

**SERVICE AGREEMENT
BY AND BETWEEN
THE COUNTY OF EL PASO
AND
AD Wrecker Service, INC.
(Wrecker and Towing Services)**

This Service Agreement ("Agreement") is made and entered into this ____ day of _____, 2020, by and between El Paso County ("County"), a political subdivision of the State of Texas, and AD Wrecker Service, Inc., with principal offices at 3565 Lee Blvd, El Paso Texas, 79936 ("Contractor"), who agree as follows:

**ARTICLE I
PURPOSE OF THE AGREEMENT**

1.1 **Purpose of Agreement.** The Agreement sets forth the terms and conditions upon which County retains Contractor to provide "non-consent" motor vehicle towing for the Sheriff's Department, and as-needed towing services for wrecked or disabled County vehicles.

1.2 **Independent Contractor.** The Parties acknowledge that Contractor is an independent contractor. Nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, or a joint venture relationship among the Parties.

**ARTICLE II
TERM AND TERMINATION**

2.1 **Term of Agreement.** The initial term of the Agreement commences on October 1, 2020 (the "Effective Date"), and continues until September 30, 2023. County shall have the option to extend the initial term for two (2) additional one-year periods by giving the Contractor written notice no later than sixty (60) days prior to termination of the Agreement.

2.2 **Termination.**

2.2.1 **Termination for Cause.** If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due or forty-eight (48) hours in the case of any other cause, the notice shall be of no further effect. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights to termination referred to in the Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.

2.2.2 **Termination without Cause.** This Agreement may be terminated by either County or Contractor for the convenience of either party by providing at least 180 days' written notice to the other Party.

2.2.3 **Annual Appropriations and Funding.** This Agreement may be subject to the annual appropriation of funds by the County Commissioners. Notwithstanding any provision herein to the

contrary, if funds are not appropriated for this Agreement, then the County shall be entitled to immediately terminate this Agreement, without penalty or liability.

ARTICLE III **CONTRACTOR'S OBLIGATIONS**

3.1 **24/7 Telephone Number.** Contractor shall furnish County a telephone number where an operator is available twenty-four (24) hours a day, seven (7) days a week, to receive calls for service from the El Paso County Sheriff's Office, Constables and other County Elected Officials and Departments.

3.2 **24/7 Service.** Contractor shall furnish service to the El Paso County Sheriff's Office, Constables and other County Elected Officials and Departments twenty-four (24) hours a day, seven (7) days a week.

3.3 **Service throughout County.** Contractor shall furnish service to all the incorporated and unincorporated areas of El Paso County.

3.4 **Prompt Arrival.** Contractor shall arrive on scene no later than forty (40) minutes of the initial telephone call from the El Paso County Sheriff's Office, Constables and other County Elected Officials and Departments.

3.5 **IM License.** Contractor will at all times during the contract period an Incident Management Tow Operator's (IM) license from Texas Department of Licensing & Regulation (TDLR).

3.6 **GPS.** Contractor shall ensure that all wrecker drivers are equipped with either a global positioning system (GPS) or street guide to reduce unnecessary requests for directions.

3.7 **Communication.** Contractor shall furnish their wrecker driver with a reliable commercial form of electronic communication between the service provider's operator and the driver; e.g. two-way radios or cell phone. Drivers must comply with all laws regarding cell phone usage.

3.8 **Equipment.** Contractor shall employ equipment to include 4x4 capabilities, for the variety of service scenarios which may be encountered; e.g. desert extraction, commercial vehicles, earth moving equipment, aquatic equipment.

3.9 **Open Locked Vehicles.** Contractor shall have the ability to open locked vehicles.

3.10 **Change flat tires.** Contractor shall have the ability to change flat tires on disabled vehicles.

3.11 **Removal of Debris.** Contractor shall remove all wreckage and or debris from a collision scene, except for commercial vehicle cargo or hazardous waste. Contractor shall use the utmost care and all due caution to avoid destruction or contamination of anything which may be of evidentiary value, if the deputy has so informed the tow truck operator.

3.12 **Multiple Wreckers.** Contractor shall have the capability to furnish multiple wreckers in the event of numerous calls for service and at a minimum maintain at least three (3) or more operational wreckers.

3.13 **Determination of Storage Location.** Contractor must maintain a storage facility in compliance with TDLR regulations with the capability of safely storing vehicles towed under this Agreement. It shall be the County's decision as to whether a vehicle is stored at the County's facility or the Contractor's facility. Contractor shall have a method of tracking vehicles seized and stored on behalf of the El Paso County Sheriff's Office.

3.13.1 **Location for Sheriff's Non-Consent Towing:**

- a) When a vehicle is impounded the law enforcement personnel on scene will determine where the vehicle should be stored.
- b) Vehicles impounded for evidence shall be taken by the Contractor to the Sheriff's Impound Yard, located adjacent to 12501 Montana Ave. Bldg. E, El Paso, TX, 79938.
- c) Vehicles involved in a collision shall be taken and stored at the Contractor's impound yard.

3.13.2 **Location for Wrecked or Disabled County-owned Vehicles:**

- a) Wrecked vehicles (all departments except Road & Bridge) shall be taken to the County yard at the Sheriff's motor pool area, located at 12501 Montana Ave. Bldg. E, El Paso, TX, 79938 during the normal 8:00am – 5:00pm.

After hours and weekends, vehicles will be dropped off at the Sheriff HQ at 3850 Justice, El Paso, TX 79938 back N.E parking lot.

- b) Wrecked vehicles for Road & Bridge shall be taken to the Road & Bridge Fabens Motor pool, located at 1331 N. Fabens Rd., Fabens, TX, 79838 during the normal 6:00am- 3:00pm.

- c) Disabled vehicles for Road & Bridge shall be taken to the Road & Bridge Fabens Motor pool at 1331 N. Fabens Rd., Fabens, TX, 79838.

- d) Disabled vehicles for Sheriff's shall be taken to the Sheriff motor pool located at 12501 Montana Ave. Bldg. E, El Paso, TX, 79938.

- e) Disabled vehicles (for all departments except Road & Bridge and Sheriff's) shall be taken to one of the contracted repair vendors if during the work day, or the Sheriff motor pool/ holding lot if after work hours. Each department that uses the contracted repair vendors will provide the vendor's address at time of service.

3.14 **Accept All Calls.** Contractor agrees to accept all calls for service from the El Paso County Sheriff's Office, Constables and other County Elected Officials and Departments.

3.15 **Priority.** Contractor shall give priority to El Paso County Sheriff's Office, Constables and other County Elected Officials and Departments calls for service over calls from private citizens or other entities.

3.16 **Administrative Fee.** Contractor shall compensate County an Administrative fee of \$10.00 for impounded vehicle inspections as per 16 Texas Administrative Code section 85.722 section (f), or as amended. This fee shall be paid to the County no later than the 10th day of the month following the collection of the fee.

3.17 Reports.

3.17.1 Monthly Reports. Contractor shall prepare a report each month and shall submit such report to the County each month, by the 10th day of the next month. The report shall be detailed, and shall list all tows, both non-consent and County-owned vehicles, handled by the Contractor. The report must include a description of the vehicle towed; the date and time the vehicle was towed; the Sheriff's accident or investigative case number, if any; vehicle year, make, model, full VIN, color, plate number and a complete and detailed breakdown of the charges assessed to the owner of the vehicle. Contractor shall supply County with copies of all the tow slips attached to each report. Any payments due and owing to the County under this Agreement must accompany the report each month, see 3.17.

3.17.2 Annual Reports. Contractor shall submit an annual report to County within sixty (60) days of close of the fiscal year. All reports shall contain a separate original statement, signed by the person responsible for the report attesting to the report's accuracy.

3.18 Monthly Invoice. With the Monthly Report described in paragraph 3.16, the Contractor shall also furnish a detailed invoice of any monies owed by the County to the Contractor. Payment by the County for any monies duly owed by the County to the Contractor under this Agreement will be paid in accordance with the Texas Prompt Payment Act located in Chapter 2251 of the Texas Government Code.

3.19 Record Keeping. Contractor shall retain copies of all financial records pertaining to this Agreement for the term of the Agreement and a minimum of two (2) years thereafter, or longer if otherwise required under law or due to pending claims or other litigation.

3.20 Right of Inspection and Audit. Contractor agrees that all financial records pertaining to this Agreement shall be available for inspection and audit without notice by County.

3.21 Breach. Failure of Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of this Agreement and shall be grounds for termination.

ARTICLE IV **AUTHORIZED FEES**

4.1 Towing Fees. Contractor shall charge the owners of towed vehicles fees in accordance with Attachment 1 - TOWING FEES, attached and included herein as though fully set forth. Contractor agrees to a thirty percent (30%) reduced towing fee for all El Paso County government-owned vehicles requiring tow service within El Paso County.

4.2 Storage Fees. Contractor may charge the owners for storage fees for vehicles stored in its storage facility in accordance with Title 16 of the Texas Administrative Code and TDLR regulations.

4.3. Auction Fees. The County will conduct abandoned motor vehicle auctions at the Sheriff's Impound Yard, or as otherwise determined by the County. The County is not obligated to hold any auctions at the Contractor's vehicle lot.

For abandoned vehicles, as defined under Chapter 683 of the Transportation Code, sold at auction by the County or its agent, Contractor will be reimbursed for its fees out of the proceeds collected from the sale of the vehicle, minus: (a) 4% of total proceeds deducted for auctioneer fees; and (b) 2% of total proceeds deducted for County Abandoned Motor Vehicle ("AMV") regular account. If the auction sale price of the vehicle is less than the total amount of Contractor's fees, the Contractor may be compensated

additional funds, up to the total amount of Contractor's fees, if there are sufficient funds in the AMV account at that time. If the fees charged by the Contractor exceed the proceeds collected from the sale of the vehicle, and the AMV account is insufficient to cover the difference, the County is not responsible to Contractor for the difference.

ARTICLE V **EMPLOYEES**

5.1 **Personnel Obligations.** The parties hereto shall be solely responsible for employees on their respective payrolls, including responsibility for recruitment, employment, promotion, transfer, layoff and termination. Each party shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including any income, social security and unemployment taxes and workers' compensation costs charges.

5.2 **Equal Opportunity and Affirmative Action Employer.** Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability or status as a Vietnam veteran, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning employees. Contractor affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to: Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights act of 1964; Equal pay Act of 1963; Age Discrimination in Employment Act of 1963; Age of Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; and any additions or amendments thereto.

5.3 Contractor shall not permit any disorderly and/or unsafe conduct or practice by Contractor or its employees that would bring discredit of any kind to El Paso County or present cause for concern for public safety.

5.4 All Contractor employees shall exhibit professional and courteous behavior at all times. Preferably, employees dealing with the public shall be bilingual in English and Spanish; however, at a minimum, employees dealing with the public must speak English to a degree that allows understanding of common towing issues.

5.5 Contractor's employees shall be paid, at minimum, a salary commensurate with federal minimum wage requirements as they apply throughout the contract and in conjunction with any/all other appropriate governmental requirements and regulations.

5.6 Contractor shall employ only persons who are citizens of the United States and/or those who may be lawfully permitted to work in this country.

ARTICLE VI **GENERAL TERMS AND CONDITIONS**

6.1 **Compliance with Law.** Contractor shall comply with all applicable laws, ordinances, rules and regulations relating to non-consent tows and disabled vehicle tows and shall maintain all necessary licenses and permits. The Contractor must comply with all Texas Department of Licensing and

Regulations (TDLR) to include fee limitation. Any non compliance must be corrected and in compliance within 48 hours. Failure of the wrecker service provider to comply with the provisions of TDLR shall be considered material breach of this contract and may be grounds for termination of this contract.

6.2 **Workers' Compensation Insurance.** Each party shall maintain workers' compensation as required by state law covering all of its employees.

6.3 **Comprehensive or Commercial Insurance.** Contractor shall maintain during the term of the Agreement, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance and Automobile Liability Insurance in the Combined Single Limit of not less than One Million Dollars (\$1,000,000) for each occurrence, including, but not limited to, Personal Injury Liability, covering only the activities of Contractor under the Agreement and shall provide County with a certificate evidencing such policies prior to the Effective Date. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice. County shall be named as an additional insured under Contractor's policies of insurance.

6.4 **INDEMNITY.** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, LOSS AND EXPENSE, INCLUDING REASONABLE COLLECTION EXPENSES, AND ATTORNEY'S FEES, WHICH MAY ARISE BECAUSE OF THE ACTS OR OMISSIONS OF THE CONTRACTOR, ITS AGENTS OR EMPLOYEES. THIS CLAUSE SHALL SURVIVE TERMINATION OF THE AGREEMENT.

6.5 **Assignment.** The Agreement may not be assigned by either party without the written consent of the other.

6.6 **Notice.** Any notice of communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To County:	El Paso County Sheriff 3850 Justice Drive El Paso, Texas 79938
With a copy to	El Paso County Administrator's Office Fleet Operations Director 500 E. San Antonio, Suite 302 El Paso, Texas 79901
To Contractor:	Andy Dominguez AD Wrecker Service Inc. 3565 Lee Blvd. El Paso, Texas 79936

Notice may be given and/or to such other persons or places as either of the parties may hereafter designate in writing, which notices shall be effective when received by the other party.

6.7 **Force Majeure.** Neither Contractor nor County shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil

disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.

6.8 **Construction and Effect.** A waiver of any failure to perform under the Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits referred to herein are made a part of the Agreement by reference. The Agreement may be executed in several counterparts, each of which shall be deemed an original.

6.9 **Severability.** If any term or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.10 **Amendments to Agreement.** All provisions of the Agreement hereto shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision. The Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements and may not be changed other than by an agreement in writing signed by the parties hereto.

6.11 **Choice of Law and Venue.** The laws of the State of Texas shall govern this Agreement, and venue for any dispute under this Agreement shall be El Paso County, Texas.


IN WITNESS WHEREOF, the parties hereto have entered into the Agreement.

APPROVED AS TO CONTENT:

THE COUNTY OF EL PASO

Hon. Ricardo A. Samaniego
El Paso County Judge

APPROVED AS TO CONTENT:




HOPETON STAPLE
Fleet Operations Director

APPROVED AS TO FORM ONLY FOR COUNTY:

Kevin McCary
Assistant County Attorney

CONTRACTOR: AD WRECKER SERVICE INC.

 9-11-20
(Signer must have legal authority to bind Corporation)