

**Application and Agreement To Be Considered for Placement on One or More
of the Towing Rotation Lists Created and Maintained by Davis County,
Through the Davis County Sheriff's Office Dispatch Center, for the
State of Utah's Fiscal Year—July 1, 2020 through June 30, 2021 APPLICATION**

Section A - Deadline

Please Note: You will not be considered for placement on one or more of the towing rotation lists unless, on or before July 8, 2020, you: (a) submit a fully completed and signed Application and Agreement To Be Considered for Placement on One or More of the Towing Rotation Lists Created and Maintained by Davis County, Through the Davis County Sheriff's Office Dispatch Center, for the State of Utah's Fiscal Year—July 1, 2020 through June 30, 2021 (collectively "this Application and Agreement") to Davis County, through the Davis County Sheriff's Office ("the DCSO") Dispatch Center ("the Dispatch Center"); and (b) fully satisfy each of the items set forth in this Application. **No application will be accepted after 5:00 PM on Wednesday, July 8, 2020. If all requirements are not met as required in this document, your application will not be accepted. Also, there will be no exceptions past the due date.**

Section B - Tow Truck Motor Carrier Information

Full Legal Name of Tow Truck Motor Carrier:

Address: City: Zip:

Mailing Address: City: Zip:

Main Telephone #: After-hours Telephone # (if different):

Primary Contact: Telephone #: Email:

Secondary Contact: Telephone #: Email:

Desired area(s) to service: Northern Davis County Southern Davis County Both

Desired service(s) to provide: Light/Medium Duty Heavy Duty Both

Provide a current certificate of liability insurance that satisfies the insurance provisions of Rule 909-19-5, Utah Administrative Code

Provide a copy of the most current tow truck motor carrier certification issued by the Utah Department of Transportation ("UDOT")

Section C - Tow Truck Operator Information

1. Name: Telephone #: DOB:

2. Name: Telephone #: DOB:

3. Name: Telephone #: DOB:

4. Name: Telephone #: DOB:

5. Name: Telephone #: DOB:

[If necessary, provide additional tow truck operator information on a separate attached sheet]

Provide a copy of the most current tow truck operator certification issued by UDOT for each tow truck operator

TOW TRUCK ROTATION AGREEMENT

This Tow Truck Rotation Agreement (this “Agreement”) is between Davis County, a body corporate and politic and legal subdivision of the state of Utah (“Davis County”), and the tow truck motor carrier (“the Company”) submitting the accompanying application and executing this Agreement. The parties agree as follows:

- 1. Establishment of Tow Truck Rotation Lists.** Davis County, through the Davis County Sheriff’s Office (the “DCSO”) and the Davis County Dispatch Center (the “Dispatch Center”), is seeking to establish the following three tow truck rotation lists, in accordance with applicable federal and state laws, rules, regulations, or otherwise, to be used when a peace officer contacts the Dispatch Center and requests the removal and towing of a vehicle located within the boundaries of Davis County (“the Tow Truck Rotation Lists”):
 - a. A light and medium duty northern tow truck rotation list (“the Northern Tow Truck Rotation List”) that will service the areas within Davis County that are north of the northern boundary of Farmington City to the southern boundary line of Weber County;
 - b. A light and medium duty southern tow truck rotation list (“the Southern Tow Truck Rotation List”) that will service the areas within Davis County that are south of the northern boundary of Farmington City to the northern boundary line of Salt Lake County; and
 - c. A heavy duty tow truck rotation list (“the Heavy Duty Tow Truck Rotation List”) that will service all instances within Davis County that require heavy duty tow truck services and/or equipment under this Agreement.
- 2. Placement of the Company on One or More of the Tow Truck Rotation Lists.** In order for the Company to be placed on one or more of the Tow Truck Rotation Lists, the Company shall comply with all of the following:
 - a. Timely complete and submit the Application to the Dispatch Center;
 - b. Have this Agreement signed by an authorized representative of the Company;
 - c. Only provide tow truck services within the boundaries of Davis County; and
 - d. Comply with all applicable federal and state laws, rules, regulations, or otherwise, including Title 49 of the Code of Federal Regulations, Titles 41, 53, and 72 of the Utah Code Annotated, and Rules R714-600, R873-22M, and R909-19 of the Utah Administrative Code.
- 3. Effectiveness, Date, and Termination.** This Agreement will become effective when all parties have signed it. This Agreement will terminate on July 1, 2020 at 12:00 a.m.
- 4. Early Termination.** This Agreement may be terminated by any of the following actions:
 - a. By either party after any material breach of this Agreement;
 - b. By the mutual, written agreement of the Parties;
 - c. By Davis County if the Company engages in or permits any unlawful or disruptive conduct or any activity not permitted by law, rule, regulation, ordinance, or this Agreement; or
 - d. As otherwise set forth in this Agreement or permitted by law.
- 5. Application of This Agreement.** This Agreement does not apply to and is not intended to hinder the activities of any private tow truck business that provides tow truck services to the general public on a consent basis. More specifically, towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted by such parties. This Agreement, however, does apply to requests made from the Dispatch Center to the Company when the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists.

6. Tow Truck Rotations.

- a. When a sworn officer contacts the Dispatch Center and requests that a tow truck motor carrier be dispatched, the Dispatch Center will contact the tow truck motor carrier on the particular Tow Truck Rotation List that is next in order on the particular Tow Truck Rotation List.
- b. When the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, the dispatcher will provide the Company with information regarding the nature of the call so the Company may determine if the Company is able to handle the call. This notification will constitute the Company's turn on the particular Tow Truck Rotation List, and the Company will not be notified again until the Company is once again the next tow truck company on the particular Tow Truck Rotation List, subject to the subsections of this Subsection 6.b. directly below.
 - 1) If the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, and the Company fails to respond or is unable to respond, this constitutes the Company's turn on the particular Tow Truck Rotation List, and the Dispatch Center will contact the next tow truck company listed on the particular Tow Truck Rotation List to perform the requested services under this Agreement.
 - 2) If the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, and the Company is available but is not equipped for the specific type of service requested, the Dispatch Center will continue to contact tow truck motor carriers on the particular Tow Truck Rotation List until one is found who is equipped to handle the request for service. The Company's inability to provide the requested services for lack of equipment, does not affect the Company's place on the particular Tow Truck Rotation List.
 - 3) If, after the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, it is determined by a peace officer that the Company is no longer needed to provide services under this Agreement and is canceled, up to and including arrival on scene and standby time which does not result in a tow, the Company will remain next on the particular Tow Truck Rotation List to provide services under this Agreement for the next instance requiring the services of a tow truck company under that particular Tow Truck Rotation List.
 - 4) If, after the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, the vehicle owner or an agent of the vehicle owner expresses his/her desire to not use the services of the Company prior to the Company taking possession of the vehicle, the Company will remain next on the particular Tow Truck Rotation List for the next instance requiring the service of a tow truck company under that particular Tow Truck Rotation List. For purposes of this subsection, possession occurs when the vehicle is removed and is in transit or when the vehicle recovery operations or load salvage operations have commenced.
 - 5) If, after the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, the Company arrives at the location specified by the sworn officer, the Company must provide the requested services, unless the Company is mechanically unable to do so.

7. Responses to Notifications from the Dispatch Center.

- a. The Company shall respond to notifications from the Dispatch Center 24 hours per day, seven days per week, 365 days per year within the maximum response times established under Section 7, Subsection c of this Agreement when the Company is the next tow truck company on one of the Tow Truck Rotation Lists.
- b. Upon the Company receiving notification from the Dispatch Center that the Company is the next tow truck company on one of the Tow Truck Rotation Lists, the Company shall either inform the Dispatch Center that it lacks equipment to perform the requested services or dispatch a tow truck to the requested location.
- c. The maximum response times for the Company to respond to notifications from the Dispatch Center when the Company is the next tow truck company on one of the Tow Truck Rotation Lists are as follows:

- 1) Twenty minutes for both the Northern Tow Truck Rotation List and the Southern Tow Truck Rotation List, unless otherwise excused by the Dispatch Center due to inclement weather, unusual traffic conditions, or other reasonable grounds determined by the Dispatch Center; and
 - 2) Thirty minutes for the Heavy Duty Tow Truck Rotation List, unless otherwise excused by the Dispatch Center due to inclement weather, unusual traffic conditions, or other reasonable grounds determined by the Dispatch Center.
- d. If the Company and another tow truck company are notified to respond to the same incident scene, the Dispatch Center shall generally provide direction regarding the removal and towing of the applicable vehicles. Nevertheless, the incident commander may make changes regarding the removal and towing of the applicable vehicles. When the incident commander makes such a change, the Company shall notify the Dispatch Center of the specific changes made by the incident commander.
- e. The Company as well as the Company's tow truck operators may only respond to and/or arrive at a scene for services under this Agreement when the Company has been notified by the Dispatch Center that it is the next tow truck company on one of the Tow Truck Rotation Lists. The Company as well as the Company's tow truck operators shall not respond to and/or arrive at a scene for services under this Agreement based on a request from anyone other than the Dispatch Center. The Company and the Company's tow truck operators shall not request another tow truck company to provide services under this Agreement on the Company's behalf.
- f. The Company as well as the Company's tow truck operators shall not cruise or jump requests for tow truck services by, among other things, listening to the radio police band and/or driving the roadways to come across incidents that require the services of tow truck companies under any of the Tow Truck Rotation Lists.
- g. When the Dispatch Center notifies the Company that it is next on one of the Tow Truck Rotation Lists, the Company shall ensure that:
- 1) The Company responds to the applicable location with the Company's own permanently marked equipment (the Company shall not use equipment on temporary lease, substitute, partnership, a backup basis, or otherwise);
 - 2) The Company's operators provide only those services that are necessary and/or requested and shall, at the time of the tow, provide the owner or driver of the vehicle (if present at the scene) with the following documents:
 - a) The location where the vehicle will be stored;
 - b) A copy of the current rate schedule;
 - c) The terms of the vehicle recovery; and
 - d) The Utah Consumer Bill of Rights Regarding Towing;
 - 3) The Company's operators do not leave the scene of a traffic accident until all debris and fluids from the towed vehicle (including all absorbent material) have been removed from the roadway to the satisfaction of the ranking peace officer at the scene of the accident; and
 - 4) The service ticket is completed at the time of the tow and includes the following information (clearly printed or electronically generated):
 - a) The start date and time dispatched;
 - b) The location of the tow;
 - c) The end date and time of arrival at the impound lot/yard where the vehicle will be stored;
 - d) The location of the approved impound lot/yard where the vehicle will be towed; and
 - e) The Company operator's name.

8. The Company.

- a. The Company's failure to comply with this Agreement and/or applicable federal or state laws, rules, regulations, or otherwise, including Title 49 of the Code of Federal Regulations, Titles 41, 53, and 72 of the Utah Code Annotated, and Rules R714-660, R873-22M, and R909-19 of the Utah Administrative Code, will constitute a material breach of this Agreement and may lead to disciplinary actions, sanctions, penalties, or otherwise against the Company.
- b. The Company accepts full and sole responsibility for the Company's acts and omissions as well as the acts and omissions of the Company's representatives.
- c. The Company's inclusion on one or more of the Tow Truck Rotation Lists is sought and continued through the voluntary actions of the Company.
- d. The Company's falsification of any portion of this Application and Agreement and/or the documentation provided by the Company in connection with this Application and Agreement shall constitute a material breach of this Agreement and may subject the Company and/or one or more of the Company's representatives to disciplinary actions, sanctions, penalties, and/or criminal charges.
- e. The Company is responsible for and will ensure that the Company's representatives are aware of and fully comply with the terms and/or provisions of this Agreement.
- f. The Company shall maintain complete and accurate records of all rotation tows under this Agreement and shall provide the Dispatch Center with such records upon request (these records shall be organized chronologically by date and maintained separate from all other towing records).
- g. Prior to the expiration or lapse of any document or record submitted by the Company to the Dispatch Center in order to be placed on one or more of the Tow Truck Rotation Lists, the Company shall provide the Dispatch Center with copies of the renewed documents or records.
- h. If the Company desires to be removed from one or more of the Tow Truck Rotation Lists for a specific period of time, the Company shall notify the Dispatch Center in writing. If the Company desires to be placed once again on one or more of the Tow Truck Rotation Lists, the Company shall make this request, in writing, to the Dispatch Center. If the Dispatch Center determines to place the Company once again on one or more of the Tow Truck Rotation Lists, the Company will be placed at the bottom of all applicable Tow Truck Rotation Lists. Notifications and requests made by the Company under this subsection must be on the Company's letterhead.
- i. The Company shall maintain a valid occurrence form commercial general liability insurance policy, which covers contractual liability and contractual agreements, of at least \$750,000 per occurrence. The Company must list Davis County, Attn: Dispatch Center, P.O. Box 618, Farmington, UT 84025 as the certificate holder of the certificate of liability insurance.

9. The Company's Tow Truck Operators. The following provisions shall apply to the Company as well as the Company's tow truck operators:

- a. The failure of the Company and/or one or more of the Company's operators to comply with this Agreement and/or applicable federal or state laws, rules, regulations, or otherwise, including Title 49 of the Code of Federal Regulations, Titles 41, 53, and 72 of the Utah Code Annotated, and Rules R714-660, R873-22M, and R909-19 of the Utah Administrative Code, shall constitute a material breach of this Agreement and may lead to disciplinary actions, sanctions, penalties, or otherwise against the Company and/or the Company's operator(s); and
- b. The Company must have and maintain at least two authorized and approved operators at all times under this Agreement.

10. The Company's Tow Trucks and Equipment. The following terms and/or provisions shall apply to the Company as well as the Company's tow trucks and equipment:

- a. The Company shall ensure that all of the Company's tow trucks and equipment comply with the safety equipment requirements set forth in law, regulation, rule, or otherwise, including Title 72, Chapter 9, Part 6, Utah Code Annotated, and Rule R909-19, Utah Administrative Code;
- b. The Company shall ensure that it has at least one flat-bed tow truck for light and medium duty vehicles stationed within the applicable area (i.e. the boundaries for the Northern Tow Truck Rotation List or the boundaries for the Southern Tow Truck Rotation List); and
- c. The Company shall ensure that the heavy duty tow trucks are stationed within the boundaries of Davis County if the Company seeks to be placed and is placed on the Heavy Duty Tow Truck List.

11. State Impound Yards. The following provisions shall apply to the Company as well as the Company's impound yards:

- a. The Company shall ensure that the Company's impound yards are in compliance with and continue to be in compliance with all applicable laws, regulations, rules, or otherwise; and
- b. If the Company desires to be placed on the Heavy Duty Tow Truck Rotation List, the Company's impound yards must have sufficient space to store at least one semi-truck cab and two semi-trailers.

12. Tow Complaints.

- a. The DCSO and the Dispatch Center will require all complaints against the Company and/or one or more of the Company's representatives to be submitted in writing, including all applicable supporting documents.
- b. The Company, for itself, and on behalf of the Company's representatives, agrees to cooperate with the DCSO and the Dispatch Center prior to and during the course of an investigation by the DCSO and the Dispatch Center regarding the Company and/or one or more of the Company's representatives.
- c. As a matter of practicality, the enforcement of certain sections of this Agreement occurs primarily as violations are brought to the attention of the Dispatch Center.
- d. If allegations within a written complaint against the Company and/or one or more of the Company's representatives give rise to potential criminal conduct or, at any point during an investigation of a complaint against the Company and/or one or more of the Company's representatives, allegations of potential criminal conduct arise, the DCSO and the Dispatch Center will refer the complainant(s) to the law enforcement agency who would have authority to investigate such allegations.

13. Grounds for Suspension.

- a. The Parties agree that any of the following are grounds for Davis County, the DCSO, and/or the Dispatch Center to suspend the Company from one or more of the Tow Truck Rotation Lists for a minimum of five business days up to the entire term of this Agreement, upon sending the Company a written notice of suspension, which will preclude the Company from providing services under this Agreement until the period of suspension has expired:
 - 1) A breach or violation of this Agreement and/or a violation of laws, rules, regulations, or otherwise by the Company and/or the Company's representatives;
 - 2) The commencement of an investigation by one or more federal or state agencies or entities into alleged violations of law, rule, regulation, or otherwise by the Company or the Company's Representatives;
 - 3) The commencement of an investigation by Davis County, the DCSO, and/or the Dispatch Center into alleged violations of this Agreement or law, rule, regulation, or otherwise by the Company and/or the Company's representatives or of a written complaint submitted against the Company and/or the Company's representatives to Davis County, the DCSO, and/or the Dispatch Center;
 - 4) A second written notification from the Dispatch Center to the Company for the same or similar offense within the term of this Agreement that is a violation of one or more of the terms or provisions of this Agreement and/or a violation of one or more laws, rules, regulations, or otherwise;

- 5) The lapse or expiration of any of the insurance policies required under this Agreement during the term of this Agreement and without a renewal insurance policy that satisfies the terms of this Agreement;
 - 6) The Company's failure to timely respond to a scene under this Agreement; and
 - 7) The Company's failure to maintain and retain accurate and complete records as required by this Agreement and applicable law, rule, regulation, or otherwise.
- b. The DCSO and the Dispatch Center shall have sole discretion regarding the length of any suspension imposed upon the Company pursuant to the provisions of this Agreement.
 - c. The Company shall comply with all of the terms of the suspension (i.e. ceasing particular practices or conduct, restitution to victims, and fulfillment of court orders) before the Company may be considered for reinstatement under this Agreement.
 - d. The Company may appeal a suspension issued by the Dispatch Center under this Agreement pursuant to Davis County's written policy regarding tow truck rotation list appeals. For a copy of this policy, please contact Davis County 911 Center Manager at (801) 451-4157.

14. General Terms and/or Provisions.

- a. **Indemnification.** With respect to any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding ("Proceeding") against Davis County, Davis County's officers, employees, agents, consultants, advisors, and other representatives, and each of their heirs, executors, successors, and assignees ("Davis County Indemnitees") that arises out of this Agreement or the acts or omissions of the Company (each, a "Claim"), the Company shall, for the duration of this Agreement and for a period of six years after the termination of this Agreement, indemnify those Davis County Indemnitees against any amount awarded in, or paid in settlement of any Proceeding, including interest ("Loss") and any out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements ("Litigation Expense") (Loss and Litigation Expense means "Indemnifiable Losses") arising out of that Proceeding, except to the extent that Davis County negligently or intentionally caused those Indemnifiable Losses.
- b. **Independent Contractor.** The Service Provider shall perform this Agreement as an independent contractor. The Service Provider acknowledges that it and its representatives are not employees of Davis County, and, thus, have no right to and shall not be provided with any Davis County benefits.
- c. **Conflict of Terms.** In the event of any conflict between the terms of this Agreement and any documents referenced in this Agreement or incorporated into this Agreement by reference, including exhibits or attachments to this Agreement, this Agreement shall control.
- d. **Assignment Restricted.** Except with the prior written consent of the other party, each party shall not transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law:
 - a. Any discretion granted under this Agreement;
 - b. Any right to satisfy a condition under this Agreement;
 - c. Any remedy under this Agreement; or
 - d. Any obligation imposed under this Agreement.

Any purported transfer in violation of this section will be void.

- e. **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.
- f. **Entire Agreement; Amendment.** This Agreement, including all attachments, if any, constitutes the entire understanding between the parties with respect to the subject matter in this Agreement. Unless otherwise set forth in this Agreement, this Agreement supersedes all other agreements, whether written or oral, between the parties with respect to the subject matter in this Agreement. No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

- g. **Governing Law; Exclusive Jurisdiction.** Utah law governs any Proceeding brought by one party against the other party arising out of this Agreement. If either party brings any Proceedings against the other party arising out of this Agreement, that party may bring that Proceeding only in a state court located in Davis County, Utah (for claims that may only be resolved through the federal courts, only in a federal court located in Salt Lake City, Utah), and each party hereby submits to the exclusive jurisdiction of such courts for purposes of any such proceeding.
- h. **Severability.** The parties acknowledge that if a dispute between the parties arises out of this Agreement or the subject matter of this Agreement, the parties desire the court to interpret this Agreement as follows:
 - 1) With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; and
 - 2) If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Agreement will remain in effect as written.
- i. **Counterparts, Digital Signatures, and Electronically Transmitted Signatures.** If the parties sign this Agreement in counterparts, each will be deemed an original but all counterparts together will constitute one agreement. If the parties digitally sign this Agreement or electronically transmit signatures by email, such signatures will have the same force and effect as original signatures.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be signed on the dates indicated below.

<p>DAVIS COUNTY</p> <p>By: _____ Randy B. Elliott, Chair Board of Davis County Commissioners</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ Curtis Koch Davis County Clerk/Auditor</p> <p>Date: _____</p>	<p>THE COMPANY</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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