

CITY OF HOUSTON CONTRACT NUMBER _____

TEXAS DEPARTMENT OF LICENSING AND REGULATION NUMBER _____

THE STATE OF TEXAS

COUNTY OF HARRIS

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

This Agreement is made and entered into by and between the City of Houston, Texas, a home rule municipality of the State of Texas, principally situated in Harris County ("the City") and the Tow Operator ("the Operator"), identified below.

Deleted: municipal corporation

RECITALS:

1. Section 8-126 of the Code of Ordinances, Houston, Texas, authorizes the Chief of Police, to execute agreements for police authorized, police authorized tows, by tow operators of auto wreckers; and

Deleted: WITNESSETH¶

Deleted: WHEREAS

Deleted: as that term is defined in Section 8-101 of the Code of Ordinances, Houston, Texas

Deleted: with

Formatted: Strikethrough, Highlight

Formatted: Highlight

Formatted: Highlight

Deleted: ,

Formatted: Strikethrough

Deleted: WHEREAS

Deleted: WHEREAS

2. the Operator desires to provide auto wrecker services to the City of Houston and will pay to the Auto Dealers Detail of the Police Department a nonrefundable annual administrative fee of \$660.00 as specified in section 8-126(c) of the Code of Ordinances, Houston, Texas, for each auto wrecker operated under this Agreement; and

3. the Operator holds a tow truck license issued by the Texas Department of Licensing and Regulation for each auto wrecker servicing this Agreement and has provided a listing of said auto wreckers and the zone in which each auto wrecker will be operated hereunder on a form provided by the Police Department that is attached to and made part of this Agreement as "Exhibit A;" and

4. the Operator has and agrees to maintain all forms of insurance coverage that are required by section 8-126(e)(2) of the Code of Ordinances, Houston, Texas. The proof of insurance is attached hereto and made a part hereof as "Exhibit B;" and

Deleted: WHEREAS

5. the Operator has a business relationship with one or more police private storage lots to accept for storage those vehicles that are towed under this Agreement within each zone that has been defined in Exhibit A. This relationship is evidenced on a form provided by the Police Department identifying each storage lot that will be utilized in servicing this Agreement and is attached to and made part of this Agreement as "Exhibit C;"

Deleted: WHEREAS

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter set forth, the City of Houston and the Operator have mutually agreed as follows:

Deleted: , KNOW ALL MEN BY THESE PRESENTS, that

I. Identity of Wrecker Service, Operator and Agents

1.01 The auto wrecker service is known as:

(Name under which the auto wrecker service operates)

and is hereinafter referred to as the "auto wrecker service" and is operated from:

(Physical street address of the wrecker service)

1.02 The "Operator" who operates the auto wrecker service is:

(Name of Owner[s] and Spouse if married)

The Operator is (Check one, as applicable):

- a. a proprietorship.
- b. a partnership.
- c. a limited partnership.
- d. a corporation.
- e. a limited liability company
- f. limited liability partnership

Deleted: e

Evidence of the ownership of the auto wrecker service is attached to and made a part of this Agreement as "Exhibit D" (Attach true copy of [1] assumed name certificate if a proprietorship, [2] partnership agreement disclosing the names of all general or limited partners if a partnership, or [3] a copy of the articles of incorporation and certificate from the corporate secretary setting forth the names of all officers and all persons owning ten percent (10%) or more of the outstanding stock if a corporation), or (4) a copy of the membership agreement if an LLC.

1.03 The publicly listed telephone number for the auto wrecker service at which the Operator or his employee or agent may be reached is: _____.

II. Police Auto Wrecker Designation

2.01 The Operator represents that he is familiar with the provisions of Article III of Chapter 8 of the Code of Ordinances, of Houston, Texas, as amended, which are hereby incorporated into and made a part of this Agreement by reference. Without limitation, the provisions of Section 8-126(e) of the Code of Ordinances, Houston, Texas, regarding operation within zones and insurance requirements are specifically incorporated herein and read as follows:

Deleted: ,

Deleted: 11

Deleted: 0

"Operator shall choose one specific zone for each auto wrecker that is to be utilized by the Operator to perform police-authorized tows. Operator shall not allow auto wrecker to tow any vehicle outside of the approved zone, except when authorized by the police department. No tow hereunder shall exceed a maximum distance of 20 miles unless the tow destination is located within the zone. Violation of this provision is grounds for revocation of this Agreement."

"The Operator shall obtain and maintain in effect during the term of this Agreement, insurance coverage as set out below, and shall furnish certificates of insurance, prior to the beginning of the term of this Agreement. All such policies except Worker's Compensation or Occupational Safety Insurance shall be primary to any other insurance and shall name the City as an additional insured. All liability policies shall be issued by a company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's rating. Operator shall maintain the following insurance coverage in the following amounts:

- A. Automobile Liability Insurance
 - ↓ \$1,000,000 combined single limit per occurrence
- B. Cargo on Hook Coverage or equivalent
 - ↓ \$50,000 per vehicle
- C. Workers Compensation or Occupational Safety Insurance
- D. All drivers of auto wreckers shall be named insured on Operator's liability insurance policy."

Deleted: *

Formatted: Indent: Left: 0.5", First line: 0.5"

Deleted: *

The Operator agrees to comply with the said provisions and the other terms and conditions of this Agreement in providing auto wrecker services. It is expressly understood and agreed that any amendments hereafter adopted by the City Council of the City of Houston, Texas, will become part of this Agreement by reference upon their effective date. It shall be the obligation of the Operator to take notice of such amendments by virtue of their adoption, and the City shall not be obligated to provide any personal notice of such amendments to the Operator.

The Operator shall charge no fees for servicing a police scene in excess of the fees authorized under city ordinance for vehicles towed without the consent of a vehicle owner. Further, the Operator shall not obligate the owner of a vehicle removed from a police scene and placed in storage to pay any fees in excess of those authorized for a vehicle delivered to a state licensed vehicle storage facility without the consent of the vehicle owner. Under no circumstances will a vehicle owner be charged a fee of any type in excess of the fees applicable had the vehicle been towed without the vehicle owner's consent.

2.02 Operator agrees that in the event City redraws the zones for auto wreckers during the term of this Agreement, operator shall choose one specific zone from the revised service areas. Thereafter Operator shall only perform police authorized ~~police authorized~~ tows in the new zone.

Formatted: Strikethrough

Deleted: authorized

Deleted: 11

Deleted: 0

2.03 It is expressly understood that this Agreement does not constitute any promise or obligation by the City to cause any vehicle to be towed by the Operator.

2.04 It is expressly understood that each auto wrecker servicing this Agreement must meet the following minimum requirements:

- a. The chassis cab will be rated at no less than one ton by the manufacturer and will be equipped by said manufacturer with dual wheels and tires at each end of the rear axle.
- b. The auto wrecker will have a strobe light bar that conforms to state law.
- c. The auto wrecker will be equipped with wheel dollies, except on rollback type trucks.
- d. The auto wrecker will carry at all times:
 - 1) Three flares, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal conditions at night time.
 - 2) One broom of a type designed for pushing with an 18 inch head and a handle of not less than 36 inches.
 - 3) No less than five gallons of dry sand or other absorbent that is at least as effective as sand in absorbing liquid.
 - 4) A box or bucket to carry glass and debris cleaned from streets when picking up a wrecked vehicle.
 - 5) One flat-edged shovel of at least nine inches, with a handle of not less than 36 inches.
 - 6) One wrecking bar of not less than 36 inches in length with a wedge head.
 - 7) Fire extinguisher, at least one 10 pound or two 5 pound multiple purpose fire extinguisher(s), in good working condition.
 - 8) Magnetic tow lights, unless wireless, with appropriate cable and cushions to protect a vehicle's finish.
 - 9) Safety (mud) flaps at least 8 inches from the surface.

Formatted: Not Highlight

Formatted: Bullets and Numbering

Deleted: . e. . The auto wrecker will meet the equipment requirements outlined in the Administrative Rules of the Texas Department of Licensing and Regulation under Chapter 86 of the Texas Administrative Code.¶

Formatted: Indent: Left: 0.13", Hanging: 0.88", Tabs: Not at 0"

2.05 Each auto wrecker shall be inspected at the Operator's expense by an inspection service provider approved by the Police Department. The inspection service provider shall certify in writing that the vehicle meets minimum manufacturer's performance standards as applicable to the specific vehicle and components being tested. Such inspections shall be performed prior to the execution of this Agreement and at least annually thereafter, during the term of this Agreement. A copy of each written certification by the inspection service provider shall be attached to and incorporated in this Agreement as "Exhibit(s) E."

Deleted: towing service

2.06 Each auto wrecker authorized to provide nonconsent tows under this Agreement must display a medallion issued by the Police Department. The medallion shall be the property of the City and may be seized pending a hearing for breach of any term of this Agreement related to any obligation of the Operator. The medallion must be returned to the Police Department on termination of this Agreement. Replacement of a lost or stolen medallion requires a Police Department offense report and payment of a \$100 replacement fee.

Deleted: 11

Deleted: 0

III. Term and Termination

Deleted: -----Page Break-----
Formatted: Left

3.01 The term of this Agreement shall commence upon the date of its countersignature by the City Controller and extend for a period of five (5) years, unless sooner terminated or suspended in accordance with Section 3.02, 3.03, 3.04, 3.05, 3.06, or 6.01.

3.02 The Operator may terminate this Agreement, without cause, upon written notice to the City of Houston.

3.03 With the prior authorization of the City Council of the City, the Chief of Police may terminate this Agreement, without cause, upon thirty (30) days written notice to the Operator.

3.04 In the event he has grounds to believe that the Operator has failed to timely or fully perform any obligation assumed under this Agreement or any prior Agreement, the Chief of Police or any Executive Assistant or Assistant Chief of Police may suspend this Agreement upon written notice to the Operator. The grounds for the suspension shall be stated in the notice. If the Operator so requests by giving notice in writing thereof to the address or party named in Section 5.02, the Chief of Police, or a hearing officer that he may designate therefor, will afford a hearing to the Operator as to the suspension within five (5) days after delivery, Saturdays, Sundays and City observed holidays, excepted. Sworn affidavits shall be accepted as evidence at such hearings. If the hearing officer finds that there has been no breach of the terms and provisions of this Agreement or any prior Agreement then he shall reinstate this Agreement. If the hearing officer finds that there has been a breach then he may terminate this Agreement, provided that, in lieu of termination, he may impose a further suspension of from zero (0) to three hundred sixty-five (365) days for the breach or breaches of this Agreement and require that reasonable restitution be made to any person(s) damaged by the breach if the hearing officer finds that the breaches were not intentional and that the Operator has taken effective action to prevent their recurrence. Unless otherwise directed by the hearing official, restitution must be made within sixty (60) days following the imposition or the Agreement shall be terminated. The decision of the hearing officer shall be made in writing and notice thereof shall be given to the Operator and shall be final.

Comment [c1]: Allows sufficient time for HPD to prepare for case and obtain offense reports from outside law enforcement agencies.

Deleted: within
Deleted: forty-eight (48) hours

3.05 Operator agrees that an officer in the Auto Dealer's Detail of the Police Department shall resolve all disputes between auto wrecker drivers relating to the right to tow a vehicle. Failure of a driver to comply with decision of the officer shall be grounds for temporary suspension of Operator's Medallion and the driver's identification card for a period not to exceed five calendar days

3.06 In the event of the termination, suspension, revocation, or cancellation of the state license issued to any of the Operator's auto wreckers servicing this Agreement, this Agreement shall be automatically suspended contemporaneously therewith and without notice. Upon restoration of such auto wrecker license, the Agreement may be reinstated upon payment of \$660 for each auto wrecker license restored.

Deleted: \$500

3.07 Operator agrees to maintain all insurance coverages required under Section 8-126(e)(2) of the Code of Ordinances, Houston, Texas, and quoted in Section 2.01, above, at all times

Deleted:)(
Deleted: 11
Deleted: 0

during the term of this Agreement. In the event of the termination or cancellation of any insurance required under Section 8-126(e)(2) on any of the Operator's auto wreckers servicing this Agreement, this Agreement shall be automatically suspended contemporaneously therewith and without notice. Upon restoration of such insurance, the Agreement may be reinstated upon payment of \$660 for each auto wrecker for which insurance is restored.

Deleted:)

3.08 Effective as of 11:59 o'clock p.m. the date of termination or expiration of this Agreement, the Operator shall not tow any vehicle without the consent of the owner except upon authorization of a police officer of the City. However, this Agreement shall survive its expiration or termination and shall continue to be applicable for any vehicle whose towing commenced prior to its expiration or termination.

IV. State Regulations

4.01 Operator agrees that it will comply with any valid and applicable state law, rule, or regulation, including the provisions of the Texas Towing Act, Chapter 2308 Texas Occupations Code effective September 1, 2007. However, no provision of this Agreement shall be construed to obligate the Operator to violate state law or any valid and applicable rule or regulation adopted thereunder.

V. Notices

5.01 Any notice that is required or permitted to be given by the City to the Operator hereunder may be mailed to the Operator by Certified U. S. Mail, return receipt requested, postage prepaid, addressed to:

or may be given by personal delivery to the Operator or any of his agents or employees at the following local address:

5.02 Any notice that is required or permitted to be given by the Operator to the City or to the Chief of Police hereunder may be mailed to the City by Certified U. S. Mail, return receipt requested, postage prepaid, addressed to:

Deleted: 11

Deleted: 0

Lieutenant in Command
Auto Dealers Detail
Houston Police Department
P. O. Box 3408
Houston, Texas 77253-3408

or may be given by personal delivery to:

Lieutenant in Command
Auto Dealers Detail
Houston Police Department
1002 Washington, Basement Level
Houston, Texas 77002

Deleted: 1200 Travis, 14th Floor

5.03 Notices mailed as above shall be deemed given on the third regular postal delivery day after the date of their deposit in the United States Mail. Notices delivered by personal delivery shall be deemed given upon their delivery.

5.04 Either party may change its address for notice upon written notice to the other party hereto.

VI. General

6.01 The rights herein granted to the Operator and the obligations herein assumed by the Operator shall be personal to the Operator and shall only apply to the auto wrecker service identified in Article I, above. This Agreement shall terminate upon any attempted assignment, subcontract, lease or other subletting of any obligation assumed hereunder in any manner unless the Chief of Police has given prior written approval therefor. This Agreement shall also terminate upon any attempted sale of the auto wrecker service or any interest therein (including, but not limited to, the conveyance of any partnership interest, if a partnership, or the cumulative transfer of ten percent (10%) or more of the outstanding stock, if a corporation or membership if a LLC) unless the Chief of Police has given prior written approval therefor.

6.02 Operator agrees not to have any final unpaid civil judgments related to Operator's wrecker service business.

6.03 This instrument, inclusive of the documents incorporated herein by reference or as exhibits hereto, constitutes the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and it may only be amended by instrument of equal dignity hereto executed by both parties.

6.04 This Agreement shall be construed in accordance with the laws of the State of Texas and the Charter and Ordinances of the City and any subsequent amendments.

Deleted: 11

Deleted: 0

6.05 The Operator agrees that any nonconsent tows to a Police Impound ordered by the Police Department for crime scene processing and then towed to a storage lot shall be considered a single tow.

6.06 Operator acknowledges and understands that the City shall not be obligated to pay any fees or other consideration to Operator for the purpose of this Agreement. The only consideration the Operator shall receive are the fees it collects for services to the vehicle owners.

6.07 The Operator agrees to notify the Police Department in writing within 48 hours of any change in the information required by this Agreement or contained in the attached exhibits. Only those auto wreckers listed in the records of the Police Department and covered by insurance required under this Agreement and applicable State law may provide towing services under this Agreement, and each auto wrecker may provide such services only in its dispatch zone.

6.08 Operator shall notify the Police Department in writing within 48 hours of any arrest or criminal conviction. Operator agrees that the Police Department may conduct an examination of any criminal conviction of Operator, including but not limited to obtaining any criminal history record information permitted by law. In addition, within 48 hours of being made aware of any arrest or criminal conviction of a wrecker driver employed by Operator, Operator shall notify the Police Department.

Furthermore, by executing this Agreement, Operator represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31, both of which are on file in the Office of the City Secretary. Operator shall execute Exhibits "C", "D" and "E".

6.09 The Operator agrees not to employ or allow any person to continue to be employed as a wrecker driver servicing this Agreement who has been the operator of an auto wrecker service for which an Agreement with the city has been terminated for cause within the five (5) year period preceding the effective date of this Agreement.

6.10 The Operator agrees not to employ or allow any person to continue to be employed as a wrecker driver servicing this Agreement who does not have a valid wrecker driver identification issued by the Police Department. Issuance of this identification requires completion of an application form prescribed by the Police Department, and:

- a. A valid Texas driver's license issued by the Department of Public Safety.
- b. Payment of a nonrefundable \$75 annual administrative fee to the Auto Dealers Detail, as authorized by Section 8-126(c) of the Code of Ordinances, Houston, Texas.
- c. Proof that the driver has taken and passed a drug test at the driver's or Operator's expense at a laboratory approved by the Texas Department of Transportation within one (1) year preceding the execution of this Agreement and

Deleted: 11
Deleted: 0

takes and passes such a test on an annual basis during the term of this Agreement, with copies of all drug test reports subsequent to the initial test report being mailed directly from the testing laboratory to the Police Department to the address and in the manner specified in Section 5.02 of this Agreement.

- d. Approval of the wrecker driver by the Police Department based on the criteria set forth under Section 6.20 of this Agreement.

Deleted: 6.18

6.11 Operator agrees to require each wrecker driver servicing this Agreement to publicly display the wrecker driver identification card issued by the Police Department. The wrecker driver identification card shall match Operator's name on the auto wrecker. The identification card is property of the City, and must be returned immediately to the Police Department on demand. Replacement of a lost or stolen identification card requires a police offense report and payment of a \$25 replacement fee. In the event a wrecker driver's employment with Operator is terminated, for any reason, Operator agrees to return the departing employee's wrecker driver identification card to the Police Department within seven (7) days after employee's last day. In the event Operator is notified of the suspension or revocation of an employee's wrecker driver identification card, Operator agrees to return said identification card to the Police Department within seven (7) days of notification. Failure by the Operator to surrender a previously issued identification card will be treated by the Police Department as a lost or stolen card, and no new card will be issued.

Deleted: Said

Deleted: shall be the

Deleted: c

Deleted: . Said identification card

Deleted: Operator agrees to require the surrender of any valid auto wrecker identification upon change of employment to another Operator and/or notification of or suspension or revocation of driver's identification card.

Deleted: with the exception that

Deleted: for the \$25 replacement fee

6.12 Operator agrees to prohibit any person, other than the holder of a wrecker driver identification card issued by the Police Department, from occupying the passenger compartment of an auto wrecker responding to a police scene. This restriction does not apply to the occupants of a vehicle that is subsequently towed from a police scene.

6.13 The Operator agrees to mark each auto wrecker used to service this Agreement in accordance with state law with the motor carrier registration number on the left and right front quarter panel of the power unit and all other required information upon the left and right side doors of the power unit.

6.14 The Operator agrees to be responsible for the removal of debris from the roadway at the scene of any accident where the authorization to tow a vehicle has been granted. This includes vehicles towed at the direction of a police officer.

6.15 The Chief of Police or any member of the Police Department that he may designate shall have the right to inspect the auto wrecker service records relating to vehicles that have been towed pursuant to this Agreement. Access to the records shall be provided during normal business hours.

6.16 All records relating to towing of vehicles pursuant to this Agreement shall be maintained by the Operator at the Operator's business address for a period of two (2) years. All records, including computer source data for those records, will be subject to inspection and copying. All records shall be kept in a manner prescribed by the Police Department and shall be kept in a controlled environment, free of insects, rodents, rodent excrement, and water damage.

Deleted: 11

Deleted: 0

6.17 It is expressly understood and agreed that the telephone number listed in Section 1.03 shall be available through Southwestern Bell Telephone Company Directory Assistance, or any successor thereof, for the business name and street address specified in Section 1.01. The telephone service must be provided by a land based telephone line. Wireless communication access of any type (i.e. cellular telephone, pager) as a method of contacting the Operator at the place of business is not acceptable as a substitute for such land based access.

6.18 It is expressly understood and agreed that in accordance with Section 8-123 of the Code of Ordinances, Houston, Texas, ~~no fees other than or in excess of those provided by ordinance may be charged for any vehicle towed at the direction of a police officer. Unauthorized fees include payments or anything of value given to Operator or its employees by storage lots or automotive repair facilities above the regulated nonconsent tow fee for the deliverance of a vehicle subject to this Agreement.~~

Deleted: that

Comment [c2]: This provision is included to address wrecker drivers accepting money above the regulated tow rate from storage lots and automotive repair facilities in exchange for delivery of the nonconsent tow.

6.19 It is expressly understood and agreed that any vehicle towed at the direction of a police officer shall be delivered as specified in the wrecker slip issued under Section 8-116(a) of the Code of Ordinances, Houston, Texas, to the storage facility specified on the police tow ticket without delay and may not be redirected except as authorized in Section 8-116(b) of the Code of Ordinances, Houston, Texas. In the event the address on the police tow ticket is the address of a storage facility and an automotive repair facility the vehicle shall be delivered to the storage facility located at the address.

6.20 It is expressly understood and agreed that the Operator will report the employment or termination of each wrecker driver servicing this Agreement to the Auto Dealers Detail on a form prescribed by the Police Department for this purpose within 48 hours. Should a wrecker driver be disapproved by the Police Department, notice shall be provided to the Operator of the disapproval and the grounds for disapproval. Grounds for disapproval shall be based upon actions or conduct that could materially affect service to the City, including, but not limited to:

- a. Failure to comply with any ordinance, state law, or valid and applicable rule or regulation governing auto wrecker operation.
- b. Conviction for any auto theft related offense or offense of class B Misdemeanor or higher.
- c. Outstanding criminal warrants.
- d. Failure to display city issued wrecker driver identification while servicing this Agreement.
- e. Failure to clean the street at the scene of an accident.
- f. Failure to obey instruction of police officer at tow scene.
- g. Failure to allow inspection of auto wrecker.
- h. Failure to use proper forms to document towed vehicle.
- i. Failure to comply with continuing education required pursuant to Section 86.250 of the Texas Administrative Code.

Deleted: <#>Failure to attend annual training seminar presented by the Police Department.

Formatted: Highlight

Deleted: a hearing officer designated by the Police Department

Deleted: 11

Deleted: 0

Within (10) days of this notice, the Operator may request a hearing before the City's Automotive Board to contest the disapproval of a wrecker driver by giving notice in writing

thereof to the address or party named in Section 5.02. The Automotive Board will afford a hearing to the Operator on the disapproval of the wrecker driver within thirty (30) days after delivery of the request, Saturdays, Sundays and City observed holidays, excepted. Sworn affidavits shall be accepted as evidence at such hearings. If the Automotive Board finds that the wrecker driver may service this Agreement, he shall order the acceptance of the wrecker driver by the Police Department. If the Automotive Board finds that the wrecker driver may not service this Agreement, the Operator may not use the wrecker driver to service this Agreement under penalty of termination of the Agreement for cause.

Deleted: hearing officer

Comment [c3]: Allows sufficient time for HPD to prepare for case and obtain offense reports from outside law enforcement agencies.

Formatted: Highlight

Deleted: forty-eight (48) hours

Deleted: hearing officer

Deleted: hearing officer

6.21 (a) Release.

THE OPERATOR, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE CITY OF HOUSTON, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AND ITS FORMER, PRESENT, AND FUTURE AGENTS, EMPLOYEES, AND OFFICERS FROM ANY LIABILITY ARISING OUT OF THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY OF HOUSTON FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE WORK PERFORMED UNDER THIS AGREEMENT.

(b) Indemnification.

OPERATOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES, (COLLECTIVELY, THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH OPERATOR'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE OPERATOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. OPERATOR FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND OPERATOR, WHETHER OPERATOR IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE OPERATOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE

Deleted: 11

Deleted: 0

RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE OPERATOR.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE OPERATOR UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$600,000 PER OCCURRENCE.

6.22 Operator agrees to [comply with the continuing education required pursuant to Section 86.250 of the Texas Administrative Code.](#)

6.23 Operator agrees to comply with the Federal Reporting Requirements stipulated in the National Motor Vehicle Title Information System issued by the Department of Justice, wherein Operator must report all junk and salvage vehicles that it purchases from a private party, takes possession of in lieu of towing or storage cost or sells at auction.

Deleted: attend an annual training seminar presented by the Police Department and provide necessary training to drivers to insure that drivers know and understand state laws and city ordinances that govern non-consent tows.

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Comment [c4]: The National Motor Vehicle Title Information System (NMVTIS) serves as a repository of information related to vehicles that have been in the possession of auto recyclers, junk yards and salvage yards. NMVTIS is used by states and consumers to ensure that junk or salvage vehicles are not later re-sold with clear title, and that the VIN from destroyed vehicles can never be used on a stolen vehicle.

Deleted: 6.24 . Operator agrees to participate in the City of Houston's Pay or Play (POP) program which mandates that the Operator offer a minimum level of health benefits or contribute a prescribed amount towards the "Contractor Responsibility Fund" to defray the costs of providing health care to uninsured people in Houston and Harris County area. ¶

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

Deleted: 11

Deleted: 0

Executed in triplicate counterparts, each having the force and effect of the original on this:

_____ day of _____, 20____.

Deleted: 0

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

CITY OF HOUSTON

By: _____

Charles A. McClelland, Jr.
Chief of Police

COUNTERSIGNED

By: _____

Ronald C. Green
City Controller

DATE OF COUNTERSIGNATURE AND EFFECTIVE DATE OF THIS AGREEMENT:

_____ day of _____, 20____.

Deleted: 0

Deleted: 11

Deleted: 0

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

EXHIBIT A

Wrecker Tag#	Zone	Wrecker Tag#	Zone
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Executed on this: _____ day of _____, 200____.

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

EXHIBIT C

As Operator of a police private storage lot located in zone _____, I agree to accept for storage vehicles towed by the below named auto wrecker service:

(Name of auto wrecker service listed in Section 1.01 of Police-Authorized Tow Service Agreement)

The auto wreckers that are authorized to deliver vehicles to my storage lot are:

Wrecker Tag#	Wrecker Tag#	Wrecker Tag#	Wrecker Tag#
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

My police private storage lot is known as:

(Name of storage lot as listed in Section 1.01 of Police Private Storage Lot Agreement)

Executed on this: _____ day of _____, 20____.

Deleted: 0

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

NOTICE OF WRECKER DRIVER DISAPPROVAL

Notice is hereby given to the Operator of the auto wrecker service known as:

_____ (Name of auto wrecker service listed in Section 1.01 of Police-Authorized Tow Service Agreement)

that under penalty of termination of your Police-Authorized Tow Service Agreement, for using a wrecker driver who does not have a valid identification issued by the Police Department, the below listed wrecker driver is **not approved** and may not be used to service your Agreement.

Wrecker Driver: _____ (Last Name, First Name MI.) (Driver License Number)

was disapproved on grounds that:

Notice is given this: _____ day of _____, 20_____.

Deleted: 0

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

INSTRUCTIONS

1. Fill out and execute each of the three copies of the Agreement in your package.
2. Complete "Exhibit A" listing each wrecker that will service this Agreement and include a copy of the registration. Attach three copies to the package.
3. Attach three copies of insurance forms marked as "Exhibit B" to the package. The insurance form must list each driver and truck servicing the Agreement.
4. Complete "Exhibit C" for each storage lot accepting vehicles towed by your wrecker service and attach three copies to the package.
5. Attach three copies of the documents indicating ownership as required by Section 1.02 of the Agreement, each marked as "Exhibit D".
 - Assumed Name Certificate must match the name of the auto wrecker service identified in Section 1.01 of the Agreement.
 - Partnership agreements must list all parties.
 - Articles of Incorporation must be verifiable through the Secretary of State and corporations must be in good standing with officers listed.
6. Attach three copies of the TXDOT vehicle inspection report on each wrecker servicing this Agreement and mark each as "Exhibit E".
7. Make sure the telephone number listed in Section 1.03 is available through Directory Assistance for the exact business name and address provided in the Agreement.
8. Attach an application form for each wrecker driver who will be servicing this Agreement.
9. Attach one check covering the ~~\$660~~ administrative fee for each auto wrecker listed in Exhibit A and one check for all wrecker drivers for which application is made.
10. After the Agreement has been sent for approval, the wreckers listed in "Exhibit A" will be scheduled for inspection by Auto Dealers.
11. After the Agreement has been sent for approval, have all wrecker drivers servicing the Agreement obtain the identification required by Section 6.08.
12. After the Agreement has been sent for approval, the Operator will be provided with a medallion for each wrecker and an identification card for each approved wrecker driver servicing this Agreement.

Deleted: 50



CITY OF HOUSTON

APPLICATION FOR AUTO WRECKER DRIVER SERVICING A POLICE-AUTHORIZED TOW SERVICE AGREEMENT *(print or type all information)*



I, _____ hereby make application to
act

(Full name: First Middle Last)

as an auto wrecker driver servicing a Police-Authorized Tow Service Agreement.

Wrecker Service Operator:

(Auto wrecker service listed in Section 1.01 of Police-Authorized Tow Service Agreement)

Address: _____ Business Phone:
(Street address, city, state, zip code)

I reside at _____ and my phone number is
(Street address, city, state, zip code)

Date of Birth: _____ Height: _____ Weight: _____ Hair: _____ Eyes: _____ Place of Birth: _____

Sex: _____ Race: _____ Social Security Number: _____ Driver's License: _____

I (circle one) have have not been convicted within the last seven (7) years of any felony or misdemeanor (including DWI, but not traffic offenses). If you have been convicted of any felony or misdemeanor, explain in detail (what, when, and where):

I (circle one) have have not received adjudicated probation/parole for any of the above offenses. If so, explain:

Date application made:

Applicant's Signature

**State of Texas
County of Harris**

_____, personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true.

Sworn to and subscribed before me this ____ day of _____ 20____.

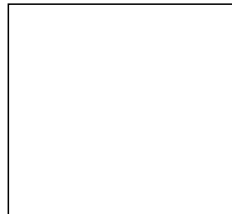
Notary Public in & for the State of Texas

FOR OFFICE USE ONLY

Right Hand Thumb

Checked By _____

FPC



Houston Police Department/Auto Dealers Detail
1200 Travis, 14th Floor
Houston, Texas 77002
Phone #(713) 308-1440

(Duplicate form as many times as needed)

Deleted: needed)

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

AUTO WRECKER INSPECTION

The below listed wreckers have been inspected by Auto Dealers for compliance with Section 2.03 and Section 6.11 of the Police-Authorized Tow Service Agreement between the City and the auto wrecker service known as:

(Name of auto wrecker service listed in Section 1.01 of Police-Authorized Tow Service Agreement)

Wrecker Tag#	Wrecker Tag#	Wrecker Tag#	Wrecker Tag#
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Approved By: _____

Date of Approval: _____

(Duplicate form as many times as needed)

Deleted: needed)

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

WRECKER DRIVER IDENTIFICATION

This letter is to serve as my authorization to issue the wrecker driver identification required by Section 6.08 of the Police-Authorized Tow Service Agreement to the below listed individual.

Wrecker Driver: _____
(Last Name, First Name MI.) (Driver License Number)

As the Operator of:

(Name of auto wrecker service listed in Section 1.01 of Police-Authorized Tow Service Agreement)

I give this authorization with the full understanding that I have not delegated my responsibility for the card.

Deleted: (Name

Deleted: Agreement)

Executed on this: _____ day of _____, 20____.

Deleted: 0

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

(Duplicate form as many times as needed)

Deleted: needed)



CITY OF HOUSTON PROOF OF INSURANCE (EXHIBIT B)

This certifies that the below named insured is provided insurance coverage issued by a company that has a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or has a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's rating. The policy issued has a 30-day cancellation-endorsement (TE 02-02A) to the Auto Dealers Detail, P.O. Box 3408, Houston, Texas 77253.

The following minimum insurance coverage is provided:
Automobile Liability Insurance - \$1,000,000 combined single limit per occurrence
Cargo on Hook Coverage - \$50,000 per vehicle
Workers Compensation or Occupational Safety Insurance

All policies except Worker's Compensation or Occupational Safety Insurance are primary to any other insurance and name the City of Houston as an additional insured. All drivers are named insured on the liability insurance policy.

Policy No. _____ Policy Period From: _____ To: _____ Deleted: :_

Name of Company Insured and Mailing Address:

List of covered vehicles (include year, make, and last five of VIN):

List of drivers (first initial, last name, DL#): Deleted: :DL

Name of Insurance Co. _____ Deleted: :_
Address: _____ Deleted: :_

Signed by: _____ Date: _____ Deleted: :_
(Authorized Company Representative) Deleted: :_
Print Name _____ Phone _____
No. _____

(Duplicate form as many times as needed) Deleted: needed)

This is an official Government record. A false entry may constitute a felony of the third degree.

(Duplicate form as many times as [needed](#))

Deleted: needed)

Formatted: Centered

(Duplicate form as many times as needed)

Deleted: needed)

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Contractor)

(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date Contractor Name

Signature

Title

(Duplicate form as many times as needed)

Deleted: needed)

EXHIBIT "D"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in ' 5.17 of Executive Order No. 1-31, that will be involved

in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date) (Typed or Printed Name)

(Signature)

(Title)

(Duplicate form as many times as needed)

Deleted: needed)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) _____ (Title)

_____ (Contractor)
_____ (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20__.

_____ A written Drug Free Workplace Policy has been implemented and employees notified. The
Initials policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and
Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.
Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact
positions during this reporting period is _____

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
--	---------------	---------------------------------	--------------------------	--------------

Number Employees Tested

Number Employees Positive

Percent Employees Positive

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this
declaration are within my personal knowledge and are true and correct.

_____ (Date) _____ (Typed or Printed Name)

_____ (Signature)

_____ (Title)

(Duplicate form as many times as needed)

Deleted: needed)

POLICE-AUTHORIZED TOW SERVICE AGREEMENT

REQUEST FOR APPLICATION

This letter is to serve as my request for a Police-Authorized Tow Service Agreement application package.

Requestor:

(Printed Name – First MI, Last) _____ (Driver License Number)

As the Operator of:

(Name of auto wrecker service)

- Deleted: (Printed
- Deleted: First MI
- Deleted: Last)
- Deleted: (Driver
- Deleted: Number)
- Deleted: (Name
- Deleted: service)

I acknowledge receipt of application package number _____ for the above named wrecker company.

(Date) _____ (Signature)

- Deleted: (Date
- Deleted:)
- Deleted: (
- Deleted: Signatutre

(Duplicate form as many times as needed)

Deleted: needed)