2023-2024

CITY OF EL CERRITO/
El Cerrito Police Department
Tow Service Contract
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TOW SERVICE CONTRACT

1. GENERAL DEFINITIONS, CONDITIONS AND TERMS

   A. This Tow Services Contract (hereinafter “CONTRACT”) contains terms and conditions that all contracting tow companies shall comply with in order to be part of the City of El Cerrito’s Police Department rotational tow program (“ROTATION TOW LIST”).

   B. No tow company (“TOW OPERATOR”) shall be placed or retained on the ROTATION TOW LIST unless the tow company has a valid CONTRACT with the City of El Cerrito (“CITY”). The El Cerrito Police Department (“ECPD”) Officer, Parking Enforcement Representative, ECPD Cadet or Code Enforcement Officer (“REQUESTING OFFICER”) on scene shall direct all towing service requests and has the sole discretion, in conformity with ECPD tow policy, to call for and/or cancel tows.

   C. The CITY’S Chief of Police is hereby designated as the Administrator for the CONTRACT. The Chief of Police or his/her designee shall supervise the progress and execution of this CONTRACT through the term of the CONTRACT.

   D. TOW OPERATOR hereby names and designates (name)__________________________________________________________ as its agent/representative (“AGENT”) having sole responsibility for the overall responsibility for the performance of the terms and conditions of this CONTRACT. The designated AGENT is required to pass the limited background investigation as set forth below.

2. TERM OF CONTRACT

   A. This CONTRACT shall not exceed thirty-six (36) months from the date of execution unless extended by written amendment executed by the CITY and TOW OPERATOR. In no event shall the total term of the contract exceed seventy-two (72) months.

   B. The total amount payable by the CITY to the TOW OPERATOR under this CONTRACT, including extensions, shall not exceed a total amount of FIVE THOUSAND DOLLARS ($5,000), except by written amendment in conjunction with a CONTRACT extension.

3. ROTATION TOW LIST

   A. Within the CITY, the Police Department Dispatch Center, as well as the El Cerrito Police Department, shall maintain the ROTATION TOW LIST for each class of tow truck to ensure equitable distribution of calls.
B. Nothing in this CONTRACT shall prohibit an ECPD supervisor from requesting a specific TOW OPERATOR when, in the supervisor’s opinion, the necessary resources to clear a hazard as expeditiously as possible are not available from the TOW OPERATOR next on the ROTATION TOW LIST.

C. In such an instance, the TOW OPERATOR who had been passed over shall be retained at the top of the ROTATION TOW LIST. Regardless of the class of tow truck utilized for the call, charges shall not be more than for the class of vehicle towed or serviced, except with vehicle recovery operations that require a larger class of tow truck.

D. More than one TOW OPERATOR may be dispatched to a location requiring multiple vehicle tows. Distribution of the vehicles to be towed shall be at the discretion of the REQUESTING OFFICER.

E. THE REQUESTING PERSONNEL may direct a TOW OPERATOR to move vehicles to clear a roadway or for emergency lifesaving operations. TOW OPERATOR shall provide such assistance as directed and there shall be no charge for this assistance. The assistance provided shall not change the TOW OPERATOR’S place on the TOW ROTATION LIST.

F. The TOW OPERATOR shall participate in the Contra Costa County Victim Assistance Program, which will offer a 15% discount to crime victims that have met the requirements of the program. Payments made by Contra Costa County Victim Assistance Program will be made by check only. TOW OPERATOR shall agree to accept checks from the Contra Costa County Victim Assistance Program.

G. The TOW OPERATOR shall waive the first 48 hours of vehicle storage fees for City of El Cerrito residents that are victims of crime or whose vehicle was towed as a result of being involved with a crime. Verification of crime victims will be verified by the El Cerrito Police Department.

4. CANCELLED TOW REQUESTS/FEES

A. If vehicle to be towed is gone when the TOW OPERATOR arrives to perform the tow, the REQUESTING PERSONNEL shall be responsible for insuring that the TOW OPERATOR is placed back on top of the ROTATION TOW LIST.

B. A tow request may only be cancelled by the ECPD Dispatcher or the REQUESTING PERSONNEL. The TOW OPERATOR does not have the authorization to cancel calls for service. The REQUESTING PERSONNEL may cancel tows at their sole discretion and in conformity with Departmental Policy.

1) An ECPD Dispatch call to a TOW OPERATOR shall constitute one turn on the list and that TOW OPERATOR shall be moved to the bottom of the ROTATION TOW LIST unless the TOW OPERATOR is cancelled while
in route and up to arrival at the tow location solely because the tow is no longer required. Displacement from the top of the ROTATION TOW LIST shall also occur when the TOW OPERATOR fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is canceled due to excessive response time. If the TOW OPERATOR is cancelled prior to and up to arrival at the scene, there shall be no charges. For the purpose of the CONTRACT “arrival” is defined as the time the tow truck physically stops at the location and the tow truck’s wheels are no longer moving. The REQUESTING PERSONNEL shall have the sole discretion to make the determination if the tow truck has arrived under the above definition.

2) The CITY shall not reimburse any tow company for any reimbursable tow services that are canceled while enroute and up to arrival to the tow location. Therefore, no fees or charges billed by the TOW OPERATOR, will be accepted or paid by the CITY, as this practice is considered “a cost of doing business” in the towing industry.

5. DROP FEES

A. When a vehicle is being towed due to a parking violation and the vehicle owner or authorized driver returns to the vehicle after the tow truck’s arrival but before the tow truck is in motion, he/she shall be informed of his/her right to have the vehicle released upon payment of a Drop Fee. The Drop Fee in this circumstance shall be one half (1/2) of cost of the CONTRACT tow fee. The Drop Fee shall be paid at that time to the TOW OPERATOR with consent of the REQUESTING PERSONNEL. The Drop Fee release does not apply when the REQUESTING PERSONNEL is impounding the vehicle.

B. If the attachment process is complete and the tow truck is in motion, the vehicle owner or authorized driver shall pay the full CONTRACT tow fee to the TOW OPERATOR, with consent of the REQUESTING OFFICER. The TOW OPERATOR is required to ensure that all tow truck drivers have the necessary equipment to accept Drop Fee payment by credit card and the necessary receipts for accepting cash payment.

6. TOWING, RECOVERY, LOAD SALVAGE, IMPOUND SERVICES AND STORAGE FACILITY

A. Services required to be provided under this CONTRACT include the following:

1) Towing of vehicles from the REQUESTING PERSONNEL’s location to the TOW OPERATOR’s storage/impound facility or, upon direction of the REQUESTING PERSONNEL, to a designated dismantling facility.
2) The ability to conduct Vehicle Recovery Operations. Vehicle Recovery Operation means an operation requiring the up-righting of an overturned vehicle or returning a vehicle to a normal position on the roadway and may require the use of auxiliary equipment due to the size or location of the vehicle. This will generally be limited to operations requiring a Class B, C, or D tow truck.

3) The ability to conduct Load Salvage Operations. Load Salvage Operation means any operation involving the recovery of a load which has been spilled, or the off-loading of a load from an overturned vehicle necessary to upright the vehicle (Section 3068.1(a) of the Civil Code (C.C.) and Section 22851(a)(1) of the California Vehicle Code (CVC).

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

4) TOW OPERATOR shall respond to ECPD calls 24 hours a day, 7-days a week and within the maximum response times set herein. The TOW OPERATOR shall respond with the appropriate class tow truck required to tow the vehicle specified by the REQUESTING OFFICER. The TOW OPERATOR shall advise ECPD 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 TOW OPERATOR is unable to respond or will be delayed in responding, the TOW OPERATOR shall immediately notify the appropriate ECPD Dispatch Center. The TOW OPERATOR shall not assign initial calls to any other TOW OPERATOR.

5) The maximum response times for ECPD tows shall be as follows:
   • For normal tow requests – 30 minutes;
   • For “expedited” tow requests – 20 minutes;
   • For “big rig” tow requests – 60 minutes.

6) A failure to respond and/or repeated failure to meet the maximum response time requirements shall constitute failure to comply with the terms and conditions of this CONTRACT.

7) When a TOW OPERATOR will be temporarily unavailable to provide services due to pre-planned or scheduled activity, e.g., vacation, maintenance, medical leave, etc., the TOW OPERATOR shall notify the ECPD Dispatch supervisor at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.

8) Only the tow truck personnel and equipment requested shall respond to an ECPD call. Additional tow truck personnel and equipment shall be at the approval of the ECPD Incident Commander. This shall not preclude the TOW OPERATOR from responding to an incident to ascertain if additional assistance or equipment is requested. There shall be no
additional charge for any personnel or equipment that is not necessary to perform the required service.

9) TOW OPERATOR shall have a business office and storage facility located within the CITY or within five (5) miles of the CITY limits throughout the term of the CONTRACT.

7. TOW TRUCK CLASSIFICATIONS

A. A TOW OPERATOR shall equip and maintain tow trucks covered under this CONTRACT in accordance with the provisions set forth in the California Vehicle Code (CVC), Title 13 of the California Code of Regulations (Title 13), the specifications contained in this CONTRACT, and in a manner consistent with industry standards and practices.

B. All tow trucks shall have recovery and wheel lift capabilities meeting the specifications contained in this CONTRACT.

1) Class D tow trucks used exclusively for recovery operations are not required to possess wheel lift capabilities.

2) A TOW 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.

C. A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck will result in termination of contract. 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.

D. Each TOW OPERATOR must have at least three tow trucks capable of towing Class A, and at least one tow truck capable of towing Class B, Class C, or Class D at all times during the term of the Contract.

1) Class A-Light Duty
• TOW OPERATOR shall maintain a minimum of one tow truck which has 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 pounds may be listed as special equipment on the CHP 234A, Rotation Tow Listing Application. These tow trucks shall be used only for recoveries requiring the use of 4-wheel drive.

2) Class B-Medium Duty
• TOW OPERATOR shall maintain a minimum of one tow truck with a GVWR of at least 26,001 pounds. The truck shall be equipped with air
brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.

3) Class C - Heavy Duty

- TOW OPERATOR 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.

4) Class D - Super Heavy

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

8. TOW OPERATORS

A. The TOW OPERATOR shall maintain a current list of drivers at all times.

1) The TOW OPERATOR shall provide a current list of drivers to the ECPD upon implementation of this CONTRACT. The TOW OPERATOR shall notify the ECPD upon any change in driver status, including the addition of any new drivers, or the deletion of any drivers. An updated list shall be provided to the ECPD within seven (7) calendar days of any change in driver status.

2) All drivers are required to complete and sign the Tow Operator/Driver Information Sheet. If a driver refuses to complete and sign the form, he/she shall not be permitted respond to calls from the TOW ROTATION LIST

3) TOW OPERATORS shall, as a minimum, maintain the following information for each employee:
   - Full name
   - Date of birth
   - California driver’s license number
   - Copy of valid medical certificate (if required)
   - Job title/description
   - Current home address
   - Current home phone number
   - Types of truck the driver is trained, instructed, and qualified to operate.

B. The TOW OPERATOR is responsible for scheduling the required Livescan at the ECPD for each of its drivers, if required.
C. All tow truck drivers will be required to wear an approved “mechanic style” uniform including a shirt with the operator’s name and company name embossed and will be required to maintain acceptable standards of dress and cleanliness while in the field.

D. All tow truck drivers engaged in performing their duties under the provisions of this CONTRACT will take direction in performing such duties from the REQUESTING OFFICER at the scene.

9. SERVICE REQUEST TYPES

A. In addition to light duty, medium duty and heavy duty tows, the TOW OPERATOR will be required to respond to the following types of tows commonly requested by the PD Tow Dispatcher:

1) Abandoned Vehicle Tow (private property tows): Any tow designated by the CITY as part of its abandoned vehicle abatement program, which must be taken to the contracted tow dismantler.

2) CITY Vehicle Tow: Any tow of a City-owned vehicle.

3) CITY Vehicle Road Service: A request for road service on a City owned vehicle, limited to tire changes, jump starts, lock outs, and winch outs.

4) Courtesy Tow: Requests to have a legally parked vehicle moved to another legal parking place for emergency purposes, at no charge to the citizen or the CITY.

5) Motorcycle Tow: Request to tow a motorcycle not requiring use of a motorcycle trailer.

6) Scheduled Tow: A tow that is scheduled in advance and does not require a specific arrival time.

7) Tows that are assigned a DMV 462 form: All tows given a DMV 462 must be taken to a licensed salvage/dismantler that has a valid permit for such services.

10. CANCELLED TOW REQUESTS

A. Tows Gone On Arrival (GOA) - If a tow request vehicle is gone when the TOW OPERATOR arrives to perform a tow, the REQUESTING OFFICER will be responsible for insuring that the TOW OPERATOR be placed back on top of the rotation tow list.
B. Cancelled Calls - A tow request may only be cancelled by the ECPD Dispatcher or the REQUESTING OFFICER. The TOW OPERATOR or its employees do not have the authorization to cancel calls for service. The REQUESTING OFFICER may cancel tows at his or her sole discretion and in conformity with Departmental Policy.

11. BACKGROUND EXAMINATIONS

A. All persons performing or causing towing services to be performed pursuant to this CONTRACT may be required to submit to a limited background examination and shall pay the required fees as established by City Council resolution. Each first-time tow driver applicant must undergo a LiveScan examination as part of the limited background process and pay fee as set in the prevailing Master Fee Schedule (currently $47). The CONTRACT ADMINISTRATOR may deny an application and may summarily revoke a previously approved tow driver permit when he or she determines, at his or her sole discretion, which said application would be detrimental to the public health, safety and welfare. A temporary approval to begin providing services on behalf of the TOW OPERATOR may be issued upon determination of the following:

1) The fee for the LiveScan exam (if required) as established by resolution of the City Council have been paid (cash or check required); currently $47 and subject to change.

2) The applicant has submitted a complete and truthful application, including photographs and all required evidence of identity and right to work in the United States. Incomplete applications or applications containing omissions or misrepresentations of any sort will be rejected. Applications will be deemed untruthful if they contain material omissions and material misstatements of fact.

3) Within the past seven (7) years, the applicant has not been convicted of a felony or any crime involving vehicles or vehicle parts; burglary, theft or stolen property; assault, battery or any similar violent crime; any criminal conviction under State Narcotic Law; any sex crime; any crime involving fraud or deceit; or any crime involving moral turpitude.

4) Within the past five (5) years, the applicant has not been convicted of any serious driving offense, including but not limited to driving under the influence of intoxicants, reckless driving, attempt to evade/elude a peace officer, or hit and run.

5) The applicant's Department of Motor Vehicles (DMV) driving record for the five- year period prior to the date of application does not contain more than:
   - Five (5) traffic infractions or,
- Five (5) serious traffic violations, or
- Five (5) motor vehicle accidents which are required to be reported to the DMV, or
- Greater than five (5) of any combination of infractions, serious traffic violations or motor vehicle accidents, as defined above.

B. The TOW OPERATOR shall be responsible for scheduling tow truck drivers for their background check appointments and for ensuring that the drivers arrive on time, with all required documents and fees. The TOW OPERATOR may incur a billing deduction when any driver fails to arrive on time and/or is not adequately prepared.

C. The TOW OPERATOR must procure all permits and licenses, pay all charges and fees, and give all notices required by state and local law.

12. **RESPONSE TO REQUEST FOR SERVICE**

A. The TOW OPERATOR shall respond to a minimum of eighty percent (80%) of all standard requests for service, and a minimum of eighty percent (80%) of all flatbed requests for service, over any given monthly billing period. A TOW OPERATOR cannot refuse response for vehicles that contain refuse, trash and debris.

B. It shall be the TOW OPERATOR’s responsibility to perform as follows:

1) Vehicle tows as requested by the ECPD, including, but not limited to, vehicles impounded for evidence or taken into custody by the ECPD, vehicles involved in accidents or disabled for other causes (when alternative towing is either not appropriate or not requested by the owner or operator of the vehicle), and vehicles which for other reasons are within the jurisdiction of the ECPD.

2) Remove debris from public streets resulting from accidents. Debris does not include personal property of the owner or operator of the vehicle. Failure to remove accident debris will result in a $150.00 penalty to be deducted from the payment of the invoice.

3) Perform the necessary work preliminary to towing such as removal of vehicles from ditches, righting said vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work in connection with the towing operations performed under the CONTRACT.

4) Review the CHP 180 form and ensure that all damages and items located in the car have been noted by the REPORTING PERSONNEL and only then sign the CHP 180 form.
5) Clear the location specified in the originating dispatch sufficiently to restore normal traffic movement. In the event that the TOW OPERATOR receives an additional tow request to remove a disabled vehicle that is interrupting traffic flow, park the first tow request in a safe location, then immediately proceed to the site specified for the additional tow request. Any disabled vehicle deposited or parked by the TOW OPERATOR at the site specified in any tow request shall be towed at the earliest opportunity after the TOW OPERATOR has complied with the above provisions for restoring traffic movement at all specified locations.

6) Write the ECPD case number and the date of tow on the front and rear windows of the towed vehicle in a legible manner, excluding plastic windows.

7) Transport all towed vehicles directly to the TOW OPERATOR’s tow yard or to the location designated by the impounding REQUESTING PERSONNEL requesting towing service or the vehicle owner.

8) Tow vehicles that do not have any wheels.

9) Ensure the tow driver/operators shall not interfere with a REQUESTING PERSONNEL’s decision to impound or release a vehicle.

10) Notify ECPD Dispatch operator when a tow truck arrives on the scene of a requested response for tow service.

11) Communicate directly and at all times, with ECPD Dispatch when providing tow services for the CITY.

12) Tow all vehicles including vehicles that are abandoned and filled with trash and debris.

13. FORBIDDEN ACTIVITIES

A. The following activities are forbidden:

1) Driving “code” by operating overhead emergency lights while enroute to or from a tow scene.

2) Disobeying traffic control devices (traffic lights, stop signs, etc.).

3) Monitoring police radio dispatches for gain or profit.

4) Soliciting preferential dispatches to accident locations by payment of any form or favor or gratuity to an agent of the CONTRACT ADMINISTRATOR.
5) Soliciting those at the scene of an accident or disabled vehicle for personal profit.

6) Soliciting performance of repair work on a vehicle involved in an accident or breakdown in connection with providing towing service for said vehicle.

7) Making any repairs or alterations to a vehicle, without first being authorized by the owner or an authorized insurance company or other authorized agent of the vehicle owner, with the exception of emergency alterations necessary to permit the safe towing of a vehicle.

8) Not taking private property tows and tows given a DMV 462 form to a licensed auto dismantler.

9) Towing any vehicle that is occupied by any person, except as specifically directed by the REQUESTING PERSONNEL.

10) Charging for services not performed, creating duplicate charges for the same service or charging any fee in excess of those permitted under the CONTRACT.

11) Causing damage to the person’s or property of others while performing under the CONTRACT.

12) Making false statements of fact or omitting disclosure of material fact.

13) Possession of any firearm or weapon in a tow truck during performance of this CONTRACT.

14) Use of profane or obscene language, which offends a customer or any other person; or being verbally or physically offensive, abusive, disrespectful, or discourteous to any customer, motorist, agency employee or any other person.

15) Touching any customer, motorist, agency employee or any other person in any inappropriate manner, except in self-defense when threatened with imminent physical harm.

16) Removing any parts, property, personal affects or any other items from a vehicle, except as specifically permitted in the CONTRACT, or at the explicit request of the vehicle owner/owner’s agent without providing the vehicle’s owner with a written receipt for said property, parts or personal effects.
17) Driving under the influence of alcohol, prescription or over the counter drugs if such drugs impair the TOW OPERATOR’s ability to safely perform all functions necessary to the fulfillment of the CONTRACT.

18) Operating any vehicle or other equipment in a careless, reckless or negligent manner, or operating a towing vehicle during the commission of a crime.

19) Refusing to issue a clearly legible receipt, if necessary, in addition the standard tow bill, to any owner/ owner’s agent who requests a detailed listing of all charges.

20) Requiring any vehicle owner/owner’s agent to make any statement or sign any document relieving the TOW OPERATOR from responsibility for the condition of the vehicle or its personal effects prior to the owner/owner’s agent inspection of the vehicle.

21) Operating any towed vehicle, except as directed by a REQUESTING PERSONNEL or other agent of the CITY.

22) All TOW OPERATORS shall refrain from recommending or promoting their tow business or other business services when performing tow requests for the CITY and its agents. The act of soliciting and/ or recommending a business or service for personal financial gain or when acting as an agent for a body shop, repair shop, or legal service is strictly forbidden.

23) Refusing to tow ANY vehicle, trailer or vessel that is filled with trash, refuse and debris.

14. RATES AND STORAGE FEES

A. Fees charged for response to calls originating from the ECPD shall not exceed those rates which have been established by resolution by the City Council of the City of El Cerrito.

B. In an effort to remain competitive in the open market, the TOW OPERATOR may lower retail rates at any time by notifying the ECPD in writing. When a TOW OPERATOR lowers the retail rate, that retail rate becomes the new approved ECPD rate for that TOW OPERATOR’s company. A TOW OPERATOR may only raise previously lowered rates for ECPD calls upon a written amendment to the CONTRACT.

C. Any TOW OPERATOR who charges rates above the TOW OPERATOR’S retail hourly rates or submitted rates for An ECPD call shall be in violation of this CONTRACT.
D. The fees charged by a TOW OPERATOR for storage of vehicles towed in response to calls originating from the ECPD shall not exceed those rates which have been established by resolution by the City Council of the City of El Cerrito.

E. The TOW OPERATOR shall display in plain view at all cashiers’ stations, a sign as described in Section 3070 (d)(2)(E) of the Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.

F. Vehicles stored 24 hours or less shall be charged nor more than one day storage. Each day thereafter or less shall be calculated by calendar day.

G. The approved schedule of rates charged by the TOW OPERATOR shall be available in the tow truck, and shall be presented upon demand to the person(s) whom the tow services were provided, their agent, or any ECPD PERSONNEL at the scene.

H. Rate requirements represent the maximum a TOW OPERATOR may charge on an ECPD call. The TOW OPERATOR is not precluded from charging less when deemed appropriate by the TOW OPERATOR. These requirements shall not be construed as requiring a charge when the TOW OPERATOR would not normally charge for such service.

I. No TOW OPERATOR or any employee of the TOW OPERATOR shall refer to any rate as the” minimum required” or as a rate set by the ECPD.

J. Whenever the ADMINISTRATOR, or their designee, determines that a vehicle was towed improperly, in error, or that fairness requires that towed vehicle be released to the owner, and orders the TOW OPERATOR to release the towed vehicle to its owner without charging him/her for the tow or storage thereof, the CITY shall pay the cost of the tow and one day storage only. The TOW OPERATOR shall waive all other storage costs and release the vehicle.

15. INSPECTION, REPAIR & MAINTAINENCE

A. Tow trucks used in the performance of this CONTRACT shall display evidence of having passed a semi-annual safety inspection. The California Highway Patrol, or other acceptable and equivalent organizations, may conduct this inspection. No tow truck shall be approved for operation under the conditions of this CONTRACT unless such truck meets the equipment standards set forth in this CONTRACT and is owned by or is under the exclusive control of the TOW OPERATOR by means of a lease. All tow trucks used in the performance of this CONTRACT shall be maintained in good condition, which includes:

1) Tow truck bodies shall be adequately painted and the paint shall be maintained in good condition
2) Tow trucks shall be marked and conform to all requirements of the California Vehicle Code.

3) Tow trucks shall be marked with the name/identification for this CONTRACT and shall be the same name as the name shown as “Firm Name”.

4) Tow trucks must be registered with the California DMV for this CONTRACT and shall be same as the name shown as "Firm Name" on the first page of this CONTRACT.

5) Tow truck bodies shall be kept in good repair, clean and free of major damage or dents.

6) Tow truck wrecker bed interiors shall have all equipment properly mounted and properly maintained.

7) Tow truck cab interiors shall be kept clean and free of dirt and grease, shall have complete instrumentation, including manufacturer's interior panels, shall have passenger seatbelts, and shall have clean upholstery surfaces and floor.

16. SERVICE COST ADJUSTMENTS

A. The time required to complete a standard tow request should not exceed one (1) hour including response time. Any charges for additional tow trucks or extra persons used during a vehicle recovery will require approval from the REQUESTING PERSONNEL or ECPD SUPERVISOR, and the times of arrival and departure of the additional equipment or person. The TOW OPERATOR shall notify ECPD Dispatch if there is any delay or extension of billable hours and provide a written justification for the extra charges on the Impound Storage Report (CHP-180) or equivalent invoice.

17. AUTHORITY OF THE CONTRACT ADMINISTRATOR

A. The Contract Administrator reviews and regulates the performance of the TOW OPERATOR. For the purpose of the CONTRACT, the CONTRACT ADMINISTRATOR shall:

1) Determine if the TOW OPERATOR is in compliance with the CONTRACT, and shall hear and investigate complaints regarding the performance of the TOW OPERATOR.

2) Determine and apply appropriate remedies for violations of the CONTRACT.
3) Determine the terms and content of the CONTRACT between the CITY and the TOW OPERATOR.

4) Oversee inspections of all equipment, facilities, and personnel for compliance with this CONTRACT.

5) Investigate the appropriate use of specialized equipment and the rates charged, and take any action deemed appropriate if it is determined that the use of specialized equipment was unnecessary or the charges excessive.

6) During the term of this CONTRACT, the CITY, acting through the CONTRACT ADMINISTRATOR, may issue new policies or directives not included in the original Contract in the form of an amendment. The TOW OPERATOR will be furnished with copies of such policies and directives. Such policies and directives will become part of and incorporated into this CONTRACT and shall become effective as provided.

18. DEDUCTIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Insufficient staffing or tow trucks in service -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>2</td>
<td>Improperly equipped truck -</td>
<td>$25.00 per occurrence, per item, per truck.</td>
</tr>
<tr>
<td>3</td>
<td>Failure to mark invoice numbers on a vehicle -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>5</td>
<td>Tow driver does not meet minimum qualifications -</td>
<td>$100.00 per occurrence without cause.</td>
</tr>
<tr>
<td>6</td>
<td>Late call-in of information to Dispatch – (if applicable)</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>7</td>
<td>Tow driver out of uniform or unkempt</td>
<td>$25.00 per occurrence without cause.</td>
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<tr>
<td>8</td>
<td>Failure to itemize billing -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>9</td>
<td>Failure to submit a Tow Storage Report -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>10</td>
<td>Failure to provide stored vehicles protection from weather -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>11</td>
<td>Unprepared or late for a background investigation -</td>
<td>$25.00 per occurrence without cause.</td>
</tr>
<tr>
<td>12</td>
<td>Late response (3) times within a 30-day period -</td>
<td>$100.00 per occurrence without cause.</td>
</tr>
<tr>
<td>13</td>
<td>Failure to perform a vehicle recovery -</td>
<td>$50.00 per occurrence without cause.</td>
</tr>
<tr>
<td>14</td>
<td>Failure to clean up at accident scene -</td>
<td>$150.00 per occurrence without cause.</td>
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</tbody>
</table>

Any violation of the Contract may cause extreme inconvenience and hardship to the CITY, and all rules, directives, laws, and terms and conditions of the CONTRACT may result in the CITY, at its sole discretion terminating the CONTRACT and/or imposing deductions as enumerated above.
19. NOTIFICATION

A. The TOW OPERATOR shall inform the CONTRACT ADMINISTRATOR within twenty-four (24) hours of the arrest, criminal charges, conviction or sentencing of any owner, part-owner, partner, business associate, principal party, officer, director, agent, employee or any other person associated with the TOW OPERATORS performance of this CONTRACT for any criminal offenses including, but not limited to, theft, robbery, burglary, assault, drugs, prostitution, weapons, fraud, trafficking in stolen goods or any traffic crime, including but not limited to, driving under the influence of intoxicants, reckless driving, attempt to elude a police officer, leaving the scene of an injury accident or hit and run or any other offense related to the protection of the public interest.

20. PAYMENT PROVISIONS FOR ABATEMENT AND PRIVATE PROPERTY TOWS.

A. The TOW OPERATOR shall tow only vehicles towed under ECC 11.44, CVC 22651(k) & CVC 22669(d) to licensed auto salvage/dismantler. Failure to tow such vehicle to a licensed auto salvage/dismantler will result in termination of the CONTRACT.

21. COLLUSION

A. No TOW OPERATOR shall conspire, or attempt to conspire, or commit any other act of collusion or comingling of services, with any other TOW OPERATOR for the purpose of secretly, or otherwise, establishing an unfair understanding regarding rates or conditions to the agreement that would bring about any unfair condition which could be prejudicial to the ECPD, the motoring public or other TOW OPERATOR or violate any condition or term of this CONTRACT.

B. Examples of “collusion” include, but are not limited to: conspiracy by any TOW OPERATOR to establish artificially low rates for services performed pursuant to this CONTRACT; conspiracy, or attempts, by any TOW OPERATOR to circumvent any term of this CONTRACT including rotation list placement.

C. A determination by the ECPD that any TOW OPERATOR has been involved in collusion shall result in termination of the CONTRACT at the sole discretion of the CITY. Any TOW OPERATOR found to be involved in any act, or attempted act of collusion or comingling of two or more TOW OPERATOR businesses, shall be removed from participation on the ECPD ROTATION TOW LIST.

22. STORAGE FACILITY

A. The TOW OPERATOR shall be responsible for the security of vehicles and property at the place of storage. The TOW OPERATOR shall comply with all
zoning and building code provisions applicable to the location but, at a minimum, a fenced or enclosed area shall be provided. The fence shall be of sufficient height to screen from the view of the adjacent street levels all vehicles, parts, materials and equipment stored on the subject property and in no event, shall any vehicles, parts, materials or equipment be stored or stacked in such a way as to be visible over the fence from any adjacent street level public right-of-way or from adjoining street level public or private property. Additionally, the TOW OPERATOR is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles.

B. The TOW OPERATOR shall, at all times during the term of this CONTRACT, and at its sole cost and expense, maintain or cause to be maintained in good condition and repair the interior of the properties, including windows, and any systems and fixtures installed by the TOW OPERATOR. The TOW OPERATOR shall, at all times, keep the properties in a neat, clean and sanitary condition or non-public nuisance thereon. All refuse, including non-salvageable vehicle parts and litter, shall be removed from the premises on a regular basis by an authorized refuse collection company. All refuse areas shall be effectively screened from view and maintained in an orderly manner. All refuse containers shall be maintained in enclosures approved by the ECPD. In the event that damage to any of the improvements which are TOW OPERATOR’S obligation to maintain, by reason of ordinary wear and tear or deterioration results in such improvements not meeting the standard of maintenance required by the ECPD for such uses as operator is making of the properties, then the operator shall have the independent responsibility for, and shall promptly undertake such maintenance or repair and complete the same with due diligence. If the storage facility is located within the CITY limits, and if the TOW OPERATOR fails to make the necessary maintenance or repairs within ten (10) days after receiving notice in writing from the CITY, then the CITY may make such maintenance or repairs and the TOW OPERATOR shall reimburse the CITY.

C. The TOW OPERATOR, in constructing and operating the facilities, shall satisfy all hazardous materials handling and storage requirements imposed by local, state, and federal governments. Additionally, if the storage facility is located within the CITY, the TOW OPERATOR shall comply with the following fire prevention measures:

1) Welding and torch cutting shall be in conformance with the requirements of the California Fire Code as adopted by the CITY;

2) No smoking shall be allowed on the premises except in designated areas consistent with applicable local ordinances (Pursuant to ECC 8.06);

3) No burning of wrecked or discarded motor vehicles or waste materials shall be allowed;
4) Motor vehicles, discarded parts of motor vehicles, junk, waste, or other materials shall not be stored, displayed, or kept in a manner that could hinder or endanger firefighting efforts and operations;

D. In the area where the vehicles are stored, vehicles must be arranged to meet the following minimum requirements, to allow the El Cerrito Fire Department access in the event of fire:

1) Entrances and exits to the area must be at least fifteen (15) feet in width and there must be access for the entrances and exits to all parts of the storage area by way of aisles of at least fifteen (15) feet in width;

2) There must be thirty (30) inches separation between the side, front and rear of any one vehicle and the side, front or rear of any other adjacent vehicle;

3) For every five cars stored lengthwise (end to end), there must be an aisle at least fifteen (15) feet in width. The requirements for aisles are based on the storage of passenger cars of an average width or length. If vehicles exceeding the length or width of an average passenger car are store, the number of vehicles which may be stored between the required fifteen (15) foot aisles is decreased accordingly.

4) For every ten (10) vehicles stored side-by-side, there must be an aisle at least fifteen (15) feet in width. The requirements for aisles are based on the storage of passenger cars of an average width or length. If vehicles exceeding the length or width of an average passenger car are stored, the number of vehicles which may be stored between the required fifteen (15) foot aisles is decreased accordingly.

E. The TOW OPERATOR shall obtain approval from the ECPD prior to the removal of any property from a stored or impounded vehicle and shall provide a receipt, with a copy placed in the stored vehicle. The requirement to obtain approval from the ECPD prior to the removal of property may be excused by the ECPD supervisor if it is determined that proper safeguards and procedure are utilized by the TOW OPERATOR.

1) This requirement may not be waived in cases where a vehicle has been impounded for evidence or investigation.

2) Upon approval from the ECPD, the TOW OPERATOR shall release personal property from an impounded vehicle at the request of the vehicle owner or agent.
3) There shall be no charge for the release of personal property during normal business hours. TOW OPERATORS may charge an after-hours release fee for property released after normal business hours, consistent with the after-hours vehicle release provisions.

4) Personal property is considered to be items which are not affixed to the vehicle.
   • Personal property includes papers, transportable cellular telephones, pull-out radios, portable radios and/or portable stereo equipment, clothes, luggage, tools, etc.
   • Personal property from a stored vehicle shall be released upon the request of the vehicle owner or agent.

5) Cargo shall be released upon the demand of the carrier or pursuant to a court order.

F. The TOW OPERATOR shall store all towed vehicles at a location which is within the CITY limits or not more than five (5) miles from the exterior boundary of the CITY limits. 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 the 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 TOW OPERATOR shall furnish the address and obtain the CONTRACT ADMINISTRATOR’s approval.

2) Secondary storage facilities shall be located reasonably close to the main business office.

G. TOW OPERATORS shall maintain sufficient storage spaces. At all times, the TOW OPERATOR shall provide sufficient space at the approved location(s) to store all vehicles towed and stored pursuant to this CONTRACT. At a minimum, there shall be available at the approved location(s), space sufficient to store 50 vehicles, when stored in a manner consistent with all applicable health and safety requirements and with all requirements of this CONTRACT. In the event all available space at the approved location(s) is utilized, the TOW OPERATOR shall be removed by ECPD from the ROTATION TOW LIST unless and until there is available space at said location or until another suitable location is obtained by the TOW OPERATOR and approved by the ECPD in the manner provided for herein.
H. A TOW OPERATORS’ 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.

I. For the purpose of this CONTRACT, “normal business hours” shall not be less than 8:00 a.m. to 5:00 p.m., Monday through Friday, except for the following State recognized holidays: New Year’s Day, Martin Luther King’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, day after Thanksgiving Day and Christmas Day.

   NOTE: When ECPD is closed in observance of a holiday, the TOW OPERATOR may also be closed.

J. Business hours shall be posted in plain view to the public.

K. If an OPERATOR’s place of business is staffed with only one employee, the business office may be closed for one hour at lunch.

1) A sign shall be posted which reflects a lunch closure and a phone number where a request by a vehicle’s owner/agent shall result in an immediate response to release property of a vehicle.

2) Response to the office shall be within the time frame required for a normal ECPD Class A tow as set forth in this CONTRACT.

L. Employees shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.

M. No motor vehicle towed at the direction of the ECPD shall be released by the TOW OPERATOR to the owner of the vehicle, or any other enumerated person, except with the prior written authorization of the ECPD.

23. INDEMNIFICATION

A. The TOW OPERATOR shall defend, save harmless and indemnify the CITY and its office, agents and employees from any and all claims, costs and liability for any damages, sickness, death or injury to persons or property arising from, or connected with, the operations of services of the TOW OPERATOR or its agents, servants, employees or subcontractors hereunder, save and except claims or litigation arising from the sole negligence or willful misconduct of the CITY or its officers or employees. The TOW OPERATOR shall reimburse the CITY for any expenditure, including reasonable attorney’s fees incurred by the CITY in pursuit or defense of matters that are the subject of this indemnification. If requested by the CITY, the TOW OPERATOR shall defend any claims or litigation to which
this indemnification provision applies at the sole cost and expense of the TOW OPERATOR.

24. INSURANCE

The TOW OPERATOR shall maintain the following minimum levels of insurance from an insurance carrier that is authorized to do business in California:

The insurance provisions in the Contract-General Conditions shall be supplemented with the following:

Without limiting the TOW OPERATORS’ indemnification of the City, the TOW OPERATOR shall provide and maintain at its own expense, during the term of the CONTRACT, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage
Prior to commencement of any contract awarded under this CONTRACT, the TOW OPERATOR shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the TOW OPERATOR upon request.

This verification of coverage shall be sent to the CONTRACT ADMINISTRATOR, unless otherwise directed. The TOW OPERATOR shall not be awarded a CONTRACT until it has obtained all insurance required and such insurance has been approved by the CITY. This approval of insurance shall neither relieve nor decrease the liability of the Proposer.

B. Qualifying Insurers
All coverage shall be issued by U. S. domiciled companies which hold a current A/M. Best rating of not less than A: VII, unless otherwise approved by the CITY’s Risk Manager.

C. Notice of Cancellation
All coverage as required herein shall provide that no cancellation, major change in coverage, expiration, or nonrenewal (except for non-payment of premium) will be made during the term of the CONTRACT, without thirty (30) days written notice (10 days for non-payment of premium) to the CONTRACT ADMINISTRATOR prior to the effective date of such cancellation, or change in coverage. Upon cancellation of coverage without evidence of replacement coverage, TOW OPERATOR shall not engage in any services under any CONTRACT awarded pursuant to this CONTRACT until replacement coverage is obtained and approved by the CITY.
D. Insurance Required

1) Garage Liability Insurance - for bodily injury (including death) and property damage which provides limits of not less than one million dollars ($1,000,000) combined single limit (CSL) per occurrence, $2,000,000 aggregate.

2) Commercial General Liability Insurance (if not provided under Garage liability) - shall have coverage equivalent to or greater than Insurance Services Office, Inc. (ISO) Form number CG 00010798 and include bodily injury (including death) and property damage coverage and have limits as follows:

   a. Each occurrence $1,000,000
   b. General aggregate $2,000,000
   c. Products/completed operations aggregate $2,000,000
   d. Personal Injury $1,000,000

3) Garage and General liability coverage shall include:

   a. Premises and Operations
   b. Products/Completed
   c. Personal Injury liability
   d. Severability of interest

4) Garage and General liability coverage shall include the following endorsement, a copy of which shall be provided to the CITY:

   • Additional Insured Endorsement shall be equivalent to or greater than ISO form number CG 20261185, and shall read:

   “City of El Cerrito, its officers, agents, employees and volunteers as additional insured”

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the CITY, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

5) Automobile Liability Insurance - For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. The CITY, its officers, agents, and employees shall be named as additional insured by endorsement for this coverage.
6) Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage.
- Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

7) Garage keepers Legal Liability - with a minimum limit of five hundred thousand dollars ($500,000) per occurrence.

On Hook Coverage/Cargo – insuring the vehicle in tow with limits based on the size of the tow truck.

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

E. Special Provisions

1) The following provisions shall apply to this CONTRACT:

- The foregoing requirements as to the types and limits of insurance coverage to be maintained by the TOW OPERATOR and any approval of said insurance by the CITY or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the TOW OPERATOR as part of any Contract awarded pursuant to this CONTRACT, including but not limited to the provisions concerning indemnification.

- The CITY reserves the right to withhold payments of any CONTRACT awarded to a TOW OPERATOR in conjunction with this CONTRACT in the event of material noncompliance with the insurance requirements outlined above.

2) Proof of insurance shall be in the form of a certification of insurance. Policy expiration or cancellation will immediately nullify the CONTRACT. The TOW OPERATOR’S insurance policy shall provide in no less than 30 days a written notice to the ECPD in the event that the insurance policy is canceled or is due to expire. Additionally, the TOW OPERATOR shall notify the ECPD in advance of the expiration, or cancellation of the TOW OPERATOR’S insurance policy.

25. VEHICLE INSPECTIONS

A. All TOW OPERATORS shall participate and qualify for the annual CHP Tow Truck Inspections. The results will be forwarded to ECPD, by the TOW
OPERATOR, for review and inclusion in the TOW OPERATOR’S service file. ECPD maintains the right to conduct additional inspections, without prior notice, during normal business hours.

B. Any TOW OPERATOR who fails an inspection is entitled to only one re-inspection. Failure to pass the re-inspection shall be cause for the disqualification of the tow truck from use on ECPD rotation.

26. BUSINESS RECORDS

A. The TOW OPERATOR shall maintain records of all tow service furnished. The records will be maintained at the TOW OPERATOR’S place of business.

1) Invoices shall, at a minimum include: a description of each vehicle, the nature of service, the start time, the end time, the location of call, and an itemized costs of towing and storage.

2) Records for each call shall indicate the tow truck driver’s name and truck used.

B. The TOW OPERATOR shall also maintain business records relating personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, FCC licensing, and non-ECPD tows.

C. The ECPD may make an inspection of all TOW OPERATOR records without notice during normal business hours.

D. TOW OPERATOR shall permit the ECPD to make copies of business records at their place of business, or to remove business cards for the purpose of reproduction.

1) The ECPD shall provide a receipt for any (optional) records removed from the place of business.

E. Records shall be maintained and available for inspection for a period of two years after the term of this CONTRACT expires or is terminated.

F. Failure of the TOW OPERATOR to comply with the inspection requirements may in the CONTRACT ADMINISTRATORS sole discretion, result in immediate termination of this contract.

27. SINGLE BUSINESS

A. No TOW OPERATOR shall own (in whole or part), manage, exercise dominion or control over, or have any legal, financial or beneficial in, or have any affiliation with any other towing company that has been awarded a CONTRACT with the
CITY. This includes, but is not limited to, any form of ownership, either as a corporation, limited liability company, partnership, shareholder, sole proprietor, employee, agent or representative, or any other business form or agreement. TOW OPERATOR shall not use or share the storage yard or any facility or any equipment of any other TOW OPERATOR that has a CONTRACT with the CITY. Any TOW OPERATOR who violates this clause shall have this CONTRACT terminated if the CITY, in its sole discretion has cause to believe that any information in the sworn Single Business Declaration was incorrect, inaccurate or misleading. If the TOW OPERATOR, subsequent to being awarded a Tow CONTRACT enters into any arrangement or affiliation, formal or informal, that violates or may violate this clause, the TOW OPERATOR shall have three (3) business days to notify the CITY in writing of the possible conflict and provide any information or documentation requested by the CITY to assist in making a determination whether the change in position creates a conflict and violates this section. The CITY’s determination shall be final.

28. **ANNUAL MEETING**

A. The CONTRACT ADMINISTRATOR shall conduct, at a minimum, one annual meeting to discuss issues concerning the TOW ROTATION LIST. All meetings shall be mandatory for the TOW OPERATOR or TOW OPERATOR’s designee wishing to remain on rotation.
   
   i. The ECPD shall give a 30-day written notice, if practical, of the meeting.
   ii. Failure to attend a meeting shall result in disciplinary action.

29. **DEMEANOR AND CONDUCT**

A. While involved in ECPD TOW ROTATION LIST 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 an ECPD rotation tow call with the odor of an alcoholic beverage emitting from the driver’s breath or person.
B. The TOW OPERATOR/tow truck driver with the odor of an alcoholic beverage emitting from the driver’s breath or person shall submit to a preliminary alcohol screening test upon demand of the ECPD.

C. All ECPD related service complaints received by the ECPD against a TOW OPERATOR or a TOW OPERATOR’S employee will be accepted and investigated in a fair and impartial manner. As a result of the investigation, the ECPD shall take any action necessary in the CITY’s sole discretion. In any event, the TOW OPERATOR will be notified if the allegations are deemed founded or unfounded.

1) Should the filing of a criminal charges be a possibility, the ECPD will conduct the investigation to conclusion or assist the lead investigation agency and, if warranted, request prosecution.

30. COMPLIANCE WITH THE LAW

A. The TOW OPERATOR and its employees and agents 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 TOW OPERATOR. (refer to Attachment B for selected Code Sections).

1) In the event of a minor traffic violation by a TOW OPERATOR which is known by the ECPD, the TOW OPERATOR shall be advised of the violation by the ECPD. The TOW OPERATOR will be required to take necessary steps to ensure that the driver complies with the law.

B. Any conviction of the TOW OPERATOR 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 while involved in an ECPD rotation tow call, or moral turpitude shall be cause of termination of the CONTRACT.

C. Any conviction of a TOW OPERATOR and its drivers or agents involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violation, a drug, misdemeanor driving while under the influence of alcohol and/or a drug while participating on the ECPD ROTATION TOW LIST, or moral turpitude shall be cause for the immediate removal of the employee, driver or agent from the list of current ECPD rotation tow truck drivers.

D. A TOW OPERATOR or its drivers or agents, arrested or charged for a violation involving any of the above crimes shall be prohibited from driving under this contract until the case is adjudicated.
31. COMPLIANCE WITH AGREEMENT

A. The TOW OPERATOR shall, as a condition of inclusion in the ROTATION TOW LIST, comply with the terms and conditions of this CONTRACT.

32. ADVERTISING

A. The TOW OPERATOR shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the ECPD or the Department of Motor Vehicles.

1) Examples include: “Official Police Department Tow,” “Approved by ECPD,” etc.

2) This will not preclude the ECPD supervisor from implementing a system to mark and identify particular tow trucks as having passed the ECPD inspection.

33. CANCELLATION

A. This CONTRACT may be terminated by either party upon giving thirty (30) days advance written notice to the other party.

34. ASSIGNMENTS: SUBCONTRACTORS: EMPLOYEES

A. Assignment. Both parties shall faithfully perform the provisions of this CONTRACT and shall not assign, transfer, convey, or otherwise dispose of this CONTRACT or any right, title, or interest to any part thereof, unless otherwise specified in the CONTRACT without the prior written consent of the other party and then only subject to such terms and conditions as the other party may require. Any assignment without such approval shall be null and void and, at the option of the other party, shall terminate this CONTRACT and any permits, licenses, or privileges granted herein. This CONTRACT and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

B. Subcontractors: Employees. The TOW OPERATOR may, for this CONTRACT, subcontract for dispatching services only.

35. NON-INTERFERENCE

A. The TOW OPERATOR and/or employees, subcontractors or other representatives of TOW OPERATOR, shall not deliberately disrupt or interfere in any matter with the operations of other TOW OPERATORS within the CITY. Evidence of deliberate interference by the TOW OPERATOR with the operations of other TOW OPERATORS shall result in the immediate termination of the CONTRACT.
36. **FORCE MAJEURE**

A. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

37. **INDEPENDENT CONTRACTOR STATUS**

A. For purposes of this CONTRACT, the TOW CONTRACTOR is an independent CONTRACTOR and this CONTRACT is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

38. **INSPECTION**

A. The TOW OPERATOR’s performance, place of business and records pertaining to this CONTRACT are subject to monitoring, inspection, review and audit by authorized representatives of the CITY, the State of California, and the United States Government.

39. **ENTIRE AGREEMENT**

A. This CONTRACT contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind any of the parties hereto.

40. **MODIFICATIONS AND AMENDMENTS**

A. General amendments. This CONTRACT may be modified or amended by a written document executed by the TOW OPERATOR and at the direction of the City of El Cerrito City Council.

41. **CHOICE OF LAW AND JURISDICTION**

A. This CONTRACT is made in Contra Costa County and shall be governed and construed in accordance with laws of the State of California.

B. Any action relating to this CONTRACT shall be instituted and prosecuted in the courts of Contra Costa County, State of California.
42. CONFORMANCE WITH FEDERAL AND STATE REGULATIONS

A. Should Federal or state regulations touching upon the subject of this CONTRACT be adopted or revised during the term hereof, this CONTRACT may be amended to assure conformance with such Federal or State requirements.

43. NO WAIVER BY CITY

A. Inspections or approvals, or statements by any REQUESTING OFFICER, agent or employee of the CITY relating to the TOW OPERATOR’S performance, or payments therefore, or any combination of these acts, shall not relieve the TOW OPERATOR’S obligation to fulfill this CONTRACT as prescribed; nor shall the CITY be thereby stopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this CONTRACT.

44. CONFLICTS OF INTEREST

A. The TOW OPERATOR promises and attests that the TOW OPERATOR and any members of its governing body shall avoid and actual or potential conflicts of interest. If the TOW OPERATOR is a corporation, the TOW OPERATOR agrees to furnish to the CITY upon demand a valid copy of its most recently adopted bylaws and also a complete and accurate list of its governing body (Board of Directors or Trustees) and to timely update said bylaws or the list of its governing body as changes in such governance occur.

45. CONFIDENTIALITY

A. The TOW OPERATOR agrees to comply with, and to require its employees, officers, agents and partners to comply with, all applicable State or Federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this CONTRACT, their records, or services provided them, and assures that:

1) All applications and records concerning any individual made or kept by the TOW OPERATOR or any public officer or agency in connection with the administration of or relating to services provided under this CONTRACT will be confidential, and will not be open to examination for any purposes not directly connected with administration of such service or as required by law.

2) No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such services or as required by law.
B. The TOW OPERATOR shall inform all employees, agents, officers and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be subject to legal action.

46. NON-RENEWAL

A. There is no representation, implication, or understanding that the services provided by the TOW OPERATOR under this CONTRACT will be renewed by the CITY upon expiration or termination of this CONTRACT and TOW OPERATOR waives all rights or claims to notice or hearing respecting any determination by the CITY to terminate or discontinue any services from the TOW OPERATOR.

47. NO THIRD-PARTY BENEFICIARIES

A. Notwithstanding mutual recognition that services under this CONTRACT may provide some aid or assistance to members of the CITY’S population, it is not the intention of either the CITY or the TOW OPERATOR that such individuals occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this CONTRACT.

48. SURVIVAL

A. The right and obligations of the parties which by their nature survive termination or completion of the services covered by this CONTRACT shall remain in full force and effect after termination or completion.

49. SEVERABILITY

A. In the event that any of the provision or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the CITY and the TOW OPERATOR shall negotiate an equitable adjustment in the provisions of the CONTRACT with a view toward effecting the purpose of this CONTRACT, and the validity and enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.

50. AUTHORIZED REPRESENTATIVES AND NOTICES

A. The CITY and the TOW OPERATOR shall each designate, below, an Authorized Representative who has authority to act on its behalf in the administration of this CONTRACT.

B. Written notification to the other party shall be provided, in advance, or charges in name or address of such Authorized Representatives.
C. Notices provided for under this CONTRACT shall be in writing, and shall be served on the Authorized Representative of the receiving party, either personally or at the party’s offices, or by registered or certified mail to its office address.

D. The CITY hereby designates as its Authorized Representative the Administrator whose name and address are as follows:

CHIEF OF POLICE OR DESIGNEE  
CHIEF PAUL KEITH  
10900 SAN PABLO AVE.  
EL CERRITO, CA. 94530

E. The TOW OPERATOR hereby designates as its Authorized Representative the Administrator whose name and address are as follows:

(NAME)  
(ADDRESS)  
(CITY)  
(ZIP_CODE)

51. EL CERRITO BUSINESS LICENSE

A. Pursuant to El Cerrito Municipal Code Section 6.20.010, the TOW OPERATOR must have or must obtain a CITY Business License before any provisions of this CONTRACT will be deemed to take effect.

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