

CITY OF HOLYOKE
Contract for the Towing and Storage of Motor Vehicles

THIS AGREEMENT is made this _____ day of October, 2020 by and between the City of Holyoke, Massachusetts, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as "the City", and Red's Towing, hereinafter referred to as "the Contractor".

RECITALS

WHEREAS, the City finds it necessary to order that certain vehicles be towed for public safety or other purposes and thereafter be stored at a place that is secure and convenient to the city;

WHEREAS, the Contractor warrants that it has a minimum of five (5) years experience in providing towing and storage services, and that it is willing and able to provide such services to the City;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Definitions

For the purposes of this Contract, the following terms, phrases, words and their derivations shall have the given meaning:

- 1.1. *Chief of Police*: the Chief of the Holyoke Police Department, or an appointed designee.
- 1.2. *Gross Vehicle Weight Rating (GVWR)*: the value specified by the manufacturer of a motor vehicle as the loaded weight of such vehicle.
- 1.3. *Response Time*: the time from which the Contractor receives notification by the Holyoke Police Department of an incident requiring a tow to the arrival of the tow truck at the requested location.

2. Scope of Services

- 2.1. Towing and Storage of Vehicles Upon Request of Chief of Police

Upon request of the Chief of Police, the Contractor shall tow and store each and every motor vehicle ordered to be towed pursuant to applicable law and in accordance with this contract. The public authority shall give an adequate description of the location of the motor vehicle. The Contractor shall maintain a response time of fifteen (15) minutes, weather permitting, for light duty tows; and an initial response time of twenty (20) minutes, weather permitting, for

heavy duty tows. The Contractor shall arrive at the site of the requested tow with all necessary and appropriate equipment and personnel, as specified in this Contract, as requested by the Chief of Police, and as informed by the Contractor's professional experience.

2.2. Accident Clean-up

If Contractor is called to the site of a motor vehicle accident, in addition to towing any vehicles, Contractor shall clean the site of the accident, including, but not limited to: removal of all vehicle debris, glass, and other materials resulting from the accident; and spreading an adsorbent or absorbent material such as speedy-dry upon any street surface that oil or gas has been illicitly discharged (as that term is defined by the Environmental Protection Agency) upon by any vehicle involved in the accident. To the extent possible, Contractor shall also be responsible for cleaning up the adsorbent or absorbent material. The City shall not be liable for the cost of cleaning the roadway in accordance with this Section.

2.3. Rotation of Towing Duties

Contractor understands that towing services within the City shall be allocated among all contracted towing companies on a weekly rotation. The Chief of Police shall maintain a rotation list of Contractors, and shall have sole discretion on the rotation. Contractor understands that it is not the sole provider of towing services for the City, and that it will only be selected for towing operations on the rotational basis, or under emergency or exigent circumstances. If the on call contractor has exhausted its capability, the next Contractor in the rotation will be utilized. The rotation shall be applicable for all incidents requiring a tow, and shall not differ based on the GVWR of the vehicle.

The City expressly reserves the right to obtain towing services from companies other than the Contractor if said Contractor is unable to perform, and the Chief of Police, in good faith, determines it to be in the best interest of the City, regardless of position on the rotation list. The City further reserves the right to obtain the services of a tow company other than the Contractor in the event the vehicle to be towed is used to carry hazardous materials, as determined by the Chief of Police.

2.4. Property of Owner of Towed Vehicles

Prior to impounding a vehicle and after the vehicle has been moved to a safe location as determined by the Contractor and/or Police, the Contractor shall allow the owner or operator of a vehicle to remove personal property not affixed to the vehicle if they are present at the time of the tow, and ownership of the property claimed is proven. This section shall not apply to abandoned vehicles.

2.5. Towing of City Owned Vehicles

Upon request of the Chief of Police, the Contractor shall tow any Holyoke Police Department owned vehicles to a distance of not more than twenty-five (25) miles at no charge to the City.

The Contractor shall offer a reduced towing rate from the regulated towing rate of the Commonwealth of Massachusetts on all passenger vehicles owned by the City.

The Contractor shall provide vehicles for the purpose of Jaws of Life training and disaster drills.

2.6. Availability of Towing Services

Contractor shall make such personnel and equipment ready and able to respond to towing requests twenty-four (24) hours a day and seven (7) days a week. The Contractor shall maintain and post regular business hours both during the week and on weekends to release towed vehicles in accordance with this contract, and shall provide the Chief of Police with the hours that it will be open to release towed vehicles.

2.7. Record Keeping

Contractor shall keep and maintain records of all vehicles ordered to be towed by the Chief of Police. Records shall include plate and vehicle identification numbers, general status of the vehicle, make, model, year, and color of the vehicle. Contractor shall also keep record of the date of tow, all fees and payments charged, and shall document any incidents regarding the vehicle that occur during Contractor's storage of the vehicle.

Contractor shall provide the Chief of Police with any records, statistics, or other information pertaining to the towing and storage of all vehicles under this contract upon request.

2.8. Motorist Request to be Disregarded

A motorists' request of a specific tow service or motor club service provider will not be utilized or considered when a police officer and or a police cruiser presence is necessary due to public safety. The Contractor on rotation will be utilized instead.

3. Term, Compliance, and Termination

3.1. Term of Contract

This contract shall take effect on October 1, 2020, and shall remain in effect until September 30, 2023 unless this contract is sooner terminated in accordance with the provisions of this agreement.

3.2. Compliance with Contract

The Contractor agrees to comply with all terms and conditions of this contract, and that a failure to comply may result in suspension or termination of this contract or render the contract invalid and or unenforceable. Any violations of the terms or conditions of this contract shall result in the following actions, at the discretion of the Chief of Police:

1st Offense - Written warning

2nd Offense - Thirty (30) day suspension from the towing rotation.

3rd Offense (which occurs within one year from date of 1st offense) - Permanent removal from the towing rotation.

3.3. Complaints

The Contractor shall post a conspicuous sign in the common area of its principal place of business in Holyoke stating: **"If you wish to file a complaint, please contact the City of Holyoke or the Massachusetts Department of Public Utilities."**

Complaints that the City receives regarding the conduct of Contractor or its employees shall be forwarded to the Contractor. The Contractor shall respond in writing to the allegations of the complaint and submit said response to the Chief of Police within 48 hours of receipt of the complaint. Repeated complaints may be grounds for suspension or termination of this contract.

3.4. Termination or Suspension

This contract shall terminate naturally upon the end of the term.

The City may suspend or terminate this agreement for cause if: Contractor fails to comply with applicable federal, state, or local laws applicable to the business of Contractor or work performed under this contract; if the Chief of Police or other authorized City Official determines that the Contractor has breached or substantially failed to perform any provision of this contract; repeated complaints are made regarding Contractor's business practices as they relate to work covered by this contract; or, if Contractor interferes with the contractual arrangements made between other towing operators and the City.

The Chief of Police will provide written notice stating the grounds for any suspension or termination, and specifying the effective date(s) of the suspension or termination, at least seven (7) days prior to the effective date(s) of suspension or termination.

4. Contractor Storage, Equipment, and Personnel Requirements

4.1. Storage Requirements

Vehicles that are ordered to be towed and stored shall be kept at an appropriate storage facility within the City of Holyoke. Such facility shall be constructed in accordance with City of Holyoke Ordinances. Any area to be used for the storage of vehicles must be enclosed by a fence and must provide adequate lighting, surveillance, and security to prevent theft or damage to vehicles and property stored by Contractor. The Contractor shall be responsible for the reasonable care, custody, and control of vehicles that are ordered to be towed and any property contained therein.

4.1.1. Release of Stored Vehicles

Prior to releasing any vehicle stored pursuant to this contract to the owner of said vehicle, the Contractor shall seek and receive clearance from the Chief of Police, the City parking clerk or their designee. This clearance will be granted after the owner of the vehicle has paid any and all relevant administrative fees owed to the Holyoke Police Department. Contractor shall also provide a receipt of any and all charges for towing and storing a vehicle to the owner prior to releasing the vehicle.

4.1.2. Cars Impounded for Investigatory Purposes

The Chief of Police shall designate a secure area to store vehicles that the Holyoke Police Department seizes for purposes of investigation.

4.2. Maintenance of Contractor's Property

Contractor shall maintain any property owned or leased for the purposes of storing vehicles in such a manner so as not to constitute a nuisance to the neighborhood, including but not limited to: complying with all applicable zoning laws; providing adequate security at the property; screening the lot from public view; maintaining the lot free and clear of litter and debris; and otherwise obeying applicable federal, state, and local laws and regulations as they pertain to maintenance of property. Failure of the Contractor to maintain the property that is used to store vehicles under this contract in a clean and secure manner may be considered to be a breach of this contract by the City.

4.3. Equipment Requirements

Contractor shall for all periods covered by this contract maintain equipment sufficient to perform all light, medium, and heavy-duty towing services, which at minimum, shall include the following equipment. Contractor shall keep said

equipment available for calls twenty-four (24) hours a day and seven (7) days a week within the response time specified in this contract:

4.3.1. Vehicles

The following vehicles shall be kept in good working condition by the Contractor. Contractor shall post in a conspicuous place on its vehicles its name and phone number.

- A. One (1) wrecker Class 3 (or above);
- B. Three (3) car carriers, Class 5 or 6 (or above);
- C. One (1) hydraulic 25-ton Class 8 wrecker;
- D. One (1) hydraulic sliding tandem-axel tilt trailer with appropriate tractor;
- E. One (1) fork truck.

4.3.2. Other Equipment

Each vehicle listed above, and any other vehicles which respond to tow requests from the City shall have at minimum the following equipment:

- A. Two-way mobile communication;
- B. 100 feet of cable on wreckers;
- C. Two (2) snatch blocks;
- D. One (1) broom and receptacle to pick up accident debris;
- E. One (1) fire extinguisher;
- F. One (1) first aid kit;
- G. One (1) set of triangles;
- H. One (1) hydraulic jack.

4.4. Right to Inspect

The City reserves the right to inspect any areas used by Contractor to store vehicles pursuant to this contract, and also to inspect all vehicles and equipment used by Contractor to provide the services required under this contract.

4.5. Personnel Requirements

4.5.1. Staffing Requirements

Contractor warrants that it has, and will continue to have the for as long as this contract remains in effect, in its employ a sufficient

number of persons experienced and possessing required licenses in towing operations such that Contractor's obligations under this contract will be safely and promptly carried out in accordance with the scope of work and the requirements of this contract.

4.5.2. Licensing and Training

Employees performing work for Contractor under this contract shall be properly licensed for equipment operation and also shall be properly trained, including training by industry-recognized organizations, in the operation of said equipment. Employees shall abide by all applicable laws regarding towing and recovery of motor vehicles.

4.5.3. Preclearance of Employees by the City

Prior to the assignment of an employee to towing or administrative responsibilities covered by this contract, Contractor shall provide the following information regarding each employee: full legal name, current address, any known previous addresses, driver's license number, date of birth, and authorization by the employee for the Chief of Police to perform a criminal background check, or for the Contractor to disclose the same to the Chief of Police.

4.5.4. Reassignment of Employees

The Chief of Police may request that an individual performing work for the Contractor under this contract cease performing said work. The Chief of Police will state the reason for such a request in writing. Upon receipt of such request, the Contractor shall immediately reassign the subject individual.

4.5.5. Conduct of Contractor and its Employees

Contractor and its employees, agents, subcontractors, or servants shall interact with the public in a professional and courteous manner at all times when performing work in accordance with this contract. Any improper or inappropriate behavior, demeanor, or communication on the part of Contractor or its employees may be considered a breach of this contract.

4.5.6. Criminal Conduct of Contractor or its Employees

Any criminal conviction, in the future or within the past seven years, of Contractor, its owner, any employees or agents, regarding stolen or embezzled vehicles, fraud related to the towing business, stolen

property, crimes against morality or crimes against the person, shall be grounds for the immediate cancellation of this contract.

4.5.7. Employment Practices

Contractor agrees that it will not engage in employment practices that have the effect on discrimination against employees on the basis of race, color, national origin, handicap, political affiliation, sex, gender expression, or sexual orientation, as well as any other class that is protected by applicable federal or state law. In addition, Contractor agrees that it will abide by all applicable terms and provisions of the Equal Employment Opportunity requirements under Executive Order No. 11246 as amended by Executive Order No. 11375.

5. Payment and Fees

5.1. Payment

Contractor shall collect and receive payment for all services rendered under this contract from the vehicle owner(s) and or the insurance carrier of the vehicle owner or responsible third parties and or their insurance carriers.

The City shall not be liable in any way for the collection or payment of any towing or storing charges for any vehicle ordered to be towed by the Chief of Police or by any other authorized City Official, including, but not limited to tows ordered for the purpose of investigation and or evidence. Further, the City shall not be liable for the costs of cleaning the public way following an accident, as specified in this contract.

5.2. Fees

Fees charged to owners for the towing and storage of vehicles by the order of the Chief of Police under this contract shall not exceed the maximum statutory rates for towing and storage established by the Massachusetts Department of Public Utilities, pursuant to M.G.L. c. 159B, §6B or by other applicable law. Contractor shall, at the request of the Chief of Police, waive the applicable fees for up to ten (10) rotation tows per calendar year.

5.2.1. Posting of Schedule of Fees in a Conspicuous Place

Contractor shall post the current rate for towing and storage charges in effect under M.G.L. c. 159B, §6B, and any other charges to owners of vehicles towed in accordance with this contract, in a conspicuous place in the common area of its principal place of business within the City of Holyoke.

6. Insurance

On the date of execution of this contract, or any renewal or extension thereof, the Contractor shall submit to the City proof of insurance for a policy that shall remain in effect throughout any period in which this contract is effective, which contains the following types and minimum amounts of insurance:

- A. Garage liability insurance with a combined single limit of one million dollars (\$1,000,000.00) for bodily injury and property damage, including without limitation, damage to towed vehicles due to negligence in towing, theft, fire loss, or vandalism sustained while the vehicle is in storage.
- B. Automobile liability insurance that has a combined single limit for bodily injury and property damage of one million dollars (\$1,000,000.00).
- C. Workers compensation in the statutory amounts.

Proof of insurance shall be in the form of a certificate of insurance and shall provide that the City be listed as an additional named insured. Policy lapse, expiration, or cancellation will result in the immediate termination of this Contract. The policy shall provide for immediate notification to the City upon policy lapse, expiration, or cancellation.

7. Indemnification

The Contractor shall assume all responsibility for the work performed under this contract and shall take all precautions for preventing injuries to persons or damage to property in performing the work required hereunder. The Contractor shall indemnify and hold harmless the City of Holyoke from all claims, damages, judgments, and or settlements; and from any and all liability of every nature and description which the Contractor or its agents or employees or other third persons may suffer through damage to property, personal injuries (including death), or which otherwise arise out of the work provided under this contract, by reason of the negligence of the Contractor, its agents or employees, in the performance of this contract.

The Contractor agrees that the City of Holyoke and or the Holyoke Police Department are not financially responsible for any direct or indirect action arising from any tow and or related activity, service, or storage unless specifically agreed to in writing by the City of Holyoke or the Chief of Police.

8. Miscellaneous

8.1. Modification

This contract may be modified or amended only by a written instrument, signed by authorized representatives of both parties.

8.2. Entire Agreement

This contract represents the entire agreement of the parties with respect to the towing and storage of motor vehicles at the request of the Chief of Police, and supersedes any prior agreements, understandings, or representations, be they written or oral, express or implied.

8.3. Assignment

Neither this contract nor any of the rights, interests or obligations hereunder shall be assigned by any party without the prior written consent of the other party.

8.4. Severability

If any term or provision of this contract or any amendments or attachments is found to be invalid or unenforceable, the remainder of this contract and its terms and provisions shall remain valid and in binding on the parties to the extent permitted by law.

8.5. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

8.6. Notices

Except as otherwise provided, all notices required or permitted to be given under this contract shall be in writing and shall be delivered by certified or registered mail to the parties at the following address or such other address or addresses as to which a party shall have notified the other party in accordance with this section.

If to the City: Mayor Alex Morse
Holyoke City Hall
536 Dwight Street, Room 1
Holyoke, MA 01040

With a copy to: Chief of Police
220 Appleton Street
Holyoke, MA 01040

If to the Contractor: Red's Towing
1528 Riverdale Street
West Springfield, MA 01089

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this instrument as of the date first written above.

BY:

CONTRACTOR

Chad D Willard

Chad D Willard, Red's Towing
(print name)

CITY OF HOLYOKE

Alex Morse, Mayor

Katherine Jackowski, Collector of Taxes

Crystal Barnes, Acting City Solicitor