

HAYS COUNTY SHERIFF'S OFFICE WRECKER SERVICE AGREEMENT

This AGREEMENT is made and entered into by and between the Hays County Sheriff's Office and the undersigned Towing Company ("Company").

I. SUBJECT OF AGREEMENT

The following Agreement provides the terms and conditions of towing services for the Hays County Sheriff's Office ("HCSO") wrecker rotation list.

II. TERM

The term of this Agreement for wrecker services will begin on the date executed and will be in effect until terminated by either party. This Agreement will be reviewed on an annual basis. This Agreement may be terminated at any time by either party in accordance with the termination provisions in Section IX of this Agreement.

III. SERVICES PROVIDED

Company shall have the right, subject to the terms and conditions of this Agreement, to provide non-consensual towing service for the HCSO. In accordance with the following terms and conditions, Company shall provide all labor, equipment and materials, and perform all necessary work for the removal of vehicles from public streets, ways and other public property within Hays County. Services also include removal of vehicles from private property when directed by the Sheriff or his designee. In addition, Company agrees, on a voluntary basis, to provide towing service for wrecked and disabled vehicles owned by Hays County and transport said wrecked and disabled vehicles to a location specified by County at a reduced rate of non-consent tows as set forth below.

IV. WRECKER SERVICE SPECIFICATIONS

A. Wrecker Rotation List

The HCSO will create and maintain a rotation list of towing companies which desire to perform non-consent tows and to tow Hays County vehicles in designated response areas of Hays County. The HCSO will maintain three rotation lists and will consist of light duty non-consent and crash tows, medium and heavy non-consent and crash tows, and a voluntary list for Hays County owned vehicles classified as light, medium, and heavy. If HCSO is unable to obtain volunteers or if volunteers are otherwise not available when needed to tow county owned vehicles, it reserves the right to contract with a company of its choosing for such tows.

The HCSO will divide Hays County into geographical response areas for the rotation of towing assignments. Each owner may only operate one company in each of the service areas. Company may request which geographical response area(s) in which it desires to receive towing assignments. HCSO will select and determine towing assignments based on needs of each geographical response area(s). The Sheriff or his designee will have the final decision on towing assignments. The rotation of assignments within each response area will be handled independently of the other response areas. When a HCSO deputy determines that the owner or operator of a vehicle requiring towing has no preference or is unable to select a towing company, the deputy will request that a towing company be selected from the list and called to execute the tow. The companies will be selected in rotating order on the basis of their position on the list.

B. Vehicle Storage Facilities

1. For each non-consent tow, Company must tow the vehicle to a Texas Department of Licensing and Regulation ("TDLR") licensed vehicle storage facility ("VSF") within Hays County.

2. Company is not required to use its own VSF; however, Company must provide the HCSO with the TDLR license and insurance of each VSF used under this Agreement.

C. Equipment

1. Each tow truck is required to have an Incident Management (IM) Permit issued by TDLR. The IM Permit must be valid at all times during the term of this Agreement.
2. All tow trucks performing under this Agreement shall provide all other tools reasonably necessary to safely and adequately perform the towing service customarily performed by tow trucks of such size and as required by the Texas Towing and Booting Act, as amended.

D. Driver Requirements

1. The Sheriff must approve all owners, and their tow truck drivers before Company will be allowed to operate under this Agreement.
2. Company shall complete and return to HCSO Personal History Statement and Wrecker Service Application listing all tow truck drivers to the HCSO for approval by the Sheriff.
3. Upon receipt of the application, a criminal history will be run on all applicants and their drivers. Any applicant or driver shall be considered disqualified and not eligible to provide services under this Agreement if:
 - i. Convicted within the last two (2) years of any class B misdemeanor to include but not limited to D.W.I., D.U.I., and D.W.L.S.
 - ii. Convicted of any class A misdemeanor, any felony offense, or any crime of moral turpitude to include but not limited to Theft, Disorderly Conduct, Public Lewdness, Sexual Assault, and Indecency with a Child.
4. All tow truck drivers must hold a valid Texas driver's license and a valid Incident Management Towing operator's license issued by the Department of Licensing and Regulation.
5. All Company employees shall be required to wear clean clothes, be well groomed, prompt, and courteous at all times.
6. Tow truck drivers must pick up and remove glass and clear all vehicle crash scenes of debris. Sand or other absorbent material must be carried and used to soak up oil, fuel, and any other liquid substances.

V. INSURANCE

1. Company shall carry on each tow truck used under this Agreement a minimum \$500,000.00 (five hundred thousand and 00/100 dollars) liability insurance to be increased as necessary to meet or exceed statutory requirements.
2. Company shall carry on each tow truck used under this Agreement a minimum \$50,000.00 (fifty thousand and 00/100 dollars) on-hook cargo insurance to be increased as necessary to meet or exceed statutory requirements.
3. In the event of a claim against Company, it is expressly understood, and such policies shall expressly provide, that Company nor its insurers will seek to avoid liability on the grounds that Company was engaged in the services contracted for herein.
4. All insurance policies required in **sub-paragraphs 1 and 2** above shall name Hays County as an additional named insured without qualification. Company expressly agrees to keep all policies in full force and in effect at all times while operating under this Agreement. Company shall deposit with the HCSO, proof of insurance and certificate of insurance, issued by a responsible company or companies authorized to do business in the State of Texas, indicating that Company has the insurance policies

required herein full force and effect. Each such policy shall contain an endorsement providing for thirty (30) days prior notice to the HCSO and Company in the event of any cancellation of, or material change in, said policy.

5. All required insurance shall be purchased at the sole expense of Company.

VI. TOWING SERVICE FEES.

- A. **Light Duty Tow requires 1.5 Ton tow truck or larger** (towed vehicle is 10,000 lbs or less):
 1. Custodial Non-Consent Tow Fee: **not to exceed \$250.**
 2. Hays County owned vehicle Tow Fee: **not to exceed \$125.**
- B. **Medium Duty Tow requires 2 Ton tow truck or larger** (towed vehicle is between 10,001 and 24,999 lbs):
 1. Custodial Non-Consent Tow Fee: **not to exceed \$450.**
 2. Hays County owned vehicle Tow Fee: **not to exceed \$350.**
- C. **Heavy Duty Tow requires 5 Ton tow truck or larger** (towed vehicle is 25,000 lbs or more):
 1. Custodial Non-Consent Tow Fee: **not to exceed \$800.**
 2. Hays County owned vehicle Tow Fee: **not to exceed \$600.**
- D. **Crash Related Light Duty, Medium Duty and Heavy Duty Tow:**
 1. Follow TDLR and Tow Company guidelines for fees.
- E. Fees marked “**not to exceed**” may be exempted when unforeseeable and justifiable circumstances arise and additional resources or labor are required. Examples of such extenuating circumstances may include vehicle fire or severe mechanical failure.
- F. Wreckers may call additional resources, to include another company, to assist them with a tow requiring the extra resources. Company must perform the primary towing function during such incidents, and this is not meant to allow company to “subcontract” other companies to perform their normal towing functions.

VII. RULES AND REGULATIONS

1. Company’s personnel and tow truck drivers shall comply with directions from HCSO Deputies, Hays County Deputy Constables, or Texas Department of Public Safety Troopers in charge of the vehicle crash scene. At no time shall Company’s personnel and tow truck drivers interfere with the duties of any Law Enforcement Official.
2. Company shall obey all State and Federal laws and Hays County Orders.
3. Company must be prepared 24 hours a day, seven (7) days a week, to respond to a call immediately and be on the scene within thirty five (35) minutes after dispatch for light duty/medium duty, and sixty (60) minutes after dispatch for heavy duty. Failure to meet this requirement may result in the HCSO contacting a back-up tow company and/or suspension or termination of this agreement in accordance with the discipline matrix, see Exhibit A. HCSO dispatch will wait five (5) minutes for a response from Company that they are enroute before calling the next Company on the rotation list. The Company will send one of it’s Incident Management tow trucks and not dispatch one from another Company.
4. Company shall provide to HCSO two (2) phone numbers where Company can be reached 24 hours a day, seven days a week, which will be used by the HCSO for the purpose of dispatching a wrecker.
5. All complaints or concerns by Company regarding the provision of this Agreement shall be put in writing and directed to the HCSO Wrecker Service Supervisor. Under no circumstances should a complaint or concern be directed to the HCSO by phone or to the HCSO Telecommunications Operator. Repeated submission of invalid or

frivolous complaints could result in suspension or termination of this Agreement. All complaints or concerns by Company against another Company regarding TDLR violations shall be put in writing and directed to TLDR for review.

6. No tow truck shall stop at a scene where a Law Enforcement Officer is present unless dispatched or requested to do so by the Officer at the scene and Company is able to provide the needed services.
7. Company shall comply with all rules and regulations set forth in this Agreement. Violations of these regulations or intentional and/or flagrant failure or refusal to respond to the duties of Company will result in termination or suspension of the offending tow truck driver and/or Company. The Discipline Matrix in Exhibit A will be the guideline for the handling of violations
8. Failure of Company to maintain the bonds of insurance required by this Agreement will result in termination of the ability to operate under this Agreement. No Company may operate under the provisions of this Agreement until the required bond and insurance has been obtained or reinstated and proof of it has been delivered to the HCSO.
9. If and when it becomes necessary on Non-consent and Hays County Vehicle tows in any manner to disconnect, tamper with, or damage the gear, emergency brake, or any other part of a vehicle before towing, Company, on termination of the tow, shall repair or return such vehicle to the condition it was in before the work was performed. This will be done at the expense of Company.
10. Company shall make all tow trucks and/or miscellaneous equipment available for inspection when ordered by the HCSO.
11. Complaints made by citizens of overcharging regarding Custodial Tows will be reviewed and acted upon by the HCSO. Any overcharge shall be refunded by Company. Appropriate action may be taken against Company by the HCSO.
12. Complaints made by citizens of overcharging regarding Crash Related Tows will be directed to TDLR. TDLR will review and act upon the complaint. If TDLR finds there is a violation the HCSO will be notified and appropriate action may be taken against Company by HCSO.
13. Reference Stored/Abandoned vehicles: Company is responsible for notifying HCSO when a vehicle is released to the owner or sold at auction and for preparing packages for said vehicles for auction and maintaining records of same per TDLR rules.

VIII. Hearing Process

1. A person or company may appeal the Office's adverse action by using the following procedures: If an Applicant is denied or its renewal refused; delivering a written notice of appeal within five (5) working days from the date the Office informs an applicant or permit holder.
2. If an ID Card or Permit is suspended or revoked it's holder may appeal by delivering a written notice of appeal within five (5) working days from the date of the Office's adverse action. The suspension or revocation shall be stayed during the pendency of the appeals process, unless the Sheriff determines that deferral of the suspension or revocation would present imminent risks to public health and safety.
3. Delivery of a notice of appeal to the Office is acceptable if hand delivered, or by United States First Class Mail, Return Receipt Requested, to the Traffic Unit Lieutenant.
4. Upon receipt of a notice of appeal, the Traffic Unit Lieutenant shall convene a Disciplinary Hearing Committee, comprised of the following individuals:

- a. Designee of the Hays County Sheriff;
- b. Designee of the Hays County Commissioners Court; and
- c. Designee of Current Towing Companies, by election pursuant to Section 5, below (One Reserve Designee shall also be designated to temporarily serve in the place of the primary designee, should the primary designee have a conflict on certain matters).

5. All Towing Companies holding a Permit shall, at or about the time these Policies are adopted and every 2 years thereafter, elect a designee to represent them on the Disciplinary Hearing Committee. Elections shall be conducted by the Hays County Sheriff's Office, shall utilize secret ballot, and shall be held over a 5-day period, during regular business hours. Each Towing Company holding a Permit shall be entitled to cast one vote by secret ballot. Preceding the election, individuals may be nominated (or self-nominated) as candidates to represent the Towing Companies. Write-in votes are allowed. The individual receiving the most votes shall be named as the primary designee for a 2-year term. The individual receiving the second most votes shall be named as the reserve designee for a 2-year term. Individuals shall serve until replaced by subsequent election. If a designee is unable to complete a term, then, as appropriate, 1) the reserve designee shall replace the primary designee for the remainder of the term, and/or 2) a new reserve designee shall be elected to fill the remainder of the term.

6. The Disciplinary Hearing Committee shall give the person or company making the appeal a written notice stating the date, time, and place of the appeal hearing. The person or company that requested the appeal and the Committee is entitled to offer evidence and argument on its behalf. The Committee shall hold a hearing and render a decision no later than fifteen (15) working days from receipt of the written notice of appeal. The decision of the Committee shall be final, unless a Final Appeal is made pursuant to subsection 8, below.

7. A person or company forfeits an appeal by failing to file a timely appeal under this article and the Office is not required to hold a hearing or render any further decisions.

8. All notices of appeal shall be sent to:

HAYS COUNTY SHERIFF'S OFFICE

ATTN:

Wrecker Administrator

1303 Uhland Rd

San Marcos, TX 78666

9. If a person or company wishes to appeal the findings of the Disciplinary Hearing Committee, that person or company shall file a Final Appeal to the Chief Deputy Sheriff by sending Notice of Final Appeal to the address cited in subsection 7, above, ATTN: Chief Deputy Sheriff. Final Appeals must be postmarked within 10 days of the findings of the Disciplinary Hearing

Committee. The Chief Deputy Sheriff shall review all materials associated with disciplinary action, consult the Hays County Sheriff, and make a final determination regarding the matter being appealed. Findings and disciplinary actions made by the Chief Deputy Sheriff shall not be appealable and shall be final.

IX.. FINANCIAL RECORDS

Company shall maintain, in Hays County, Texas, financial books and records reflecting their operations. Such books and records, together with any other documentation necessary for verification of Company compliance with terms the terms of this Agreement, shall be made available, upon request, to the Sheriff or his representative, during regular business hours.

X. TERMINATION

This agreement is terminable by either party at will by the giving of actual, written notice to the other party.

XI. INDEPENDENT CONTRACTOR

Company, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner or joint venture of or with County, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor.

XII. INDEMNITY

Company agrees to waive all claims, fully release, indemnify, defend and hold harmless the County, and all of its respective officials, officers, agents, representatives, employees, and attorneys, in both their public and private capacities, from any and all liability, claims, lawsuits, demands or causes of action of any kind, including all expenses of litigation and/or settlement which may arise by or result in injury to property or person occasioned by error, omission, intentional or negligent act of Company, its officials, officers, agents, representatives, employees, invitees or successors, arising out of or in connection with this Agreement.

XIII. GENERAL NOTIFICATION

When notice or notification is required under this Agreement, the following persons and addresses shall be used for purposes of sending notice:

COUNTY

**Sheriff Gary Cutler
Hays County Sheriff's Office
1307 Uhland Road
San Marcos, TX. 78666**

COMPANY

**Wrecker Service Supervisor
Hays County Sheriff's Office
1307 Uhland Road
San Marcos, TX. 78666**

XIV. CHOICE OF LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Hays County, Texas.

XV. SEVERABILITY

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this

Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

XVI. PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties.

XVII. ASSIGNMENT

This agreement is personal to the Parties. It is not assignable, and any attempt to assign this agreement will terminate the agreement.

XVIII. IMMUNITY

Hays County and its officers, directors, employees and agents do not waive any sovereign or governmental immunity available to the County under Federal or Texas law and do not waive any available defenses or remedies at law under Federal or Texas law.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date below:

Signed on this ____ day of _____, 20____.

COUNTY:

COMPANY:

GARY CUTLER, SHERIFF
HAYS COUNTY SHERIFF'S OFFICE

OWNER

HCSO WRECKER SERVICE SUPERVISOR

COMPANY NAME

**EXHIBIT A
DISCIPLINE MATRIX****

VIOLATION	OCCURRENCE	DISCIPLINARY ACTION
Unexcused late to a call-out	1 st 2 nd and 3 rd	Written Reprimand
	4 th	1-Month Suspension
	5 th	3-Month Suspension
	6 th	Termination
TDLR Violations	1 st 2 nd and 3 rd	Written Reprimand/Report to TDLR
	4 th	1-Month Suspension
	5 th	3-Month Suspension
	6 th	Termination
Unexcused/Unanswered Refusal	1 st 2 nd and 3 rd	Written Reprimand
	4 th	1-Month Suspension
	5 th	3-Month Suspension
	6 th	Termination
Operator Issues	1 st 2 nd and 3 rd	Written Reprimand
	4 th	1-Month Suspension
	5 th	3-Month Suspension
	6 th	Termination
Hays County Policy Violations	1 st 2 nd and 3 rd	Written Reprimand
	4 th	1-Month Suspension
	5 th	3-Month Suspension
	6 th	Termination

Violations expire exactly ONE year from the date that they are incurred. **Violations are considered against the COMPANY for which the Operator was driving at the time of the violation, not the Driver/Operator. Each violation is considered in only ONE category and will not be used against the company in multiple categories by HCSO. TDLR violations cited are independent of HCSO violations and the company may incur both HCSO sanctions and TDLR sanctions for the same offense.