) Axle covers/caps.
- g) Air hoses and necessary fittings to provide air to the towed vehicle.