



CITY OF NEWMAN

**REQUEST FOR APPLICATIONS
FOR
CITY GENERATED NON-EXCLUSIVE NON-CONSENSUAL
FRANCHISE TOWING SERVICES**

TIMELINE

Application Period Opened:	Monday, December 13, 2009 at 8:00 AM
Application Period Closed:	Friday, January 8, 2010 at 4:00 PM
Introduction to City Council:	Tuesday, January 12, 2010 at 7:00 PM
Adoption by City Council:	Tuesday, January 26, 2010 at 7:00 PM
Award Contract:	Tuesday, February 9, 2010 at 7:00 PM
Franchise Agreement Effective:	Monday, March 1, 2010 at 12:00 AM

CITY CONTACT: Chief of Police Adam McGill
PHONE: (209) 862-2902
E-MAIL ADDRESS: amcgill@cityofnewman.com

REQUEST FOR APPLICATIONS
For
CITY GENERATED NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING
SERVICES

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NOTICE FOR APPLICATIONS

NOTICE IS HEREBY GIVEN The City of Newman is accepting applications for City generated non-exclusive non-consensual franchise towing services for vehicle towing, impound services, street sweeps, and vehicle storage as directed by the Police Department. To be eligible for a non-exclusive franchise, applicants must: Submit a completed application packet, meet any and all requirements identified in the request for application, agree to comply with the terms and conditions of the non-exclusive non-consensual towing services franchise agreement and meet any other terms and conditions imposed by the City of Newman for granting of a non-exclusive franchise.

All Costs associated with the preparation of an application shall be borne by the Applicant.

Applications must be submitted on the application form prescribed by the City of Newman.

Each application packet shall be sealed and filed with the City Clerk's Office, 1162 Main Street, Newman, CA. 95360 prior to Friday, January 8, 2010 at 4:00 PM, at which time application packets will be opened and announced. Application packets will be received only at the City Clerk's Office address shown above, and prior to the date and time indicated. Any application packet received at or after said date and time or at a place other than the stated address shall not be considered and will be returned to the applicant unopened.

All application packets will be on file for review, following the City Managers recommendation for granting of a non-exclusive non-consensual towing services franchise to City Council, at the City Clerks Office, 1162 Main Street, Newman, CA. 95360 and at the Police Department, 1200 Main Street, Newman, CA. 95360.

All application packets, whether delivered by the applicant or agent of the applicant, U.S. Postal Service, courier or package delivery service must be received and time stamped by the date and time stated, at the stated address. The City Clerk's time stamp shall be considered the official timepiece for the purpose of establishing the actual date and time of receipt of the application packet. The City of Newman assumes no responsibility for delay in the delivery of the application packet. It is solely the applicant's responsibility to ensure that the application packet has been delivered to the proper location prior to the date and time indicated on this notice for application. On the outside of the application packet envelope, the applicant shall indicate the following:

NAME AND ADDRESS OF APPLICANT
REQUEST FOR APPLICATION
NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES
APPLICATION OPENING TIME AND DATE: January 8, 2009 at 4:00 PM

UNITED STATES POSTAL SERVICE
MAIL TO: CITY CLERK
P.O. Box 787
Newman, CA. 95360

COURIER SERVICE/ HAND DELIVERY
TO: CITY CLERK
1162 Main Street
Newman, CA. 95360

The City reserves the right to reject any or all applications or to waive any informalities or minor irregularities in any application.

CITY CONTACTS

All questions regarding the application process are to be submitted in writing via U.S. mail, fax or email, to:

Newman Police Department
Attn: Chief of Police Adam McGill
P.O. Box 787
Newman, CA 95360
Fax: 209-862-4151
Email: amcgill@cityofnewman.com

Attempts by the applicant to contact other City representatives may result in disqualification of the applicant from the application process.

NOTE: It is the responsibility of each applicant to be familiar with all terms, conditions and specifications of this RFA. The applicant agrees to and acknowledges all RFA specifications, terms, and conditions and indicates the ability to perform by submission of an application packet. By the submission of an application packet, the applicant certifies that if awarded a non-exclusive non-consensual towing service franchise, applicant will make no claim against the City based upon ignorance or misunderstanding of the terms, conditions or specifications.

REQUEST FOR APPLICATION (RFA)
For
CITY GENERATED NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES

SECTION 1

1.1 BACKGROUND

In calendar year 2008 the City generated approximately 122 tows during a twelve (12) month period, January through December 2008. At this point it appears the City will generate approximately 135 tows for calendar year 2009. The City of Newman does not currently have any rules, ordinances, policies, or guidelines to regulate the towing companies providing service on behalf of the City of Newman. The City is now embarking on improving its non-consensual towing program. The main goal of the program is to provide safe, responsible and reliable towing of vehicles on behalf on the City of Newman. In addition, California Vehicle Code (CVC) 12110 authorizes a fee in connection with the award of a franchise for towing vehicles on behalf of the City. However, the fee may not exceed the amount necessary to reimburse the City for its actual and reasonable costs incurred in connection with the towing program.

1.2 SCOPE OF WORK

The City of Newman is accepting applications for City generated non-exclusive non-consensual towing services on behalf of the Newman Police Department. Non-consensual towing services include but are not limited to:

- 1) Vehicles impounded by The City of Newman for investigation, as evidence in a criminal case, asset forfeiture or vehicle forfeiture;
- 2) Vehicles involved in collisions, stalled vehicles, illegally parked vehicles, vehicles whose driver is incapacitated or physically unable to drive or has been arrested or detained;
- 3) Vehicles towed under any authority section of the California Vehicle Code or the Newman City Code including but not limited to, 30 day impounds, abandoned vehicles, inoperative vehicles or abated vehicles from any street, alley, highway, or any other private or public property in the City of Newman;
- 4) Any other towed vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the City of Newman who is properly authorized to order such removal.
- 5) Vehicles towed whose driver or owner requests a preference or non-preference tow through the City of Newman or a representative of the Newman Police Department.

1.3 ELIGIBILITY REQUIREMENTS

To be eligible for a non-exclusive non-consensual towing services franchise applicants must:

- 1) Submit a completed application packet.
- 2) Meet any and all requirements identified in this request for application.
- 3) Agree to comply with the terms and conditions of the non-exclusive non-consensual towing services franchise agreement.
- 4) Meet any other terms and conditions imposed by the City of Newman for the granting of a non-exclusive, non-consensual tow franchise.

All Costs associated with the preparation of an application packet shall be borne by the Applicant.

Applications must be submitted on the application form prescribed by the City of Newman.

Each application packet shall be sealed and filed with the City Clerk's Office, 1162 Main Street, Newman CA 95360 prior to January 8, 2010 at 4:00 PM, at which time the applications will be opened and announced.

All application packets will be on file for review, following the City Managers recommendation for granting of a non-exclusive non-consensual towing services franchise agreement to the Newman City Council, at the City Clerks Office, 1162 Main Street, Newman CA. 95360, and at the Newman Police Department, 1200 Main Street, Newman CA. 95360.

Applications will be received only at the City Clerk's Office address shown above, and prior to the date and time indicated. Any application received at or after said date and time or at a place other than the stated address shall not be considered and will be returned to the applicant unopened.

SECTION 2

2.1 APPLICATION PACKET AND APPLICATION PROCESS:

The submission of an application is a two (2)-phase process. Each application packet shall consist of two (2) parts.

2.1.1 Application Packet

Each application packet shall consist of the following two (2) parts.

Part 1: The required Financial, Business, and Insurance documents as defined in Section 3 of this Request for Application shall be placed in a sealed envelope. The outside of the envelope shall be marked "Financial/Business/Insurance Documents, Part 1" Failure to provide all documents as required in Section 3 will result in the rejection of the application and the application will be returned to the applicant with no further consideration.

Part 2: The completed Franchise Application, all required documents listed in section 4 and the **Franchise application deposit**, shall be placed in a sealed envelope marked "Franchise Application, Part 2". Incomplete applications and/or failure to submit all required documents listed in Section 4 will result in the rejection of the application and the application will be returned to the applicant with no further consideration.

A complete application packet shall consist of the Financial/Business/Insurance requirements envelope, Part 1, and the Franchise Application envelope, Part 2. Both application parts shall be placed in an envelope with the following information on the outside of the envelope:

NAME AND ADDRESS OF APPLICANT
REQUEST FOR APPLICATION
NON-EXCLUSIVE NON-CONSENSUAL FRANCHISE TOWING SERVICES
APPLICATION OPENING TIME AND DATE: Friday, January 8, 2010 at 4:00 PM

The complete application packet shall be submitted at the place, date and time specified in the Notice for Applications.

2.1.2 Application Process

The application process consists of two phases.

Phase 1: The Newman Police Department, Chief of Police and Deputy City Clerk, will open and review the Financial/Business/ Insurance Documents, Part 1 envelope. The envelope marked "Franchise Application, Part 2" will remain sealed until it has been demonstrated that the Financial /Business /Insurance requirements have been met. If the documents submitted by the applicant do not satisfy all the requirements as detailed in Section 3, the entire Application Packet will be rejected and returned to the applicant and receive no further consideration.

Applicants meeting all Financial/Business and Insurance requirements will proceed to phase 2 of the application process.

Phase 2: The Newman Police Department will open and review all documents and statements in the Franchise Application, Part 2 envelope. If the submitted Franchise Application does not satisfy all the requirements as detailed in Section 4, the entire Application packet will be rejected and returned to the applicant and receive no further consideration.

Applicants satisfying all requirements in both Phase 1 and Phase 2 shall be presented to the Newman City Council for referral to the City Manager for his recommendation and report.

2.2 REQUIRED DOCUMENTS:

Applicants shall submit one (1) “inked” (preferably blue inked,) signed original application packet, plus four (4) copies of a signed original application packet. **Original application packets are to be clearly marked, “Original”**. Photocopies do not constitute an original application packet.

A complete application packet shall consist of the Financial/Business/Insurance requirements envelope, Part 1, and the Franchise Application envelope, Part 2. Both application parts shall be placed in an envelope.

FAILURE TO FURNISH ONE (1) “INKED” SIGNED ORIGINAL APPLICATION PACKET WILL RESULT IN DISQUALIFICATION.

It is the responsibility of the Applicant to identify information in their application responses that they consider to be confidential under the California Public Records Act. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

All costs associated with the preparation of this application packet shall be borne by the Applicant.

2.3 REJECTION OF IRREGULAR APPLICATIONS:

Application packets shall be rejected if they show alterations of form, additions not called for, conditional applications, incomplete application packets, erasures or irregularities of any kind. All required documents as stated in this Request for Application must be submitted at the time of application. Failure to submit all required documents will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

Any of the following shall be considered cause to disqualify an applicant without further consideration:

- A. Any attempt to improperly influence any staff person reviewing the applications;

- B. Any applicant having a governmental agency-generated towing services agreement cancelled or terminated within the past 5 years immediately preceding application submission.

2.4 NON-DISCRIMINATION:

- a. During the performance of this non-exclusive franchise, Franchisee shall not unlawfully discriminate against any employee or applicant for employment because of race, color, ancestry, religion, sex, national origin, marital status, age, medical condition (cancer related), physical handicap (including AIDS), or sexual orientation. Equal employment opportunity extends, but is not limited to recruitment, compensation, benefits, layoff, termination, and all other conditions of employment. Franchisee shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractor/Franchisee 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 hereunder (California Administrative Code, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Request for Application and non-exclusive non-consensual towing services franchise agreement by reference and made a part thereof as if set forth in full.
- b. Franchisee shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- c. Franchisee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the franchise.
- d. Franchisee shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

NON-DISCRIMINATION OF THE HANDICAPPED:

Policy Statement

In compliance with Section 51.55, Office of Revenue Sharing, Department of the Treasury, it is the policy of the City of that it will not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing an aid, benefit, or service to beneficiaries of the program or activity.

CERTIFICATION OF BIDDER REGARDING NON-DISCRIMINATION OF THE HANDICAPPED

By executing a non-exclusive non-consensual towing services franchise agreement, the applicant hereby certifies that he/she is in compliance with the Americans with Disabilities Act of 1990, the applicable administrative requirements promulgated in response thereto, and any other applicable Federal laws and regulations relating to handicap discrimination and participation, and will continue to do so for at least the duration of the agreement and any extensions thereof.

2.5 DRUG FREE WORKPLACE:

Applicant certifies that he/she is in compliance with Sections 8350 - 8355 of Chapter 5.5 of the Government Code, Drug Free Workplace Act. Every person or organization awarded a contract/purchase order or grant for the procurement of any property or service from any state agency (city) shall certify to the contracting or granting agency that it will provide a drug free workplace.

2.6 CONSEQUENCE OF SUBMISSION OF APPLICATION

The City shall not be obligated to respond to any application packet submitted nor be legally bound in any manner by the submission of an application packet.

Acceptance by the City of an application packet obligates the applicant to enter into a non-exclusive non-consensual towing services franchise agreement with the City.

Statistical information contained in these documents is for informational purpose only. The City shall not be responsible for the accuracy of said data. City reserves the right to increase or decrease the project scope.

2.7 AWARD

The CITY intends to award a non-exclusive non-consensual towing services franchise to all applicants who meet all CITY requirements outlined below.

- A. Financial, Business, and Insurance requirements as defined in Section 3 of this Request for Application as determined by the City of Newman Police Department.
- B. Complete Franchise application with all required documentation and application deposit as determined by the Newman Police Department.
- C. Verification of applicant's statements and documentation, including but not limited to; Public restrooms in compliance with all applicable federal, state and local laws and ordinances, public phone, storage and fleet as determined by the Newman Police Department.

- D. In the event a material change is made to the agreement, applicant will be given written notice of the material change, and the ability to withdraw from the application process, without penalty, within ten (10) calendar days of the noticed material change.

SECTION 3

3.1 FINANCIAL / BUSINESS / INSURANCE REQUIREMENTS

All information, documentation, deposits and attachments required in this section must be provided by the applicant and submitted as part of the Financial/Business/Insurance requirements, Part 1 envelope. Failure to include all Financial/Business/Insurance information, documentation, deposits and attachments will be cause for rejection of your application packet and your application packet will be eliminated from the application/award process.

3.1.1 Financial Guarantee

Applicant shall provide and submit as part of the Financial/Business/Insurance requirements Part 1 envelope, written evidence from a financial institution that s/he qualifies for and can secure a Standby Letter of Credit secured by a Letter of Credit from a financial institution in the minimum amount of \$2,000.00 with the City of Newman, as the beneficiary. All costs incurred by applicant to qualify for the Standby Letter of Credit and Letter of Credit shall be borne by Applicant.

3.1.1.1 Performance Security Deposit

If applicant is awarded a non-exclusive, non-consensual tow franchise, applicant shall upon demand by CITY, deliver to CITY within five (5) business days a Certified Check in the amount of \$2,000.00 to be placed on deposit for the duration of the non-exclusive non-consensual towing services franchise agreement as security for the faithful performance of the duties outlined in the non-exclusive non-consensual towing services franchise agreement.

3.1.2 Business Experience Requirement

The applicant must have owned a towing business in the State of California for a minimum of two (2) years immediately preceding the date of application packet submission. Applicant shall provide and submit as part of the Financial/Business/Insurance requirements part 1 envelope, a copy of the business license/s that was/were filed during the two (2) years with the jurisdiction in which they were/are licensed to operate if they were/are a partnership or sole proprietorship form of ownership, or for a corporate entity, a copy of the applicant's annual filing with the secretary of state that shows the listing of officers must be provided in addition to a copy of the business license/s that was/were filed during the two (2) years with the jurisdiction in which they were/are licensed to operate.

3.1.3 Insurance Requirements

The applicant shall provide and submit as part of the Financial/Business/Insurance requirements part 1 envelope, evidence (Acord Certificate) of valid insurance to the CITY in the coverage limits listed below. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Newman

Police Department by registered mail, return receipt requested, for all of the following stated insurance policies.

- A. Workers' Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.
- B. General Liability - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, property damage and personal injury. This insurance shall indicate on the certificate of insurance the following coverage's and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and professional liability.
- C. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, property damage and personal injury. This insurance shall cover any automobile for bodily injury and property damage.
- D. Commercial Business Automobile Liability- Bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) shall be maintained. These minimum standards are to include scheduled, non-owned, and hired auto coverage.
- E. Uninsured Motorist- Legal minimum combined single limit.
- F. On-Hook Coverage- Insuring the vehicle in tow with limits based on the size of the tow truck.
 - 1. Class-A tow truck- Fifty Thousand Dollars (\$50,000)
 - 2. Class B tow truck- One Hundred Thousand Dollars (\$100,000)
 - 3. Class C tow truck- Two Hundred Thousand Dollars (\$200,000)
- G. Garage Liability- Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than Five Hundred Thousand Dollars (\$500,000).
- H. Garage Keepers Liability - Shall be the same minimum as on hook coverage for vehicles in the care, custody, and control of the FRANCHISEE in the storage yard.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the FRANCHISEE shall promptly obtain a new policy, submit the same to Newman Police Department for approval and submit a certificate thereof as hereinabove provided. Upon failure of the FRANCHISEE to furnish, deliver or maintain such insurance and certificates as above provided, this FRANCHISE, at the election of the CITY, may be forthwith declared suspended or terminated. Failure of the FRANCHISEE to obtain and/or maintain any required insurance shall not relieve the FRANCHISEE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the FRANCHISEE concerning indemnification. The CITY, it

agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by FRANCHISEE for the CITY. The FRANCHISEE'S insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A: VII or with approval of the Risk Manager.

For any claims related to this project, the FRANCHISEE'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.

FRANCHISEE shall either require any subcontractor to procure and to maintain during the term of the subcontract all insurance in the amounts specified above, or shall insure the activities of subcontractors in the policy specified above. The limits of liability required may vary, depending on the type of permit or contract.

Proof of insurance shall be in the form of a certificate of insurance and separate endorsements naming the City as an additional insured for all insurances except Workers' Compensation. Policy expiration or cancellation will immediately nullify the agreement. FRANCHISEE'S insurance policy should provide for a thirty (30) day advance notice to City in the event the insurance policy will expire or be cancelled. FRANCHISEE shall also immediately notify the Tow Administrator in the event the insurance policy has expired or is canceled. Failure to maintain insurance or to notify the City and Tow Administrator of insurance lapses shall constitute a material breach of contract and City shall have the right to suspend and/or terminate the contract or agreement as determined by the Chief of Police or his designee.

The ultimate responsibility of any damage to a vehicle or property or the loss of a vehicle or any property contained in the vehicle while the vehicle and/or properties are in the FRANCHISEE'S care and custody rests with the FRANCHISEE. The FRANCHISEE shall reimburse the vehicle or property owner for any loss or damage which has been identified in a Newman Police Department Motor Vehicle Report or other official document and is not covered by FRANCHISEE'S insurance.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City of Newman.

Section 4

**NON-EXCLUSIVE, NON-CONSENSUAL FRANCHISE TOW SERVICES
VERIFIED APPLICATION**

All information, documentation and attachments in this section must be provided by the applicant and submitted in the Franchise Application, Part 2 envelope. Statements must be complete and accurate in the form requested and included in the envelope identified as Franchise Application, Part 2. Omission, inaccuracy, or misstatement will be cause for rejection and the application will not be considered any further in the application/award process.

A. APPLICANT (Business Name): (as it is to appear on the contract if awarded)

B. BUSINESS LOCATION/ADDRESS: (Location where applicant will conduct business)

MAILING ADDRESS (if different from above))

C. BUSINESS PHONE NUMBER: _____ **Fax:** _____

Email: (if none, write 'none'): _____

D. BUSINESS OWNERSHIP/PRINCIPALS:

Name: _____ Phone: _____

Address: _____

Name: _____ Phone: _____

Address: _____

Name: _____ Phone: _____

Address: _____

E. ALL APPLICANTS MUST HAVE THE FOLLOWING PERMITS AND LICENSING:

(1) Motor Carrier Permit: You must attach a copy of your company’s current/valid Department of Motor Vehicles Motor Carrier Permit to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(2) Pull Notice Program Enrollment: You must attach a copy of your current/valid Pull Notice Contract with the Department of Motor Vehicles. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(3) City of Newman Business License: You must attach a copy of your company’s current/valid City of Newman Business License to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(4) Other Business Licenses: If your primary business or any storage facility for your business is located outside the City of Newman, you must attach a copy of the current/valid business license for that jurisdiction to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

F. FLEET:

At a minimum, applicant must own or lease and possess at the time of application, and at all times thereafter, two (2) fully operational Tow Trucks with a Gross Vehicle Weight Rating (GVWR) of at least 14,000 pounds, a minimum of one (1) truck shall be capable of towing all vehicles with a (GVWR) up to and including 10,000 pounds. All trucks must be currently registered with the California Department of Motor Vehicles. Failure to meet these requirements will result in the rejection of your application and your application will be eliminated from the application/award process.

1. How many tow trucks do you own or lease: _____

2. You must attach and submit with this application a copy of all current valid vehicle registrations and a photograph of all tow-trucks that will be used for the purposes of towing under the Non-Exclusive Non-Consensual Tow Service Franchise Agreement. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

3. Newman Police Department will physically verify possession, registration and operational status of all tow trucks listed in your application. Failure to possess a minimum of two (2) currently registered, fully operational tow trucks with a GVWR of at least 14,000 pounds, including one (1) truck capable of towing all vehicles with a GVWR up to and including 10,000 pounds will result in the rejection of your application and your application will be eliminated from the application /award process.

G. FACILITIES

The Applicant must maintain an office facility with a primary storage yard and interior storage facility within the city limits of Newman. Secondary storage locations may be used; secondary storage lots must be within the City limits of Newman. Failure to meet these requirements at time of application will result in the rejection of your application and your application will be eliminated from the application/award process.

Outdoor storage lots shall be fenced with a solid wall or chain link fence at least six (6) feet in height for maximum security and lighted during hours of darkness. Fencing shall be in accordance with all applicable building and zoning codes. The lot must have an improved surface (e.g., gravel, concrete, paved). The storage facility shall have interior storage used exclusively for the storage of impounded/stored vehicles.

Failure to meet these requirements at time of application will result in the rejection of your application and your application will be eliminated from the application/award process.

Applicant's facilities must be neat and clean in appearance. You must attach and submit two (2) photographs of the interior lobby/public access area of your facility and two (2) photographs of your storage area to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

Applicants' facility must have a working public restroom in compliance with all applicable federal, state and local laws and regulations and a working telephone accessible to customers. You must attach two (2) photographs of the public restroom and telephone to this application. Failure to do so will result in the rejection of your application and your application will be eliminated from the application/award process.

(1) What is the total square footage of your exterior vehicle storage area (including secondary storage facility if applicable): _____ square feet.

(a) Do you have more than one vehicle storage facility? _____

(b) If yes, what is the address/location of your secondary storage facility:

(2) Do you have an accessible public restroom in compliance with all federal, state and local laws and regulations, and a telephone accessible to the public? _____

The Newman Police Department will physically inspect the applicant's facilities for compliance with the requirements for storage, restrooms and a working telephone. Failure to meet any of the requirements as defined in this application will result in the rejection of your application and your application will be eliminated from the application /award process.

H. FRANCHISE APPLICATION DEPOSIT

This application for a franchise shall be accompanied by a cash deposit of five hundred dollars (\$500.00) or by a certified check for said amount, payable to the City, as a fund out of which to pay all expenses connected with the application.

The deposit of the applicant shall be retained until the acceptance of the franchise and the filing of any bond or other security required, or until the Council determines not to grant the franchise. Whereupon the remainder, if any, of the amount deposited shall be returned after the payment there from of all expenses incurred by the City in connection with the advertising, engineering, clerical work and awarding of such franchise.

In the event that the amount of the deposit is insufficient to pay the expenses incurred by the City in connection with the advertising, engineering, clerical work and processing of such franchise, the applicant shall be held liable for such costs as are in excess of the amount deposited.

I. APPLICANT BACKGROUND

Applicant understands and agrees that a background investigation shall be conducted on all applicants. A release and waiver is included with this application and shall be signed by the applicant and returned as part of this application. Failure to sign and return the Release and Waiver will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

In addition, any of the following will result in the rejection of your application packet and your application packet will be eliminated from the application/award process.

Any applicant under the age of eighteen (18) years;

Any applicant who is currently required to register pursuant to Section 290 of the California Penal Code;

Any applicant who has been convicted of a crime involving any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud, stolen or embezzled property, crimes of violence, possession and/or sales of drugs or crimes of moral turpitude, unless a period of not less than five (5) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whatever is later;

Any applicant who has been convicted of driving a vehicle recklessly within the two (2) years immediately preceding application;

Any applicant who has been convicted of driving a vehicle while under the influence of intoxicating liquors or drugs within the five (5) years immediately preceding application.

Any applicant not possessing a valid driver's license, issued by the State of California;

Any applicant having a governmental agency-generated towing services agreement cancelled or terminated within the past 5 years immediately preceding application.

- 1) Has any agreement for City and/or governmental agency-generated towing services to which you were or are a party ever been cancelled/terminated within the past 5 years immediately preceding application?

- 2) Do you have a valid driver's license issued by the California Department of Motor Vehicles? _____ CDL# _____

J. APPLICANT'S REPRESENTATION

Applicant understands, agrees, and warrants the following:

- (1) Applicant has carefully read and fully understands the information that was provided by the City to serve as a basis for submission of this application to provide City-generated non-exclusive non-consensual franchise towing services on behalf of the City of.
- (2) All statements, answers, and representations made in this questionnaire and in the Application are true and accurate, including all supplementary statements attached hereto.
- (3) Applicant did not receive unauthorized information from the City during the application period except as provided for in the Request for Application document package and addenda thereto.
- (4) By submission of this Application, Applicant acknowledges that City has the right to make any inquiry it deems appropriate to substantiate the information supplied by Applicant, and Applicant hereby grants the City permission to make such inquiries and further agrees to provide any and all documentation requested in furtherance of such inquiry in a timely manner.
- (5) Applicant understands and acknowledges any required information not attached to the application packet, including omissions of information will result in the rejection of the application packet and the application packet will be eliminated from the application/award process.
- (6) Applicant acknowledges receipt of the non-exclusive non-consensual towing services franchise agreement included with this application and agrees to the terms of the contract in the event that a non-exclusive non-consensual towing services franchise is awarded to the applicant. In the event a material change is made to the agreement, applicant will be given written notice of the material change, and the ability to withdraw from the application process, without penalty, within ten (10) calendar days of the noticed material change.
- (7) Application must be signed by owner or officer having authority to negotiate on behalf of the Applicant.

Questions regarding the application requirements should be directed to: Newman Police Department, Attention: Chief Adam McGill, (209)-862-2902.

K. PURPOSE

The purpose of a non-exclusive non-consensual towing services franchise agreement is to provide for City generated non-exclusive non-consensual towing services on behalf of the Newman Police Department. Non-consensual towing services include, but are not limited to:

- 1) Vehicles impounded by The City of Newman for investigation, as evidence in a criminal case, asset forfeiture or vehicle forfeiture;
- 2) Vehicles involved in collisions, stalled vehicles, illegally parked vehicles, vehicles whose driver is incapacitated or physically unable to drive or has been arrested or detained;
- 3) Vehicles towed under any authority section of the California Vehicle Code or the Newman City Code including 30 day impounds, abandoned vehicles, inoperative vehicles or abated vehicles from any street, alley, highway, or any other private or public property in the City of Newman;
- 4) Any other tow of a vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the City of Newman who is properly authorized to order such removal.

L. TERM

The initial term of the non-exclusive non-consensual towing services franchise agreement shall be three (3) years. The City reserves the right to extend the non-exclusive non-consensual towing services franchise agreement for two (2) additional, one-year extensions at the sole discretion of the City. Either party may terminate the franchise agreement by giving the other party thirty (30) days written notice.

M. FRANCHISE FEE

In the event the applicant is awarded a non-exclusive franchise, commencing with the start date and for the first year of the non-exclusive non-consensual towing services franchise agreement, the FRANCHISEE shall pay to the CITY a fee in the sum of \$40.00 for each and every non-consensual tow. Commencing on the second year of the contract (i.e. the 366th day from the start date) the franchise fee will increase to \$45.00 for each and every non-consensual tow. Commencing on the third year (i.e. the 731st day from the start date) the franchise fee will increase to \$50.00 for each and every non-consensual tow.

FIRM

ADDRESS

PRINT NAME

SIGNATURE

**CITY OF NON-EXCLUSIVE NON-CONSENSUAL
TOW FRANCHISE APPLICANT
AUTHORIZATION TO RELEASE INFORMATION/HOLD HARMLESS**

TO WHOM IT MAY CONCERN:

I _____, the owner and operator of _____, am an applicant for a Non-Exclusive Non-Consensual Tow Franchise with the City of Newman. As part of the Non-Exclusive Non-Consensual Tow Franchise application process the Newman Police Department is required to conduct a background investigation. I fully understand that personnel of the Newman Police Department will conduct a reasonable investigation into my personal, driving, arrest and criminal investigation records.

I hereby direct you, your organization, its Custodian of Records, and/or persons in your employ to release any and all information which you may have concerning me, including information which may be of a confidential, privilege, and/or derogatory nature, including, but not limited to: driving, arrest, or criminal investigation records, administrative and/or local criminal history information (pursuant to Penal Code Section 13300[b][10]), and/or any other information that you possess.

I hereby exonerate, release and discharge you, your organization, the City of Newman, the Newman Police Department, its officers, agents, and assigns, from any and all liability, claims or damages, of every nature or kind, whether in law or in equity, now or in the future arising out of or for the furnishing of any information or documents, and/or records whatsoever requested by the bearer of this authorization form. This release shall be binding on my legal representatives, heirs and assigns.

I hereby waive my right, now and in the future, to examine, review, or otherwise discover the contents of this investigation and all documents and responses related thereto. I further exonerate, release, and discharge the City of Newman, the Newman Police Department and their officers, agents, or assigns for their refusal to make available any and all information and/or documentation contained in this background investigation, including but not limited to, the identity of any person or organization who may have supplied information in the course of this investigation, as well as the substance of such information supplied, even where such information has been the basis for my disqualification for a Attendant Permit.

I have specifically and permanently waived any rights I may have to review and inspect any and all information developed in this investigation so your response will be completely confidential. You may retain this form for your files.

I further hereby knowingly, voluntarily, specifically and permanently waive all my legal rights and causes of action to the extent that this background investigation violates or infringes upon my legal rights and causes of action. I agree to hold harmless and release from any and all liability under any and all possible causes of legal action against the City of Newman, the Newman Police Department, and their officers, agents, employees and assigns for any statement, question, interview, act, or omission in the course of the investigation into my background, personal habits and reputation.

CERTIFICATION:

I CERTIFY THAT I HAVE HAD ADEQUATE TIME TO REVIEW THIS FORM, I UNDERSTAND IT'S MEANING AND PURPOSE AND HAVE BEEN FURNISHED A COPY OF IT. I MAY REVOKE THIS AUTHORIZATION AT ANY TIME BY DELIVERING, IN WRITING, SUCH REVOCATION TO YOU/YOUR ORGANIZATION.

NOTARIZATION OF APPLICANTS SIGNATURE REQUIRED.

A photocopy of this release is to be considered as valid as an original. This release is valid for 180 days from the date of signature.

Dated this _____ day of _____, 20_____

In the County of _____
Within the State of California.

Applicant Signature

Notary Public Signature

EXHIBIT A

(SAMPLE) NON-EXCLUSIVE NON-CONSENSUAL TOWING SERVICE FRANCHISE AGREEMENT

This Agreement between the CITY OF NEWMAN, a municipal corporation of the State of California, and _____ (FRANCHISEE) is for Non-Exclusive Non-Consensual Franchise Towing Services.

WHEREAS, on _____, 2009, CITY OF NEWMAN issued Request for Application (Hereinafter RFA) for City Generated Non-Exclusive Non-Consensual Franchise Towing Services; and

WHEREAS, on _____, 2009, FRANCHISEE submitted a complete application packet in response to the RFA; and

WHEREAS, on _____, 2009, applications received in response to the RFA were presented to the Newman City Council for referral to the City Manager for his recommendation and report; and

WHEREAS, on _____, 2009, the City Manager presented his recommendation and report to the Newman City Council; and

WHEREAS, on _____, 2009, the Newman City Council passed a resolution of intent to consider the applications, stating the character of the franchise, setting forth a notice of the day, hour and place when and where all persons may appear before Council and be heard thereon, and directing the City Clerk to publish said notice in the official newspaper at least once within ten (10) days after the passage of said resolution.

WHEREAS, on _____, 2009, FRANCHISEE was granted a Non-Exclusive Franchise for City Generated Non-Consensual Towing Services; and

WHEREAS, on _____, 2009, FRANCHISEE filed written acceptance of said Non-Exclusive Franchise with the City Clerk; and

WHEREAS, FRANCHISEE represents that it is qualified, willing and able to provide non-consensual towing services; and

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants and stipulations hereinafter contained, the parties agree as follows:

1. SCOPE OF WORK

FRANCHISEE shall furnish all labor, materials, and equipment necessary to provide non-exclusive non-consensual towing services as specified in the Notice for Application, Request for Application, Non-Exclusive Non-Consensual Franchise Towing Services Verified Application, and all documents requested in response thereto, all of which are incorporated herein by this reference, and this Agreement (which collectively shall constitute the Non-Exclusive Non-Consensual Towing Service Franchise Agreement and which is referred to herein as “This Agreement”). All non-consensual towing services shall be furnished and performed in strict compliance with the terms and conditions of this Agreement. Non-Consensual towing services include, but are not limited to;

- A. Towing of all vehicles impounded by the CITY for investigation, as evidence in a criminal case, asset forfeiture, and vehicles towed pursuant to the California Vehicle Code (“CVC”) including, but not limited to, CVC Section 14607.6.
- B. Towing of vehicles involved in accidents, and/or stalled vehicles obstructing traffic, and/or vehicles illegally parked, and/or vehicles whose driver is incapacitated or physically unable to drive the vehicle, and/or vehicles whose driver has been arrested and/or detained and cannot drive the vehicle, and/or vehicles under the 30-day impound authority including, but not limited to, CVC Section 14602.6, and/or vehicles with five (5) or more outstanding parking citations;
- C. Towing of all vehicles necessitating special procedures to ascertain vehicle identification numbers, VIN tows, in compliance with the requirements of the CVC;
- D. Towing of any abandoned vehicle, inoperative vehicle, or abated vehicle, from any street, alley, highway, or any other private or public property in the CITY pursuant to the Newman City Code (“OCC”), Uniform Traffic Code (UTC), and CVC including CVC Section 22669
- E. Towing any other vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the CITY who is properly authorized to order such tow. This shall include, but is not limited to, any vehicle that is submerged, either wholly or in part. This shall also include, but is not limited to, the removal and storage of any abandoned vessel from city streets/property, whether or not said vessel is attached to a trailer;
- F. Towing trailers, boats, motor homes, etc.
- G. Towing City of Newman vehicles at no cost, not to exceed 12 times per calendar year

2. TERM OF AGREEMENT

The initial term of this Agreement shall be for three (3) years. The CITY reserves the right to extend this Agreement for two (2) additional, one-year terms, at the sole discretion of The City of Newman. Either party may terminate this Agreement by giving the other party thirty (30) days written notice.

3. PAYMENT/FRANCHISE FEES PAYABLE TO CITY

- A. FRANCHISEE agrees to pay to The City of Newman a franchise fee in accordance with the terms of this Agreement.
- B. Commencing with the start date and for the first year of this Agreement, the FRANCHISEE shall pay The City of Newman a franchise fee of \$40.00 for each and every non-consensual tow, as defined in this Agreement, performed by FRANCHISEE on behalf of or at the request of The City of Newman.
- C. Commencing with the second year of this Agreement (i.e. the 366th day from the start date), the FRANCHISEE shall pay The City of Newman a franchise fee of \$45.00 for each and every non-consensual tow, as defined in this Agreement, performed by FRANCHISEE on behalf of or at the request of The City of Newman.
- D. Commencing with the third year of this Agreement (i.e. the 731st day from the start date) the FRANCHISEE shall pay The City of Newman a franchise fee of \$50.00 for each and every non-consensual tow, as defined in this Agreement, performed by FRANCHISEE on behalf of or at the request of The City of Newman.
- E. All franchise fees owed to The City of Newman for each and every non-consensual tow performed by the FRANCHISEE shall be due and payable on a monthly basis as set forth in the invoice detailing the franchise fees owed. The City of Newman shall receive payment no later than thirty (30) days proceeding each month as illustrated in Paragraph 3F. Payment shall be made in the form of a preprinted company bank check or cashier's check payable to the Newman Police Department, P.O. Box 787, Newman, CA 95360, Attn: Chief of Police.
- F. CITY shall mail an itemized bill/invoice of the franchise fees owed by FRANCHISEE to The City of Newman, on or before the 10th of each month, for the preceding month's non-consensual tows. Payment on the invoice is due to the City of Newman by the 1st day of the following month. (E.g. FRANCHISEE fees for the month of January will be invoiced and mailed by February 10th. Payment of the total amount invoiced shall be received by the City of Newman no later than March 1st, everyday thereafter the invoice is delinquent.)
- G. Payments shall not be made contingent on any payments due or payable to the FRANCHISEE by either The City of Newman or the registered owner.
- H. If any itemized bill/invoice is more than five (5) calendar days delinquent, the Chief of Police or his designee shall have the authority to immediately suspend the FRANCHISEE until payment of any and all billed/invoiced amounts are paid in full

to CITY. Furthermore, if any itemized bill/invoice is more than sixty (60) calendar days delinquent, the Chief of Police or his designee shall have the authority to immediately terminate this Agreement.

4. SECURITY

FRANCHISEE shall present The City of Newman with a cashiers check payable to, in favor of, and payable at the sight of the City of Newman in the amount of Two Thousand Dollars and 00/100 as a Performance Security. The check shall be held by the City of Newman for the term of this Agreement in an interest bearing account. In the event that this Agreement is terminated, the performance security and any interest accrued thereon will be used to pay any outstanding amounts owed to The City of Newman by the FRANCHISEE, any remaining balance shall be returned to the FRANCHISEE within thirty (30) calendar days of the termination.

5. INSURANCE

FRANCHISEE shall provide, at its own expense, and maintain at all times, the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to The City of Newman as may be required by the City Clerk of Newman. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be sent by registered mail to the Newman Police Department, P.O. Box 787, Newman CA. 95360, return receipt requested, for all of the following stated insurance policies.

- A. Workers' Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.
- B. General Liability - insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, property damage, and bodily injury. This insurance shall indicate on the certificate of insurance the following coverage's and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and/or professional liability.
- C. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, property damage, and personal injury. This insurance shall cover any automobile for bodily injury and property damage.
- D. Commercial Business Automobile Liability - Bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) shall be maintained. These minimum standards are to include scheduled, non-owned, and hired auto coverage.
- E. Uninsured Motorist - Legal minimum combined single limit.
- F. On-Hook Coverage - Insuring the vehicle in tow with limits based on the size of the tow truck.

Class A tow truck – Fifty Thousand Dollars (\$50,000)

Class B tow truck - One Hundred Thousand Dollars (\$ 100,000)

Class C tow truck - Two Hundred Thousand Dollars (\$200,000)

G. Garage Liability - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than Fifty Thousand Dollars (\$500,000).

H. Garage Keepers Liability - Shall be the same minimum as on-hook coverage for vehicles in the care, custody and control of the FRANCHISEE in the storage yard.

i. If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the FRANCHISEE shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the FRANCHISEE to furnish, deliver or maintain such insurance and certificates as above provided, this FRANCHISE, at the election of the CITY, may be forthwith declared suspended or terminated. Failure of the FRANCHISEE to obtain and/or maintain any required insurance shall not relieve the FRANCHISEE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the FRANCHISEE concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by FRANCHISEE for the CITY. The FRANCHISEE'S insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A: VII or with approval of the Risk Manager.

ii. For any claims related to the work performed pursuant to this Agreement the FRANCHISEE'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the FRANCHISEE'S insurance and shall not contribute with it

iii. FRANCHISEE shall either require any subcontractor to procure and to maintain during the term of the subcontract all insurance in the amounts specified above, or shall insure the activities of subcontractors in the policy specified above. The limits of liability required may vary, depending on the type of permit or contract.

iv. Proof of insurance shall be in the form of a certificate of insurance and separate endorsements naming the CITY as an additional insured for all insurances except Workers' Compensation. Policy expiration or cancellation will immediately nullify this Agreement. FRANCHISEE'S insurance policy shall provide for a thirty (30) day advance notice to CITY in the event the insurance policy will expire or be cancelled. FRANCHISEE shall also immediately notify the Tow Administrator in the event the

insurance policy has expired or is cancelled. Failure to maintain insurance or to notify the CITY and Franchise Tow Administrator of insurance lapses shall constitute a material breach of this Agreement and CITY shall have the right to immediately suspend and/or terminate this Agreement as determined by the Chief of Police or his designee.

v. The ultimate responsibility for any damage to any vehicle or property or the loss of any vehicle or any property contained in the vehicle while the vehicle and/or property is in the FRANCHISEE'S care and/or custody rests with the FRANCHISEE. The FRANCHISEE shall reimburse the vehicle or property owner for any loss or damage which has been identified in a Newman Police Department Motor Vehicle Report or other official document and is not covered by FRANCHISEE'S insurance.

vi. Any deductibles or self-insured retention must be declared to and approved by the City Newman.

6. HOLD HARMLESS AGREEMENT

FRANCHISEE shall hold The City of Newman, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to, injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of FRANCHISEE, whether or not the act or omission arises from the sole negligence or other liability of The City of Newman, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

7. PROHIBITION OF GIFTS

- A. FRANCHISEE shall be subject to The City of Newman's prohibition against acceptance of any gift by a CITY officer or employee.
- B. FRANCHISEE agrees not to offer any CITY officer or employee any gift. The offer or giving of any gift prohibited by The City of Newman shall constitute, at a minimum, a **failure to provide adequate service** by FRANCHISEE. In addition to any other remedy (ies) The City of Newman may have at law or equity, The City of Newman may immediately terminate this Agreement for a violation of this Paragraph 7 notwithstanding any provision of this Agreement to the contrary.

8. ATTENDANTS (DRIVERS)

- A. FRANCHISEE shall, at a minimum, maintain the following information for each employee/driver providing services to The City of Newman pursuant to this Agreement.
- i. Full name
 - ii. Date of birth.
 - iii. Valid California Driver's License number and photocopy of said driver's license.
 - iv. Copy of Social Security Card

- v. Job title-description.
 - vi. Current home address
 - vii. Current home phone number.
 - viii. Copy of employment application.
 - ix. Medical certificate (if applicable)
- B. It is the responsibility of FRANCHISEE to maintain a sufficient number of employees and/or properly licensed and permitted drivers to meet all the terms and conditions set forth in this Agreement. Any violation of CVC Section 12500 or 14601 through 14601.5, by a FRANCHISEE or FRANCHISEES employee/driver providing towing service for The City of Newman under the terms of this Agreement, may be grounds for immediate suspension of this Agreement, notwithstanding any provisions of this Agreement to the contrary, and at a minimum, shall be deemed **a failure to provide adequate service.**
- C. At the start of this Agreement, FRANCHISEE shall provide to the Tow Franchise Administrator a current list of its driver's who will be providing services under the terms of this Agreement. Any drivers hired thereafter that will provide services to The City of Newman pursuant to the terms of this Agreement and/or any change in the employment status of any driver including, but not limited to, suspension or dismissal from employment, shall be reported to the Franchise Tow Administrator within twenty-four (24) hours.
- D. FRANCHISEE and all tow truck drivers providing services to The City of Newman pursuant to the terms of this Agreement shall be enrolled in the pull notice program with the Department of Motor Vehicles. FRANCHISEE shall enroll all newly hired tow truck drivers in the Pull Notice Program within fifteen (15) calendar days of hire.
- E. Any violation of 8A through 8D shall, at a minimum, be deemed a **failure to provide adequate service.**

9. TOW DRIVERS PERMIT

- A. FRANCHISEE tow driver(s) shall apply for and obtain an Attendant Permit annually from the Newman Police Department for each and every tow driver responding to a CITY generated tow.

A Attendant Permit fee will be charged for each permit applied for and shall be paid by the FRANCHISEE at the time of permit application. The fee will be established by resolution of the Newman City Council, which may be amended from time to time.

- B. FRANCHISEE'S tow driver(s) shall carry a valid Newman Police Department issued Attendant Permit with them at all times when responding to a CITY generated tow. Failure to obtain an Attendant Permit and/or failure to provide a valid Newman Police Attendant Permit, upon request, at the scene of a CITY generated tow shall, at a minimum, be deemed a **failure to provide adequate service** and may at the discretion of the officer or agent on scene result in the tow being cancelled.

- C. An Attendant Permit application can be obtained from the Tow Franchise Administrator at the Newman Police Department, 1200 Main Street, Newman, CA., 95360. The Attendant Permit will be valid for one year from the date of issuance. It is the responsibility of the FRANCHISEE to ensure all drivers maintain a valid Attendant Permit.
- D. An Attendant Permit shall NOT be issued to any of the following persons:
- i. Any person under the age of eighteen (18) years old;
 - ii. Any person who is currently required to register pursuant to Section 290 of the California Penal Code;
 - iii. Any person who has been convicted of a crime involving any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, possession and/or sales of drugs or crimes of moral turpitude, unless a period of not less than five (5) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later;
 - iv. Any person who has been convicted of driving a vehicle recklessly within the two (2) years immediately preceding application for a permit;
 - v. Any person who has been convicted of driving a vehicle while under the influence of intoxicating liquors or drugs within the five (5) years immediately preceding application for a permit;
 - vi. Any person not possessing a valid class specific driver's license issued by the State of California
 - vii. Any person on current probation or parole.
- E. The requirement to currently possess an Attendant Permit shall be waived for a period of ninety (90) calendar days following the start date of this Agreement, to provide the CITY sufficient time to process all Attendant Permit applications. FRANCHISEE shall ensure all tow drivers apply for an Attendant Permit within ten (10) calendar days following the start date of this Agreement, failure to do so shall, at a minimum, be deemed a **failure to provide adequate service.**
- F. Nothing herein shall prohibit the Chief of Police, or his designee from denying the issuance of, or imposing an immediate suspension and/or termination of, any Tow Drivers Permit when the applicants/permit holders conduct, in the opinion of the Chief of Police, or his designee, is considered to be a danger to the motoring public or who has engaged in conduct constituting a violation of this Agreement.

10. DEMEANOR AND CONDUCT

While providing towing services pursuant to this Agreement, the FRANCHISEE, its employee(s) and/or agents shall refrain from any act of misconduct including, but not limited to, any of the following:

- A. Rude or discourteous treatment of the public or CITY employees.
- B. Lack of service or refusal to provide service to the public or CITY employees.
- C. Any act of sexual harassment or sexual impropriety.
- D. Unsafe driving practices.
- E. Exhibiting any objective symptoms of alcohol and/or drug intoxication. FRANCHISEE/tow truck driver shall submit to a Preliminary Alcohol Screening Test/Under the Influence of a Controlled Substance test, upon demand of a peace officer.
- F. Appearing at the scene of a CITY-generated tow with the odor of an alcoholic beverage emitting from his/her breath or person. FRANCHISEE /tow truck driver shall submit to a Preliminary Alcohol Screening Test upon demand of a peace officer.
- G. Appearing at the scene of a CITY-generated tow without being attired in the FRANCHISEE'S established uniform. Such uniform shall be approved by and kept on file with the Tow Franchise Administrator prior to the start date of this Agreement. At a minimum, the name of the tow business and the name of the employee shall be clearly visible on the uniform shirt.
- H. Any violation of sections 10.A through 10.G shall, at a minimum, be deemed a **failure to provide adequate service**.
- I. **However, nothing herein shall prohibit the Chief of Police, or his designee, from imposing an immediate suspension and/or termination on any FRANCHISEE and/or employee(s) whose conduct, in the opinion of the Chief of Police, or his designee, is considered to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement.**
- J. All complaints received by the Newman Police Department against the FRANCHISEE or its agent(s) or employee(s) will be accepted and investigated in a fair and impartial manner. At a minimum, any substantiated complaint will be deemed a **failure to provide adequate service**. Furthermore, as a result of the investigation, the Chief of Police or his designee may initiate such disciplinary action as he deems appropriate.
- K. FRANCHISEE must notify The City of Newman of all contracts with other cities or governmental agencies to provide tow services within California. Any FRANCHISEE that is under contract with any other city or agency and who is either suspended or terminated by that city or agency shall notify in writing the City of Newman / Tow Franchise Administrator within twenty-four (24) hours of such suspension or termination, failure to do so shall, at a minimum, be deemed a **failure to provide adequate service**.

11. FACILITIES

- A. FRANCHISEE shall maintain an office facility with a primary storage yard and interior storage within the City limits of Newman.
- B. Hours of Operation:
 - i. The business office shall be open to the public, staffed and available for vehicle releases, storage, inquiries and all other business purposes during business hours. Business hours are defined as Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except the following observed holidays: New Years Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day (observed), Independence Day, Labor Day, Veterans' Day (observed), Thanksgiving Day, Day after Thanksgiving and Christmas Day.
 - ii. In order to ensure that the vehicle owner or his/her agent may claim vehicles towed on behalf of the CITY at any time, on any day and to promptly release CITY towed vehicles, the FRANCHISEE must have an employee available after business hours, who can arrive at the primary office facility within thirty (30) minutes of a request by the CITY or a citizen. Vehicle owners or their agents who request entry to the storage facilities after business hours may be assessed an after-hour gate fee. CITY shall not be assessed an after-hour gate fee.
 - iii. Any violation of sections 11.A through 11.B.ii. shall at a minimum be deemed a **failure to provide adequate service.**

12. BUSINESS OFFICE

- A. FRANCHISEE shall have an accessible public restroom that complies with all federal, state and local laws and regulations and FRANCHISEE shall have a telephone available for customers to use during business hours.
- B. FRANCHISEE shall display the FRANCHISEE'S business name, address and telephone number at the primary business and secondary storage lot/facility location with a sign clearly visible day and night from the street.
- C. Shall be neat and clean in appearance.
- D. The following documents, printed in a minimum of 12-point type (unless otherwise stated or required by the California Vehicle Code) shall be posted by FRANCHISEE in the Primary business office in a conspicuous location clearly visible to the public
 - i. Complete Copy of this Agreement;
 - ii. Name and address of FRANCHISEES insurance broker carrying the insurance required pursuant to this Agreement;
 - iii. A notice explaining the procedure by which unclaimed vehicles are sold at public auction stating that all in attendance at such auction shall have an equal

opportunity to bid. Notice shall include the locations of such auctions and publications in which such auctions are advertised.

- iv. “Vehicle Impound Rights and Obligations” informing the public of their rights pursuant to CVC Section 22852.
- v. A notice advising that complaints against FRANCHISEE related to The City of Newman generated non-consensual tows can be made by contacting the Newman Police Department, Tow Franchise Administrator, P.O. Box 787, Newman, CA. 95360, (209) 862-2902. This notice shall be displayed in a conspicuous place clearly visible to the public in a minimum of 48- point type.
- vi. Maximum Fee/Rate Schedule for CITY generated non-consensual tows. This notice shall be displayed in a conspicuous place clearly visible to the public in lettering not less than 1” in size.
- vii. Any violation of 12A through 12D shall, at a minimum, be deemed a **failure to provide adequate service**.

13. STORAGE LOT

- A. FRANCHISEE’S lot(s) must have an improved surface (e.g., gravel, concrete, paved) and the storage lot(s) shall be free of litter, debris and weeds which is adequate to store not less than twenty vehicles.
- B. The storage lot(s) must be adequately lit during hours of darkness.
- C. The storage lot(s) must comply with all applicable local, state and federal rules, regulations and laws.
- D. Stored vehicles shall be parked with a minimum of two (2) feet of clearance on each side and one (1) foot of clearance in the front and one foot of clearance in the rear.
- E. The storage lot(s)/facility (ies) shall have interior storage used exclusively for the storage of impounded/stored vehicles. The building must be capable of storing a minimum of two vehicles.
- F. Secondary storage locations may be utilized, however, neither customers nor The City of Newman shall be charged any additional fees for vehicles stored at a secondary facilities. Secondary storage lots/facilities must be within the city limits of Newman. In addition, all vehicles must be released to the registered owner or their agent at the primary business location. Both primary and secondary storage lots shall be enclosed by a solid wall or chain link fence at least six (6) feet in height for maximum security. Said wall or fence shall comply with all local, state and federal rules, ordinances, codes and regulations. Storage lots/facilities must be adequately lit during hours of darkness.
- G. All towed vehicles shall be stored on private property only. At no time shall a towed vehicle be deposited, placed, left standing or stored on a public roadway or right of way.

- H. A request for outside or inside storage on a CITY generated non-consensual tow by a customer shall be honored. If no request is made, the vehicle shall be stored in the least costly manner to the customer.
- I. It is the responsibility of the FRANCHISEE to determine and maintain a sufficient amount of storage to meet all the terms and conditions of this Agreement.
- J. Any violation of 13.A through 13.I shall, at a minimum, be deemed a **failure to provide adequate service.**

14. TRUCKS

- A. FRANCHISEE shall own or lease, and have in their possession a minimum of two (2) fully operational Tow Trucks, as defined in Section 615(a) of the California Vehicle Code, with a minimum GVWR of 14,000 pounds, a minimum of one (1) tow truck shall be capable of towing all vehicles with a (GVWR) up to and including 10,000 pounds. All tow trucks must be currently registered with the California Department of Motor Vehicles.
- B. Tow Truck Classifications and Equipment Specifications:
 - i. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment shall be used when appropriate.
 - ii. Tow truck equipment and specifications listed are the minimum acceptable. Auxiliary equipment will be required in each class.
 - iii. Equipment Limitations: All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.
 - iv. Towing Limitations:

The criteria to use in determining the safe towing limits for a tow truck are:

 - a. The total weight of the tow truck, including the lifted load, must fall within the manufacturer's GVWR and not exceed either the Front or Rear Axle Weight Ratings (FAWR/RAWR).
 - b. The tow truck must meet all applicable local, state and federal standards, regulations and laws.
 - c. For proper steering and braking, the front axle load must be at least 50% of its normal or unladen weight after the load is lifted.
 - v. Identification Label:

Each piece of towing equipment shall have a label or identification tag

permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rate capacity.

vi. Recovery Equipment Rating:

The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode when the boom is static at a 30-degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

- a. The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).
- b. Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAE J706.
- c. All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies shall be the same type, construction, and rating as specified by the Original Equipment Manufacturer (OEM) for the equipment.

vii. Safety Chains:

Safety chains shall be rated at no less than the rating specified by the OEM.

viii. Control/Safety Labels:

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

ix. Wire Rope (Cable):

Wire rope shall be maintained in good condition. Only wire rope with swaged ends with metal sleeves in the loops shall be approved for use on CITY generated tows. Wire rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are two or more wires broken in lay length, or when there is other visible evidence of loss of strength.

x. Class A – Light Duty: For the purposes of this Agreement, a Class A tow truck is defined as a tow truck that has a manufacturer’s GVWR of at least 14,000 pounds.

xi. Class B – Medium Duty: For the purposes of this Agreement, a Class B tow truck is defined as a tow truck with a GVWR of at least 26,001 pounds. The tow 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.

xii. Class C- Heavy Duty: For the purposes of this Agreement, a Class C tow truck is defined as a tow truck with a GVWR of at least 48,000 pounds. The tow 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.

C. All tow trucks utilized by FRANCHISEE to provide CITY generated non-consensual tow services shall be inspected annually by CHP. To avoid multiple inspections, the

FRANCHISEE will provide the Newman Police Department a copy of the current CHP inspection sheet.

- D. Storage lots/facilities will also receive a bi-annual inspection by the Newman Police Department at no additional cost to the FRANCHISEE.
- E. In the event the FRANCHISEES tow truck fails its initial or annual inspection, a reinspection of the FRANCHISEES tow truck, that failed inspection, must be conducted within thirty, (30) calendar days.
- F. All tow trucks shall maintain a broom, shovel, reflective triangles, fire extinguisher and a covered container with a minimum of 5 gallons of absorbent at all times.
- G. FRANCHISEE hereby allows the Newman Police Department to inspect any and all storage lots/facilities, used to store CITY generated tows, business office(s), and all equipment owned by FRANCHISEE at any time and for any reason, with or without notice. FRANCHISEE shall not utilize a tow truck on a CITY generated tow that has not been inspected.
- H. All tow trucks shall be clearly marked with the FRANCHISEE'S business name, address and telephone number on all doors.
- I. FRANCHISEE shall not display any sign or engage in any advertisement indicating an official connection with the CITY or the Police Department; (e.g., "Official Police Tow," "Approved by NPD," etc.). This will not preclude the Chief of Police, or his designee, from implementing a system of marking and/or identifying particular tow trucks as having passed a Newman Police Department inspection or as being certified as a FRANCHISEE for CITY generated tows.
- J. Towed vehicles shall be loaded, secured and transported in compliance with this Agreement and all applicable local, state and federal rules, regulations and laws. Any violation of local, state or federal rules, regulations or laws, including, but not limited to a violation of the GVWR, safe loading requirements or a violation of the equipment requirements shall, at a minimum, be deemed a **failure to provide adequate service**.
- K. It is the responsibility of the FRANCHISEE to provide a sufficient number of tow trucks to meet all the terms and conditions of this Agreement. The number of tow trucks listed in this Agreement is a minimum. It is the FRANCHISEES responsibility to determine the number and type of tow trucks required to fulfill all the requirements of this Agreement.
- L. Any violation of 14A through 14L shall, at a minimum, be deemed a **failure to provide adequate service**.
- M. Any violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck may be cause for immediate suspension, notwithstanding any provision of this Agreement to the contrary, and shall, at a minimum, be deemed a **failure to provide adequate service**. This includes but is not limited to, exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, not maintaining 50 percent of the tow trucks unladed front axle weight on

the front of the axle or any violation of the CVC including, but not limited, to CVC Section 29004 CVC.

15. TOWING AND STORAGE CHARGES

- A. The following schedule reflects the maximum rates established for services or materials in connection with any vehicle towed pursuant to a CITY generated non-consensual tow, which includes but is not limited to the following.
 - i. Towing of all vehicles impounded by the CITY for investigation, as evidence in a criminal case, asset forfeiture or vehicles towed under the CVC including, but not limited to, CVC Section 14607.6 (vehicle forfeiture);
 - ii. Towing of vehicles involved in accidents, and/or stalled vehicles obstructing traffic, and/or vehicles illegally parked, and/or vehicles whose driver is incapacitated or physically unable to drive the vehicle, and/or vehicles whose driver has been arrested and/or detained and cannot drive the vehicle, and/or vehicles under the 30-day impound authority including, but not limited to, CVC Section 14602.6, and/or vehicles with five (5) or more outstanding parking citations;
 - iii. Towing of all vehicles necessitating special procedures to ascertain vehicle identification numbers, VIN tows, in compliance with requirements of the CVC;
 - iv. Towing of any abandoned vehicle, inoperative vehicle, or abated vehicle, from any street, alley, highway, or any other private or public property in the CITY pursuant to the NCC and CVC including, but not limited to CVC 22669
 - v. Towing any other vehicle or vessel as may be ordered by any police officer, police employee, or any other employee or agent of the CITY who is properly authorized to order such tow. This shall include, but is not limited to, any vehicle that is submerged, either wholly or in part. This shall also include, but is not be limited to, the removal and storage of any abandoned vessel from city streets/property, whether or not said vessel is attached to a trailer.
 - vi. Towing trailers, boats, motor homes, etc

B. MAXIMUM CHARGES

Time expended on a CITY generated tow shall be charged at a rate not to exceed the rates set forth hereinafter. There shall be no additional charge(s) for towing after 5 p.m., weekend tows, holiday tows, use of a dolly or any other equipment, mileage and labor, which includes, but is not limited to, crane charges, winching and recovery from areas not accessible to the tow truck. FRANCHISEE shall collect all towing and storage charges from the vehicle owner unless otherwise stated in this Agreement.

Tow Fees

Year 1

Class A tow (GVWR – 14,000 pounds) \$165.00

Class B tow (GVWR – 26,001 pounds)	Current CHP Rate
Class C tow (GVWR – 48,000 pounds)	Current CHP Rate

Year 2 (366th day)

Class A tow (GVWR – 14,000 pounds)	\$170.00
Class B tow (GVWR – 26,001 pounds)	Current CHP Rate
Class C tow (GVWR – 48,000 pounds)	Current CHP Rate

Year 3 (731st day)

Class A tow (GVWR – 14,000 pounds)	\$175.00
Class B tow (GVWR – 26,001 pounds)	Current CHP Rate
Class C tow (GVWR – 48,000 pounds)	Current CHP Rate

In the event that CITY exercises its right to extend the term of this Agreement pursuant to Paragraph 2, Term of Agreement, the maximum amount allowed for towing shall be:

Year 4

Class A tow (GVWR – 14,000 pounds)	\$180.00
Class B tow (GVWR – 26,001 pounds)	Current CHP Rate
Class C tow (GVWR – 48,000 pounds)	Current CHP Rate

Year 5

Class A tow (GVWR – 14,000 pounds)	\$185.00
Class B tow (GVWR – 26,001 pounds)	Current CHP Rate
Class C tow (GVWR – 48,000 pounds)	Current CHP Rate

Additional Charge for 2nd tow truck required for removal of a vehicle. (Must have direct approval by City of Newman officer on scene and must be itemized on the invoice.) \$83.00

Storage fees:

Year 1

Outside Daily Storage Fee	\$42.00
Inside Daily Storage Fee.....	\$42.00
Class B/C Storage Fee.....	\$45.00

Year 2 (366th day)

Outside Daily Storage Fee.....	Current CHP Rate
Inside Daily Storage Fee.....	Current CHP Rate
Class B/C Storage Fee.....	Current CHP Rate

Year 3 (731st day)

Outside Daily Storage Fee.....	Current CHP Rate
Inside Daily Storage Fee.....	Current CHP Rate
Class B/C Storage Fee.....	Current CHP Rate

After business hours gate fee..... ½ of current hourly rate

In the event that the CITY exercises its right to extend the term of this Agreement pursuant to Paragraph 2, Term of Agreement, the maximum amount allowed for storage fees shall be:

Year 4

Outside Daily Storage Fee.....	Current CHP Rate
Inside Daily Storage Fee.....	Current CHP Rate
Class B/C Storage Fee.....	Current CHP Rate

Year 5

Outside Daily Storage Fee.....	Current CHP Rate
Inside Daily Storage Fee.....	Current CHP Rate
Class B/C Storage Fee.....	Current CHP Rate

After business hours gate fee..... \$50.00

The above rates represent the maximum a FRANCHISEE may charge on a CITY generated non-consensual tow. A FRANCHISEE is not precluded from charging less when deemed appropriate. No FRANCHISEE, or their employee or agent, shall refer to any rate as the minimum required or set by the City of Newman.

- C. The schedule of rates charged by FRANCHISEE shall be available in the tow truck, and shall be presented upon demand to the person(s) for whom the non-consensual tow services were provided or his/her agent at the scene.
- D. Vehicles stored twenty-four (24) hours or less shall be charged for no more than one-day storage. Each day of storage thereafter shall be calculated by calendar day (Civil Code Section 3068.1).
- E. If a request for a non-consensual tow is cancelled by the CITY or vehicle's owner/agent prior to the FRANCHISEE taking possession of the vehicle, there shall be no charge to the CITY or to the vehicle owner by the FRANCHISEE
- F. FRANCHISEE may charge a fee for lien sale preparations in compliance with California Vehicle Code Section 22851.12. All lien preparations and/or sales performed by FRANCHISEE shall be done in strict compliance with all applicable laws. All forms shall be accurate and complete.
- G. Notwithstanding any other provision of this Agreement to the contrary, any violations of sections 15.A. through 15.G shall, at a minimum, be deemed a **failure to provide adequate service** and a material breach of this Agreement, and shall constitute grounds for immediate termination of this Agreement.
- H. FRANCHISEE shall furnish a fully itemized billing to the vehicle owner or agent at the time of payment and/or upon request of the vehicle owner or agent. Failure to do so shall, at a minimum, be deemed a **failure to provide adequate service.**
- I. FRANCHISEE shall accept a valid bank credit card or cash for payment of towing and/or storage by the registered owner, legal owner or the owner's agent claiming the vehicle (CVC Section 22651.1). Appropriate credit card equipment shall be located at the

primary business location and available for immediate processing from each tow truck. Failure to do so shall, at a minimum, be deemed a **failure to provide adequate service**

- J. A record of all vehicles towed by FRANCHISEE under this Agreement shall be retained by the FRANCHISEE and shall be readily available for immediate inspection and/or transcription or copying at the primary business location of the FRANCHISEE for a minimum of three (3) years. Failure to retain and provide complete and accurate records upon request of the CITY shall, at a minimum, be deemed **a failure to provide adequate service**. All records shall contain the following information
- i. Date and time vehicle towed
 - ii. Police Department Case Number
 - iii. License Plate/Vehicle Identification Number
 - iv. Date and time of vehicle release
 - v. Year, Make and Model of Vehicle
 - vi. Copy of Newman Police Dept Vehicle Release (if applicable)
 - vii. Date Lien Filed (if applicable)
 - viii. Date Lien Sale (if applicable)
 - ix. All Lien Documents (if applicable)
 - x. All DMV paperwork (if applicable)
- K. A trailer with a vessel as a load (e.g. boat, motorcycle, jet ski,) shall be considered one vehicle for the purposes of the maximum rate allowed for tow and storage.
- L. Any violation of 15A through 15M shall at a minimum be deemed **a failure to provide adequate service**.

16. RESPONSE / RESPONSE TIMES

- A. FRANCHISEE shall respond to a dispatch order for a CITY generated tow and be on-scene within thirty (20) minutes of the time of dispatch by a City of Newman dispatcher, a police officer, a community service officer, employee, agent, or other officer of the City of Newman who has been duly authorized to request tow services. The dispatcher shall record the time of dispatch into the incident history. The dispatchers' computer entry record shall be the official time piece for the time of dispatch. If the tow truck arrives on scene after the thirty (20) minute requirement, the dispatcher or the officer on scene shall log the time of arrival into the incident history. The officers or dispatchers computer entry record shall be the official time piece for the time of arrival of the tow truck.

Failure of the FRANCHISEE to respond to a call and furnish a tow truck capable of towing the vehicle at the designated point of the tow within thirty (20) minutes shall, at a minimum, be deemed a **failure to provide adequate service**.

Exception: Tows requested off the Over Weight Vehicle List shall respond to a dispatch order and be on scene within forty-five (45) minutes of the time of dispatch by a City of Newman dispatcher, a police officer, community service officer, employee, agent, or other officer of the CITY who has been duly authorized to request such tow services. Failure of the FRANCHISEE to respond to a tow request from the Over Weight Vehicle List and furnish a tow truck capable of towing the vehicle at the designated point of tow within forty five (45) minutes shall, at a minimum, be deemed a **failure to provide adequate service**.

- B. Any officer or CITY employee may at his/her discretion cancel a tow that has not arrived on scene within the required time.
- C. FRANCHISEE shall maintain a phone line dedicated to Newman Police Department Dispatch. Said phone line will be staffed twenty-four (24) hours a day, seven (7) days a week, including weekends and holidays. FRANCHISEES failure to answer the dedicated phone line will be deemed a **failure to provide adequate service**.
- D. FRANCHISEES failure to respond to a call for service by the City of Newman for any reason shall be deemed a **failure to provide adequate service**.

17. ROTATION TOW LIST

- A. The City of Newman will make a good faith effort to provide an even distribution of work among the FRANCHISEES. A list shall be established for non-consensual towing of all vehicles with a GVWR of 10,000 pounds or less. FRANCHISEE agrees to the rotation system established by the City of Newman.
- B. A separate list (Over Weight Vehicle List) will be established for non-consensual towing of vehicles with a GVWR of 10,001 pounds or more. FRANCHISEES who own or lease a tow truck with a minimum GVWR of 26,001 pounds may be placed on the Over Weight Vehicle List on a voluntary basis. However, once placed on the Over Weight Vehicle List FRANCHISEE shall give thirty (30) calendar days written notice to the Franchise Tow Administrator in order to be removed from the Over Weight Vehicle List.
- C. This Agreement applies to non-consensual towing as defined in this Agreement. Nothing contained herein shall be construed to regulate consensual tows.
- D. CITY reserves the right to request any tow company, regardless of its position on the rotation tow list.

18. AUDITING OF CHARGES AND SERVICES

- A. The City of Newman reserves the right to audit all records, charges, and/or services provided by FRANCHISEE pursuant to this Agreement. The City of Newman duly authorized representative shall have access to and the right to examine, transcribe, and/or copy, during business hours, as defined in Section 11 B.i., any and all reports, records,

documents, files and personnel necessary to audit and verify charges and services provided by FRANCHISEE. A complete record of all vehicles towed by FRANCHISEE pursuant to this Agreement including, but not limited to; date and time of tow, Police Department case number, license plate number, vehicle identification number, date and time of release, year, make and model of vehicle, copy of Newman Police Department vehicle release (if applicable), all completed lien and sale documents (if applicable) and vehicle disposition shall be readily available for inspection at the primary business location of the FRANCHISEE and provided to the City of Newman immediately upon request, and shall be retained for a minimum of three (3) years.

19. RESPONSIBILITY

- A. FRANCHISEE shall be responsible for the protection of all CITY generated towed and/or stored vehicles in its possession until the vehicle has been released to its owner, or disposed of through the legal process, and shall be responsible for safeguarding all articles or property left in the towed and/or stored vehicle.
- B. FRANCHISEE shall release personal property from a towed/stored vehicle at the request of the vehicle owner or his/her agent, accept under the below listed exceptions. (Personal property is considered to be items, which are not affixed to the vehicle; i.e. papers, cell phones, clothes, luggage, tools, cargo, etc.) EXCEPTION: No personal property shall be released from vehicles impounded by the City of Newman for evidence, investigation, asset forfeiture or vehicle forfeiture without prior authorization from the Newman Police Department.
- C. Any vehicle towed by the Newman Police Department for evidence, investigation, asset forfeiture and vehicle forfeiture (CVC Section 14607.6) and stored by the FRANCHISEE shall be stored at the primary storage facility and shall not be moved until authorized by the Chief of Police, the Tow Franchise Administrator or their designee. The need for inside storage shall be indicated on the tow sheet. Vehicles towed by the Newman Police Department for evidence, investigation, asset forfeiture and vehicle forfeiture (CVC Section 14607.6) shall not be lien sold until such time as the Newman Police Department Tow Franchise Administrator provides the FRANCHISEE with a written release of the vehicle.
- D. FRANCHISEE shall not release any vehicle that is marked as an “Agency Hold” on the Vehicle Report without a signed Newman Police Department Vehicle Release form.
- E. FRANCHISEE shall ensure that all debris and fluids are cleared from the scene of a CITY generated tow prior to leaving the scene.
- F. Any violation of sections 19.A thru 19.E shall, at a minimum, be deemed a **failure to provide adequate service**.

20. COMPLIANCE WITH THE LAW

- A. FRANCHISEE and its tow truck driver(s) and employees must be in compliance with all terms and conditions of this Agreement and all applicable federal, state, and local laws, rules, and regulations which are in force or become effective during the franchise period

which, in any manner, affect towing and storage of vehicles, including, without limitation, the requirement that any person who drives a tow truck for FRANCHISEE is properly licensed and permitted and that all tow trucks meet any and all applicable Vehicle Code requirements.

- B. In the event that FRANCHISEE or any agent or employee of FRANCHISEE is cited, arrested and/or charged with any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, driving while under the influence of alcohol and/or drugs, possession and/or sales of drugs or crimes of moral turpitude, FRANCHISEE may be immediately suspended or terminated at the discretion of the Chief of Police and/or FRANCHISEE's employee or agents Attendant Permit may be immediately suspended or revoked, notwithstanding any provision of this Agreement to the contrary. FRANCHISEE shall notify the Tow Administrator within seventy-two 72 hours of any citation or arrest of the FRANCHISEE or any known citation or arrest of any agent or employee of the FRANCHISEE.
- C. Any conviction of FRANCHISEE or any agent or employee of FRANCHISEE for any misdemeanor or felony driving offense, any crime involving stolen or embezzled vehicles, fraud related to the towing business, stolen or embezzled property, crimes of violence, driving while under the influence of alcohol and/or drugs, possession and/or sales of drugs or crimes of moral turpitude, notwithstanding any provision of this Agreement to the contrary, shall be grounds for immediate suspension or termination of this Agreement, at the discretion of the Chief of Police. FRANCHISEE shall notify the Tow Administrator within seventy-two (72) hours of any conviction of FRANCHISEE or any known conviction of an agent or employee of FRANCHISEE
- D. Any violation of 20A thru 20C shall, at a minimum, be deemed a **failure to provide adequate service.**

21. FAILURE TO PROVIDE ADEQUATE SERVICE/DISCIPLINARY ACTION

- A. FRANCHISEE'S failure to meet *any* of the terms and conditions of this Agreement shall, at a minimum, be deemed a failure to provide adequate service. Any failure to provide adequate service is a **violation** of the terms of this Agreement and shall result in the following disciplinary action unless otherwise stated in this Agreement:
 - i. First violation within any rolling twelve (12) month period, Written Notice via certified mail
 - ii. Second violation within any rolling twelve (12) month period, Written Warning via certified mail.
 - iii. Third violation within any rolling twelve (12) month period, thirty (30) Day Suspension.
 - iv. Upon reinstatement following a suspension a new rolling twelve (12) month period will begin for the FRANCHISEE.

v. Any two suspensions within any rolling three (3) year period shall result in termination of this Agreement.

B. Nothing herein shall be deemed to prohibit the Chief of Police, or his designee, from imposing an immediate suspension and/or termination on any FRANCHISEE and/or employee(s) whose conduct, in the opinion of the Chief of Police, or his designee, is considered to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement.

22. EXPERIENCE/SALE OR TRANSFER OF BUSINESS

A. FRANCHISEE must have owned a towing business in the State of California for a minimum of two (2) years immediately preceding the date of its application for a non-exclusive non-consensual towing service franchise.

B. FRANCHISEE agrees that sale or transfer of the controlling interest in FRANCHISEES Tow Company shall immediately terminate this Agreement.

23. REVIEW/APPEAL OF VIOLATION

A. FRANCHISEE may request a review of a **violation** within seven (7) calendar days of receipt of the notice of violation by submitting a request in writing to the Administrative Services Sergeant. If a review is requested by FRANCHISEE, it shall be done as soon as practicable by the Administrative Services Sergeant or his/her designee. FRANCHISEE shall be notified in writing of the Administrative Services Sergeants decision(s) within ten (10) business days of the date of completion of the review.

B. Following a review, FRANCHISEE may appeal the Administrative Services Sergeants decision(s) by submitting a request in writing to the Chief of Police within seven (7) calendar days of receipt of the decision. If an appeal is requested, it shall be done as soon as practicable. The appeal shall be conducted by the Chief of Police or his/her designee. FRANCHISEE shall be notified in writing of the decision(s) of the Chief of Police within ten (10) business days of the date of the completion of the appeal. **The decision of the Chief of Police is final.**

C. A suspension or termination resulting from a violation shall not be imposed until the review and/or appeal process for that violation has been exhausted, except where this Agreement permits an immediate suspension or termination or where a FRANCHISEE'S conduct is deemed to be a danger to the motoring public or who has engaged in conduct constituting a gross violation of this Agreement. Failure to request a review or appeal in writing within the time specified or failure of FRANCHISEE to appear at a scheduled review or appeal hearing shall constitute a waiver of his or her right to a review or appeal and adjudication of the violation and/or disciplinary action and the violation and/or disciplinary action shall become final.

24. MOTOR CARRIER PERMIT/OTHER PERMITS AND LICENSES

A. FRANCHISEE must possess a current/valid Department of Motor Vehicles Motor

Carrier Permit. Failure to do so shall be grounds for immediate suspension and/or termination of this Agreement.

- B. FRANCHISEE and his/her officers, officials, employees and agents shall obtain and maintain during the term of this Agreement all necessary licenses, permits and certificates required by law for the conduct of FRANCHISEE'S activities and for the provision of services hereunder, including a business license issued by the City of Newman.