

**FRESNO COUNCIL OF GOVERNMENTS
CONTRACT FOR CONTRACTOR SERVICES**

This CONTRACT, made and entered into this ____ day of February 2019 by and between the FRESNO COUNCIL OF GOVERNMENTS, 2035 Tulare Street, Suite 201, Fresno, California 93721, a joint powers Public Agency (hereafter referred to as “Fresno COG”) and TOWING COMPANY. (hereafter referred to as “CONTRACTOR”).

WITNESSETH:

WHEREAS, pursuant to the joint powers agreement of September 24, 1969 creating the Fresno COG and the amendments thereto, Fresno COG is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, Fresno COG is a Regional Transportation Planning Agency and a Metropolitan Planning Organization pursuant to State and Federal designation; and

WHEREAS, in part, the charge of Fresno COG is to help relieve congestion and improve air quality, and to deal in an expeditious manner with local transportation maintenance and improvement needs; and

WHEREAS, Fresno COG has determined that serious congestion problems exist on segments of Freeways 41, 99, 168, and 180 in the Fresno metropolitan area during morning and evening commute hours and that these problems will likely increase as urban growth and development continues to occur in southern Madera County, northern Fresno County and elsewhere; and

WHEREAS, Fresno COG has determined it is necessary and desirable that Fresno COG secure contractor services to operate a Freeway Service Patrol to reduce congestion on segments of Freeways 41, 99, 168, and 180 in the Fresno metropolitan area; and

WHEREAS, a Request-for-Proposal was distributed to tow companies throughout the Fresno metropolitan area; and

WHEREAS, Fresno COG has determined that CONTRACTOR is best qualified to perform the required services; and

WHEREAS, CONTRACTOR is a licensed automotive services business in the City of Fresno; and

WHEREAS, CONTRACTOR represents it is qualified to perform the services required to operate a Freeway Service Patrol and is willing to perform such services pursuant to the terms and conditions of this contract.

NOW, THEREFORE, it is agreed by Fresno COG and CONTRACTOR as follows: This contract is fully comprised of these terms and the attached appendices, exhibits and amendments. The attachments are as follows:

- Attachment A: - PRELIMINARY LIST OF FSP TOW HOLIDAYS
- Attachment B: - FRESNO FREEWAY SERVICE PATROL BEATS
- Attachment C: - FREEWAY SERVICE PATROL STANDARD OPERATING PROCEDURES
- Attachment D: - FRESNO FREEWAY SERVICE PATROL CONTRACTOR REPRESENTATIVE FORM
- Attachment E: - FSP UNIFORM REQUIREMENTS
- Attachment F: - DBE/WBE PARTICIPATION
- Attachment G: - DRUG-FREE WORKPLACE CERTIFICATION

Article I – Description

CONTRACTOR shall provide equipment and operators to patrol segments of Freeways 41, 99, 168, and 180 in the Fresno metropolitan area. The Freeway Service Patrol (FSP) will clear the lanes and shoulders of disabled non-exotic automobiles, small trucks, motorcycles, and small debris, and provide minor service to disabled vehicles, for a period of forty (40) months.

Article II – Contract Management

- A. Contract Manager for this contract will be Suzanne Martinez, Associate Regional Planner. Any questions regarding the work described herein should be addressed to the above named person or his/her designee at the Fresno Council of Governments, 2035 Tulare Street, Suite 201, Fresno, CA 93721, telephone (559) 233-4148 x240.
- B. The California Department of Transportation (CALTRANS), California Highway Patrol (CHP), and Fresno Council of Governments (Fresno COG) will jointly oversee the FSP. All agencies shall have the responsibility for overseeing service performance and ensuring that the CONTRACTOR abides by the terms of the contract.

Article III – Contract Period

This contract shall begin on March 4, 2019, and expire on June 30, 2022, unless extended by amendment.

Article IV – Duration of Service

- A. The service provided will cover forty (40) months and will operate five (5) days per week, Monday through Friday excluding holidays (see Attachment A: - PRELIMINARY LIST OF FSP TOW HOLIDAYS). The total number of hours estimated for the FSP is approximately 16,680 hours, based on approximately 5,000 hours per year (1,250 hours per beat per year times four beats, plus 420 hours per beat, times four beats, for the period between March 4, 2019 and June 28, 2019) for the 40-month contract period. However, the total hours may be increased/decreased during the course of the contract through supplemental agreement.

- B. Fresno COG, in consultation with CALTRANS and the CHP, reserves the right to add or delete holidays to the work schedule.

Article V – Cost Limitation

- A. Total amount of this contract shall not exceed \$xxx,xxx per year for the 40-month contract period
- B. It is understood and agreed that this total is an estimate and that the Fresno COG will pay only for those services actually rendered as authorized by the Contract Manager or his/her designee

Article VI – Performance Bonds

- A. The CONTRACTOR shall furnish a Performance Bond that guarantees performance under the contract. The bond shall be in the form of a bond executed by an admitted surety insurer registered with the State of California Insurance Commissioner and shall not be a deposit or cashier's check in lieu of bond.
- B. If the maximum total amount payable under the terms of this contract is in excess of \$25,000, the CONTRACTOR agrees to furnish a Performance Bond in a sum not less than one-half of the maximum total amount payable under the terms of this contract. The bond shall be furnished prior to the effective date of the contract.

Article VII – Scope of Work/Special Provisions

VII-1 General

VII-1.1 Description

- A. This work shall consist of providing equipment and operators to patrol Beats one, two, three and four of Freeways SR 41, SR-99, SR-168, and SR-180 as designated on Attachment B: – FRESNO FREEWAY SERVICE PATROL BEATS, to clear the lanes and shoulders of disabled non-exotic automobiles, small trucks, motorcycles, and small debris, and to provide minor service to disabled vehicles. Clearing of vehicles shall be limited to the tow truck's capacity and ability to safely tow the vehicle.
- B. At any time during the contract's term, Fresno COG reserves the right to adjust beat specifications to better accommodate demand for the FSP service. The above shall take place through 30-day written communication only.
- C. Travel time to the beat will be at the CONTRACTOR'S expense.

VII-1.2 License and Ordinances

The FSP CONTRACTOR shall have a business license and comply with city and/or county ordinances.

VII-1.3 Insurance

The FSP CONTRACTOR shall furnish documentary evidence of the ability to respond to damages as required by Section 16500.5 of the Vehicle Code. Insurance in the type and amount in accordance with Article XVIII – Contractor Insurance Requirements on page 23 of this contract shall be required. A Certificate of Insurance shall be submitted to the Fresno COG prior to commencement of work.

VII-2 EQUIPMENT

VII-2.1 Service Patrol Trucks

Five (5) Service Patrol Trucks as described below shall be provided for this contract. Four (4) Class “A” trucks will be used to patrol the FSP route while one (1) Class “A” Truck will remain on standby status in the event that any of the four Service Patrol Trucks is unable to continue its patrol.

- A. Service Patrol Trucks shall have a minimum gross vehicle weight rating of 14,500 pounds, dual wheel chassis and four (4) ton recovery equipment rating. All trucks proposed for use in the FSP program shall be no more than two (2) years old with a maximum of 75,000 miles at the start of service and/or the proposed truck shall pass a Level 1 Safetynet Vehicle Inspection conducted by the CHP. The Level 1 Safetynet Vehicle Inspection entails a complete inspection of the proposed truck’s steering components, braking system, fuel system, lights, wheels, tires, frame, suspension, registration, maintenance and overall truck body and paint condition.
- B. Each truck shall also successfully pass a safety inspection by the CHP at 1352 W. Olive Avenue, Fresno. Documentation of the successful completion of this inspection of each truck shall be given to the Contract Manager by the FSP CONTRACTOR prior to commencing operations. Succeeding inspections will occur periodically. Any unsafe or poorly maintained vehicle(s) or improperly equipped vehicle(s) shall be removed from service or repaired as directed and the CONTRACTOR shall be fined double the CONTRACTOR’S hourly rate. Spare vehicles will be required to complete the shifts of vehicles removed from service. The CONTRACTOR will be required to have a spare vehicle available for service during the period for which the patrol is in operation.
- C. Each truck shall be equipped, as a minimum, with the following:
 - 1. Wheel lift towing equipment with minimum lift rating of 3,000 pounds retracted and 3,000 pounds with a 95” extension.
 - 2. Wheel lift safety straps or equivalent mechanical device.
 - 3. Hydraulic or mechanical winch(es).

4. Winch Cable – 8,000 pound rating on the first layer of cable, 100 foot, 3/8 inch diameter, 6 x 19 cable or original equipment manufacturers specifications.
 5. Towing sling with 3,000 pound rating, unless waived by the local California Highway Patrol office. If installed, all FSP tow drivers assigned to the vehicle must successfully demonstrate their proficiency in the use of the sling during the tow truck operation proficiency test.
 6. Push bumper and grill guard.
 7. Spotlight(s) capable of directing a beam centered in any direction of a 360-degree horizontal arc around the truck and must be dashboard control.
 8. Amber warning lights with front and rear directional flashing capabilities, with on/off switch in cab.
 9. Power outlets (“Hot boxes”), front and rear mounted, with outlets compatible to booster cables, 6 and 12 volt switchable.
 10. Heavy duty, 60 +/- amp battery.
 11. Two-way mobile radio with CALTRANS frequency (800 MHz) capable of communicating with the FSP Dispatcher in the CALTRANS TMC from any and all points along the FSP route.
 12. Radio scanner capable of scanning between 42 and 47.24 MHz frequencies used by both CALTRANS and the CHP.
 13. Fully charged mobile data-enabled tablet provided by the Contract Manager for GPS fleet tracking and management.
 14. Wiring harness for powering portable, remote brake/tail lights on towed vehicles.
 15. Trailer hitch capable of handling a 1 and 7/8-in. ball and 2-in. ball.
 16. Motorcycle transporting capability.
 17. Steering wheel clamp.
 18. A 4-wheel micro-brake lock.
 19. Folding steps to access rear deck.
 20. Rear work lights.
 21. Safety chain D-ring or eyelet mounted on rear of truck.
- D. Five (5) Service Patrol Trucks shall be painted white. Magnetic signs or decals bearing the FSP title or other identifying logo will be provided by the Contract Manager. These signs shall be mounted on the doors and in a readable location. The signs shall be maintained in a clean, readable condition throughout the FSP operation. There will be no color requirement for the trim. If trim is used, it shall be no greater than four (4) inches

on the front and sides of the vehicle. At the end of the contract, the signs shall be removed and returned to the Contract Manager.

- E. The four (4) active Service Patrol Trucks shall be dedicated to use on this contract during the times and locations specified herein, or as designated by the Contract Manager.
- F. One (1) spare vehicle shall be required. The spare vehicle shall be painted the required color with the required identification markings, title and logo. It shall meet all the vehicle equipment specifications. When the reserve truck is not in use on the FSP, all markings associated with the patrol must be removed from the vehicle. The spare vehicle must be in service within 45 minutes of the time a permanently dedicated vehicle must be taken out of service for any reason. The CONTRACTOR shall not be paid for the 45 minute time period that the contractually required number of trucks is not in service. If a vehicle is unavailable or out of service due to breakdown, CONTRACTOR shall not be paid for that truck and shall be fined double the hourly contract rate in 15 minute increments. If the CONTRACTOR is without a back-up vehicle for more than two (2) weeks, further monetary fines may be imposed and contract termination may be recommended.
- G. The Operator shall be required to complete a pre-operation inspection of the vehicle as well as inventory the required equipment prior to the start of each shift. The sheets must be kept on file at the CONTRACTOR'S office and available for CHP or CALTRANS inspection upon request. Any item missing must be replaced prior to the start of shift.
- H. Truck maintenance shall be performed during off-duty hours. The trucks shall be kept neat and clean, and shall be maintained in conformity with Sections 24605, 25253, 25300, and 27700 of the Vehicle Code.
- I. Service Patrol Trucks and the equipment they carry shall be subject to periodic inspection by the Contract Manager/CHP Officer who, for unsafe or poorly maintained trucks, or for improperly equipped trucks, may, at his/her sole discretion, order the truck(s) removed from service, or may order repairs. The FSP CONTRACTOR shall replace or repair trucks removed from service within 48 hours. The deductions described in Article IX – Payment of this Contract shall apply until the CONTRACTOR has restored the full complement of Service Patrol Trucks during the times as required in Section VII-3.2 Time of Operation.
- J. The CHP will inspect all FSP vehicles, including spares, no later than ten (10) working days prior to the FSP service start date. Documentation of the vehicle's identification number (VIN) and successful completion of the inspection will be kept on file at the CHP offices and CONTRACTOR'S base office.

VII-2.2 Toolbox

- A. Each Service Patrol Truck shall carry a toolbox with the following minimum number of tools/supplies:

<u>Items</u>	<u>Quantity</u>
Screwdrivers	
Standard – 1/8", 3/16", 1/4", 5/16"	1 each
Phillips head - #1 and #2	1 each
Needle nose pliers	1
Adjustable, rib-joint pliers, 2" min capacity	1
Crescent wrench – 8 inch and 12 inch	1 each
Assorted open end wrenches	
Standard: 1/4" - 7/8"	1 each
Metric: 6 – 19 mm	1 each
Socket set	
Standard: 1/4" – 1"	1 each
Metric: 6 – 19 mm	1 each
Ratchet and extensions	1
Ball peen hammer	1
4 pound hammer	1
20 oz. Claw hammer	1
Rubber mallet	1
Wire cutters	1
Bolt cutters	1
Shop rags	12
Mechanics wire	1
Allen wrench for Delco Distributors	1
Battery and terminal cleaning tools	1
Point file	1
Electrical tape, roll	1
Hacksaw and spare blades	1
Duct tape, 20-yard roll	1
Light or penetrating oil, 2 oz. or larger can	1
Battery cable puller	1
Tire pressure gauge	1
Motorcycle straps	2

- B. This list may be supplemented with additional items, at the CONTRACTOR'S option and expense, if necessary to carry out the duties of the FSP.
- C. The toolbox and above items shall be inventoried and the results recorded at the start of shift. Deficient items shall be replaced prior to commencing the patrol circuit.

VII-2.3 Equipment for Operations

- A. Each FSP vehicle shall carry the following equipment needed to perform the service function of the patrol:

<u>Items</u>	<u>Quantity</u>
Steering wheel strap	1
Trailer balls: 1 and 7/8" and 2"	1 each
5-gallon metal jerry cans filled with:	

Yellow – Diesel fuel	1
Red – Unleaded gasoline	1
Safety chains (5/16")	
alloy or original equipment manufacturers specifications	2
Tow chains (5/16") with J and T hooks	
Alloy or original equipment manufacturers specifications	1
Snatch blocks, 4-ton capacity	1
First aid kit, small (5" x 9")	1
Fire extinguisher aggregate rating of at least 4-B, C units	1
Pry bar – 36" or longer	1
5-gallon can of radiator water	1
Sling crossbar spacer blocks	2
4" x 4" x 48" wooden cross beam	1
4" x 4" x 60" wooden cross beam	1
24-inch wide street broom	1
Square point shovel	1
Fuses (highway flares), 15 minutes	36
Traffic cones – fluorescent orange, 28 inches	6
Hydraulic jack, 2-ton, floor	1
Four way lug wrench (1 std.)	1
Four way lug wrench (1metric)	1
Air compressor or rechargeable air bottle, hoses and fittings to fit tire valve stems, 100 psi capacity	1
Paper towels, roll	1
Hand cleaner, waterless, can	1
Flashlights and spare batteries	2
Tail lights/brake lights, portable remote with extension cord	1 set
Vehicle door unlocking tool	1
Electrical fuses – assorted box	2
Funnel, multipurpose, flexible spout	1
Tow chain and hooks, 20 foot	1
Transmission fluid, Ford and GM	1 quart each
Engine Oil, 30 weight	2 quarts
Dolly, portable for removing otherwise untowable vehicles	1
5-gallon garbage cans, 1 filled with sand	2
Trash can with lid (5-gallon)	1

- B. Expendable items such as gasoline, fire extinguisher, fuses, etc., shall be replenished after use and prior to commencing the next circuit of the patrol route.
- C. The items included in this listing are the minimum equipment required. The CONTRACTOR may, at his option and expense, augment the equipment to facilitate the services of the patrol or to improve safety for the public and the FSP Operators.

VII-2.4 Communications Equipment

- A. Service Patrol Trucks shall be equipped and maintained with two-way mobile radios with CHP frequency (800 MHz) capable of communicating with the CHP dispatcher from any and all points along the patrol route. The communications equipment will be supplied by CALTRANS and Fresno COG. CALTRANS and Fresno COG-supplied communication equipment shall be in addition to the CONTRACTOR'S radios.

- B. Programmable scanners capable of scanning between 42 and 47.24 MHz band frequencies used by both CALTRANS and CHP shall be supplied by the CONTRACTOR and shall be installed in all vehicles. Each FSP vehicle shall be equipped with radios to enable the operator to communicate with his/her base office. The radios shall be supplied by the CONTRACTOR.
- C. Each Service Patrol Truck shall be equipped and maintained with a fully charged, mobile data-enabled tablet provided by the Contract Manager for GPS fleet tracking and management. Each Service Patrol Truck Operator is required to log in to the fleet tracking tablet device at the beginning of each FSP shift, and keep the device logged-in and operational through the duration of each shift.
- D. CONTRACTOR shall supply FSP vehicles with an external speaker and public address system. The speaker and address system shall have the capability for the driver of the disabled vehicle to hear instructions transmitted from the cab of the FSP vehicle when the FSP vehicle is adjacent to the rear of the disabled vehicle.
- E. The CONTRACTOR shall be responsible for maintaining the security of the vehicles' communication and fleet tracking equipment. The CONTRACTOR shall be liable for any damage other than normal wear and tear to the communication equipment. The CONTRACTOR shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. Fresno COG shall be liable to repair or replace CALTRANS or Fresno COG communication equipment due to normal wear and tear. Fresno COG shall deduct full repair or replacement costs of any CALTRANS or Fresno COG communication equipment that is not caused by normal wear and tear from CONTRACTOR'S payment. CALTRANS and Fresno COG supplied vehicle equipment shall be returned upon contract termination. The cost of any equipment not returned shall be deducted from the CONTRACTOR'S final payment.

VII-3 OPERATIONS

VII-3.1 Patrol Route

- A. The Service Patrol Trucks shall operate in both directions of SR-41, SR-99, SR-168, and SR-180 in the Fresno metropolitan area as described in Attachment B: FRESNO FREEWAY SERVICE PATROL BEATS. The approximate one-way trip length of the four beats is as follows: 11.3 miles for beat one along SR-41 between Friant Road and Jensen Avenue; 12.4 miles for beat two along SR-99 between Herndon Avenue and Jensen Avenue; 11.4 miles for beat three along SR-168 between Temperance Avenue and SR-180 and along SR-180 between SR-168 and Clovis Avenue; and, 7.2 miles for beat four along SR-180 between Marks Avenue and Chestnut Avenue. CONTRACTOR shall also be responsible for responding to service calls on the four (4) freeway segments that are within the Fresno/Clovis city limits during operation schedule hours. CALTRANS

and the CHP shall have the option of modifying the hours of operations accordingly if peak periods change in nature.

- B. The Service Patrol Truck shall not leave the designated route except:
1. To discontinue patrol at the end of a shift.
 2. For mechanical failure of patrol vehicle or equipment.
 3. To replenish expendable supplies.
 4. To tow or push a disabled vehicle to a point of refuge.
 5. To circumvent a queue to reach an incident/lane blockage on the freeway.
 6. In response to an order from the Contract Manager, a CHP officer or fire department official carrying out his/her duties.
 7. To change operator in the event of operator illness.
 8. To dispose of collected debris gathered during the previous circuit.

VII-3.2 Time of Operation

- A. Unless otherwise ordered by the Contract Manager, the FSP shall commence on the first day of the Contract Period (see Article III – Contract Period). The FSP shall remain in operation, during the designated hours, until the end of the Contract Period, unless ordered by the Contract Manager or the CHP to cease operations.
- B. The Contract Manager shall notify the CONTRACTOR of the exact date on which FSP operations will both commence and end. To permit timely coordination with the CHP Communications Center, the CONTRACTOR'S start-up notification shall be at least two (2) weeks prior to the actual commencement date, and the "cessation of operations" notice shall be at least two (2) weeks prior to the last day of operation.
- C. Typical daily operation schedule is from 0700 to 0900 hours and from 1530 to 1830 hours, for a total of five (5) hours per day per tow truck (beat).
- D. When the FSP Operator receives a request for service from either the Contract Manager or the CHP or when an incident is encountered near the end of the FSP Operator's shift, the Operator shall respond and provide the service, on an overtime basis if necessary.
- E. The specified level of service shall be provided for each incident or disabled vehicle, even if it requires working past an otherwise scheduled break or end of shift.

VII-3.3 Communications

- A. FSP Operator shall notify the CHP dispatcher via radio, and via tablet-enabled GPS fleet tracking system, the time the truck physically commences its patrol of the designated

route, the time the truck goes off duty, and at any time the truck leaves the designated Patrol Route. The CHP dispatcher shall maintain a log of said times. The log shall contain the reason for each departure from the Patrol Route.

- B. FSP Operator shall monitor the local CHP radio frequency. Calls for assistance, as heard on the monitors shall initiate the FSP's response without waiting for the request to go through the various dispatchers. On overhearing such request and commencing response, the FSP Operator with the most expedient access to the "incident" shall radio the CHP Dispatcher that the unit is enroute and specify the unit number, present location, estimated time of arrival, and the situation ("incident") description to which the unit is responding. The CHP Dispatcher shall confirm these details. Radio confirmation or changes will be supplied to the responding truck(s). The CHP Dispatcher shall maintain a log showing the date, original response time, responding unit number, nature of the incident, and the time the incident is reported cleared. The FSP Operator shall be required to complete assist records for each incident.
- C. When transporting a motorist, FSP Operators shall radio the CHP Dispatcher of the fact and their intended destination with the motorist and again upon their arrival at said destination. If the FSP Operator is transporting a female motorist, they shall radio the CHP Dispatcher that they are transporting a female motorist, their intended destination and their beginning mileage prior to their departure. Upon the FSP Operator's arrival at said destination, the FSP Operator shall contact the CHP Dispatcher and advise of their arrival and the ending mileage. The FSP Operator shall radio the CHP Dispatcher again on resumption of patrol.

VII-3.4 Duties

Within the specified time and patrol route location limits, the FSP Operator shall:

- A. At the beginning of each shift, check in with the CHP Dispatcher before beginning the patrolling process.
- B. Continuously patrol the designated routes seeking disabled vehicles, stranded motorists, major items of debris in the roadway, spilled loads, accidents, obstructions to traffic, and other potential hazards, and when safe to do so, shall clear lanes of all such items encountered on patrol or, if beyond the capacity of the Service Patrol Truck, call for: a) CALTRANS Maintenance forces for large spilled loads or large debris; b) local fire department for verified fires; or c) CHP for accidents, law enforcement situations, or for towing of vehicles beyond the Service Patrol Truck's capacity or contractual requirements.
- C. FSP Operators shall contact the CHP Dispatcher when there are more towing incidents than can be handled by the Service Patrol Trucks.
- D. Disabled vehicles shall be cleared from the lanes with the least delay practicable by either pushing or towing. Vehicles disabled due to lack of fuel shall be provided with a

maximum of one (1) gallon of the proper fuel after which restarting of the vehicle should be attempted. If the vehicle is not then able to continue under its own power, it shall be towed or pushed clear off the freeway. The driver of a vehicle with a flat tire shall be encouraged to drive to the nearest location where parking is permitted (a full width shoulder or other safe refuge area) and the tire changed there. If the driver refuses to drive on the flat tire, the FSP Operator shall offer to tow the disabled vehicle.

- E. Motorists shall be advised, prior to towing, pushing, fueling, or servicing the vehicle, that the vehicle must be removed from the traffic lanes, that this service is being provided free of charge as a courtesy by Fresno COG, CALTRANS, and CHP, and that the "Freeway Service Patrol Operator" may attempt minor repairs once the vehicle is cleared from the traffic lanes. If the vehicle cannot be mobilized within a **10 minute time limit**, it will be towed to a designated drop location identified by the CHP. The motorist can request the FSP Operator to call the CHP dispatch to request a CHP rotational tow, specified tow or relative/friend to assist them, said secondary tow shall be at the motorist's sole expense.
- F. The FSP Operators will not be in rotation during FSP hours and will not be allowed to tow as an independent contractor from an incident that occurred during the FSP's shift unless called by the CHP rotation. If called as a rotation tow after a FSP shift, the Operator must remove all FSP markings and his/her FSP uniform. There may be instances where FSP Operators may be requested to lend assistance to CHP officers. FSP Operators shall follow the instructions of the CHP officer at the scene of any incident within the FSP program.
- G. The FSP Operator shall give the motorists an FSP survey card (provided by the Contract Manager) prior to providing any services and prior to pushing or towing the disabled vehicle. The card will explain the need to remove the disabled vehicle from traffic, the fee (none), and the services that the FSP Operator is authorized to provide. It will also contain a postage-paid, CHP addressed questionnaire and response card.
- H. Should a motorist refuse to allow the disabled vehicle to be cleared of the traffic lanes, the FSP Operator shall radio for CHP assistance and remain on the scene providing additional protection to the vehicle from the traffic via the Service Patrol Truck. Without driver permission, the vehicle shall not be pushed or towed unless a CHP Officer at the scene orders the vehicle to be removed.
- I. When a vehicle's operator is not available to authorize towing due to the driver being removed from the scene as an accident victim, the FSP Operator shall not remove the vehicle unless ordered by a CHP officer at the scene to remove it.
- J. Vehicles involved in accidents shall not be towed unless directed by the CHP. When directed to tow such vehicles, the vehicles shall only be towed to designated FSP drop locations whereupon other arrangements may be made.
- K. People shall not be permitted to ride in vehicles being towed, but should ride in the Service Patrol Truck instead. If there are more than two (2) such persons, the FSP

Operator shall call the CHP or another Service Patrol Truck for transportation of such persons.

- L. After towing or pushing a disabled vehicle to a location as described above, the FSP Operator shall attempt to discern the cause of the disability and offer simple repairs and/or remedies. The FSP Operator should limit this assistance to 10 minutes or less with any single such disabled vehicle and inform the motorist of this time limit prior to commencing services. If the vehicle cannot be mobilized within a **10 minute time limit**, it will be towed to a designated drop location identified by the CHP. The motorist can request the FSP Operator to call the CHP Dispatch to request a CHP rotational tow, specified tow or relative/friend to assist them, said secondary tow shall be at the motorist's sole expense.
- M. The FSP Operator should:
 - 1. Change flat tires for drivers.
 - 2. Provide "jump" starts with booster cables for vehicles with dead batteries.
 - 3. Provide motor oil (2 quarts maximum) or transmission fluid.
 - 4. Provide appropriate automobile fuel (1 gallon maximum).
 - 5. Temporarily tape or repair burst cooling system hoses and refill radiators with water.
 - 6. Change readily accessible blown electrical fuses.
 - 7. Attempt to restart stalled engines.
 - 8. Make minor mechanical adjustments, within the Operator's scope of mechanical skill, to get the vehicle under way on its own power.
- N. Remove from the travel way debris and/or dead animals to a limit not to exceed the FSP Operator's safe lifting limit, or to the ability of the Service Patrol Truck to safely transport the debris to beyond the right shoulder. The locations and nature of heavy or voluminous debris shall be reported to the CHP Dispatcher who shall, as soon as possible, contact CALTRANS' Maintenance Branch for removal of the debris.
- O. Dispose of collected rubbish, debris, and dead animals at a legal site and in a manner conforming to local sanitation laws.
- P. On request, render assistance to CHP officers. FSP Operators shall follow the instructions of, and obey the orders of, CHP officers at the scene of any incident attended by both.
- Q. Call for police, fire and ambulance assistance as necessary at accident scenes.

- R. Protect scenes of serious accidents by setting flares (where safe to do so), cones, and/or flashing amber lights and assist in traffic control, at the direction of the CHP until CALTRANS maintenance personnel arrive and/or are relieved by the CHP.
- S. FSP Operators shall use an appropriate method of towing for each encountered situation and type of vehicle to be towed. FSP Operators shall use towing procedures that are unlikely to cause damage to the towed vehicle and that would be considered appropriate by other competent tow service operators acting in similar circumstances with similar equipment. Safety chain(s) between the towed vehicle and the Service Patrol Truck shall be used during all towing.
- T. No FSP Operator shall tow a hybrid vehicle with any of its wheels on the ground. FSP Operators shall use tow dollies (or flatbed if available) to remove the vehicle from the freeway. FSP Operators shall not attempt to service hybrid vehicles by performing any function within the engine compartment. Under no circumstances shall an FSP Operator attempt to jump-start or repair battery cables on a hybrid vehicle.
- U. FSP Operators shall maintain "Service Patrol Incident Logs" that shall be completed for each incident attended by an Operator.
- V. FSP markings as well as vehicle numbers shall be required on both sides of all FSP tow vehicles. FSP Operators shall be required to keep the title and logos clean and in readable condition throughout the duration of the FSP contract. FSP vehicle numbers shall be placed on the rear, front, and both sides of the regular patrolling FSP vehicles as well as on the back-up vehicle. The numbers shall be placed above the midpoint in height on the vehicle and shall be a minimum of 2-1/2 inches in height.
- W. It will be the FSP Operator's responsibility to place the detachable FSP markings on each vehicle during the FSP service hours and to remove the detachable markings immediately upon completion of each shift. Fresno COG will supply the FSP CONTRACTOR with the appropriate number of detachable markings and vehicle roof markings for his/her beat(s). If a marking is lost or damaged, the FSP CONTRACTOR shall be responsible for the cost of the replacement marking. All FSP markings shall be returned to Fresno COG at the termination of the contract. The cost of any Fresno COG and/or CHP supplied item and/or equipment shall be deducted from the CONTRACTOR'S final payment.

VII-3.5 Operator Qualifications

- A. FSP Operators shall be licensed in accordance with Section 12804 of the Vehicle Code.
- B. FSP Operators shall be sufficiently capable in the tasks of tow truck operations to provide safe and proper discharge of the service responsibilities.
- C. All potential FSP Operators shall be required to have a safe driving record and current Class C driver's license. All Operators shall be 18 years of age or older. Potential

Operators shall be subject to driving record and criminal background checks. The CHP will be permitted to do background checks. The driving record and criminal background checks shall be obtained by the CHP. Any operator convicted of a crime specified in paragraph (1), (2), (3), or (4) of Subdivision (a) of Section 13377 of the Vehicle Code or any operator not meeting the requirements put forth in the Tow Service Agreement (TSA) for Rotation Tow Operators (HPM 81.2, Vehicle Procedures Manual, Element 15, Annex GG-1, "Criminal Conviction Disqualifications for Rotation Tow Operators/Drivers"), will be automatically excluded from the FSP. In addition, as a matter of policy, the Fresno COG may, in its sole discretion, require an operator to replace any driver whom it determines is not suitable to represent the FSP program with the public, based on the CHP background check. Potential Operators shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required FSP equipment to provide safe and proper service. All potential Operators must be capable of demonstrating their tow operating abilities prior to formal CHP/CALTRANS training. Additionally, the Operators will be required to exercise good sound judgment in carrying out their duties.

- D. All FSP Operators shall possess a valid medical certificate. Drivers not in possession of a valid medical certificate are to be removed from FSP service until they are in compliance with this requirement. Medical certificates are to be retained in driver records (files) for review by CHP personnel.
- E. The CHP, CALTRANS, and Fresno COG maintain strict drug and alcohol policies. Any FSP Operator found working under the influence of drugs and/or alcohol will be terminated immediately. The FSP CONTRACTOR shall be responsible for finding a replacement driver for the vehicle. In addition, all tow truck drivers involved with the FSP Program shall participate in an annual random drug testing program in accordance with the CHP's Tow Service Agreement (TSA).
- F. All FSP Operators including back-up drivers shall be required to complete the CHP/CALTRANS two-day training. The CONTRACTOR shall pay drivers for the time spent in the training class. No driver shall be allowed to begin patrolling without attending the mandatory training classes. Any driver who is found on patrol without completing the mandatory training shall be prohibited from further FSP service and the CONTRACTOR'S contract terminated immediately.
- G. Mandatory CHP/CALTRANS refresher training classes shall be scheduled during non-FSP hours. The refresher training shall occur once per year at least eight (8) hours per year. The FSP Contractor shall pay all FSP Operators and back-up drivers for attending the training.

VII-3.6 Operator Conduct

- A. The FSP CONTRACTOR, in accepting said contract, acknowledges that the FSP Operator may be in the best position to determine the necessary steps to be taken at the location of a stalled or wrecked vehicle. As all conditions that may be encountered

cannot be anticipated so that detailed specifications can be issued, the Operator will be expected to exercise good, sound judgment in carrying out the duties and to conduct the duties in such a manner that it will reflect favorably upon Fresno COG, CALTRANS, CHP, and the State of California.

- B. If any subcontractor or person employed by the CONTRACTOR shall appear to the Contract Manager to be incompetent or to act in a disorderly or improper manner, she/he shall be removed from this project service immediately on request by the Contract Manager, and such person shall not again be employed on the work.
- C. Operators shall be informed that the public could refuse assistance, thereby negating the purpose of the FSP, if the Operator's personal appearance is so unsavory and unkempt as to cause mistrust in the minds of the public. Operators shall:
 - 1. Change uniforms when required. Uniforms shall be clean at the start of each shift.
 - 2. Be well groomed.
 - 3. Wear name plates where they can be seen.
 - 4. Be courteous at all times.
- D. FSP Operators shall follow the following Safety Rules and General Regulations:
 - 1. Drinking of alcoholic beverages on or less than 8 hours before a shift is forbidden. Use of illegal substances or illegal use of controlled substances is forbidden.
 - 2. Inspect assigned tow trucks at the beginning of each shift.
 - 3. Always wear uniforms while on duty (uniform shirt or jacket must be clearly visible).
 - 4. Keep all communications radios, tablets, and monitors "on" and the volume "up."
 - 5. Remain on their assigned beat and depart from the beat only after radioing the CHP Dispatcher of the time and reason for leaving.
 - 6. Never exceed the legal speed limit. Obey traffic laws.
 - 7. Never remove personal objects from a vehicle being serviced even if requested to do so by the owner.
 - 8. Always radio the CHP Dispatcher before transporting passengers.
 - 9. Do not stop on the freeway other than to service an incident. Paperwork shall be done off the freeway.
 - 10. Crouch as low as possible when opening the hood of a vehicle with an engine fire.
 - 11. When clearing an incident, use caution; do not rush.

12. Never push a truck or any other vehicle when the FSP Operator cannot see directly ahead. Tow instead.
13. **DO NOT ACCEPT PAYMENT OF ANY TYPE FOR SERVICES RENDERED.** This is a FREE service and in NO CASE shall an Operator accept any payment or gratuity for services rendered, even if the driver insists.
14. Contact the CHP after arriving at situations that the FSP Operator cannot handle.
15. Operators shall not carry firearms or other weapons while on duty.
16. Flashing amber lights shall only be used:
 - a. at the scene of an incident.
 - b. when needed to warn overtaking traffic of the Service Patrol Truck's low speed when accelerating into traffic lanes.
 - c. to warn traffic when using the truck to protect the scene of an incident.
 - d. when needed to help protect the FSP Operator from oncoming traffic. Flashing amber light shall be activated in conformity with Section 25253 of the Vehicle Code.

E. Operators shall comply with the following uniform requirements:

1. It shall be the responsibility of the FSP CONTRACTOR to provide FSP Operators with the specified uniforms, shoes, and other equipment necessary to carry out the FSP duties as required by this contract. The equipment includes navy blue suits or shirts and pants. If coveralls are worn they shall have two-way zip front with heavy duty brass zipper. Coverall or shirt sleeves shall be half raglan type or set-in sleeve with pleated-action back. Long sleeves may have plain barrel cuff or be equipped with snap or button closure on wrist. The length of the sleeve on short-sleeve coveralls/shirts shall come to within approximately one (1) inch of the inside forearm when the wearer's arm is bent at a 90 degree angle.
2. The coveralls shall have shape-holding, sanforized, waist banding with elastic inserts for trim fits. Legs shall be moderately tapered to avoid excessive fullness, H.D. Lee Company style No. 018-3041 (Navy Blue) or Commercial Uniform Company style No. 201 (Navy Blue) or equal. All main seams shall be at least double stitched with good quality thread.
3. Shirts or coveralls shall have one or two chest pockets. Single pocket coveralls/shirts shall have the chest pocket on the left.
4. The first initial of the first name and the full last name shall be sewn above the left chest pocket so that it shall be clearly visible with the collar open. Letters shall not exceed ½ inch. A detachable metal nameplate may be worn in place of the embroidered name at the CONTRACTOR'S option.

5. Reflective white stripes shall be sewn around both sleeve cuffs and both leg cuffs and across the upper back.
6. The FSP logo shall be sewn across the middle portion of the back of each uniform. It shall be centered. The small FSP logo shall be sewn on the left front pocket. If awarded, a Driver of the Month patch should be sewn on the left shoulder. The month of the award patch shall be sewn directly below the Driver of the Month patch.
7. All FSP Operators shall wear general duty black work boots with protective steel toe.
8. During cold weather, a navy blue sweater or sweatshirt may be worn under the uniform shirt/jumpsuit. A navy blue jacket may replace the sweater or sweatshirt at the CONTRACTOR'S option, if it meets all the uniform specifications including patches.
9. Rain gear shall be waterproofed material, yellow in color. Reflective white tape shall be applied to both sleeve cuffs and both leg cuffs and across the upper back.
10. Hats shall be baseball type cap, navy blue in color. At the CONTRACTOR'S option, the words "Freeway Service Patrol" or the initials "FSP" shall be embroidered above the brim. The words or initials shall be centered. It shall be sewn in white. No other logos/names shall be accepted.
11. A sketch of the uniform is provided in Attachment E: FSP UNIFORM REQUIREMENTS.

VII-4 LOCAL OFFICE

- A. The CONTRACTOR shall provide a local office for contract administration purposes. This office shall be staffed by either the CONTRACTOR or a person who has the authority to conduct business and make decisions on behalf of the CONTRACTOR. The office shall have business hours coinciding with CONTRACTOR'S beat hours of operation as described on Attachment B: FRESNO FREEWAY SERVICE PATROL BEATS.
- B. Through the sheet shown on Attachment D: FRESNO FREEWAY SERVICE PATROL CONTRACTOR REPRESENTATIVE FORM, the CONTRACTOR shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the CONTRACTOR.

VII-5 STANDARD OPERATING PROCEDURES

Attachment C: FREEWAY SERVICE PATROL STANDARD OPERATING PROCEDURES contains the Standard Operating Procedures which, as part of this contract, describe the guidelines and policies used to administer the FSP program. Potential contract violations by both driver and companies are described and the penalty guidelines established. However, each case will be weighed on its own merits. Multiple contractual violations may result in more severe penalties, up to and including contract termination.

Article VIII - RATES

For its performance of services as described above, the CONTRACTOR shall be paid at the rate specified below:

Price Per Hour/Tow Trucks #1, #2, #3, and #4 \$xx.xx each

The compensation above specified will cover and include all applicable labor surcharges such as taxes, insurance, and fringe benefits, as well as equipment, supplies, tools, indirect costs, overhead, general and administrative expense, and profit.

Article IX - Payment

- A. The work to be performed in Article VII – Scope of Work/Special Provisions will be paid for by the hour for each Service Patrol Truck, for the hours of operation either as previously designated herein or as directed by the Contract Manager. The hourly rate shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all work as specified in this contract, and as directed by the Contract Manager. The bid price shall also take into consideration that operators are required and shall be paid by the CONTRACTOR for attending the mandatory training classes.
- B. Fresno COG shall not be obligated to pay costs that exceed the ceiling price set by the CONTRACTOR’S bid proposal. CONTRACTOR agrees to use its best efforts to perform the services and all obligations under this contract within such ceiling price.
- C. Fresno COG will reimburse the CONTRACTOR **MONTHLY** in arrears as promptly as Fresno COG fiscal procedures permit upon receipt of itemized invoices in triplicate. Invoices shall reference this contract number and shall be submitted to the Contract Manager at the following address:

Fresno Council of Governments
Attn: Suzanne Martinez, Associate Regional Planner
2035 Tulare Street, Suite 201
Fresno, CA 93721
- D. For its performance of services, the CONTRACTOR shall be paid for labor expended directly in the performance of this service at the rates specified. Overtime shall be subject to prior approval by the CHP and/or Fresno COG and the CHP shall document all

overtime requests. Overtime shall be reimbursed at the straight time rate and paid in quarter hour increments.

- E. The compensation hereinabove specified will cover and include all applicable labor surcharges such as taxes, insurance and fringe benefits, as well as direct/indirect costs, overhead, general and administrative expenses and profit.
- F. Allowance of other direct costs under this contract shall be determined in accordance with applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations in effect on the date of this contract.
- G. Reimbursement: Fines for starting late, leaving early, or being ordered out of service by CHP or CALTRANS shall be deducted from the CONTRACTOR'S monthly invoice at double the hourly rate charge in 15 minute increments calculated to the next greatest charge. Wherein a 20-minute break in service will be charged as 30-minutes rather than 15 minutes.

Article X - Nondiscrimination

- A. During the performance of this contract, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. CONTRACTOR and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. CONTRACTOR shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Article XI – Statement of Compliance

The CONTRACTOR'S signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the CONTRACTOR has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

Article XII – Funding Requirements

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this contract in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- D. Fresno COG has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

Article XIII – Retention of Records/Audits

For the purpose of determining compliance with Public Contract Code Section 10115 et. seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code Section 8546.7, the CONTRACTOR, subcontractors, State, and Fresno COG shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the contract. The State, the State Auditor, Fresno COG, FHWA, or any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Article XIV - Termination

Fresno COG reserves the right to terminate this agreement without cause upon thirty (30) days written notice to the CONTRACTOR or immediately in the event of material breach by the CONTRACTOR.

Article XV – Change in Terms/Amendment

This contract may be amended or modified only by mutual written agreement of the parties.

Article XVI - Disputes

- A. If Fresno COG determines that CONTRACTOR has not adequately performed any such task or services, Fresno COG shall inform CONTRACTOR of those acts in writing which are necessary for satisfactory completion of the item(s). CONTRACTOR shall undertake any and all work to satisfactorily complete the item(s) at no additional charge to Fresno COG. An unresolved dispute over an alleged error or omission may cause payment of CONTRACTOR'S fees in the disputed amount to be withheld by Fresno COG.
- B. Neither the pendency of a dispute nor its consideration by the Fresno COG will excuse the CONTRACTOR from full and timely performance in accordance with the terms of this contract.

Article XVII - Subcontracting

- A. CONTRACTOR shall not assign or subcontract its duties under this contract without the prior express written consent of the Fresno COG. No such consent shall be construed as making the Fresno COG a party to such subcontract, or subjecting the Fresno COG to liability of any kind to any subconsultant.
- B. No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the CONTRACTOR of his/her liability and obligation under this contract, and all transactions with the Fresno COG must be through the CONTRACTOR. Subcontractors may not be changed by CONTRACTOR without the prior express written approval of Fresno COG.
- C. CONTRACTOR represents and covenants by entering into this contract that it is the prime contractor in this contract, and that it is responsible for all acts or omissions of its said subcontractors.

Article XVIII – Contractor Insurance Requirements

- A. CONTRACTOR shall be required, at its own expense, to obtain and maintain insurance for the duration of the contract against claims for injuries to, or death of, persons, or damages to or destruction of, property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, his agents, representatives, or employees. The CONTRACTOR must have original insurance certificates and endorsement approved by Fresno COG on file before contract performance begins. Insurance carriers shall be required to have an established place of business in California. Fresno COG may request a claims report at any time.
- B. **Minimum Coverage.** Contractor shall obtain the following types of coverage with limits no less than:
 - 1. Workers' Compensation Insurance as required by the State of California;

2. Employer's Liability of \$2,000,000 per accident for bodily injury or disease;
 3. General Liability of \$2,000,000 per occurrence for bodily injury, personal injury and property damage (if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit), plus a minimum of \$1,000,000 excess liability insurance (totaling a minimum of \$3,000,000 in general liability insurance);
 4. Automobile Liability, \$2,000,000 per accident for bodily injury and property damage; and
 5. On-hook Insurance, \$100,000 per accident.
- C. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to and approved by Fresno COG. At the option of Fresno COG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Fresno COG and its subsidiaries, officers, officials, employees and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- D. **Other Insurance Provisions.** The general liability and automobile liability are to contain, or be endorsed to contain, the following provisions:
1. Fresno COG, CHP, CALTRANS, State of California, and their agents, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of the protection afforded to such additionally covered parties.
 2. For any claims related to this project, the CONTRACTOR'S insurance coverage shall be primary insurance as respects to Fresno COG, CHP, CALTRANS, State of California, their subsidiaries, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Fresno COG, CHP, CALTRANS, State of California, their subsidiaries, officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
 3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Fresno COG, CHP, CALTRANS, State of California, their subsidiaries, officers, officials, employees or volunteers.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Fresno COG and its subsidiaries.
- E. **Acceptability of Insurers.** All insurance, with the exception of worker's compensation coverage, is to be placed with insurers currently admitted in California, with a current A.M. Best's rating no less than A:VII. Worker's compensation coverage is to be placed with insurers currently admitted in California.
- F. **Verification of Coverage.** Contractor shall furnish Fresno COG with original endorsements effecting coverage required by this contract. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms approved by Fresno COG's Finance Director. All endorsements are to be received and approved by Fresno COG before work commences. Fresno COG may at any time request written verification that insurance coverage is being maintained.
- G. **Indemnification and Hold Harmless.** The CONTRACTOR shall indemnify, hold harmless and defend the Fresno COG, CHP, CALTRANS, State of California, and their agents, employees, officers, officials, and volunteers, from and against all liability, claims, losses, actions, and expenses including, but not by way of limitation, attorney's fees, of whatsoever nature, including, but not by way of limitation, those made on account of bodily injury to or death of any person, including employees and parties who would be indemnified and held harmless, or damage to or loss of use of property, including property of the indemnities, or those arising from any violation or claimed violation by CONTRACTOR of federal, State, or local wage or hour regulations, arising out of, or resulting from, the acts, or omissions to act, of the CONTRACTOR, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable in the performance of their work, whether occurring during the course of the contract, or after its completion, unless caused solely by the gross negligence or willful misconduct of the parties to be indemnified or held harmless.

This Indemnity and Hold Harmless agreement shall survive termination of the contract or final payment hereunder. This Indemnity and Hold Harmless agreement is in addition to any other rights or remedies which the indemnified parties may have under the law or under the contract. In the event of any claim or demand made against any party which is entitled to be indemnified or held harmless hereunder, Fresno COG may in its sole discretion reserve, retain, or apply any monies due to the CONTRACTOR under the contract for the purpose of resolving such claims, provided, however, that Fresno COG may release its funds, if the CONTRACTOR provides Fresno COG with reasonable assurance of protection of the indemnified parties' interests. Fresno COG shall in its sole

discretion determine whether such assurances are reasonable. CONTRACTOR'S obligation to indemnify and hold harmless the parties to be indemnified and held harmless shall not be limited, in any way, by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR, or its subcontractors, under Workers' Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts or Insurances.

Article XIX – Independent Contractor

- A. **INDEPENDENT CONTRACTOR RELATIONSHIP TO Fresno COG:** In performance of the work, duties, and obligations assumed by CONTRACTOR under this Contract, it is mutually understood and agreed that CONTRACTOR, including any and all of CONTRACTOR'S partners, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of Fresno COG. Furthermore, Fresno COG shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, Fresno COG shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof. CONTRACTOR and Fresno COG shall comply with all applicable provisions of law and the rules and regulations, if any, of Public Sector authorities having jurisdiction over the subject matters thereof.
- B. **INDEPENDENT CONTRACTOR RIGHTS:** Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to Fresno COG employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CONTRACTOR shall be solely responsible and save Fresno COG harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to Fresno COG or to this Contract.
- C. **FRESNO COG LIABILITY BY CONTRACTOR:** Nothing in this Contract authorizes CONTRACTOR to make any contract, agreement, warranty, or representation on Fresno COG's behalf, or to incur any debt or other obligation in Fresno COG's name, and Fresno COG shall in no event assume liability for or be deemed liable as a result of any such action or by reason of any act or omission of CONTRACTOR pursuant to this Contract.

Article XX – Maintenance of DBE Percentages

The CONTRACTOR agrees to maintain the DBE percentages as set forth in Attachment F: DBE/WBE PARTICIPATION.

Article XXI – Drug Free Work Place

The CONTRACTOR shall certify compliance with Government Code Section 8355 pertaining to providing a drug-free workplace per Attachment G: DRUG FREE WORKPLACE CERTIFICATION.

Article XXII – Laws to be Observed

The CONTRACTOR shall keep fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. CONTRACTOR shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The CONTRACTOR shall protect and indemnify the Fresno COG and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the CONTRACTOR, a subcontractor, or an employee. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, the CONTRACTOR shall immediately report the same to the contract manager in writing.

Article XXIII – Specific Statutory Reference

Any reference to certain statutes in this contract shall not relieve the CONTRACTOR from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished thereunder.

Article XXIV – Equipment Indemnification

The CONTRACTOR shall indemnify the Fresno COG and the State against all loss and damage to the CONTRACTOR'S property or equipment during its use under this contract and shall at the CONTRACTOR'S own expense maintain such fire, theft, liability or other insurance as deemed necessary for this protection. The CONTRACTOR assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this contract or by operations of the CONTRACTOR or the CONTRACTOR'S employees under this contract.

Article XXV – Enforcement of Agreement

If any action is brought to enforce the terms of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and expenses from the other party, in addition to any other relief to which the prevailing party may be entitled.

Article XXVI – Inclusive Costs

The cost of employer payments to or on behalf of employees, subsistence, travel, compensation insurance premiums, unemployment contributions, social security taxes, contract bond premiums, and any other taxes or assessments INCLUDING SALES AND USE TAXES required by law or otherwise shall be included in the price bid and no additional allowance will be made thereof, unless separate payment provision should specifically so provide.

Article XXXVII – Non-solicitation

The CONTRACTOR warrants, by execution of this contract, that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained or contracted by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the Fresno COG shall have the right to annul this contract with our liability, paying only for the value of the work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Article XXVIII – Interfacing with Pedestrian and Vehicular Traffic

Pursuant to the authority contained in Section 591 of the Vehicle Code, CALTRANS has determined that within such areas as are within the limits of the project and open to public traffic, the CONTRACTOR shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONTRACTOR shall take all necessary precautions for safe operations of the CONTRACTOR'S equipment and the protection of the public from injury and damage from such property.

Article XXIX – National Labor Relations Board Certification

In accordance with Public Contract Code Section 10296, a contractor who is not a public entity, by signing this contract, hereby swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the CONTRACTOR'S failure to comply with an order of a federal court which orders the CONTRACTOR to comply with an order of the National Labor Relations Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as of the date and year first above written.

FRESNO COUNCIL OF GOVERNMENTS

By _____
AMARPREET DHALIWAL, Chairman

TOWING COMPANY

By _____
Ernest Holmes, Sr., Owner

APPROVED AS TO CONTENT:

By _____
ANTHONY BOREN, Executive Director

APPROVED AS TO LEGAL FORM:
DANIEL CEDERBORG, County Counsel

By _____
ARTHUR WILLE, Senior Deputy County Counsel

Attachment A

PRELIMINARY LIST OF FSP TOW HOLIDAYS

HOLIDAY	March 4, 2019 – June 30, 2019
Memorial Day	Monday, May 27, 2019
HOLIDAY	July 1, 2019 – June 30, 2020
Independence Day	Thursday, July 4, 2019
Labor Day	Monday, September 2, 2019
Columbus Day (Observed)	Monday, October 14, 2019
Veterans Day	Monday, November 11, 2019
Thanksgiving Day	Thursday, November 28, 2019
Day After Thanksgiving Day	Friday, November 29, 2019
Christmas Day	Wednesday, December 25, 2019
New Years Day	Wednesday, January 1, 2019
M.L. King Jr's Birthday (Observed)	Monday, January 20, 2020
Lincoln's Birthday (Observed)	Monday, February 10, 2020
President's Day	Monday, February 17, 2020
Memorial Day	Monday, May 25, 2020
HOLIDAY	July 1, 2020 – June 30, 2021
Independence Day (Observed)	Friday, July 3, 2020
Labor Day	Monday, September 7, 2020
Columbus Day (Observed)	Monday, October 12, 2020
Veterans Day	Wednesday, November 11, 2020
Thanksgiving Day	Thursday, November 26, 2020
Day After Thanksgiving Day	Friday, November 27, 2020
Christmas Day	Friday, December 25, 2020
New Years Day	Friday, January 1, 2021
M.L. King Jr's Birthday (Observed)	Monday, January 18, 2021
Lincoln's Birthday (Observed)	Monday, February 8, 2021
President's Day	Monday, February 15, 2021
Memorial Day	Monday, May 31, 2021
HOLIDAY	July 1, 2021 – June 30, 2022
Independence Day (Observed)	Monday, July 5, 2021
Labor Day	Monday, September 6, 2021
Columbus Day (Observed)	Monday, October 11, 2021
Veterans Day	Thursday, November 11, 2021
Thanksgiving Day	Thursday, November 25, 2021
Day After Thanksgiving Day	Friday, November 26, 2021
Christmas Day (Observed)	Friday, December 24, 2021
New Years Day (Observed)	Friday, December 31, 2021
M.L. King Jr's Birthday (Observed)	Monday, January 17, 2022
Lincoln's Birthday (Observed)	Monday, February 14, 2022
President's Day	Monday, February 21, 2022
Memorial Day	Monday, May 30, 2022

NOTE: Fresno COG, in consultation with CALTRANS and CHP, reserves the right to adjust, add, or delete holidays to the work schedule.

Attachment B

FRESNO FREEWAY SERVICE PATROL BEATS

BEAT	ROUTE	LIMITS	# OF MILES (ONE-WAY)	# OF TRUCKS	# OF BACKUP TRUCKS	# OF DRIVERS	MINIMUM # OF DRIVER BACKUPS	AM SHIFT	PM SHIFT	STARTING DATE	ENDING DATE
1*	SR-41	Friant to Jensen	11.3	1	1**	1	1***	7:00 to 9:00	3:30 to 6:30	3/4/2019	6/30/2022
2*	SR-99	Herndon to Jensen	12.4	1	1**	1	1***	7:00 to 9:00	3:30 to 6:30	3/4/2019	6/30/2022
3*	SR-168 SR 180	Temperance to SR-180 SR 168 to Clovis	11.4	1	1**	1	1***	7:00 to 9:00	3:30 to 6:30	3/4/2019	6/30/2022
4*	SR-180	Marks to Chestnut	7.2	1	1**	1	1***	7:00 to 9:00	3:30 to 6:30	3/4/2019	6/30/2022

* Towing Contractor shall also be responsible for responding to *service calls* on the four (4) freeway segments that are within the Fresno/Clovis city limits during operation schedule hours.

** One backup truck required for all four beats.

*** One backup driver required for all four beats.