

STATE OF TEXAS §
 § **WRECKER SERVICE CONTRACT**
COUNTY OF TARRANT §

WHEREAS, the City of Keller, Texas, (the "City") is a home rule city with power and authority, by virtue of the laws of the State of Texas and its Home Rule Charter, to regulate the storage, parking and towing of vehicles within its corporate limits; and

WHEREAS, the City desires to enter in a contract with a wrecker service operating within the City to remove and store, at the request of the City, vehicles which violate City ordinances and State law; and

WHEREAS, AA Wrecker Service ("Operator"), desires to operate a wrecker service within the corporate limits of the City and to provide the City with wrecker service; and

WHEREAS, the City and Operator mutually agree and desire to enter into this Contract (the "Contract") for the provision of wrecker and towing services to the City.

W I T N E S S E T H:

In consideration of the mutual covenants and stipulations hereinafter expressed, the City of Keller, Texas, and Operator do hereby CONTRACT, COVENANT, WARRANT and AGREE as follows:

I. Grant of Towing Rights. The City of Keller, Texas, hereby grants to Operator, for a period of two (2) years from the date of this Contract, with the option to extend the contract for (2) two additional one-year periods without requesting new proposals, the authorization to tow, remove and store, upon request from the City, all vehicles required by the City to be removed from their stationary location or from public streets or other locations when required by the City as a result of accidents, arrest, abandonment, or mechanical difficulty, and there is not a request by the person in charge of such vehicle to utilize another provider of such service.

II. Duties of Operator.

A. Operator shall respond to all calls by the City for light or medium duty wrecker service, as hereinafter defined, within twenty (20) minutes of the time of the call. Response time for heavy-duty wrecker services shall not exceed forty-five (45) minutes following a call or request for such service.

B. Operator shall maintain at all times, 24 hours a day each day of the week, personnel on duty who shall be able to respond to a City request for wrecker service as required by this Contract and to request for release of vehicles stored and parked on Operator's property. Failure of Operator to maintain such personnel shall constitute a cause of termination of this Contract by the City.

C. Operator shall maintain and operate a place for the storage of vehicles towed pursuant to this Contract (the "storage facilities") said storage facility to be a minimum of one acre with a storage capacity for 150 vehicles or greater and shall be maintained and kept in good condition, including paving, fencing, lighting and security as follows:

1. The storage facility shall be completely enclosed by a privacy fence of at least six (6) feet in height, with a gate which is locked at all times Operator is not at the storage lot;
2. The storage facility shall have an all-weather surface that makes delivery and release of vehicles feasible in all weather conditions such as concrete, asphalt, black top, stone, macadam, limestone, iron ore, gravel, shell or caliche;
3. The storage facility shall have a sign at its main entrance, clearly visible and readable for the storage lot, which shall include the street address, telephone number, the hours vehicles will be released to vehicle owners, and the state license number of the storage facility;
4. The storage facility shall have an operable telephone which must be publicly listed, where Operator can be contacted. If at any time the telephone number is changed from the number in use on the date of this Contract, Operator shall give written notice of the same and the new telephone number to the City prior to the date the new number is used;
5. For nighttime release of vehicles, Operator shall maintain adequate illumination at the storage facility, which shall be not less than one (1) foot-candle where the vehicles are maintained; five (5) foot-candles in the traffic lanes; and five (5) foot-candles at the entrance.

Said storage facility shall be and remain at 5709 - B Denton Highway Haltom City, TX , and said location shall not be changed except upon written notice to the City at least thirty (30) days before the change of location. Requesting approval of the new location, the City shall approve or disapprove the location within fifteen (15) days of receipt of the notice. Failure to maintain such a storage facility within a ten-mile distance from the City limits shall constitute cause for termination of this Contract by the City. Operator shall deliver all vehicles to and store such vehicles at said location unless directed otherwise by the Chief of Police or his designated representative.

D. Operator shall have the right to continue to provide wrecker and towing services to persons other than the City; provided, however, that calls and requests for wrecker service made by the City shall have immediate and absolute priority over any other calls received.

E. Operator shall provide, at no cost, towing of any vehicle owned by the Police Department.

F. Operator shall tow, park and store all vehicles in a safe and secure manner. When towing a vehicle from the scene of an accident, the immediate surrounding area must be cleared and cleaned up by the Operator in a manner that is satisfactory to the City. Vehicle storage shall be conducted in accordance with the following requirements:

1. All vehicles shall be kept inside the fenced area of the vehicle storage facility at all times;
2. No stored vehicle shall be used by Operator, its agents and employees for personal or business use;
3. A vehicle stored pursuant to this Contract shall be secured, such as doors, windows and/or hatchbacks closed, convertibles covered or tops raised, without additional charge. Wrecked vehicles which cannot be secured are exempt from this requirement;
4. A vehicle stored pursuant to this Contract shall not be repaired, altered or parts replaced without the consent of the vehicle's owner or authorized representative.

G. Vehicles shall be accepted for storage by Operator as follows:

1. When Operator accepts for storage a vehicle towed without the consent of the vehicle owner, Operator shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface in any manner any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip was incorrect, Operator shall note in its records the correct number, and notify every previously advised person of the current information, within 48 hours.
2. When storing a vehicle pursuant to this Contract, Operator shall notify the registered owner and all lien holders of record of the vehicle within 5 calendar days by certified mail. Such notice shall state:
 - (a) the location where the motor vehicle is located, as required by this Contract, and the hours the vehicle can be released to the vehicle owner from that storage lot;
 - (b) the amount of all fees which must be paid before the vehicle is released;
 - (c) the date on which the vehicle will be removed from the vehicle storage facility if it is not recovered by the vehicle owner prior to that date;

- (d) from where, when and by whom the vehicle was authorized to be towed.

H. Operator shall not release any vehicle stored pursuant to this Contract, which has a "hold" placed on it, except upon written direction from the Chief of Police of the City or his designated representative. Whenever a person claims ownership or the right of possession to a motor vehicle located on the vehicle storage facility, such person shall be entitled to inspect the wrecker slip or wrecker ticket for the motor vehicle, and shall not be required to pay any fees or charges prior to inspecting the wrecker slip or wrecker ticket. The registered motor vehicle owner or authorized representative shall have access to and be allowed to remove any personal belongings in the vehicle, unless otherwise directed by a peace officer.

I. Operator shall maintain current records during the term of this Contract and shall make the same available for review by the City Manager, Chief of Police of the City or their duly designated representative upon one (1) day's notice. Such records shall include, but not be limited to, the following:

1. Date and time call or request for service was received by Operator;
2. Date and time of arrival at location of vehicle to be towed, and location of vehicle to be towed;
3. Date and time of arrival at storage area after vehicle has been towed;
4. Name of wrecker driver and the wrecker license plate number, the name of the wrecker driver shall be available to the Texas Department of Transportation, Keller Chief of Police, the Dallas County Sheriff and Texas Department of Public Safety Officials only;
5. Make, model, year and color of vehicle;
6. License plate number of the vehicle, state issuing the license and correct vehicle identification number;
7. A general description of the vehicle, including the overall condition of the vehicle and any damage to the body of the vehicle or missing equipment;
8. Vehicle inventory and time of same;
9. The date the vehicle was released and the name of the individual to whom the vehicle was released;
10. If the vehicle ownership has been transferred due to any action of the Operator the vehicle has been disposed of or demolished, a copy of the certificate of title issued after the vehicle came into the Operator's possession, the certificate of authority to demolish, a police auction sales

receipts, or transfer document issued by the State of Texas for vehicle; and

11. All amounts charged for the storage of the vehicle.

The record required by this subsection may be kept in the form of wrecker tickets and slips so long as all information required herein is kept on the tickets and slips. Each record required to be kept by this Contract shall be kept for two (2) years from the date of the last transaction shown in the record under Operator's care and custody.

In addition to these record-keeping requirements, the Chief of Police of the City shall have the right to prescribe such other record-keeping requirements as he deems, in his sole judgment, are necessary to effectuate the terms of this Contract. Operator shall maintain any other records required by State Statute which are not specifically enumerated here.

J. Operator shall provide the opportunity for the owners of vehicles stored by Operator to remove items of personal property from their vehicle, and for appraisals and photographs by insurance agents and body shop specialist. Operator shall not dismantle or remove any part or parts from any impounded vehicle.

K. Operator shall maintain a minimum of the following:

1. One (1) light-duty wrecker with a minimum towing capacity of 4,000 pounds;
2. Two (2) medium-duty wreckers with a minimum towing capacity of 10,000 pounds;
3. Availability of one heavy-duty wrecker with a minimum towing capacity of 40,000 pounds;
4. Minimum of one (1) Hydraulic Wheel Lift for towing late-model vehicles;
5. Trailer and slings for towing motorcycles;
6. Dollies for towing damaged vehicles; and
7. Other equipment as may be needed from time to time including, but not limited to, vehicle-mounted air compressors, portable air tanks, brooms, towing chains and electric winch.

L. In the event of a motor vehicle accident, Operator shall clean and remove from the street, road, highway, alley or other public way all glass or debris resulting from such accident.

M. Operator shall not solicit personal or private business from owners of impounded vehicles which are stored at the location above described.

N. Operator shall at all times adhere to the specifications in the Request for Proposal which is attached hereto as Exhibit A and incorporated herein for all purposes.

III. Fees

A. All towing, storage and other fees shall be collected by Operator. The City shall not participate in any manner in the collection of fees.

B. Operator hereby agrees that it shall not charge or seek to collect from City any fees or cost incurred by Operator for the towing of police department vehicles.

C. The following fees and charges are set by the Operator for towing services within the City of Keller and shall remain in effect during the term of this Contract.

1.	Normal towing charges for vehicles	<u>145.00</u> Per Hour
2.	Heavy duty wrecker service.	<u>250.00</u> Per Hour
3.	Storage fees per day under 25'	<u>20.00</u>
4.	Storage fees per day over 25'	<u>35.00</u>
5.	City owned vehicles other than police	<u>N/C</u>
6.	Change flats on police vehicles	<u>N/C</u>
7.	Jump start police vehicles	<u>N/C</u>

IV. Sale of Impounded Vehicles. Any vehicle removed and impounded under the provisions of the Contract may be sold at public sale under the provisions of the Texas Vehicle Storage Facility Act, Texas Tow Truck Act, Texas Litter Abatement Act, and Texas Traffic Laws.

V. **INDEMNITY. OPERATOR SHALL ASSUME RESPONSIBILITY FOR ANY AND ALL CLAIMS OF PROPERTY LOSS, DAMAGE OR BODILY INJURY WHICH MAY ARISE, DIRECTLY, FROM OPERATOR'S PERFORMANCE UNDER THE TERMS OF THIS CONTRACT. OPERATOR HEREBY AGREES THAT IT SHALL INDEMNIFY THE CITY AGAINST, AND HOLD THE CITY HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, DAMAGES OR INJURIES WHICH MAY ARISE OUT OF THE ACTIONS OF THE OPERATOR, ITS AGENTS AND EMPLOYEES, IN THE PERFORMANCE OF THE CONTRACT. FURTHER, OPERATOR AGREES THAT IT IS AN INDEPENDENT CONTRACTOR AND THAT THE OPERATOR IS SUBJECT, AS AN EMPLOYER, TO ALL APPLICABLE WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION STATUTES, SO AS TO RELIEVE THE CITY OF ANY RESPONSIBILITY OR LIABILITY FROM TREATING OPERATOR'S EMPLOYEES AS EMPLOYEES OF THE CITY FOR THE PURPOSE OF KEEPING RECORDS, MAKING REPORTS OR**

PAYMENTS OF UNEMPLOYMENT COMPENSATION TAXES OR CONTRIBUTIONS. OPERATOR FURTHER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSE AND LIABILITY INCURRED UNDER THE WORKER'S COMPENSATION STATUTES IN CONNECTION WITH EMPLOYEES OF OPERATOR.

VI. Insurance. Operator shall at all times during which this Contract is in effect, and for a period of 60 days after the expiration or cancellation of the contract, maintain liability insurance in the following minimum amounts or in any additional amounts as provided in the Texas Tort Claims Act or other laws regarding liability of municipalities within the State of Texas: \$100,000.00 for property damage to any one person; \$300,000.00 for property damage in any one accident; \$500,000.00 for personal injury to any one person; and \$1,000,000.00 for person injury in any one accident. Operator shall furnish the City, at the time of execution of this Contract and at all times when such insurance may be renewed, a certificate and paid receipt of such liability insurance. All certificates of insurance shall name the City as an additional insured. In addition, Operator shall also provide to the City at the time of execution of the Contract and at all times when the insurance may be renewed, a certification of insurance indicating evidence of insurance coverage in the types and amounts as defined in Exhibit A hereto.

VII. Vehicle Owner Rights. Nothing contained herein shall prevent the owner of any motor vehicle disabled on the public streets of the City to arrange for the prompt removal of his/her vehicle from the scene of the accident or disablement by wrecking or towing service of his/her own selection; provided that such right does not hinder the City's ability to protect the health, safety, and/or welfare of its citizens.

VIII. Termination.

A. Failure to comply with any of the terms of the Contract shall be cause for termination of the Contract by either party hereto. Prior to termination of the Contract and in instances where a violation may be corrected, written notice of the violation or violations shall first be given to the party in violation, which party shall thereafter have ten (10) calendar days in which to correct the violation. Failure to correct the violation within such time period may, in the City's sole discretion, result in immediate termination of the Contract. Where a violation has occurred which is not subject to correction, the party not in violation may terminate the Contract by first giving written notice of the violation, and the Contract shall be terminated ten (10) days following the receipt of such notice. Where required herein, written notice shall be considered received when deposited in the United States mail or when hand delivered to the following address:

To City:

City of Keller
1100 Bear Creek Parkway
Keller, Texas 76248

Attention: Mr. Mark R. Hafner
City Manager

To Operator: AA Wrecker Service
5709 - B Denton Highway
Haltom City, Texas 76148

B. Notwithstanding the above, the City reserves the right to terminate this Contract by giving ten (10) days written notice.

IX. Compliance With Federal, State and Local Laws. Operator shall abide by all applicable state and federal laws and local ordinances which regulate wrecker operations, including those requiring licenses and wrecker permits from the state and from the City.

X. General.

A. Operator shall not assign or transfer any of the rights and duties under this Contract except upon written approval of the City.

B. Venue for any proceedings under this Contract shall be in Tarrant County, Texas.

C. This Contract constitutes the entire agreement and understanding between the City and Operator. Modifications, changes or amendments to this Contract shall be made in writing.

D. If any clause, paragraph, section, subsection, sentence, phrase or word of this Contract shall be found by a Court of competent jurisdiction to be illegal, unlawful, unconstitutional or void for any reason, the remainder of this Contract shall remain in full force and effect and the parties hereto shall be deemed to have contracted as if said clause, paragraph, section, subsection, sentence, phrase or word had not been in the Contract initially.

EXECUTED this the _____ day of _____, 2017.

ATTEST:

CITY OF Keller, Texas:

City Secretary

City Manager

APPROVED AS TO FORM:

City Attorney

Operator - AA Wrecker Service