

## TOWING AGREEMENT

THIS AGREEMENT, made and entered into this 00 day of April, 2023, by and between the City of Moorhead, a municipal corporation and political subdivision of the State of Minnesota, hereinafter referred to as "City", and TOW COMPANY, hereinafter referred to as "Operator".

WITNESSETH:

WHEREAS, the City of Moorhead is desirous of entering into a formal agreement with the Operator of a towing service to provide a source of towing for abandoned, disabled, and impounded motor vehicles within the City of Moorhead and has no equipment or personnel to operate such a service itself as a municipal function, and

WHEREAS, City did by appropriate resolution of its City Council authorize the execution of an agreement for and on behalf of the City of Moorhead with Operator for the joint operation of towing services within the City of Moorhead,

NOW, THEREFORE, in consideration of the foregoing premises, it is hereby stipulated and agreed by and between City and Operator as follows:

1. Operator hereby agrees to provide for the City of Moorhead a 24 hour, 7 day a week towing service for City. Operator, in accomplishing the operation of said towing service, will provide as minimum equipment the following:

A. Two vehicles which, by state regulations, will meet the qualified designation as wreckers and each such vehicles shall be of one ton capacity with a gross weight of 8,000 or more pounds each and shall have either a single or double wrecker boom.

B. Each vehicle shall have all other equipment as required for wrecker operation, including but not necessarily limited to, dolly, broom, shovel, flares, trailer hitch, snatch block, scotch block, extension lighting for rear of towing vehicles, vehicular warning devices (emergency red or amber lights), minimum five-pound dry chemical fire extinguisher, and jack stand.

C. Operator will supply its own private communication system which would be made up of a mixture of two-way radios and pager communication system. Operator will not have a radio

receiver on the Moorhead Police Department frequency without approval of the Chief of Police.

D. In providing 24 hour service, Operator will have one wrecker and Operator immediately available at all times and to have a second vehicle and Operator on standby at all times and in both instances, be able to respond within a reasonable time (to be determined by the Police Department depending upon the circumstances). If the Operator does not respond within a reasonable time, the City may call upon another qualified wrecker service without being in violation of this Agreement.

E. Operator must have available a sufficient number of wreckers and manpower to man same, so as to handle sudden emergencies that may require a number of vehicles being moved in a relatively short period of time.

F. It shall be the responsibility of the Operator to clean up the scene of any accident if Operator is called either to impound or provide service. Operator shall respond as soon as possible to the locations requested for impounding and/or towing. This has priority over any other service run which may be waiting.

G. Operator shall keycard access to the City Impound Lot so that Operator may enter and leave impounded vehicle, without the Police Department being present. Operator will guard against any loss or theft of the access card and should access card be lost, Operator will immediately notify the Police Department.

2. Operator shall provide liability insurance coverage in an amount not less than \$600,000.00 combined single limit against claims for personal injury, death, or property damage and will further provide necessary vehicle insurance for theft, fire, collision damage, and other perils which might occur to a vehicle in the performance of the terms of this Agreement. The above coverage shall be maintained concurrently with the term of this Agreement. Operator shall provide a copy of each respective policy and a Certificate of Insurance executed by each insurer to the City prior to the execution of this Agreement.

3. Operator will charge for its services fees in accordance with Schedule A attached to this Agreement, which Schedule is by reference hereby incorporated into and made a part of this Agreement. Extra fees, such as the use of a flatbed, must include a documented reason for the need and not simply charged because it was the responding unit.

4. Operator shall submit monthly a list of all vehicles towed by Operator under Towing Agreement with the City stating the date of tow, location from which the vehicle was towed, vehicle identification and information as to license number, make, model and serial number, and location to which the vehicle was towed. In addition, Operator agrees to immediately notify the Moorhead Police Department whenever a vehicle is towed from private property within the City of Moorhead at the request of the owner or person in charge of said private property because the vehicle was illegally or improperly parked on said private property or for whatever other reason, giving again information as to the location from which the vehicle was towed, the date of the tow, information as to the vehicle license number, make, model and vehicle identification number, and the location to which the vehicle was towed.

5. City agrees with Operator that all towing requested by the City of Moorhead, through its Police Department or any other department of the City, which involves a tow or an impounded vehicle as defined by the ordinances of the City of Moorhead shall be made by the Tow Operator pursuant to this Agreement, except in the case of an emergency as provided in paragraph 1(E) and paragraph 6 of this Agreement. City agrees with Operator that all tows of vehicles to be impounded and/or vehicles involved in accidents shall be made by the Agreement Tow Operator unless the owner of the vehicle involved in the accident expressly requests towing by a wrecker service other than the Agreement Tow Operator. City agrees that all vehicles involved in accidents that are required to be towed, shall be towed to the Tow Operators Impound Lot or the City of Moorhead Impound Lot at discretion of the Officer requesting the tow, unless the owner requests the vehicle to be towed to a bonafide auto body repair garage or the owner's residence or place of business as provided by City Ordinances. Fee Schedule shall apply to vehicles towed to any city impound lot or city approved contract lot.

6. Operator agrees that the City may, in the event of an emergency, call upon other qualified wrecking services within the City of Moorhead to tow motor vehicles (for example: during a blizzard or snow emergency when it is necessary to clear the streets or some other natural disaster, or a delayed time in responding and needing to clear the roadway) without the City being in violation of this Towing Agreement.

7. City will agree to pay Operator not later than the 15th day of each month all towing fees incurred by Operator pursuant to this Agreement not reimbursed by the owner or other claimant of the vehicle upon reclaiming from the City Impound Lot and such billing shall be included and attached to the monthly list of vehicles towed with sufficient information to identify the particular vehicles for which towing charges are being charged in that particular month, provided however, that said fees shall be paid only if Operator has fully and completely performed its obligations as Agreement Tow Agency, including the rendering of prompt, efficient service at all times.

8. Operator agrees to release and to hold the City, its agents and employees, harmless from any and all liability for any and all damage or injury to persons or property occurring while engaging in, arising from or relating to its performance under the terms of this Agreement, including, but not limited to the act of impounding the motor vehicles and the acts of traveling to and away from the impound site.

9. This Agreement is for a period of two years from April 30, 2023 to April 30, 2025. The City may terminate this Agreement for any reason upon 60-day written notice to Operator.

10. All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the parties at the following addresses:

If to Operator:        [name]  
                                 [address]  
                                 [city, state, zip]

If to City:                City of Moorhead  
                                 Attn: []  
                                 []  
                                 Moorhead, MN 56560

Notice will be deemed to be properly delivered (a) immediately upon being served personally, (b) five (5) days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

11. General Provisions.

- A. Entire Agreement. This Agreement contains the entire understandings of the parties hereto. It may not be changed orally, but only upon an agreement in writing signed by Operator and the authorized officials of the City.
- B. Modifications. This Agreement may be modified as to terms and conditions from time to time upon mutual consent of the parties; however, such modification must be reduced to writing and signed by the parties as authorized by law.
- C. Binding Effect. The terms and conditions of this Agreement are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.
- D. Severability. If any provision or any portion thereof contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, is deemed severable and will not be affected and will remain in full force and effect.
- E. Governing Law. This Agreement will be construed and enforced in accordance with Minnesota law. The parties agree any litigation arising out of this Agreement will be venued in Clay County District Court in Clay County, Minnesota, and the parties waive any objection to venue or personal jurisdiction.
- F. Previous Agreements and Negotiations. The parties agree that this Agreement contains the parties' entire agreement, including any written or oral agreements or consent previously provided. This Agreement supersedes any previous negotiations.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

**IT WITNESS WHEREOF** the parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MOORHEAD

OPERATOR:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Shelly Carlson, Mayor

BY: \_\_\_\_\_

Dan Mahli, City Manager