

CITY OF HOUSTON CONTRACT NUMBER _____

TEXAS DEPARTMENT OF LICENSING AND REGULATION NUMBER _____

HEAVY-DUTY AND RECOVERY

POLICE AUTHORIZED TOW SERVICE AGREEMENT

This Heavy-Duty and Recovery Police Authorized Tow Service Agreement (“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” or “Contractor”), identified below.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

| | | |
|--|---------------|-------|
| City of Houston Police Chief, City of Houston Police Department or his designee City of Houston P O Box 1562 Houston, TX 77251 | _____ | |
| | Operator Name | |
| | _____ | |
| | Address | |
| | _____ | |
| | City | State |

RECITALS:

1. Section 8-126 of the Code of Ordinances, Houston, Texas, authorizes the Chief of Police to execute agreements for police authorized tows by tow operators; and
2. the Operator desires to provide non-consent heavy-duty wrecker services to the City of Houston and will pay to the Auto Dealers Detail of the Houston Police Department (“HPD”) a nonrefundable annual administrative fee as specified in section 8-126(c) of the Code of Ordinances and the City of Houston fee schedule for each heavy-duty wrecker operated under this Agreement; and
3. 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. and

4. the Operator holds a tow truck license issued by the Texas Department of Licensing and Regulation (TDLR) for each heavy-duty wrecker servicing this Agreement and
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 as shown on Exhibit "C" attached hereto and incorporated herein and
6. the Operator applied and qualified during the open enrollment period between February 1 and May 1(the Open Enrollment Period) and
7. the operator has a minimum of five consecutive years of incident management experience and
8. Heavy-duty wrecker services require different types of trucks and equipment and zones than light duty wrecker services.

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

I. Duties of Operator

- 1.01** 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. "Operator shall be assigned to a rotation list more specifically described in Exhibit "A" for each heavy-duty wrecker that is to be utilized by the Operator to perform police-authorized heavy-duty tows. Operator shall not allow a heavy-duty wrecker to perform a non-consent heavy-duty tow of any vehicle outside of the approved heavy-duty rotation list, except when authorized by HPD.
- 1.02.** "The Operator shall obtain and maintain in effect during the term of this Agreement, insurance coverage as set out below. All such policies except Worker's Compensation shall be primary to any other insurance and shall name the City as an additional insured. All policies shall be issued by a company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas and have a rating of at least B+ and a financial size category of Class VI or better according to the most current Best's Key Rating Guide. Operator shall maintain the following insurance coverage in the following amounts:
 - a.** Automobile Liability Insurance at a minimum of

\$1,000,000 combined single limit per occurrence

- b. Cargo on Hook Coverage or equivalent at a minimum of \$750,000 per vehicle
- c. Workers Compensation (statutory amount)

1.0.2.1 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Operator shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Chief of Police's request, or each time coverage is renewed or updated, Operator shall furnish to the Chief of Police current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Operator shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Operator waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees.

- a. **1.02.2 Form of insurance.** The form of the insurance shall be approved by the Auto Dealers Detail; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement.

1.02.3 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies, except Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Operator waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Operator's insurance policies must contain coverage waiving such claim. Each policy, except Workers' Compensation, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. All certificates of insurance submitted by Operator shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for - Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Automobile Liability and Workers' Compensation policies. The Chief of Police will consider all other forms on a case-by-case basis.

1.02.4 Notice. OPERATOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE CHIEF OF POLICE IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Operator shall provide other suitable policies in order to maintain the required coverage. If Operator does not comply with this requirement, the

Chief of Police, at his or her sole discretion, may immediately suspend Operator from any further performance under this Agreement and begin procedures to terminate for default.

1.02.5 Other Insurance. If requested by the Chief of Police, Operator shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Operator's operations under this Agreement.

1.03 The Operator shall comply with the said provisions and the other terms and conditions of this Agreement in providing heavy-duty wrecker services. It is expressly understood and agreed that any amendments to Chapter 8 of the Code of Ordinances 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.

1.04 The Operator shall not charge fees in excess of the fees authorized under city ordinance for servicing a police scene and towing vehicles 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 to vehicles towed without the vehicle owner's consent.

1.05 Operator shall maintain the ability to accept and process at least two major credit cards issued by the following: VISA, MasterCard, American Express, and Discover Card. Furthermore, all credit or debit transactions will reflect the Operator's name as payee. Operator shall not charge an additional fee for the use of a credit card. Any interruption of Operator's ability to process credit card transactions that lasts longer than one hour must be reported to the HPD Auto Dealers Detail. Upon the initial submission of this agreement, Operator shall provide adequate proof of a credit card merchant account or the ability to process credit card payments.

1.06 Auto Dealers Detail will develop a Standard Operating Procedure ("SOP") for dispatching heavy-duty wreckers, including the designation of towing zones and rotations. Operator agrees to abide by the terms of the SOP. Operator agrees to maintain minimum staffing levels and ensure that heavy duty wreckers are available to respond to police scenes. In the event Operator's inability or failure to respond to police scenes becomes frequent or habitual, this Agreement may be terminated or suspended.

1.07 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.

1.08 It is expressly understood that each heavy-duty wrecker servicing this Agreement shall meet the following minimum requirements:

- a. Three (3) TDLR approved extendable boom tandem axle wreckers. An acceptable wrecker shall have a minimum Boom manufacturer rating of 30 tons. Each wrecker shall have a minimum of two 30,000 manufacturers rated winches and each winch shall have a minimum of 200 feet of 3/4 inch diameter wire rope. Every wire rope end must be swaged.
- b. The heavy-duty wrecker shall have emergency lighting that conforms to state law.
- c. The heavy-duty wrecker shall carry at all times the equipment listed in Exhibit "A" Section C.

1.09 Each heavy-duty wrecker shall be inspected as follows:

- a. **State Inspection.** At the Operator's expense by a State inspection service provider approved by HPD. 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. A copy of each written certification by the inspection service provider shall be provided to HPD Auto Dealer's Detail.
- b. **Auto Dealers Detail Inspection.** These inspections shall be performed prior to the execution of this Agreement and at least annually thereafter, during the term of this Agreement to ensure that all of the equipment listed in Operator's Application exists and meets the standards required by this Agreement.

1.10 Each heavy-duty wrecker authorized to provide non-consent tows under this Agreement must display a medallion issued by HPD. The medallion shall be the property of the City and may be seized for breach of any term of this Agreement related to any obligation of the Operator. The medallion shall be returned to the HPD Auto Dealer's Detail on termination of this Agreement. Replacement of a lost, stolen, or damaged medallion requires an HPD offense report and payment of a \$100 replacement fee.

1.11 Operator shall provide the motorist with a copy of the "Heavy Duty Towing Bill of Rights" in a form, prescribed by the Chief of Police, which may be amended

by the Chief of Police and shall include wording relating to rights of individuals in regard to police authorized tows. See Exhibit "A-1." The "Heavy Duty Towing Bill of Rights" may be provided to the motorist electronically.

- 1.12 Operator shall make citizen and City personnel satisfaction a priority in providing services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely interact with citizens and City personnel when performing contract services. Operator's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the opinion of the Chief of Police, Operator's employee is not interacting in a positive and polite manner with citizens or City personnel, he or she shall direct Operator to take all remedial steps to conform to these standards.

II. Term and Termination

- 2.01 The term of this Agreement shall commence on the Countersignature Date by the City Controller, and expire December 31, 2030, unless sooner terminated or suspended pursuant to the provisions of this Agreement.
- 2.02 The Operator may terminate this Agreement, without cause, upon written notice to the City of Houston.
- 2.03 The Chief of Police may terminate this Agreement at any time by giving 10 days written notice to Operator. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 2.04 On receiving the notice, Operator shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement.
- 2.05 In the event he has grounds to believe that the Operator has failed to timely or fully perform any obligation assumed under this Agreement, including but not limited to the provisions of Section 4.17 herein, the Chief of Police may suspend or terminate this Agreement upon written notice to the Operator. The grounds for the suspension or termination shall be stated in the notice.
- 2.06 Violations of the dispatch or rotation procedures set forth in the Standard Operating Procedures shall be grounds for temporary suspension of the Operator and Operator's Heavy-duty Wrecker service from the rotation list. Operator shall have the right to appeal suspensions of five rotation days or less to the lieutenant in charge of the Auto Dealers Detail, whose decision shall be final. Any suspension of more than five rotation days may be appealed to the Automotive Board whose decision shall be final.

- 2.07 Violations of this agreement or any city, state, or federal statute or administrative rule, including equipment or safety violations, by Operator or driver shall be grounds for temporary suspension of a driver or seizure of a medallion by an Auto Dealers officer until the equipment/safety violations are remedied.
- 2.08 In the event of the termination, suspension, revocation, or cancellation of the state license issued to any of the Operator's heavy-duty wreckers servicing this Agreement, this Agreement shall be automatically suspended contemporaneously therewith and without notice. Upon restoration of such heavy-duty wrecker license, the Agreement may be reinstated upon payment of the annual fee for each heavy-duty wrecker license restored.
- 2.09 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 1.02, above during the term of this Agreement. In the event of the termination or cancellation of any insurance required for any of the Operator's heavy-duty 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 the annual fee for each heavy-duty wrecker for which insurance is restored.
- 2.10 Effective as of 11:59 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.
- 2.11 If Operator is charged with, indicted, or convicted of a criminal offense pertaining to the towing, storage, or automotive industries, or an offense listed Section 1-10(a)(2) of the Code of Ordinances, the Chief of Police may suspend or terminate this Agreement upon written notice to the Operator.

III. Notices

- 3.01** 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:
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or may be given by personal delivery to the Operator or any of his agents or employees at the following local address:

3.02 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:

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
or emailed to:
hpd.autodealers@houstonpolice.org

3.03 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.

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

IV. General

- 4.01** 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 heavy-duty wrecker service identified in Article I, above. Operator shall not assign, subcontract or lease any heavy-duty wrecker servicing this Agreement to any driver or other person or entity without the prior written approval of the Chief of Police. Operator agrees and acknowledges that all drivers servicing this Agreement shall be regular employees as defined by Texas Workforce Commission and not be Independent Contractors. Operator agrees to maintain payroll records for three (3) years which will be made available for inspection by the HPD Auto Dealers Detail within two (2) working days. 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. This Agreement shall also terminate upon any attempted sale of the heavy-duty 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.
- 4.02** Operator shall not have any unpaid civil or administrative judgments (including those issued by the State of Texas) related to Operator's heavy-duty wrecker service business or any wrecker business previously owned by Operator. Operator agrees to notify the HPD Auto Dealers Detail if any administrative, civil, or criminal action is initiated against Operator or the company.
- 4.03** 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.
- 4.04** This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.
- 4.05** 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 considerations the Operator shall receive are the fees it collects for services to the vehicle owners.
- 4.06** The Operator agrees to notify HPD in writing, hand delivered, pursuant to Section 4.02 within 2 business days of any change in the information required by this Agreement or contained in the attached exhibits. Only those heavy-duty wreckers listed in the records of HPD and covered by insurance required under this Agreement and applicable State law may provide towing services under

this Agreement, and each heavy-duty wrecker may provide such services only according to the rotation list described in Exhibit "A."

4.07 4.07.1 Upon the initial submission or renewal of this agreement, Operator shall submit to a background check. If Operator has a conviction or deferred adjudication for an offense listed under Section 1-10(a)(1) of the Code of Ordinances or provides false or misleading information on the application the Agreement shall be denied. If Operator has an outstanding charge or is under indictment for an offense listed under Section 1-10(a)(1) of the Code of Ordinances, the Chief of Police shall delay making a decision on the Agreement until the resolution of the criminal case.

4.07.2 Operator shall notify, within 48 hours, a supervisor or the on-call officer from the Auto Dealers Detail of any arrest or criminal conviction of Operator. Operator agrees that HPD 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, upon being made aware of any arrest or criminal conviction of a wrecker driver employed by Operator, Operator shall immediately notify the Auto Dealers Detail of such arrest or criminal conviction.

4.08 The Operator shall not employ or allow any person to continue to be employed as a wrecker driver servicing this Agreement who has been the operator of a wrecker service for which an Agreement with the city has been terminated for cause within the seven (7) year period preceding the effective date of this Agreement.

4.09 The Operator shall not 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 HPD. Issuance of this identification requires completion of an application form prescribed by HPD, and:

- a. A valid Texas commercial driver's license issued by the Department of Public Safety.
- b. Payment of a nonrefundable 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 certified by the Federal Department of Health and Human Services within thirty (30) days preceding the execution of this Agreement or employment of driver by Operator and 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 delivered in person by the applicant or by email directly from the testing laboratory to HPD to the address and in the manner specified in Section 3.02 of this Agreement.

d. Approval of the wrecker driver by HPD based on the licensing requirements set forth in Chapter 8 of the Code of Ordinances.

4.10 Operator shall require each wrecker driver servicing this Agreement to publicly display the wrecker driver identification card issued by HPD. The wrecker driver identification card shall match Operator's name on the heavy-duty wrecker. The identification card is property of the City and shall be returned immediately to the HPD Auto Dealers Detail on demand. Replacement of a lost or stolen identification card requires a police offense report and payment of a replacement fee. In the event a wrecker driver's employment with Operator is terminated, for any reason, Operator shall return the departing employee's wrecker driver identification card to the HPD Auto Dealers Detail 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 shall return said identification card to HPD Auto Dealers Detail within seven (7) days of notification. Failure by the Operator to surrender a previously issued identification card will be treated by HPD as a lost or stolen card, and no new card will be issued to the wrecker driver. Each driver shall also have a valid TDLR wrecker license in his or her possession.

4.11 Operator shall prohibit any person, other than the holder of a wrecker driver identification card issued by HPD or a uniformed employee of the tow operator, from occupying the passenger compartment of a heavy-duty 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 or an individual who has been issued a City of Houston wrecker driver trainee license.

4.12 The Operator agrees to mark each heavy-duty 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. All decals and signage must be in contrasting colors.

4.13 The Chief of Police or any member of HPD that he or she may designate shall have the right to inspect the heavy-duty wrecker service records relating to vehicles that have been towed pursuant to this Agreement. Access to the records shall be provided both during normal business hours and within one (1) hour outside of normal business hours.

4.14 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 HPD and shall be kept in a controlled environment, free of insects, rodents, rodent excrement, and water damage.

- 4.15 It is expressly understood and agreed that the telephone number listed on page 1 shall be available through an internet search for the business name and street address specified on page 1.
- 4.16 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.
- 4.17 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 Ordinance. 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.
- 4.18 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 HPD for this purpose within 48 hours. Wrecker drivers shall be licensed pursuant to Article III, Subdivision B of Chapter 8 of the Code of Ordinances
- 4.19 Operator agrees to the following:

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 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 \$1,000,000 PER OCCURRENCE.

4.20 Operator agrees to conduct towing operations with honesty, trustworthiness, and integrity and shall ensure that all employees are held to that standard. Operator shall utilize sound judgment to provide quality customer service to address customer needs, minimize complaints, and resolve disputes. Operator shall work with the Auto Dealers Detail, first responders, incident management personnel, or other personnel on scene in a cooperative and professional manner. Operator shall make all employees available in a timely manner to any HPD employee upon request.

4.21 Operator shall ensure that no photos or videos of vehicles towed from police scenes are posted to social media or broadcast without the consent of the vehicle owner involved and the Auto Dealers Detail.

4.23 Operator agrees that each wrecker driver servicing this Agreement shall be able to read and speak the English language sufficiently to communicate effectively with citizens, dispatchers and first responders, to understand

highway traffic signs and signals, to respond to official inquiries and to make entries on reports and records.

4.24 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

4.25 Anti-Boycott of Israel. in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code. agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

4.26 DRUG ABUSE DETECTION AND DETERRENCE:

4.26.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

4.28.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

4.28.2.1 a copy of its drug-free workplace policy,

4.28.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "B-1," together with a written designation of all safety impact positions and,

4.28.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "B-2"

4.28.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the

performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "B-3." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

4.28.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

4.28.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

V. Signatures

5.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

ATTEST (if a corporation)

OPERATOR

By: _____
Corporate Secretary

By: _____

(Print or type name)

(Print or type name)

(Title)

(Title)

CITY OF HOUSTON

By: _____
Chief of Police

COUNTERSIGNED

By: _____
City Controller

DATE OF COUNTERSIGNATURE AND EFFECTIVE DATE OF THIS

AGREEMENT: _____ day of _____, 20__.

EXHIBIT "A"

HEAVY-DUTY TOWING AND RECOVERY REGULATIONS

All Heavy-duty tow operators ("Operators") holding a Heavy-duty Police Authorized Tow Service Agreement ("HDPATSA") shall comply with the following Heavy-Duty Towing and Recovery Regulations ("Regulations").

1. HDPATSA Operator shall continuously own or lease and comply with the equipment requirements listed in Section C. below. If leasing the equipment, Operator shall provide documentation that equipment is available for Operator's immediate use when on-call. The leased equipment agreement shall be registered in the Operator's name and the leased equipment shall be listed and covered by Operator's insurance.
2. Each Operator shall maintain a business location with appropriate dispatch/office personnel. The equipment listed in Section C. below shall be located and available to Operator within 35 miles of 901 Bagby, Houston, Texas.
 1. a. Each Operator shall employ a minimum of 3 Heavy-duty tow truck drivers with a City of Houston Heavy-duty wrecker badge, Texas Department of License and Regulation Incident Management License ("TDLR"), and shall have a minimum of 16 hours of continuing education approved by TDLR and/or the Texas A&M Engineering Extension Service (TEEX) that includes hands on training within 6 months of issuance of the HDPATSA ("Driver(s)"). All Drivers who respond to incidents pursuant to an HDPATSA shall repeat the same level of training at least once every 3 years. Operators must complete any training mandated by HPD Auto Dealers Detail.
 - b. Drivers hired after the execution of the HDPATSA will have 6 months from the date of hire to complete the 16 hours of continuing education
 - c. Operator shall replace Drivers and/or damaged or obsolete equipment within 90 days or be taken off rotation until minimum number of Drivers and/or required equipment is met.
 - d. Each Operator shall remain current with all ad valorem taxes.

Heavy Duty Zones:

2. Each Operator shall comply with the Zone Map consisting of 3 zones referred to as 1, 2, and 3 (see boundary definitions, Exhibit "A-2" and Map, Exhibit "A-3.").
3. Each Operator will be assigned a zone and shall provide all non-consent Heavy-duty towing services within that zone for 24 consecutive hours or one calendar day on a rotating basis.
4. The Operator on duty shall monitor Police radios and/or be dispatched at the discretion of Law Enforcement.
5. The Operator shall respond within 45 minutes to any incident, accident, stall, or breakdown requiring a Heavy-duty wrecker. The Operator shall adhere to quick clearance practices when safe and practical to upright overturned tractor-trailers, remove overturned tractor-trailers from main travel lanes, removing large obstructions, lost loads, spilled loads, or shifted loads, or similar incidents requiring heavy-duty wreckers for operations.
6. If Operator is unable to cover a rotation assignment Operator shall notify HPD Auto Dealers Detail as well as the Heavy-duty dispatcher before the start of the rotation. If the inability to adequately cover a rotation assignment becomes regular or habitual, Operator may be removed from the rotation until such a time as Operator meets the requirements set out in these Regulations.
7. Operator's owner or general manager shall attend regular heavy-duty meetings as required by the Auto Dealers Detail. Failure to attend 80% of annual meetings shall be grounds for temporary suspension.

B. Equipment: Each Operator shall also own or lease and operate the following equipment:

| | | |
|-----|------------------|--|
| 1. | 3 Each | TDLR approved extendable boom, tandem axle wreckers. An acceptable wrecker shall have a minimum Boom manufacturer rating of 30 tons. Each wrecker shall have a minimum of two 30,000 manufacturers rated winches and each winch shall have a minimum of 200 feet of 3/4 inch diameter wire rope. Every wire rope end must be swaged. |
| 2 | 3 Each | Flares, all 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 or three bidirectional reflective triangles. |
| 3. | 1 Each | Broom of a type designed for pushing with an 18-inch head and a handle of not less than 36 inches |
| 4. | 5+ Gallons | No less than five gallons of dry sand or other absorbent that is at least as effective as sand in absorbing liquid |
| 5. | 1 Box/ Bucket | To carry glass and debris cleaned from streets when picking up a wrecked vehicle |
| 6. | 1 Each | Flat-edged shovel of at least nine inches, with a handle of not less than 36 inches |
| 7. | 1 Each | Wrecking bar of not less than 36 inches in length with a wedge head |
| 8. | 1 Each | Fire extinguisher at least 10 pounds or two 5- pound multiple purpose fire extinguisher(s), in good working condition |
| 10. | | Tow lights with appropriate cable and cushions to protect a vehicle's finish |
| 11. | | Safety (mud) flaps at least 8 inches from the surface |
| 12. | 1 Each | Set of heavy duty bolt cutters capable of cutting a minimum of 3/8 inch diameter |
| 13. | 2 Each | Nylon recovery straps (2 Ply-6 inch by 20 feet Minimum) |
| 14. | 4 Each | Hardwood timbers (6 inches by 4 inches by 48 inches) |
| 15. | 6 Each | Ratchet straps (4 inches by 20 feet) |
| 16. | 6 Each | Ratchet straps (2 inches by 20 feet) |

| | | |
|-----|--------|--|
| 17. | 6 Each | Grade 70 High test Tie Down Chains (3/8 inch by 20 Ft) |
| 18. | 2 Each | Snatch Blocks (Minimum 8 - Ton Rating) |
| 19. | 1 Each | 50 ft. roll of 1/2 Inch nylon rope |
| 20. | 1 Each | 24-inch Pipe Wrench |
| 21. | 1 Each | Set of hand Tools to include Screw drivers, Hack Saw, American and Metric hand wrenches, Wire cutters and large pliers and a 10-inch adjustable wrench, Sockets and air tools needed to remove any drive line. Claw Hammer and Knife |
| 22. | 2 Each | 50 ft. 3/8 Air Hoses |
| 23. | 1 Each | Flash Light |
| 24. | 1 Each | 8 lb. Sledge Hammer with a minimum of a 36inch handle |
| 25. | 1 Each | Round Point Shovel with a minimum of a 36- inch handle |
| 26. | 1 Each | Cheater pipe (Minimum of 2 inch by 48 inch- long) |
| 27. | 1 Each | 60 inches Flat head wedge pry bar |
| 28. | 1 Each | 1 Roll of electrical tape and 1 Roll of Duct tape |
| 29. | 2 Each | Wheel Chalks |
| 30. | 6 Each | Six (6) 28" to 36" Safety Orange Cones with 4" reflective tape and six (6) LED road flares or ten (10) 28" to 36" Safety Orange Cones with 4" reflective tape |

Support Equipment Trailer to transport equipment listed below.

| | | |
|-----|--------|---|
| 1. | 2 Each | Pallet Jack (minimum 5,000 lb. Rating) |
| 2. | 1 Each | Pallet Tong puller (Minimum 1,250 Rating) |
| 3. | 2 Each | Hand Truck Dollies (Minimum 800 lbs. Rating) |
| 4. | 1 Each | Adjustable Drum Dolly or Lifter (Minimum 1,000 Rating) |
| 5. | 1 Each | Dock Ramp - Decking plate for load transfers |
| 6. | 2 Each | Metal Plate Clamps or Plate Dog Clamps |
| 7. | 2 Each | Rolls of shrink Wrap (Minimum of 12 inch by 100 ft. roll) |
| 8. | 1 Each | 40 ft. of Gravity skate wheel or roller track conveyer, with supports |
| 9. | 1 Each | 1 set of Acetylene cutting torches |
| 10. | 8 Each | Load locks or Cargo bars |
| 11. | 1 Each | 20 ft. extension ladder |
| 12. | 1 Each | 3/8 Cordless Drill |
| 13. | 1 Each | Box 16d Nails - 3 inch |
| 14. | 1 Each | 72 Inch Pike Bar with wedge Head |

| | | |
|-----|--------|---|
| 15. | 1 Each | Standard set of air cushions with a minimum of 4 large cushions, 2 starter cushions, a 6 valve air bank control station, and 150 ft. of air hoses and a self-contained air compressor |
| 16. | 1 Each | Auxiliary Lighting System to include a 3000 watts generator and 4 -500 watt lights with stands 7,500 lumens = 500 watts = 125 watts LED |
| 17. | 1 Each | Gas powered cut off saw |
| 18. | 1 Each | Chain saw or electric Saws-all cutting saw |

Each Operator shall also own or lease and operate the following equipment:

| | | |
|-----|--------|---|
| 1. | 1 Each | Front end loader or rubber tire skid-steer loader |
| 2. | 1 Each | Forklift with a 6,000 lb. lifting capacity |
| 3. | 1 Each | Mechanical Sweeper |
| 4. | 1 Each | DOT Approved and inspected Tandem Axle Road Tractor to pull any of the following support trailers |
| 5. | 1 Each | DOT Approved and inspected Box Trailer (Minimum of 48 ft.) |
| 6. | 1 Each | DOT Approved and inspected Flatbed Trailer (Minimum of 48 ft.) |
| 7. | 1 Each | DOT Approved and inspected Tilt bed Trailer, Minimum 48 ft. length with a Minimum 20,000 lbs. winch with 5/8 inch wire rope |
| 8. | 1 Each | Heavy Duty Convert Dollies |
| 9. | | All other Required TDLR required Safety equipment, including safety vest, gloves, or reflective Uniform |
| 10. | | All other Required FMCSA required Safety equipment |

Each Operator shall have access to the following additional equipment and man power:

Roll Off Boxes, Vacuum Trucks and Suction Equipment for off-loading materials, Crane Services, Additional labor used for off-loading Spilled Cargo

THE FOREGOING ITEMS OF EQUIPMENT SHALL BE INVENTORIED ON EACH WRECKER OPERATED UNDER OPERATOR'S HDPATSA AT THE SAME TIME.

C. Clothing Requirements:

1. Level 3 reflective vest, shirt or reflective jacket at all times while working outside of the tow truck; the reflective vest, shirt or reflective jacket must meet the ANSI/ISEA requirements for high visibility safety apparel.
2. Closed Toe Shoes
3. Vest or Shirt with company name

D. Cab:

Operators shall keep the cab of each wrecker clean and free of debris. All items in and on wrecker including but not limited to tools, dollies, etc need to be secured to the wrecker.

E. Dispatching:

Heavy-duty Tow trucks will be dispatched at the direction of law enforcement. Dispatchers will initiate a dispatch to notify the appropriate HDPATSA holder for the specific zone and day of the incident details. **The City of Houston reserves the right to change the method of dispatching including but not limited to GPS based electronic dispatching.

**add AVL mandate for all wreckers.



EXHIBIT "A-1"



Heavy Duty Towing Bill of Rights

Tow Fee

\$344.00 per hour, 2-hour minimum – The heavy-duty tow rates are set by State and Local laws on an annual basis. The two-hour minimum time starts at the time of dispatch.

Recovery / Scene Clean-up

There are no regulated fees regarding recovery or scene clean-up. The heavy-duty tow operator must provide you with a detailed bill listing the equipment, labor and time utilized to clean the scene. Additional fees based on hazardous materials may apply.

Tow Location

You have the right to have the vehicle removed to a City of Houston Approved Police Storage Lot or a destination of your choice.

Complaints

Complaints may be directed to the Houston Police Department, Auto Dealers Detail at hpd.AutoDealers@HoustonPolice.org. If you need to speak with an Auto Dealers Detail Officer, you may call 832-394-4869.

EXHIBIT "A-2"

Heavy Duty Zone Definitions

Zone 1

Going East from Highway 290 (excludes service road) to the City Limits, and North of North Loop West service road to the City Limits and East of North Main to the City Limits and North of I-10 East center median to include all West bound lanes to the City Limits.

- This Zone excludes Highway 290 and includes the west-bound lanes of I-10

Zone 2

Includes Highway 290 (including service roads) to South Main (Hwy 90A) and South of North Loop West including service roads to Main Street and West of Main Street to the City Limits.

- Includes all of 290 and the southbound lanes of 90A

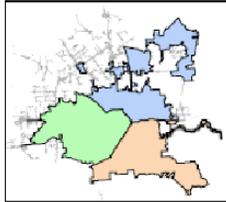
Zone 3

East of Main and South Main to the City Limits, and South of I-10 East center median including all East bound lanes.

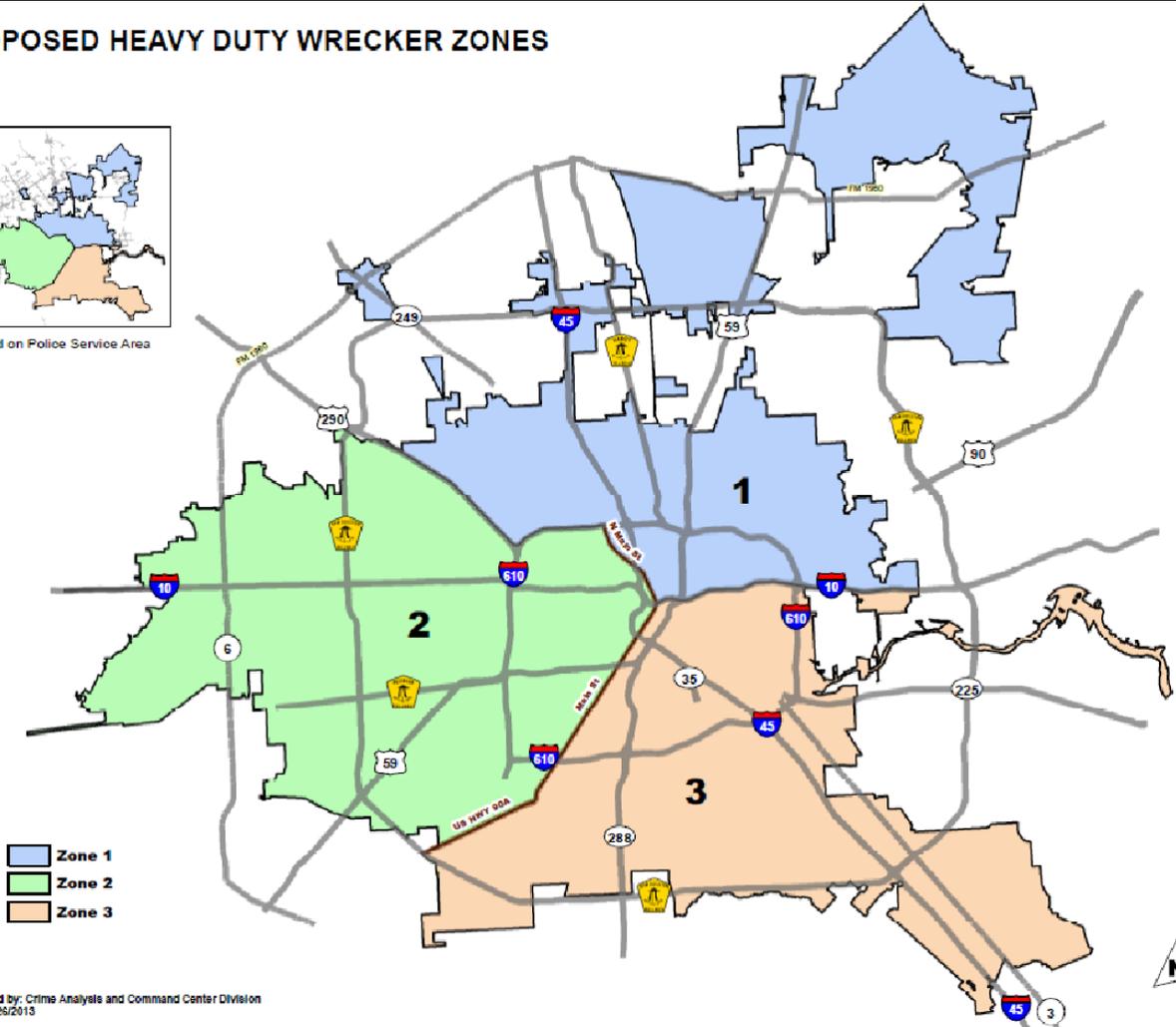
- Includes east-bound I-10 and north-bound 90A

EXHIBIT "A-3"

PROPOSED HEAVY DUTY WRECKER ZONES



Based on Police Service Area



Prepared by: Crime Analysts and Command Center Division
Date: 4/25/2013

EXHIBIT "B-1"

EXHIBIT "B" 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 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 will be bound by and agree to designate appropriate safety impact positions for company employee positions, if any and to comply with the following requirements:

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 an 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 this form as many times as needed)

EXHIBIT "B-2"

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

I, _____,
(Name)

(Title)

as an owner or officer of _____(Contractor)

have authority to bind the Contractor with respect to employee safety impact positions, as defined in Executive Order No. 1-31, that will be involved in performing Heavy Duty towing services for the Houston Police Department.

Contractor agrees and covenants that it shall immediately notify the Houston Police Department Auto Dealers Detail if any safety impact positions are established to provide services in performing this Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "B-3" DRUG POLICY COMPLIANCE DECLARATION

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

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The 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 Initials 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

 (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____,

_____ Services (HHS) guidelines.
 Initials

_____ 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)

Reasonable Post

Random Suspicion Accident Total

Number of Employees Tested

Number of Employees Positive

Percent of 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 guideline 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)

EXHIBIT "C"

POLICE-AUTHORIZED HEAVY-DUTY TOW SERVICE AGREEMENT

| Year / Make / Model | License Plate # | Last 4 # VIN | Medallion # | Tonnage | Winch Capacity | (For Office Use Only) License # |
|---------------------|-----------------|--------------|-------------|---------|----------------|------------------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Owner: _____ Date: _____
(Print or type name)

Signature: _____ Date: _____
(Title)

As Operator of a police private storage lot, 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 listed in the above table are authorized to deliver vehicles to my storage lot. My police private storage lot is known as:

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

Address: _____ VSF #: _____

Owner: _____ Date: _____
(Print or type name)

Signature: _____ Date: _____