



**AN AGREEMENT BETWEEN**

**THE TOWN OF ELSMERE**

**AND**

**FIRST STATE TOWING & RECOVERY SERVICE**

**TO PROVIDE THE TOWN WITH TOWING AND  
STORAGE SERVICES FOR VEHICLES TOWED BY  
THE TOWN**

**Whereas:** the Town of Elsmere hereafter referred to as “The Town” wishes to enter into an agreement with a reputable business to provide to The Town vehicle towing and storage services for all vehicles being impounded by The Town, its agents or employees and more specifically its Public Safety Department and Code Enforcement Office; and

**Whereas:** the Mayor and Council of The Town have received a proposal from First State Towing & Recovery of P.O. BOX 729, Hockessin, Delaware, 19707 hereafter referred to as “First State” to provide these services; and

**Whereas:** subject to the following terms and conditions the Mayor and Council of The Town and First State hereby agree that First State shall be the official towing company for The Town and that both parties intend to be bound by the terms and conditions of this agreement.

### **The Town Agrees That:**

1. First State shall be the official towing service for The Town and will be used by all of The Town’s department’s and employees whenever towing services are needed.

### **First State Agrees That They:**

1. Will maintain a valid State of Delaware, New Castle County and Town of Elsmere, Business License.
2. Will comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of duties under this agreement.
3. Will execute an affidavit stating that all of their employees and the employees of any Sub-Contractor performing work within the Town of Elsmere in accordance with this agreement are lawfully permitted to be employed in the United States under both federal and state law.
4. Will obtain at their own cost and expense and keep in force and effect throughout the term of this agreement including all extensions the following minimum insurance coverage’s.

**a. WORKERS’ COMPENSATION INSURANCE COVERAGE:**

First State will provide proof of workers' compensation insurance coverage for the person's or entity's employees providing services detailed in this agreement and shall provide to The Town a certificate of coverage prior to the commencement of work and throughout the duration of this agreement.

1. Person's or entity's employees providing services detailed in this agreement includes all persons or entities performing all or part of the services required by this agreement, regardless of whether that person has employees.

This includes, without limitation, First State, or any Sub-Contractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services under this agreement.

"Services" include, without limitation, providing, towing, or delivering equipment or materials, or providing labor, transportation, or other services related to this proposal. "Services" does not include activities unrelated to the agreement, such as food/beverage vendors, office supply deliveries.

2. Coverage will be, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Delaware Code.
3. If the coverage period shown on the current certificate of coverage ends during this agreement First State will, prior to the end of the coverage period, file a new certificate of coverage with The Town showing that coverage has been extended.
4. First State will obtain from each person providing services related to this agreement, and provide to The Town a certificate of coverage, prior to that person beginning work related to this proposal, so The Town will have on file certificates of coverage showing coverage for all persons providing services related to this proposal;
5. First State shall retain all required certificates of coverage throughout this agreement and for one year thereafter.

6. First State shall notify The Town in writing by certified mail or personal delivery, within ten (10) days after First State knew or should have known, of any change that materially affects the provision of coverage of any person providing services under this agreement.
7. By signing this agreement or providing or causing to be provided a certificate of coverage, First State is representing to The Town that all employees of First State who will provide services under this agreement will be covered by workers' compensation coverage for the duration of the agreement, which the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier. Providing false or misleading information may subject First State to administrative penalties, criminal penalties, civil penalties, or other civil actions.
8. Any failure by First State to comply with any of these provisions is a breach of agreement by First State which shall entitle The Town to declare this agreement void if First State does not remedy the breach within ten (10) days of notice of breach from The Town.

b. **COMPREHENSIVE GENERAL LIABILITY INSURANCE:**

First State will provide proof of Comprehensive General Liability Insurance in an amount of \$1,000,000.00 per person / \$3,000,000.00 per occurrence. Before any work can begin First State shall provide to The Town a Certificate of Insurance and or copies of insurance policies. The certificate holder shall be as follows.

The Town of Elsmere  
11 Poplar Avenue  
Elsmere, Delaware 19805

5. Will indemnify and hold the Town of Elsmere and all of its department's and employees harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused by acts or omissions of First State or any sub-contractor utilized by First State, their employees, invitees on or about the premises and which arise out of First State's performance, or failure to perform as specified in this agreement.

6. Will accept Visa and Master Card as well as cash and have a sign posted by the cash register stating their payment policy.
7. Will not release any vehicle to the owner without an official authorization for release document from the proper Departments of The Town.
8. Will not release any vehicle until personal identification and proof of ownership has been provided to First States company personnel.
9. Not release any vehicle which is being held by First State as a vehicle for seizure, forfeiture or evidence or otherwise remove such vehicle from the storage area without the authorization of the Chief of Police of The Town or in the case of the Code Enforcement Office, the Town Manager, or their designees. It is the sole responsibility of First State to ensure compliance with this specification and they shall be directly responsible if this specification is not adhered to.
10. Will prominently post near the cashier's location, at his principal storage compound or any compound where the pickup of vehicles occurs and at the Elsmere Town Hall, a list of all towing and storage rates.
11. Will notify The Town in writing ninety (90) days prior to the date that any change in fees would take place, when First State wishes to adjust fees associated with this agreement which were in effect on the date this agreement became effective.

The notice shall include the requested adjustments including full documentation for the requested changes. If The Town wishes an adjustment it shall notify the Proposer under the same terms and schedule. Within thirty (30) days of notice, the parties shall meet to resolve any differences and determine if the new fees will be accepted by both The Town and First State or not.

12. Will provide an invoice to a vehicle owner when the owner redeems his/her vehicle.

The basic information contained in the invoice shall include, but not be limited to:

- a. Date of Service Call (date vehicle was towed)
- b. Location where tow originated
- c. Vehicle VIN number
- d. Vehicle Make & Model
- e. Vehicle License number
- f. Owners name & Driver ID number

- g. Breakdown of towing and storage charges
  
- 13. Will maintain a storage facility / compound that;
  - a. Complies with all provisions of the applicable building, zoning, and environmental regulations.
  - b. Is of sufficient size and capability to accommodate all towed vehicles during the term of this agreement until such vehicles are claimed by the owner or otherwise legally disposed of.
  - c. Is available for vehicle receipt seven (7) days per week and twenty-four (24) hours per day.
  - d. Is available for vehicle release of vehicles a minimum of five (5) days per week and eight (8) hours per day.
  - e. Provides sufficient available space to properly accommodate and protect all motor vehicles entrusted to their care.
  - f. Is completely enclosed with a fence or wall of sufficient size to discourage theft of any vehicle or any property being stored inside the vehicle.
  - g. Has its name, phone number and mailing address clearly painted or a sign on the front of the facility.
  
- 14. Will immediately release any vehicle which has been forfeited to The Town.
  
- 15. Will conduct operations under this agreement in a courteous, orderly, ethical and businesslike manner.
  
- 16. Will require their personnel to deal with the public in a professional and courteous manner and that their employees will be required to extend such common courtesies such as:
  - a. Expediting the release of the vehicle in accordance with the terms of this agreement.
  - b. Assisting the vehicles owner in retrieving documents from the vehicle to establish ownership.
  - c. With the exception of vehicles which are seizures vehicles or evidence allowing the owner to remove the auto tag and any unattached personal possessions.

- d. Explaining fully and politely the reason for the tow and all charges levied.
  - e. In cases of dispute they shall attempt to resolve the dispute promptly and politely. If it cannot be resolved satisfactorily, the dispute shall be reported to The Town no later than the next business day.
17. Will provide twenty four (24) hour seven (7) day a week uninterrupted towing services to The Town.
  18. Will provide phone number(s) where request for tow services will be received by an actual human being Twenty Four (24) hour seven (7) day a week.
  19. Will have a tow truck at the requested location within thirty minutes of being notified that towing services are needed.
  20. Will provide or have available a sufficient number of vehicles to have multiple tow trucks on the scene at one time. This may be accomplished by utilizing sub-contractors
  21. Will provide towing services and short term storage of vehicles owned, leased or used by The Town at no charge.
  22. Will provide at no charge an unlimited number of storage spaces for vehicles being held for, seizure, forfeiture or as evidence by The Town.
  23. Will provide a one page 8-1/2" x 11" document detailing any and all fees that will or could potentially be charged to the public for the towing and storage fees as well as any special fees associated with their vehicle being towed.
  24. Will provide proof that they have met all of the requirements to become and have been approved as an authorized Delaware State Police tow company.

### **Both Parties Agree That:**

1. Any disputes over the interpretation and/or meaning of any individual terms, conditions, and/or language within this agreement shall be resolved by and at the sole discretion of the Town Manager of the Town of Elsmere in a manner that is in the best interest of, and best advantage to, the Town of Elsmere, provided that any such interpretation shall be reasonable. In the event that an individual term, condition, and/or language/wording is determined at any time, including after award, by the Town Manager to be not applicable at all to this agreement, then the term, condition, and or language / wording may be disregarded, even though an addendum is not issued.

However, if the Town Manager determines that the term, condition, and / or language / wording is applicable in part, then the term, condition, and/or language / wording will apply to the degree applicable, even though an addendum is not issued.

2. The Town Manager and Chief of Police of The Town, shall be the administrators and as such are responsible for ensuring compliance with the agreement requirements, such as but not limited to, acceptance, inspection and delivery. The administrators will serve as liaison between The Town and First State.
3. The agreement shall become effective on July 01, 2016 and shall end on June 30, 2017.
4. The Town has the right to enforce the performance of this agreement in any manner prescribed by law or deemed to be in the best interest of The Town. In the event of breach or default of this agreement by First State in the terms or conditions shall be a basis for the termination of the agreement by the Town. First State will be given a reasonable opportunity before termination to correct the deficiencies. This, however, shall in no way be construed as negating the basis for termination for non-performance.
5. The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
6. Subcontracting is permitted under this agreement. However, every subcontractor shall be identified and agreed to in writing by the Town during the performance of this agreement. Any substitution in or addition to such subcontractor, associates, or consultants will be subject to the prior written approval of The Town.
7. First State shall be responsible for the compliance of any subcontractor with all terms, conditions and requirements of this agreement and all Local, State or Federal Laws. First State shall be liable for any non-compliance by any sub-contractor. Further, nothing contained herein or in any subcontractor agreement, shall be construed as creating any contractual relationship between the subcontractor and the Town of Elsmere.
8. All certificates of insurance coverage must be provided to the following individual prior to beginning work:

John S. Giles Jr.  
Town Manager  
Town of Elsmere  
11 Poplar Avenue  
Elsmere, Delaware 19805



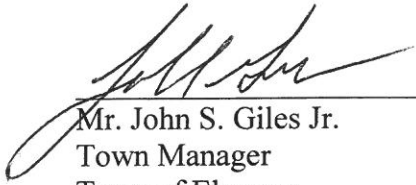
9. If at any time First State's performance fails to meet expectations, First State will be placed on probation for a period of thirty (30) days. If performance does not improve the contract will be cancelled.
10. With the exception of vehicles being stored by the Proposer for the purpose of seizure, forfeiture or as evidence by the Town of Elsmere, the Proposer may dispose of vehicles to compensate for towing and storage fees after all responsibilities called for in accordance with Delaware Statutes have been adhered to. Records must be maintained which state towing, storage, and salvage compensation.
11. First State's liability for any vehicle towed and all property contained therein will commence with the time the vehicle is hooked onto the tow truck.
12. The Town will not be responsible for the collection or payment of any charge for services rendered.
13. With the exception of any vehicle towed as a seizure or as evidence, First State will pay to The Town the sum of \$100.00 for each and every vehicle which they tow or store at the direction or under the authority of The Town or any of its department's officers or agents. Payments shall be made as follows.
  - a. Payment shall be made to the Town of Elsmere located at 11 Poplar Avenue, Elsmere, Delaware 19805 attention Finance Department.
  - b. Payment shall be made by no later than the tenth (10<sup>th</sup>) day of each month and shall be payment in full for each and every vehicle towed in the month immediately preceding the month in which the payment is being made.
  - c. Payment shall be accompanied by a report detailing at a minimum the following:
    1. The total number of vehicles towed during the month.
    2. The date of the tow.
    3. The vehicles, year, make, model and license number.
    4. The total amount due.
  - d. Should no vehicles be towed during the month a report shall still be required which shall clearly state that no vehicles were towed during the month.
14. No change or modification to this agreement shall be effective unless it is written, agreed to and signed by both, The Town and First State. No verbal agreement may change any of the terms or conditions of this agreement.

Both parties hereby acknowledge that they have been provided with a copy of this agreement and have had an opportunity to review it in its entirety. Both parties also acknowledge that they intend to be bound by all of the terms and conditions of this agreement

Agreed to this 30<sup>th</sup> day of June 2016

By:

  
\_\_\_\_\_  
Mrs. Katherine (Beth) Morris  
Owner  
First State Towing & Recovery

  
\_\_\_\_\_  
Mr. John S. Giles Jr.  
Town Manager  
Town of Elsmere

Witness:  \_\_\_\_\_ Date: 6/30/2016

Witness: \_\_\_\_\_ Date: \_\_\_\_\_