

City of Portsmouth



Police Department

“Towing Agreement”

2013 – 2015

Memorandum of agreement made by and between the City of Portsmouth by and through its Police Department and _____ of _____ hereinafter called the Contractor:

Preamble:

The intent of this agreement is to provide towing services for the City of Portsmouth Police Department to include: snow ban, snow removal, impounded vehicles, non-payment of fine, illegally parked vehicles, disabled vehicles, any and all vehicles that the Police Department may legally order towed. Eligible contractors who are parties to this agreement will respond to the location within 20 minutes during business hours and 30 minutes after business hours. The Portsmouth Police Department will be responsible for maintaining a rotating or revolving wrecker list. The Contractor must be available 365 days a year, 24 hours a day. The Contractor will not pass on a request unless there are exigent circumstances. In the event the Contractor can not handle a request for service they will notify the Portsmouth Police Department Dispatch Center that they are out of service. Repeated refusal of calls for service will result in the termination of this contract. Contractors agree to charge the owner/operator of any vehicle towed the amount listed in the stated fee schedule.

That whereas the Portsmouth Police Department wishes to secure the services of Wrecker/Towing firms and whereas the Contractor has been found to meet the qualifications and specifications of this contract.

Now therefore witnesseth:

That for and in consideration of mutual promises and covenants hereinafter stated, the parties hereto agree as follows:

1. In determining which companies will tow for the City of Portsmouth, experience, availability, honesty, and past working relationships with the Portsmouth Police Department will be taken into consideration. The Portsmouth Police Department may do a background check on all eligible wrecker services that apply for this contract. The background check may include, but is not limited to, the following:
 - A. Attorney General's Office (Consumer Protection Division)
 - B. New Hampshire State Police
 - C. Other public & private agencies

2. Because of the emergency nature of the service required and for convenience to the citizens of Portsmouth:
 - A. The Contractor must maintain offices and storage lots within the city limits of the City of Portsmouth.
 - B. Storage lots must be staffed Monday-Friday (excluding holidays), during business hours, business hours being described as (9:00 a.m. 5:00 p.m.).

- C. After business hours, the contractor will respond to the lot within thirty (30) minutes.
3. Upon the execution of this agreement and every six months thereafter the Contractor shall provide the police department with the following:
- Provide to the Portsmouth Police Department, a list of its wrecker operators, their qualifications and valid driver's license number. All drivers must have attended & received a certificate of training in a basic towing course such as those presented by the New Hampshire Towing Association or equivalent.
 - A. The qualifications of any new operator shall be provided to the Portsmouth Police Department within *10 days* of employment by the Contractor.
 - B. Any wrecker operator who operates a wrecker with a GVW of over 26,001 lbs. will also supply a copy of their commercial driver's license.
4. The Portsmouth Police Department does hereby agree that the said contractor shall be one of the contractors whom the Police Department will call for towing service during the two years beginning September 1, 2013 and ending August 31, 2015 with the exception noted below.
- A. The Portsmouth Police Department reserves the right to call any wrecker service designated by the owner of a vehicle involved in an accident.
 - B. For special tows that the contractor is not equipped to handle, the city reserves the right to call a company that can perform the needed service.
5. Insurance certificates as detailed below shall be furnished to the City prior to this contract being finalized and the Contractor hereby agrees to maintain insurance as prescribed below in full force and effect during the entire term of this agreement:
- A. Comprehensive General Liability Insurance written on occurrence form, Including complete operations coverage, personal injury liability coverage, broad form property damage liability coverage and contractual liability coverage insuring the agreements contained herein. The minimum limits of liability carried on such insurance shall be \$1,000,000 each occurrence and, where applicable, in the aggregate combined single limit for bodily injury and property damage liability; \$1,000,000 annual aggregate personal injury liability, all without deductible.
 - B. Automobile liability insurance for owned, non-owned and hired vehicle. The minimum limit of liability carried on such insurance shall be \$1,000,000 each accident, combined single limit for bodily injury and property damage.
 - C. Worker's Compensation insurance with statutory coverage including employer's liability insurance with limits of liability of at least \$100,000 each employee and \$500,000 per policy year.

- D. Insurance companies utilized must be admitted to do business in New Hampshire or be on the Insurance Commissioner's list of approved non-admitted companies and shall have a rating of (A) or better in the current edition of Best's Key Rating Guide.
 - E. Contractor agrees to furnish certificate(s) of the above mentioned insurance to the City of Portsmouth execution of this agreement and, with respect to the renewals of the current insurance policies, at least thirty (30) days in advance of each renewal date. Such certificates shall, with respect to comprehensive general liability and auto liability insurance, name the City of Portsmouth and the Police Department as an additional insured and, with respect to all policies shall state that in the event of cancellation or material change, written notice shall be given to the Portsmouth Police Department, 3 Junkins Avenue, Portsmouth, N.H. 03801 at least thirty (30) days in advance of such cancellation or change.
 - F. The purchase of the insurance required or the furnishing of the aforesaid certificate shall not be a satisfaction of Contractor's indemnification responsibilities to the City of Portsmouth and the Police Department.
6. The Contractor agrees to be solely responsible for the payment of its employee's employment, social security and other payroll taxes including contributions from them when required by law.
 7. Contractor hereby agrees to protect, defend, indemnify, and hold the City of Portsmouth and its employees, agents, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including but not limited to, the amounts of judgments, penalties, interests, court costs, legal fees and all other expenses including claims, liens, debts, personal injuries to property, including property of the City, and without limitation by or in any way incident to, in connection with or arising directly or indirectly out of this Contractor Agreement. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands or suits at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Contractor or the City or to enlarge in anyway the Contractor's liability but is intended solely to provide for injuries to third persons or property arising from Contractor's performance hereunder.
 8. All equipment to be used by the contractor in the performance of this contract may be inspected by the Portsmouth Police Department to insure compliance with the specifications of this contract. The Portsmouth Police Department may have a State Highway Enforcement Officer from the Department of Safety inspect any wrecker at any time throughout the contract period.
 9. Contractor must meet the requirements of all State Laws which pertain to wrecker services which are now enacted or may be enacted during the life of this contract.

10. Every wrecker shall display lettering on both sides of the vehicle that indicates the name or trade name of the wrecking service, the city and state in which the vehicle is customarily based, the business telephone number, and their "DOT" or ICC number. Said lettering shall contrast sharply in color with the background and be a minimum two (2) inches in height.
11. Ledgers, records and bills shall be kept for all vehicles towed and shall be made available to the Portsmouth Police Department upon request. These records will be kept for a period of three (3) years.
12. The Portsmouth Police Department may schedule periodic meetings, with attendance of the contractor or his designee is *mandatory*. Failure to attend may in the sole discretion of the Portsmouth Police Department result in the suspension of all rights and privileges of this agreement.
13. The Contractor shall not assign, sublet subcontract any portion of its rights or responsibilities under this contract without the written permission of the Chief of Police or his designee. Nor shall the Contractor sell or transfer any of its rights or responsibilities under this contract.
14. Contractors shall possess a wrecker having a manufacturer's G.V.W. of 15,000 lbs., with dual wheels and a four ton minimum winching capacity. "Wrecker" shall have the same meaning as RSA 259:126.

Each wrecker shall have:

- A. In the absence of having a ramp truck, "Dolly" wheels (tires with legal tread reading), snatch blocks, chains and nylon straps for towing.
 - B. Broom, shovel, and a container to place debris into once it has been picked up and such other items or materials as would be needed to fulfill this contract. The contractor is responsible to clean up debris at accident scenes.
 - C. Each vehicle shall also carry a supply of "Speedy-Dry" and/or sand that the Contractor will place upon fluids at an accident scene. The Contractor shall be responsible for the clean up and removal of "Speedy-Dry" and/or sand at the scene (see applicable hazardous waste disposal fee on schedule).
15. NO debris from a scene will ever be placed into the vehicle.
 16. During normal business hours, the contractor must agree to transport vehicles to body shops specified by the owner/operator in Portsmouth at no additional charge. If the owner/operator or Police Department requests the vehicle to be towed to/from outside the city limits, the first three (3) miles will be free. The mileage rate thereafter will be \$4.25/mile (9/1/13-8/31/14) and \$4.25/mile (9/1/14-8/31/15) and \$4.25/mile (9/1/13-8/31/14) and \$4.25/mile (9/1/14-08/31/15) vehicle owner rate.

17. Contractor shall not charge in excess of the following fees and administrative charges:

FEE SCHEDULE

	EFFECTIVE: 9/1/13 to 8/31/14		EFFECTIVE: 9/1/14 to 8/31/15	
	BUSINESS HOURS Monday – Friday (8:00 a.m. - 5:00 p.m.)	AFTER HOURS and HOLIDAYS (5:01 p.m. – 7:59 a.m.)	BUSINESS HOURS Monday – Friday (8:00 a.m. - 5:00 p.m.)	AFTER HOURS and HOLIDAYS (5:01 p.m. – 7:59 a.m.)
Straight Tow - Up to 10,000 pounds Cars/Trucks	\$140.00	\$140.00	\$140.00	\$140.00
Straight Tow - In Excess of 10,000 pounds Cars/Trucks	See Addendum A	See Addendum A	See Addendum A	See Addendum A
Service Call/Lock Out (Police Call)	\$70.00	\$70.00	\$70.00	\$70.00
Drop Fee:	The straight tow fee will be charged if the owner shows up after a vehicle is completely hooked up. If the wrecker has arrived on scene but the vehicle is less than 100% hooked up, the service call rate will be in effect.			
Gate Fee: ** (if not open)	None	\$30.00	None	\$30.00
Second Wrecker / Winching	\$140.00 / hour	\$140.00 / hour	\$140.00 / hour	\$140.00 / hour
Dolly Use:	\$85.00	\$85.00	\$85.00	\$85.00

Waiting time: All fees (tow + service) are billed in one hour minimums (see above). Clock starts up on arriving at scene. *No waiting time fees will be charged to the Police Department.*

Second Hour Rate	\$70.00 / hr	Second Hour Rate	\$70.00 / hr
Start of Third Hour	\$35.00 / per 30 minutes	Start of Third Hour	\$35.00 / per 30 minutes

Storage: Vehicles not picked up within the first 24-hours will be charged from the first hour.

First 24-hours	Free	First 24-hours	Free
After 24-hours	\$55.00 / per 24-hour period	After 24-hours	\$55.00 / per 24-hour period

Mileage: During normal business hours, the contractor agrees to transport vehicles to body shops specified by the owner/operator, in Portsmouth at no additional charge. If the owner/operator or Police Department requests the vehicle to be towed to/from outside the city limits the following fees apply:

Inside City Limits	Free	Inside City Limits	Free
Outside City Limits up to 3-miles	Free	Outside City Limits up to 3-miles	Free
Outside City Limits - \$4.25 / mile (fixed rate) Starting with mile 4 -		Outside City Limits - \$4.00 / mile (fixed rate) Starting with mile 4 -	
Owner Rate		Owner Rate	
Outside City Limits - \$3.75 / mile (fixed rate) Starting with mile 4 -		Outside City Limits - \$3.75 / mile (fixed rate) Starting with mile 4 -	
Police Rate		Police Rate	

Hazardous materials: The contractor may charge a reasonable fee for the clean-up and disposal of hazardous materials at an accident scene (i.e. gasoline, oil, contaminated speedy-dry, etc.) for the first five gallons of spill material not including cargo. Anything in excess of five gallons will be handled by a hazardous materials vendor (billed directly or through the tow company).

Fee Not to Exceed	\$55.00	Fee Not to Exceed	\$55.00
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**Gate fees may be charged when the contractor is required to respond to their facility during other than normal business hours for any purpose related to the tow or storage of a vehicle pursuant to this agreement. The contractor will not charge gate fees to the Portsmouth Police Department.

- 18.** The Contractor shall attach a sign as prescribed by the Portsmouth Police Department to the main gate that details all tow fees and cost as listed in Section 17, above. Tow fees will also be posted conspicuously within the place of business.
- 19.** Upon being contacted by the Portsmouth Police Department the Contractor shall respond within a maximum of twenty (20) minutes during business hours and thirty (30) minutes after business hours. If the Contractor does not respond within the specified time limits the Police Department may elect to cancel that wrecker and/or terminate this agreement. The Contractor will then lose their spot within the rotation and/ or be suspended from the agreement.
- 20.** All requests for wreckers will be filled on a rotating basis. Contractors will be listed alphabetically in a log book or computer program. As Contractors are requested the log will be filled in and the next request will go to the next company on the list.
- 21.** The contractor will provide a secure fenced lot to prevent unauthorized persons from entering the lot. The lot shall be posted in accordance with N.H. RSA 635:4 and will specify signage similar to that required by N.H. RSA 635:4, the name and telephone number of the wrecker service using the lot as a storage facility.

 - A.** The lot shall be able to hold a minimum of ten (10) vehicles.
 - B.** The secured lot must be approved by the Portsmouth Police Department.
- 22.** Immediately after the towing of any vehicle pursuant to this contract the contractor shall notify the Portsmouth Police Department of the tow by contacting a member of the Dispatch Center at (603) 436-2145. The Contractor shall also notify the owner of any vehicle which the Contractor has towed pursuant to this contract, when said vehicle has been on the Contractor's lot in excess of 30 days from the time at which it was originally towed.
- 23.** It is understood and agreed that the contractor shall tow any vehicle on request of the Portsmouth Police Department and that the contractor shall charge the owner of the vehicle so towed and shall not charge the Police Commission, the Portsmouth Police Department, or the City of Portsmouth for any service rendered or performed pursuant to this contract. The contractor agrees to tow any vehicle owned by the City of Portsmouth, Police Department, except heavy equipment and shall bill the City at the Service Call rate. Heavy equipment shall be billed at the Heavy Equipment rate.
- 24.** The contractor may exercise any lien it may have on a towed vehicle pursuant to New Hampshire state laws except that:

 - A.** The Contractor shall release to the owner or operator of any towed vehicle, any and/or all essential (e.g. medication, eyeglasses, clothing) personal property contained within but not attached to such vehicle upon request by the owner or operator without regard to any lien that the Contractor may have on said property pursuant to New

Hampshire State Law. The Contractor may hold any items, other than wallets, purses, legal documents, car seats, eyeglasses, medicine, or medical equipment, pending payment of any towing fees.

25. Impoundment & Abandoned Vehicles.

- A.** The contractor agrees to tow any impounded vehicle, excluding heavy equipment, at the *service* call rate to the City or the *straight* tow rate to the owner/operator.
 - B.** Vehicles impounded by the Portsmouth Police Department will be picked up by the original contractor and transported to their facility at no additional cost to the Portsmouth Police Department and not more than the service call rate to the owner of said vehicle. The towing company of record will place a sticker on the windshield of the towed vehicle with the towing company's contact information and the phrase: "Do Not Release this Vehicle until (Towing Company Name) is Contacted." However, the Portsmouth Police Department reserves the right to return any impounded vehicle directly to the owner. On those occasions, the police department shall compensate the towing company of record at the straight tow rate currently in effect depending on whether the vehicle was towed during business hours or after hours.
 - C.** Abandoned vehicles will be towed at no charge to the City and at the tow rates listed in Section 17 tow rate to the owner/operator. The Police Department will make every effort to schedule these calls for service between 8:00-5:00 M-F when possible, unless there is a hazardous condition. The Police Department will provide the Contractor with a copy of a vehicle inventory form.
 - D.** The contractor agrees to store any vehicle, which may be impounded by the Portsmouth Police Department at no cost to the owner, the Police Department, or the City of Portsmouth. Storage fees may be charged after 24 hours from the release of impoundment by the Portsmouth Police Department
- 26.** Any violation of State Law or City Ordinance shall be considered just cause for suspension from this agreement.
- 27.** At the time the snow emergency removal operation begins, police officers accompanied by Public Works personnel will direct the removal of vehicles. Wreckers will be dispatched and tow the vehicle assigned them by the officer at the scene. Wrecker operators will not tow any vehicle that was not authorized first by the officer.
- A.** The Director of Public Works, or his designee in charge of the "Snow Emergency", will dictate when the removal of vehicles from the City streets begins.
 - B.** The Contractor shall release to the owner or operator of any towed vehicle, any and/or all essential (e.g. medication, eyeglasses, clothing) personal property contained within but not attached to such vehicle upon request by the owner or operator without regard to any

lien that the Contractor may have on said property pursuant to New Hampshire State Law. The Contractor may hold any items, other than wallets, purses, legal documents, car seats, eyeglasses, medicine, or medical equipment, pending payment of any towing fees.

- C. The Contractor shall provide at least (1) wrecker for each snow emergency of the season, unless otherwise instructed by the officer in charge of the operation. The officer in charge of each operation will decide if more or fewer wreckers are needed for each snow emergency.
 - D. In order to recover an impounded vehicle, the owner will be required to present proof of ownership and make a payment in cash or credit card to the towing company of record.
 - E. It is understood by both parties that in the event of a snow storm wreckers may be tied up handling emergencies. In this event they will respond as soon as possible.
- 28.** Violation of the above-agreed contract between the contractor and the City of Portsmouth will result in the suspension of the contractor from this agreement.
- A. In the event a company does not meet the expectations of the Chief of Police or his designee the company may be suspended or terminated from the tow list.
 - B. The contractor, if aggrieved by the above decision, shall have the right of appeal to the Chief of Police. Such appeal shall be in writing and filed with the Chief of Police within ten (10) working days of the suspension or termination. The said appeal shall fully state in writing, the grounds for appeal.
 - C. The Chief of Police or his designee shall be the hearing officer and shall set a date for a hearing of the appeal and notify the appellant of the date of the hearing. The hearing shall be held as soon as practicable upon receipt of the appeal request, and shall decide the matter within a reasonable time and notify the appellant thereof
- 29.** In case of suspension or termination from this agreement, the Contractor waives any claim for damages.
- 30.** The contractor shall notify the Chief of Police or his designee at the Portsmouth Police Department, in writing, of any change of trade name or the use of any additional trade names.
- 31.** This agreement supersedes any and all prior agreements and contracts that have been previously contracted and awarded.

Addendum A

Fee Schedule for tows in excess of 10,000 lbs

The contractor shall not charge the Portsmouth Police Department in excess of the Police Call Rate listed below for the duration of the contract period.

The Public fee rates are effective 9/1/13. These rates are subject to change during the contract period. The contractor will provide an updated public fee schedule for the items listed below should these fees change over the course of the 9/1/13 – 8/31/15 contract period.

Effective 9/1/13 (Rates subject to change during contract period)			
Week Days			
Straight Tow Costs Only (Public)	08:00 a.m. to 05:00 p.m.	05:00 p.m. to 12:00 a.m.	12:00 a.m. to 08:00 a.m.
Medium Duty (10,000-26,000 lbs)	\$355.00	\$355.00	\$410.00
Large Duty - (26,000 lbs and above) Local tow within 10 miles	\$465.00	\$465.00	\$520.00
Weekend and Holiday			
Straight Tow Costs Only (Public)	08:00 a.m. to 05:00 p.m.	05:00 p.m. to 08:00 a.m.	
Medium Duty (10,000-26,000 lbs)	\$355.00	\$410.00	
Large Duty - (26,000 lbs and above) Local tow within 10 miles	\$465.00	\$520.00	
Storage	Straight - 24ft box truck	Tractor <u>OR</u> Trailer	Tractor-Trailer UNIT
Fees per day	\$110.00/day	\$110.00/day	\$ 160.00/day
Effective 9/1/13 - 8/31/15			
Weekday/Weekend/Holiday			
Police Department Call Rate	08:00 a.m. to 05:00 p.m.	05:00 p.m. to 12:00 a.m.	12:00 a.m. to 08:00 a.m.
All Vehicles in excess of 10,000 lbs	\$ 165.00/hr	\$ 165.00/hr	\$ 165.00/hr

Note: Highway toll fees and/or extra equipment needed for a job will be an added charge depending upon what is needed. For example: contracted services for equipment not owned by tow vendor, air bags for a recovery, skids steer, extra man, extra trucks, etc.

In witness whereof the parties hereto have signed this original and one (1) *duplicate* copy on the date noted below the signatures.

By: _____
Stephen J. DuBois, Chief of Police
Portsmouth Police Department

Date: _____, 2013

and

By: _____
Towing Contractor

Date: _____, 2013

SJD/kas