

CITY OF HOUSTON CONTRACT NUMBER

**TEXAS DEPARTMENT OF LICENSING AND REGULATION
NUMBER _____**

THE STATE OF TEXAS

COUNTY OF HARRIS

**POLICE-AUTHORIZED HEAVY DUTY AND RECOVERY
TOW SERVICE AGREEMENT**

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

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 heavy-duty wrecker services to the City of Houston and will pay to the Auto Dealers Detail of the Police Department a nonrefundable annual administrative fee of \$660.00 as specified in section 8-126(c) of the Code of Ordinances, Houston, Texas, for each heavy-duty wrecker operated under this Agreement; and
3. the Operator holds a tow truck license issued by the Texas Department of Licensing and Regulation for each heavy-duty wrecker servicing this Agreement and has provided a listing of said heavy-duty wreckers on a form provided by the Police Department that is attached to and made part of this Agreement as "Exhibit B;" and
4. the Operator has and agrees to maintain all forms of insurance coverage that are required by section 8-126(e) (2) of the Code of Ordinances, Houston, Texas. The proof of insurance is attached hereto and made a part hereof as "Exhibit C;" 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. This relationship is evidenced on a form provided by the Police Department identifying each storage lot that will be utilized in servicing this Agreement and is attached to and made part of this Agreement as "Exhibit D."
6. Heavy-duty wrecker services require different types of trucks and equipment and zones than light duty wrecker services.

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

I. Identity of Heavy-duty Wrecker Service, Operator and Agents

1.01 The heavy-duty wrecker service is known as:

(Name under which the heavy-duty wrecker service operates)

and is hereinafter referred to as the "heavy-duty wrecker service" and is operated from:

(Physical street address of the heavy-duty wrecker service)

1.02 The "Operator" who owns the heavy-duty wrecker service is:

The Operator is (Check one, as applicable):

- | | | | |
|-----------------------------|-----------------------------|-----------------------------|-------------------------------|
| a. <input type="checkbox"/> | a proprietorship. | b. <input type="checkbox"/> | a partnership. |
| c. <input type="checkbox"/> | a limited partnership. | d. <input type="checkbox"/> | a corporation. |
| e. <input type="checkbox"/> | a limited liability company | f. <input type="checkbox"/> | limited liability partnership |

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

1.03 The publicly listed telephone number for the heavy-duty wrecker service at which the Operator or his employee or agent may be reached is:

_____.

II. Police Heavy Duty Wrecker Designation

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

Houston, Texas, regarding insurance requirements are specifically incorporated herein and read as follows:

"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 heavy-duty tow of any vehicle outside of the approved heavy-duty rotation list, except when authorized by the police department.

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

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

Operator shall provide City with new certificate of insurance if additional drivers are added.

The Operator agrees to 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 hereafter adopted by the City Council of the City of Houston, Texas, will become part of this Agreement by reference upon their effective date. It shall be the obligation of the Operator to take notice of such amendments by virtue of their adoption, and the City shall not be obligated to provide any personal notice of such amendments to the Operator.

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

law enforcement officer in charge of the police scene. Operator agrees to comply with heavy-duty wrecker regulations promulgated by the Houston Police Department and attached hereto as Exhibit "A".

Operator agrees to maintain the ability to accept and process the following form of payment: credit cards. Operator agrees to maintain the ability to accept at least two major credit card issuers of the following: VISA, MasterCard, American Express, and Discover Card. Furthermore, all credit or debit transactions will reflect the Operator's name as payee.

2.02 Operator agrees that in the event the City's Police Chief redraws the zones and rotation list for heavy-duty wreckers during the term of this Agreement, operator shall comply with the new heavy duty rotating zones.. The Police Chief will give Operator thirty days written notice of new zones and rotation list.

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

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

- a. 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 5/8 inch diameter wire rope. Every wire rope end must be swaged.
- b. The heavy-duty wrecker will have a light bar that conforms to state law.
- c. The heavy- duty wrecker will carry at all times the equipment listed in Exhibit "A".

2.05 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 the Police Department. The inspection service provider shall certify in writing that the vehicle meets minimum manufacturer's performance standards as applicable to the specific vehicle and components being tested. A copy of each written certification by the inspection service provider shall be attached to and incorporated in this Agreement as "Exhibit(s) F."
- b. **Auto Dealers 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 listed equipment in Exhibit A exists and meets the standards required by this Agreement.

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

2.07 Operator shall provide the motorist with a copy of the "Heavy Duty Towing Bill of Rights" in a form prescribed by the Police Chief, which shall include wording relating to rights of individual in regard to police authorized tows. See Exhibit "A-1."

III. Term and Termination

3.01 The term of this Agreement shall commence _____, 2013 and extend for a period of five (5) years, unless sooner terminated or suspended pursuant to the provisions of this Agreement.

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

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

3.04 In the event he has grounds to believe that the Operator has failed to timely or fully perform any obligation assumed under this Agreement, including but not limited to the provisions of Section 6.19 herein, except for violations relating to the right to tow a vehicle as covered by Section 3.05, the Chief of Police or any Executive Assistant or Assistant Chief of Police may suspend this Agreement upon written notice to the Operator. The grounds for the suspension shall be stated in the notice. If the Operator so requests by giving notice in writing thereof to the address or party named in Section 5.02, the Chief of Police, or a hearing officer that he may designate therefor, will afford a hearing to the Operator as to the suspension within five (5) days after delivery, Saturdays, Sundays and City observed holidays, excepted. **Sworn affidavits shall be accepted as evidence at such hearings.** If the hearing officer finds that there has been no breach of the terms and provisions of this Agreement or any prior Agreement then the hearing officer shall reinstate this Agreement. If the hearing officer finds that there has been a breach then he may terminate this Agreement, provided that, in lieu of termination, he or she may impose a further suspension of from one (1) to three hundred sixty-five (365) days for the breach or breaches of this Agreement and require that reasonable restitution be made to any person(s) damaged by the breach. Unless otherwise directed by the hearing official, restitution shall be made within thirty (30) days following the imposition of the suspension and restitution or the Agreement shall be terminated. The decision of the hearing officer shall be made in writing and notice thereof shall be given to the Operator and shall be final.

3.05 Operator agrees that an officer in the Auto Dealer's Detail of the Police Department shall resolve all disputes between heavy-duty wrecker Operators relating to the right to tow a vehicle. Failure of an Operator to comply with decision of the officer shall be grounds for temporary suspension of the Operator and Operator's Heavy-duty Wrecker service from the rotation list as described in Exhibit "A", for a period not to exceed five rotation days. Operator shall have the right to appeal to the Automotive Board. The suspension will be held until a decision is made by the Automotive Board. The decision of the Automotive Board shall be final. If suspended, Operator shall not work as a fill-in for any other Heavy Duty PATSA holders during the effective dates of the suspension. After the second violation, any future violations, during the term of this Agreement may be considered grounds for termination. The operator may appeal the termination. In the event of such appeal, the notice and hearing shall be handled in accordance with the provisions of Section 3.04.

3.06 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 \$660 for each heavy-duty wrecker license restored.

3.07 Operator agrees to maintain all insurance coverages required under Section 8-126(e) (2) of the Code of Ordinances, Houston, Texas, and quoted in Section 2.01, above, at all times during the term of this Agreement. In the event of the termination or cancellation of any insurance required under Section 8-126(e) (2) on any of the Operator's 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 \$660 for each heavy-duty wrecker for which insurance is restored.

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

IV. State Regulations

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

V. Notices

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

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

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

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

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

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

VI. General

6.01 The rights herein granted to the Operator and the obligations herein assumed by the Operator shall be personal to the Operator and shall only apply to the 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. This Agreement shall terminate upon any attempted assignment, subcontract, lease or other subletting of any obligation assumed hereunder in any manner unless the Chief of Police has given prior written approval therefor. This Agreement shall also terminate upon any attempted sale of the 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.

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

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

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

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

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

6.07 The Operator agrees to notify the Police Department in writing within 48 hours of any change in the information required by this Agreement or contained in the attached exhibits. Only those heavy-duty wreckers listed in the records of the Police Department and covered by insurance required under this Agreement and applicable State law may provide towing services under this Agreement, and each heavy-duty wrecker may provide such services only according to the rotation list described in Exhibit "A".

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

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

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

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

- a. A valid Texas commercial driver's license issued by the Department of Public Safety.
- b. Payment of a nonrefundable \$75 annual administrative fee to the Auto Dealers Detail, as authorized by Section 8-126(c) of the Code of Ordinances, Houston, Texas.
- c. Proof that the driver has taken and passed a drug test at the driver's or Operator's expense at a laboratory 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 the Police Department to the address and in the manner specified in Section 5.02 of this Agreement.
- d. Approval of the wrecker driver by the Police Department based on the criteria set forth under Section 6.20 of this Agreement.

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

6.12 Operator agrees to prohibit any person, other than the holder of a wrecker driver identification card issued by the Police Department, from occupying the passenger compartment of 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.

6.13 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.

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

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

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

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

6.18 It is expressly understood and agreed that in accordance with Section 8-123 of the Code of Ordinances, Houston, Texas, no fees other than or in excess of those provided by ordinance may be charged for any vehicle towed at the direction of a police officer.

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

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

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

Within (10) days of this notice, the Operator may request a hearing before the City's Automotive Board to contest the disapproval of a wrecker driver by giving notice in writing thereof to the address or party named in Section 5.02. The Automotive Board will afford a hearing to the Operator on the disapproval of the wrecker driver within thirty (30) days after delivery of the request, Saturdays, Sundays and City observed holidays, excepted. Sworn affidavits shall be accepted as evidence at such hearings. If the Automotive Board finds that the

wrecker driver may service this Agreement, he shall order the acceptance of the wrecker driver by the Police Department. If the Automotive Board finds that the wrecker driver may not service this Agreement, the Operator may not use the wrecker driver to service this Agreement under penalty of termination of the Agreement for cause.

6.21 (a) Release.

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

(b) Indemnification.

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

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

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE OPERATOR.

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

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

6.23 Operator agrees to comply with Federal requirements in 49 CFR §391.11 (b) (2) for wrecker drivers employed by Operator.

[INTENTIONALLY LEFT BLANK]

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

_____ day of _____, 20____.

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

CITY OF HOUSTON

By: _____

Charles A. McClelland, Jr.
Chief of Police

COUNTERSIGNED

By: _____

Ronald C. Green
City Controller

DATE OF COUNTERSIGNATURE AND EFFECTIVE DATE OF THIS AGREEMENT:

_____ day of _____, 20____.

EXHIBIT "A"

Heavy-duty Towing and Recovery

Qualifications and Requirements

The following heavy-duty regulations are made to promote a safe efficient system for response to heavy-duty incidents and to promote quick clearance practices thereby reducing traffic congestion and secondary accidents and to promote a safer environment for all first responders.

A. Experience:

1. The Houston Police Department Auto Dealers Detail will hold an annual open enrollment period from _____ to _____ for ninety days for heavy-duty wrecker operators that wish to participate in Non-Consent Heavy Duty Towing and Recovery within the city limits of Houston once per year. Heavy Duty Towing Operators must meet the following requirements in order to qualify for a "Heavy-duty Police Authorized Tow Service Agreement (HDPATSA)". Operators that do not comply during the enrollment period or that wish to apply after the enrollment period can do so at the next available open enrollment period.

2. Operator shall have a minimum of 3 consecutive years' experience in a licensed Heavy Duty Towing and recovery business.

3. Each HDPATSA holder must continuously own or lease and comply with the equipment requirements listed in Section C. below. If leasing the equipment, operator must provide documentation that equipment is available for their immediate use when on-call. The leased equipment agreement must be in Operator's name and the leased equipment must be covered by Operator's insurance.

4. Each HDPATSA holder must maintain a business location with appropriate dispatch/office personnel. The Equipment listed in Section C. below must be located and available to Operator within 35 miles of 901 Bagby, Houston, Texas.

5. a. Each operator of a Heavy Duty Tow Truck shall have a minimum of 16 hours of continuing education approved by the Texas Department of Licensing and Regulation (TDLR) and/or the

Texas A&M Engineering Extension Service (TEEX) that includes hands on training within 12 months of HDPATSA issuance. All operators that respond to incidents pursuant to this Agreement shall repeat the same level of training at least once every 5 years.

b. Operators hired after the approval of the HD PATSA will have 12 months from the date of hire to complete the 16 hours of continuing education

6. Each HDPATSA holder shall remain current with all ad valorem taxes at all times.

- B. Heavy Duty Zones:**
1. Each HDPATSA holder will 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.").
 2. Each Heavy duty company will be assigned a Zone and will provide all Non consent Heavy-duty towing services within that zone including all freeways, road ways and side streets for 24 consecutive hours for one calendar day on a rotating basis.
 3. The Operator on duty shall monitor Police radios and/or be dispatched at the discretion of Law Enforcement.
 4. 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.
 5. If Operator is unable to cover a rotation assignment Operator shall notify HPD Auto Dealers as well as the Heavy Duty dispatcher. Notification shall be made before the start of the rotation.

C. Equipment:

Each Heavy Duty PATSA holder must 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 5/8 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 36 inch 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 inch 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.	10 Each	Safety Orange Cones

Support Equipment Trailer

1.	1 Each	Support Trailer used to transport the following equipment
2.	2 Each	Pallet Jack (minimum 5,000 lb. Rating)
3.	1 Each	Pallet Tong puller (Minimum 1,250 Rating)
4.	2 Each	Hand Truck Dollies (Minimum 800 lbs. Rating)
5.	1 Each	Adjustable Drum Dolly or Lifter (Minimum 1,000 Rating)
6.	1 Each	Dock Ramp - Decking plate for load transfers
7.	2 Each	Metal Plate Clamps or Plate Dog Clamps
8.	2 Each	Rolls of shrink Wrap (Minimum of 12 inch by 100 ft. roll)
9.	1 Each	40 ft. of Gravity skate wheel or roller track conveyer, with supports
10.	1 Each	1 set of Acetylene cutting torches
11.	8 Each	Load locks or Cargo bars

12.	1 Each	20 ft. extension ladder
13.	1 Each	3/8 Cordless Drill
14.	1 Each	Box 16d Nails - 3 inch
15.	1 Each	72 Inch Pike Bar with wedge Head
16.	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
17.	1 Each	Auxiliary Lighting System to include a 3000 watt generator and 4, 500 watt lights with stands

Each Heavy Duty PATSA holder must 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 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

Heavy Duty P.A.T.S.A. holder must 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 HEAVY DUTY PATSA AT THE SAME TIME.

D. 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

E. Cab:

Operators shall keep the cab of each wrecker clean and free of debris.

F. Dispatching:

Heavy-duty Tow trucks will be dispatched at the direction of law enforcement. Dispatchers will notify the appropriate HDPATSA holder for the specific zone and day of the incident details and initiate a dispatch.



EXHIBIT "A-1"



Heavy Duty Towing Bill of Rights

Tow Fee

\$243.50 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.

Scene Clean-up

There are no regulated fees regarding recovery scene clean-up. The heavy duty tow company should 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

May be directed to the Houston Police Department, Auto Dealers Detail at hpdc.AutoDealers@HoustonPolice.org. If you need to speak with an Auto Dealers 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

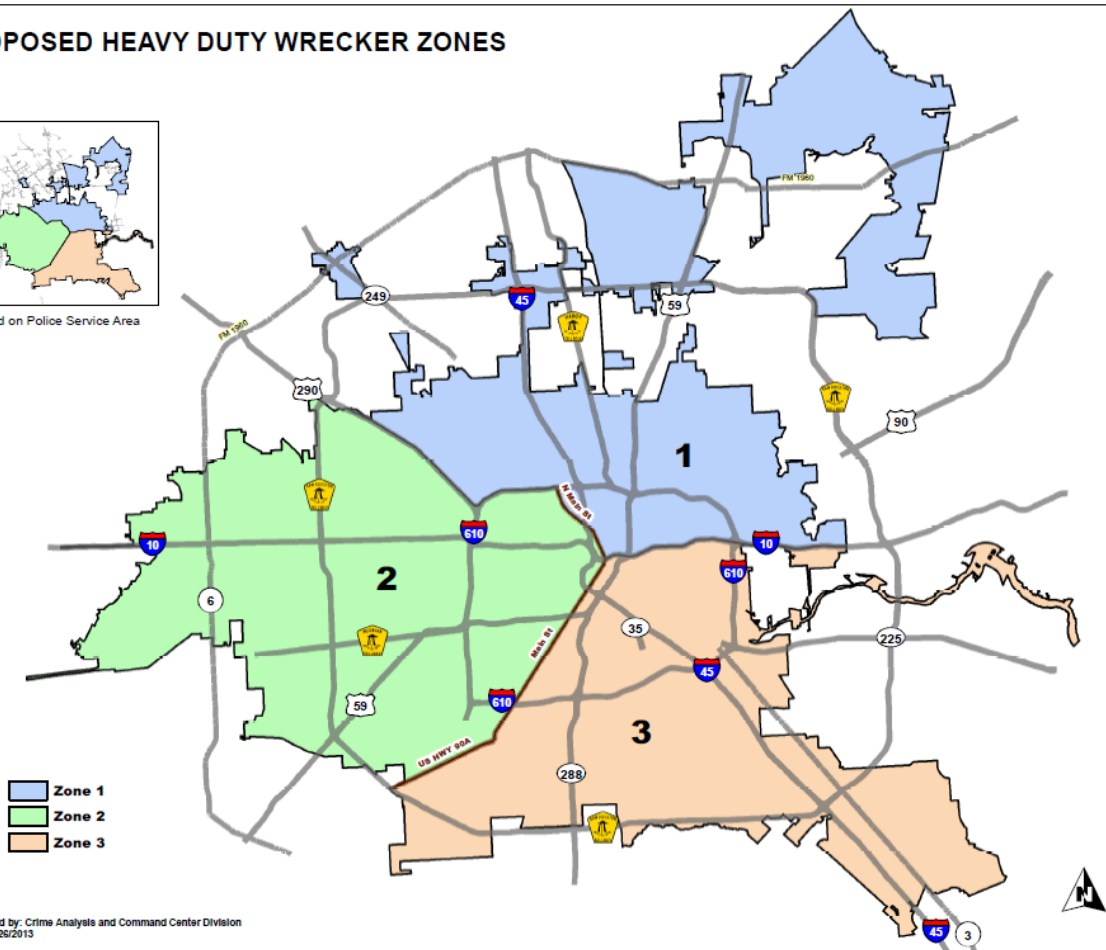
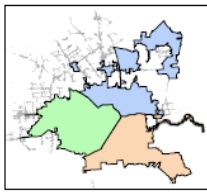




EXHIBIT "B"
CITY OF HOUSTON
PROOF OF INSURANCE

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

The following minimum insurance coverage is provided:

- Automobile Liability Insurance - \$1,000,000 combined single limit per occurrence
- Cargo on Hook Coverage - \$50,000 per vehicle
- Workers Compensation or Occupational Safety Insurance

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

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

Name of Company Insured and Mailing Address:

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

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name of Insurance Co. _____

Address: _____

Signed by: _____
 (Authorized Company Representative)

Date: _____

Print Name _____

Phone No. _____

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

EXHIBIT "C"

**POLICE-AUTHORIZED HEAVY-DUTY AND RECOVERY TOW SERVICE
AGREEMENT**

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 that are authorized to deliver vehicles to my storage lot are:

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

My police private storage lot is known as:

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

Executed on this: _____ **day of** _____, **20**_____

OPERATOR

ATTEST (if a corporation)

By: _____

By: _____

Corporate Secretary

(Print or type name)

(Title)

EXHIBIT "D"

Attach true copy of

[1] assumed name certificate if a proprietorship,

[2] partnership agreement disclosing the names of all general or limited partners if a partnership, or

[3] a copy of the articles of incorporation and certificate from the corporate secretary setting forth the names of all officers and all persons owning ten percent (10%) or more of the outstanding stock if a corporation), or

(4) a copy of the membership agreement if an LLC.

EXHIBIT "E"

POLICE AUTHORIZED HEAVY-DUTY AND RECOVERY TOW SERVICE AGREEMENT AUTO WRECKER INSPECTION

The below listed wreckers have been inspected by Auto Dealers for compliance with Section 2.05 of the Police-Authorized Heavy-duty and Recovery Tow Service Agreement between the City and the auto wrecker service known as:

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

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

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

Approved by: _____

Date of Approval: _____

EXHIBIT "F"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of

(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

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

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

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "G"

DRUG POLICY COMPLIANCE DECLARATION

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

(Name of Company) (Contractor)

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

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

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

_____ Written drug testing procedures have been implemented in conformity with the Mayor's 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 Services (HHS)
initials guidelines.

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

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

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

Number of Employees Tested

Number of Employees Positive

Percent of Employees Positive

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

_____ I affirm that falsification or failure to submit this declaration timely in accordance with established
guidelines
Initials 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 "H"



CITY OF HOUSTON

APPLICATION FOR AUTO WRECKER DRIVER SERVICING A POLICE AUTHORIZED HEAVY DUTY AND RECOVERY TOW SERVICE AGREEMENT (print or type all information)

I, _____ hereby make application to act as an auto wrecker driver servicing a Police-Authorized Heavy-duty and Recovery Tow Service Agreement.

Wrecker Service Operator: _____ (Auto wrecker service listed in Section 1.01 of Police-Authorized Heavy-duty and Recovery Tow Service Agreement)

Address: _____ Business Phone: _____

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

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

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

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

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

Date application made: _____ Applicant's Signature _____

State of Texas County of Harris

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

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

Notary Public in & for the State of Texas

FOR OFFICE USE ONLY

Right Hand Thumb

Checked By _____ FPC

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



