

City of Rochester
Request for Interest
**Rochester Police Department
Towing Services**

Submissions to be received by 5:00 PM

May 28, 2021

Send Submissions to:

Lt. Joseph Hayes
Technical Services Section
Rochester Police Department
185 Exchange Blvd.
Rochester, NY 14614
Joseph.Hayes@cityofrochester.gov

REQUEST FOR INTEREST

The City of Rochester, New York is seeking responses to this Request for Interest (“Response”) from interested and qualified companies (“Towing Agencies”) to provide services for the towing of illegally parked, damaged, disabled, recovered stolen, or abandoned civilian vehicles from the public right-of-way and from private property, as well as City owned or leased vehicles operated by the Rochester Police Department, (the “Project”).

Background

1. The City of Rochester utilizes private Towing Agencies to protect the health, safety, and welfare of all persons in the City of Rochester by promoting the unobstructed flow of traffic in the City.
2. There are approximately 3,600 towing requests per year by the City of Rochester that are dispatched on a rotational basis to multiple Towing Agencies that have contracted with the City.
3. The City intends to enter into a three-year agreement with the option to renew for one additional three-year period, with multiple Towing Agencies who will be required to provide towing services on a rotational basis. Although, historically the City has entered into agreements with four Towing Agencies, the City’s decision as to the total number of Towing Agencies to which it will award an Agreement will depend on the proposals received and other factors at the City’s sole discretion.

The proposed timeline for questions, submissions, decisions and other actions related to the Project:

Timeline

Activity	Time	Date
RFI Release		April 30, 2021
Deadline for questions		May 14, 2021
City response to questions		May 21, 2021
RFI Responses due	5:00 p.m.	May 28, 2021
Towing Agency Selection and Award Notification		July 20, 2021
Agreement Start Date		September 1, 2021

Note: Although Towing Agencies will be notified if they are selected, no award is final and no Professional Services Agreement can be executed until City Council approval and Mayoral signature are confirmed. The dates shown above may be subject to change within the City of Rochester's sole discretion and upon written notification as set forth herein.

Communications

All communications by parties who have indicated an intent to submit or have submitted a Response to this RFI ("Respondents"), including any questions or requests for clarifications, submissions, requests for status updates about the selection process, and any other inquiries whatsoever concerning this RFI shall be sent, in writing, to the following City staff person ("City Contact"):

Lt. Joseph Hayes by email only to Joseph.Hayes@cityofrochester.gov.

No contact is permitted with any other City staff member with regard to this RFI during the RFI process unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFI, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFI. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFI.

The City will make every reasonable effort to keep Respondents informed about the process. Notifications about Timeline date changes, amendments to the RFI, and other information about the RFI will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's website for this RFI. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFI.

Scope of Services

The City is seeking the services of Towing Agencies to perform the following services:

1. Towing Agencies shall provide services for towing of illegally parked, damaged, disabled, recovered stolen, or abandoned civilian vehicles from the public right-of-way and from private property, as well as City owned or leased vehicles operated by the Rochester Police Department on a rotational basis.
2. The City will establish a list of Towing Agencies that are available to provide towing services in the event of an emergency as described in Section 2.01C of the Agreement. Respondent shall state in its Response whether it will be available to provide emergency towing services.
3. Towing Agencies shall be requested to perform various towing assignments at or involving the Auto Impound, located at 330 Colfax Street, and its related operation.
4. Towing Agencies shall, in addition to the towing services, provide roadside tire removal and replacement services on RPD vehicles, on a two (2) month rotational basis

5. Towing Agencies shall provide standby services, on a rotational basis, for special events to address vehicle accidents, breakdowns, and illegally parked vehicles.

Terms of Professional Services Agreement

Towing Agencies shall be required to enter into a Professional Services Agreement ("PSA") with the City, Attachment A. Below is a summary of the services required by the PSA. Respondents should carefully review the list of services below as well as the entire PSA, including but not limited to the Fee section, and confirm that they will be able to comply with the PSA or identify any requirements to which they object. Respondent's submission of a Response shall be deemed acceptance of the terms of the PSA unless specifically otherwise stated.

1. Towing Agencies are required to have portable and truck radios to communicate with 911 (currently issued through Licciardi Radio). If the Tow Agency does not currently own these, they will be required to purchase the radios and pay for the programming, installation, antenna, and batteries.
2. Towing Agency must be able to arrive at any point in the City within twenty (20) minutes from receipt of the call for service during non-rush hour traffic, except where the Towing Agency is called to the Charlotte area where it must arrive within thirty (30) minutes from receipt of the call for service, or as soon thereafter as reasonably possible, depending on weather conditions, traffic, or other traffic effecting events.
3. During a declared emergency, the Towing Agency shall dedicate and provide the use of at least four (4) tow trucks and four (4) operators to the service of the City.
4. Towing Agencies must have at least two (2) years of demonstrated experience in operating a commercial towing agency. Towing must be the primary business of such Agency.
5. Towing Agencies must own or lease premises to include, but not be limited to, facilities for the dispatch of tow trucks and no less than seven thousand five hundred (7,500) square feet of space for storage of towed vehicles.
6. Towing Agency's storage facilities must be open and accessible to persons seeking to recover their vehicles from 9:00 am to 6:00 pm daily, and if the Towing Agency performs towing services after 5:00 pm, until at least one hour after the latest time the towing services are performed, unless the vehicle is towed to the Auto Impound.
7. Towing Agencies must be able to accept credit card payments.
8. Towing Agency's premises, including dispatch, storage, or any other business areas, must conform to the local Zoning Code, Fire Prevention Code, Building Code, and all other applicable codes.
9. Towing Agencies shall have at least one (1) qualified tow truck operator available twenty-four (24) hours per day except at least two (2) qualified operators must be available each day between the hours of 7:00 am and 7:00 pm, Monday through Friday, exclusive of holidays.
10. Towing Agencies must own or possess at least four (4) operating tow trucks on a year-round basis, which trucks must be capable of performing all work under the Agreement. Of the four (4) required operating tow trucks, a minimum of one shall be a flatbed truck.
11. Each truck owned by the Towing Agency shall have a minimum of the carry-on equipment specified in Section 2.06 of the PSA while on-call.

12. The maximum fees that will be paid to Towing Agencies are set forth in Appendix A of the PSA. The Respondents must confirm that they agree to accept the fees for towing services rendered, as set forth in the Fee section of the PSA, Appendix A.
13. Towing Agencies shall secure and keep fully in effect for the period of the Agreement, insurance as set forth in the Agreement. Those insurances include:
 - a. Liability Insurance in the amounts of not less than One Million Dollars (\$1,000,000), each person for bodily injury each occurrence, with a Two Million Dollar (\$2,000,000) umbrella coverage, and Three Hundred Thousand Dollars (\$300,000) for property damage.
 - b. Garage Keepers Legal Liability Insurance covering damage to vehicles while stored on the Consultant's premises in an amount of Three Hundred Thousand Dollars (\$300,000).
 - c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles in amounts as indicated in paragraph a. above.
 - d. Workers' Compensation Insurance and New York State Disability Insurance, proof of self-insurance, or establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.
14. It is the City's policy that all consultants who enter into PSA with the City that equals or exceeds \$50,000 are required to comply with the City's Living Wage requirements. Accordingly, Respondent must include, with its Response a written commitment to pay all "covered employees" a "living wage", as those terms are defined in Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance." In addition, Respondent must provide a list of job titles and wage levels of all "covered employees".
15. Respondent shall include confirmation that the Respondent has reviewed and will comply with the PSA, which will be entered into by all Towing Agencies that are chosen pursuant to this RFI process.

Preparation and Submission Process

Responses must be postmarked or received by the City no later than May 28, 2021. Submit four (4) paper copies and a digital copy to:

Lt. Joseph Hayes
Technical Services Section
Rochester Police Department
185 Exchange Blvd.
Rochester, NY 14614
Joseph.Hayes@cityofrochester.gov

This RFI is designed to facilitate the evaluation and selection of Respondents that are best able to achieve the City's objectives. The Response shall contain a table of contents. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents. In order to enable the City to effectively review the information contained in the submissions, submissions shall reference the paragraph title and numbered and lettered sections of the RFI. The Response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting for a specific section or requirement of the RFI.

The Response shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its Response, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFI. The Response shall be deemed authorization for the City to contact Respondent's references. Evaluation of Responses will be conducted by the City based on information provided in the Respondent's submitted Response and on such other available information that the City determines to be relevant. The evaluation of Responses may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent(s) selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment A). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated, the Respondent's Response to this RFI shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals).

Respondents shall provide sufficient information in their Response to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their submission. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the Respondents or to conduct the Project described herein. The City may amend or withdraw the RFI at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a submissions or responding to the City's requests with respect to the submission.

Response Content

The Response should include the following information in the order specified:

1. Information regarding the business, including:
 - a. The legal name of the business.
 - b. If a Corporation, list of names and addresses of all officers and directors; or if a partnership, list of all partners.
 - c. List any parent company or subsidiaries and identify any companies proposed to be used as a subcontractor.
 - d. Number of years the organization has been in business under the present business name. If conducted towing operations under another name, please explain.
 - e. Hours of towing services on weekdays, weekends, and holidays.
 - f. Describe the size and location of the physical facility. Include the square footage available to store and secure towed vehicles, fenced-in areas, yards, buildings, etc. Indicate whether the property is owned or leased. If leased, attach lease.
 - g. List of all tow trucks by make, model, and engine or identification number, and if they are owned or leased. In the case of leased equipment, indicate the owner of that equipment and attach lease.
2. Statement confirming agreement to accept all of the terms as specified in numbers 1 through 13 under paragraph above entitled "Terms of Professional Services Agreement". Respondent shall clearly and specifically identify any of the terms to which it objects or with which it is unable to comply. Unless Respondent has identified a term or terms to which it objects or cannot comply,

it will be deemed by the City that Respondent agrees to all of the terms of the PSA and Respondent will be required to enter into the PSA, Attachment A.

3. Proof of ownership or lease, for the term of the Agreement, of premises meeting the requirement of a facility for the dispatch of tow trucks 7,500 square feet of storage space and location in the City of Rochester.
4. Proof of ownership or lease, for the term of the Agreement, of at least four (4) operating tow trucks as described in Section 2.05 of the PSA. Leased vehicles shall be leased on a year round basis.
5. Proof of a current towing company license pursuant to Chapter 108A of the Code of the City of Rochester and Section 401-b of the New York State Vehicle and Traffic Law.
6. Proof of insurance as required by Section 5.02 of the PSA.
7. Written commitment to pay covered employees a living wage and list of job titles and wage levels of covered employees.
8. Proof of the legal use of the Towing Agency Premises in the form of a Certificate of Zoning Compliance or other document acceptable to the City.
9. Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.
10. List of references for clients receiving similar services.
11. Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Respondent's workforce and that of any subcontractors who will be utilized.
12. Statement as to whether the Respondent will be available to provide emergency towing services in order to be on the City's Emergency List, as described in section 2.01C of the PSA, even if its submission is not chosen by the City to provide regular towing services. In such case, the City may enter into a separate agreement for emergency towing services.
13. If requested by the City Director of Finance, financial information shall be provided as necessary to permit the Director to determine whether a Towing Agency has the financial ability to successfully complete the responsibilities of the Towing Agreement.

Evaluation Criteria

The following is a summary of the evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria.

Response: A complete submission that demonstrates the Respondent's comprehension of the needs of the City based on the responses to this RFI.

Experience: The Respondent's relevant experience in providing the same or similar services.

References: Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

MWBE and Workforce Goals: The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to

encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Respondents who are New York State certified MWBEs. Respondents who meet this requirement shall receive **an additional weighting of 10%**.
2. The City will give preference to Respondents who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the Respondent shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Respondent shall receive an **additional weighting of 10%**.
3. Respondents shall provide sufficient documentation with their submissions to support the additional preference weighting as an MWBE Respondent or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.
 - a. If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Respondent shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the PSA.
4. The City will give preference to Respondents who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Respondents who demonstrate that their and/or their subcontractors' workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer. Once reviewed, the Workforce Staffing Plan shall be incorporated into the PSA. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.
5. If selected, the Respondent shall provide MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the

Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.

7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

Category of Additional Evaluation Points	Additional Weight Awarded
Respondent is New York State Certified MWBE	10%
Utilize MWBE Subcontractors for 10-20% of work	5%
Utilize MWBE Subcontractors for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

Towing Agencies are required to be located in the City of Rochester.

Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

The selection of a Towing Agency is within the City's sole discretion and no reasons for rejection or acceptance of a submission are required to be given. The decision will be based on qualifications and compliance with the requirements of this RFI. The City reserves the right to reject any or all submissions or to accept a submission that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the submissions and negotiate with Towing Agencies to serve the City's best interest.

Miscellaneous

The City reserves the right to amend or withdraw this RFI in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The submission and all additional materials submitted shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted, it must be clearly identified and a request to keep such information confidential must be submitted. Submission shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a PSA.

ATTACHMENT A

AGREEMENT FOR TOWING SERVICES

THIS AGREEMENT, entered into on the _____ day of _____, 2021, by and between the **CITY OF ROCHESTER**, a municipal corporation having its principal office located at City Hall, 30 Church Street, Rochester, New York 14614, hereinafter referred to as the "City", and _____, with offices located at _____, Rochester, New York, _____, hereinafter referred to as the "Towing Agency".

WITNESSETH:

In consideration of the mutual covenants, terms and conditions contained herein, the parties hereby agree to the following:

ARTICLE I GENERAL PROVISIONS

Section 1.01 Statement of Purpose

The parties hereto mutually agree that the purpose of this Agreement is to protect the health, safety and welfare of all persons in the City of Rochester by promoting the unobstructed flow of traffic in the City. The City will utilize private towing agencies, pursuant to individual Agreements for Towing Services, (hereinafter also referred to collectively as "Towing Agencies"), to furnish towing services to the City on a rotational basis for the towing of illegally parked, damaged, disabled, recovered stolen or abandoned civilian vehicles in the public right-of-way and on private property, as well as City owned or leased vehicles operated by the Rochester Police Department (hereinafter "RPD Vehicles") in the most modern, expeditious, reliable and workmanlike manner.

Section 1.02 Scope of Services, Fees & Representations

Towing services as may be required and the fees to be paid for them are more fully set forth in Appendix A attached hereto. Towing Agency hereby represents that it possesses the equipment, personnel and expertise to execute the terms and conditions of this Agreement. All such equipment shall be of merchantable quality and fit for their purpose.

ARTICLE II SPECIFICATIONS

Section 2.01 Towing Procedures

The following procedures shall be applicable to each Towing Agency providing towing services under an Agreement for Towing Services (hereinafter "Towing Agreement"):

A. Rotation System

1. All Towing Agencies who enter into a Towing Agreement shall be placed on a towing services rotation list established by the Chief of Police or his designee(s). The list will be made available to the Emergency Communications Department (hereinafter "ECD") who shall assign the requests for towing services which come into the Rochester Police Department (hereinafter "RPD") to the different Towing Agencies on a strict rotation basis. If, for any reason, the Towing Agency assigned to a call indicates to the ECD Dispatcher (hereinafter "Dispatcher") that it cannot accept the assignment or fails to respond to the Dispatcher after three (3) attempts via the RPD tow channel, within five (5) minutes, the Dispatcher may assign the call to the next Towing Agency on the list. A Towing Agency which indicates that it cannot accept a call when assigned by the Dispatcher, or which fails to respond, will forfeit its turn in rotation and will not again be assigned a call until the next rotation. Upon the acknowledgment of the towing assignment, the Dispatcher will inform the Towing Agency of the year, make and model of the vehicle being towed, to ensure that proper equipment is being dispatched.
2. A Towing Agency will be assigned for each incident, and such Towing Agency shall provide as many tow trucks as are necessary to remove the cars involved in that incident. If the assigned Towing Agency cannot supply enough trucks to remove all the cars, each succeeding Towing Agency on the list will be assigned the call until enough tow trucks are available.
3. If a situation arises in which special towing equipment is required, which equipment is not mandatory under this Agreement, the Dispatcher shall assign the call to the next Towing Agency on the list which has the special equipment. A Towing Agency not equipped to handle the assignment requiring special towing equipment shall not forfeit its turn in rotation. The Towing Agency assigned to the call will not again be assigned a call until the next rotation.
4. Nothing herein shall prevent the City from engaging the services of a heavy duty tow truck to respond to situations where two regular duty trucks, in tandem, are unable, or due to safety, not able to complete a dispatched towing assignment, or where vehicles in excess of 26,000 GVW are to be towed.

5. In the event that a Towing Agency privately contracts for towing services at a road or bridge construction project, towing services performed pursuant to such contract shall not constitute a turn in the rotation under this Agreement and the Towing Agency will be eligible for a towing assignment in the regular rotation, provided that it has not preempted a normal assigned call.
6. The Towing Agency shall tow disabled RPD vehicles within Monroe County at no cost to the City and outside Monroe County at the rate set forth in Appendix A, however the City will make every reasonable effort to use its own RPD tow truck to tow disabled RPD vehicles from 7:00AM until 11:00 PM.

B. Response Time

1. After receiving a call for service from the Dispatcher, a tow truck must respond to the call by radio or phone and proceed to the scene within five (5) minutes. The Towing Agency that fails to respond to the Dispatcher either by radio or phone within five (5) minutes after the Dispatcher transmits a call may be denied the privilege of rendering towing services for that incident.
2. The Towing Agency must be able to arrive at any point in the City within twenty (20) minutes from receipt of the call for service, during non-rush hour traffic, (rush hours are defined for purposes of this Agreement, as 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M., Monday through Friday), except where the Towing Agency is called to the Charlotte area where it must arrive within thirty (30) minutes from receipt of the call for service, or as soon thereafter as reasonably possible, depending on weather conditions, traffic or other traffic effecting events.
3. If the Towing Agency is unable to respond to a request for towing services under this Agreement, or will not be able to arrive at the scene within twenty (20) minutes from receipt of the call for service, due to rush hour conditions or for other reasons, it must notify the Dispatcher of such fact. The Dispatcher will then either: 1) inform the Towing Agency that the Dispatcher will assign the job to the next Towing Agency on the rotation list and the Towing Agency first assigned will forfeit its turn, or 2) if the Towing Agency first assigned can proceed to the scene but will be delayed in arriving due to unusual circumstances, the Dispatcher may authorize the Towing Agency to proceed to the scene. The exercise of discretion by the Dispatcher in telling the Towing Agency to proceed or not to proceed in such circumstances shall be final.
4. Repeated failure to answer calls within the response time specified in this Agreement shall be deemed inability to provide the required standard of service. Three (3) such failures in a three (3) month period shall constitute a default in the performance of this Agreement and shall be a basis of termination in accordance with Section 6.01 "Termination for Default".

5. Towing Agencies may not refer calls from the Dispatcher to other towing firms. In all cases, whenever the Towing Agency is unable to handle an assignment, for whatever reason, the Towing Agency shall advise the Dispatcher immediately and the Dispatcher will assign the call according to the terms of this Agreement.
6. Tow trucks shall not use amber lights in proceeding to a call.

C. Special Emergencies

1. The Chief of Police shall establish an Emergency Towing Services List ("Emergency List") which shall include but not be limited to all Towing Agencies. This Emergency List shall be used whenever the Chief of Police, his designee, or any lawful authority determines that an emergency situation exists and that a large number of vehicles must be quickly removed from City streets.
2. Because an emergency situation requires prompt response, a strict rotation basis will not be used. However, the Towing Agencies will be given priority in providing the tow trucks required during the period of emergency. The Dispatcher will assign tow trucks to calls as the tow trucks become available. If the Towing Agencies are not able to supply the number of tow trucks required during the emergency, the Chief of Police, or his designee, in his sole discretion, shall seek to engage tow trucks from towing agencies which are on the Emergency List.
3. Only Towing Agencies shall be assigned to accident calls during the period of emergency. The duration and extent of towing services required during an emergency shall be determined solely by the Chief of Police, or his designee, and no amount of work during an emergency shall be guaranteed. A reasonable effort shall be made by the Dispatcher to distribute the towing during an emergency among the Towing Agencies on the rotation list as evenly as possible and to assign Towing Agencies to geographic areas closest to their home base of operations.
4. The Police Department may request the use of tow trucks at the scene of an emergency on a stand-by basis (hereinafter "Emergency Stand-by"). The duration and extent of such Emergency Stand-by status shall be determined by the ranking police officer at the emergency scene. No amount of work will be guaranteed to the Towing Agency for such stand-by status. The Towing Agency shall be paid for Emergency Stand-by status as set forth in Appendix A.

D. Declared Emergencies

1. During declared emergencies, the Towing Agency shall dedicate and provide the use of at least four (4) tow trucks and four (4) operators to the service of the City. For the duration of such emergency, the Towing Agency shall not assign the dedicated vehicles to perform other private towing services unless specifically released by the Chief of Police or his designee. In the event of a dedicated vehicle becoming disabled or inoperable, the Towing Agency shall make every reasonable effort to return the vehicle to operation rapidly or obtain a replacement vehicle during the duration of the declared emergency.
2. Other than the four (4) tow trucks and four (4) operators dedicated to the service of the City as set forth in Section 2.01.D.1 above, during a declared emergency, at the discretion of the Chief of Police, all of the Towing Agency's remaining vehicles shall be subject to the provisions of Section 2.01.C above.
3. The parties mutually agree that the availability and dedication of such vehicles is deemed necessary to the health and welfare of the citizens of the City of Rochester. Therefore, in the event that the Towing Agency does not provide and dedicate four (4) operating tow trucks during a declared emergency, one or more of the following penalties shall apply, in the sole discretion of the Chief of Police or his designee:
 - a. Replacement towing services may be obtained from other towing agencies and any charges in excess of those agreed to herein will be deducted from any sums due to the defaulting Towing Agency.
 - b. The defaulting Towing Agency may be suspended from receiving non-emergency towing calls for a period of up to thirty (30) days.
 - c. Declaration of default in accordance with Section 6.01, "Termination for Default".

E. Towing Scene

1. Amber lights shall be used at the towing scene.
2. Towing Agencies shall not remove accident-involved vehicles prior to the arrival of a police unit, and only then with the permission of the assigned police unit. The Towing Agency shall not receive additional payment in the event that the Towing Agency is required to wait for permission to remove the vehicle. Such waiting time shall not constitute "stand-by" time, for which compensation may be obtained only in the event of emergencies and special events as set forth herein.

3. All personnel operating tow trucks shall be qualified and experienced in handling equipment safely on the scene, and in going to and from the scene.
4. Tow truck operators must comply with all safety regulations, the Vehicle and Traffic Law of the State of New York and the Code of the City of Rochester.
5. The Towing Agency shall be responsible for removing vehicular glass and/or other debris from the area of the accident scene as a result of a traffic accident, in conformance with New York State Vehicle and Traffic Law, Section 1219(c).

F. Damage to Vehicles and Towing to Auto Pound

1. The Towing Agency shall assume responsibility for all damage done to, or loss from, a vehicle while it is being towed and while the vehicle is stored at the Towing Agency's place of business. Insurance for such loss or damage is required as set forth in Section 5.02. Claims for loss, theft, and/or damage to contents and parts of a vehicle, or the vehicle itself, while being towed or while stored at the Towing Agency premises will be made against the individual Towing Agency.
2. All illegally parked, abandoned, or disabled vehicles, as well as vehicles towed pursuant to an arrest and recovered stolen vehicles shall be towed to the City Colfax Street Auto Pound ("Auto Pound") or other area designated by the RPD. In the event that it becomes necessary to open a remote auto impound lot, the Towing Agency will not be required to first go to the Auto Pound and that intake processing will be performed at the remote lot. The City will notify the Towing Agency as soon as possible after the opening of a remote lot.

G. Accident Vehicles

1. Accident vehicles shall be towed, at the owner's option, either to any location of the owner's choice within the City limits, or to the Towing Agency's premises. Payment for such towing and other services must be obtained directly from the vehicle owner and will not be reimbursed by the City. Fees charged to vehicle owners shall not be greater than the fees set forth in Sections 108A-7B and 111-72G of the City Code, except that a fuel surcharge fee of \$5.00 per vehicle tow may be charged when the Rochester Area average cost per gallon of regular gasoline, as established by the AAA Fuel Price Finder, exceeds \$4.00. Under no circumstances shall towed vehicles be parked on a public street. RPD Vehicles shall be towed to the City's Equipment Services Division at 945 Mt. Read Boulevard or to another location determined by the City.

2. The Towing Agency shall not begin any repair work whatsoever to any towed accident vehicle without the express consent of the owner of the vehicle or his authorized representative, nor shall the Towing Agency move the vehicle, nor allow the vehicle or its contents to be removed from its premises without the consent of the owner or his authorized representative.
3. The Towing Agency shall not dispose of any vehicle or its contents towed under this Agreement except in accordance with local, New York State and Department of Motor Vehicles laws and regulations including written notice to the owner, sent certified mail to the owner's last known residence address or business address, if known. The Towing Agency shall allow an owner or his authorized representative to reclaim his vehicle at any time while such vehicle is under the control of the Towing Agency unless it has been directed by the RPD that such vehicle is not to be released without specific authorization by the RPD.
4. The Towing Agency shall dispose of all unclaimed accident vehicles in accordance with New York State Vehicle and Traffic Law.

H. Cancellation of Tow Trucks

1. When a tow truck has been dispatched and is hooked up to a vehicle to be towed, and it becomes necessary to cancel the tow truck due to the return of the driver of the vehicle to be towed, the police shall release the vehicle to the driver after the driver pays to the Towing Agency, the fees set forth in Appendix A. If the owner of the vehicle refuses to pay the fees, the vehicle shall be towed to the Auto Pound for routine handling and release upon payment of fees.
2. If a tow truck arrives on the scene and does not hook up to a vehicle or is otherwise not used, no payment will be due or made to the Towing Agency.

I. Assignments

A dispatched tow assignment shall be completed solely by the assigned Towing Agency for that incident. No other company is authorized to respond, intercede or pre-empt an assigned Towing Agency unless otherwise directed by that Agency through the auspices of the ECD. Failure to follow assignments shall be deemed inability to provide the required standard of service. One (1) such incident of a confirmed preempting of an assignment or "call-jumping" shall be a basis of termination in accordance with Section 6.01 "Termination for Default".

J. Citizen Request Calls

Towing Agencies receiving a dispatched towing assignment based on a request from a citizen through the ECD shall have the assignment classified as a regular rotation call if at the time of the assignment that Agency is number one on the rotation list. The Agency then shall take its assignment position at the bottom of the revolving call rotation list. If a Towing Agency receives a citizen request tow assignment from the ECD when it is not number one on the rotation list, the assignment shall not impact its standing on the list.

K. Auto Pound Towing

During the period of this agreement, Towing Agencies shall be requested to perform various towing assignments at or involving the Auto Pound and its related operation. The Auto Pound shall maintain a two month assignment rotation list that it shall utilize to call Towing Agencies to perform in-pound towing. In-pound towing assignments may consist of moving vehicles within the Auto Pound area or to the auction area and/or other assignments deemed necessary by the City. In addition, as part of the two month assignment rotation, the Towing Agency shall, as requested, tow disabled or accident RPD Vehicles from the City's Equipment Services Division at 945 Mt. Read Boulevard, to the City's vehicle dealership for warranty work. The payment for such towing shall be the fee for Towing RPD Vehicles as set forth in Appendix A. Failure of a tow company to respond or complete an Auto Pound towing assignment within the time frame requested shall be deemed inability to provide the required standard of service. One (1) such failure of assignment completion shall be a basis of termination in accordance with Section 6.01 "Termination for Default".

L. Flatbed/Dolly Towing

The Agency shall use flatbed/dolly equipment to transport a vehicle in accordance with the following guidelines:

1. For all vehicles appearing by make, model and year on a list approved by the RPD which cites the mandatory towing of such a vehicle by a flatbed/dolly to prevent damage.
2. For vehicles that do not have two inflated tires on the same axle.
3. When the Officer at the scene requests via the ECD that a flatbed truck be dispatched.
4. When the vehicle owner/operator at the scene requests that a flatbed truck be utilized to remove the vehicle.

M. Roadside Tire Removal and Replacement

Towing Agency shall, in addition to the towing services set forth above, provide roadside tire removal and replacement services as set forth below:

1. Towing Agency will be dispatched, and shall provide roadside removal and replacement of damaged tire(s) on RPD Vehicles, on a two (2) month rotational basis, starting with the next Towing Agency on the rotation from the previous Towing Agreement.
2. Towing Agency shall install City-supplied spare tire(s) as required and retain damaged tire(s) for exchange at the City's tire repair shop at 945 Mt. Read Boulevard, Bldg. 100, door 123 during its normal business hours (7:00 a.m. - 3:00 p.m., Monday - Friday).
3. Towing Agency will be consigned spare tires for this service to facilitate prompt response. Towing Agency may be required to retrieve non-standard sized tires from the City's tire repair shop if required sizes are not consigned.
4. Towing Agency shall prepare road service repair slip upon completion of job. Repair slip shall include: date, time, fleet number, service location, services performed and signature of City vehicle operator.
5. Towing Agency shall submit road service repair slip to the City's tire repair shop supervisor with each damaged tire presented for exchange.
6. Towing Agency shall invoice the City's Equipment Services Bureau for all tire services, at the rate set forth in Appendix A.
7. Towing Agency shall return all consigned tires to the City's tire repair shop within seven (7) days after termination of this agreement.

N. Special Event Stand-by

During the term of this Agreement there will be a number of special events which will attract large numbers of people and vehicles over a period of several hours or days, including but not limited to events at the Port of Rochester. Due to the unpredictable nature of parking and traffic issues at such special events, it is necessary to have an on-site towing vehicle available at all times during the event to address vehicle accidents, breakdowns and illegally parked vehicles, to have the ability to promptly respond to these issues and to ensure the proper flow of traffic. The Chief of Police will establish a special events towing services rotation list. In preparation for a special event, the City will notify the next Towing Agency on the special events list that they are required to provide one towing vehicle continuously throughout the event. The

Towing Agency will be notified of the special event at least five days before the event and will be provided with necessary information about the times and location of the event. The Towing Agency will be paid for such special events stand-by status as set forth in Appendix A.

Section 2.02 General Restrictions on Towing Agencies & Operators

- A. Towing Agencies shall not engage in business practices that reflect adverse criticism upon the City. Where such business practices are deemed by the City not to be in the best interest of the City, this Agreement may be terminated by the City.
- B. Towing Agencies personnel shall conduct themselves in a courteous and sober manner, free from alcohol and unlawful drugs, so as not to bring any undue criticism to the City.
- C. The owners of all Towing Agencies will be responsible for insuring that all of his operational personnel are properly trained and licensed and fully competent to perform the duties required under this Agreement.
- D. All tow truck operations shall be licensed in accordance with the New York State Vehicle and Traffic Law, and Rochester City Code.
- E. Towing Agencies are prohibited from giving gratuities to any employee or officer of the City and any such action by a Towing Agency will constitute grounds for the summary and immediate termination of this Agreement at the direction of the Chief of Police or his designee(s).
- F. Towing Agencies understand that any capital expenditures the Agency makes or prepares to make in order to perform the service required by this Agreement is a business risk which the Agency must assume. The City will not be obligated to reimburse amortized or unamortized capital expenditures or to maintain the approved status of any Towing Agency. If the Agency is unable to recoup its capital expenditures during the time it is rendering such services, it shall not have any claim against the City.
- G. Towing Agencies shall be allowed to enter into only one agreement with the City despite the fact that such Towing Agency may have the requisite number of towing vehicles and the required storage area for more than one agreement. The City will not enter into agreements with Towing Agencies that have common owners or partners, or common officers or interlocking directorates, or which show any form of common ownership or control. The City shall immediately terminate this Agreement with those Agencies found to have any form of common ownership or control after the date the agreements are executed by the Mayor. No Towing Agencies under this Agreement shall share any vehicles, equipment, buildings or storage areas required

under this Agreement.

- H. Towing Agencies must have at least two (2) years of demonstrated experience in operating a commercial towing agency. Towing must be the primary business of such Agency.
- I. Towing Agencies shall not utilize any information obtained as a result of a towing assignment under this Agreement for the purpose of notifying owners of towed vehicles to solicit additional business. Such information shall include any and all data provided by the Office of Emergency Communications regarding the dispatch of the Towing Agency and any and all information provided by the towing officer via the Rochester Police Department Tow Ticket.
- J. The Towing Agency understands that certain towing assignments may involve or be related to RPD investigations or other police activities. Towing Agency's employees shall not disclose to anyone outside the Towing Agency, the identity of vehicles or the owners of those vehicles being towed and any information concerning any towing assignments shall remain confidential.
- K. Towing Agencies will be reviewed and evaluated every six months for qualifications, equipment, response and quality of services rendered. Field inspections will be conducted under the supervision of the Chief of Police and Director of Zoning.

Section 2.03 Towing Premises and Operations

The Towing Agency's premises must meet the following standards and the Towing Agency shall meet the following operational requirements:

- A. The Towing Agency must own or lease for the duration of this Agreement suitable premises to include, but not be limited to facilities for the dispatch of tow trucks and no less than seven thousand five hundred (7,500) square feet of space for the storage of towed vehicles, to perform the services required under this Agreement. The Towing Agency, when inspected by the RPD, must demonstrate that it has ownership, or a lease for the term of this Agreement, of all real estate and equipment required under this Agreement. Approval of all equipment and premises shall be determined by the Chief of Police or his designee and it shall be at his sole discretion although not unreasonably withheld. All Towing Agency premises necessary to perform the services required under this Agreement must be located in the City of Rochester. All leases must be kept current throughout the term of this Agreement and the Towing Agency shall notify the City immediately upon the termination of any of its leases.

- B. The Towing Agency's storage facilities must be open and accessible to persons seeking to recover their vehicles from 9:00 A.M. to 6:00 P.M., daily, and if the Towing Agency performs towing services after 5:00 PM, until at least one hour after the latest time the Towing Company performs towing services, unless the vehicle is towed to the Auto Pound.
- C. The Towing Agency's premises, including dispatch, storage or any other business areas must conform with the local Zoning Code, Fire Prevention Code, Building Code and all other applicable codes throughout the term of this Agreement. The Towing Agency must secure a written certificate from the Director of Zoning or the appropriate zoning official in the town or village in which the Towing Agency's premises are located stating that the premises are in compliance with local zoning provisions. After a Towing Agency has initially met code requirements, any failure to remain in compliance during the term of this Agreement shall, upon ten (10) days' written notice to the Towing Agency by the City, be sufficient cause to terminate this Agreement.
- D. The Towing Agency's premises (to include dispatch, storage and any other business areas) must be properly identified by signs on the exterior of the structure. All signs are subject to the approval of the Director of Zoning.
- E. A reasonable state of cleanliness must be maintained. Working areas, interior and exterior structures shall be kept free of debris and/or articles inappropriate or inconsistent with the operation of a towing service.
- F. The Towing Agency shall furnish to the City of Rochester the name and address of any answering service used to accept calls from the Dispatcher.

Section 2.04 Tow Operators

- A. The Towing Agency shall have at least one (1) qualified tow truck operator available twenty-four (24) hours per day except at least two (2) qualified operators must be available each day between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, exclusive of holidays.
- B. The Chief of Police may, in his discretion, waive the requirement that a Towing Agency have a qualified tow truck operator on duty beyond normal business hours (as set forth above) provided that the Towing Agency meets all other requirements and performance standards as set forth herein. However, if the Towing Agency does not have a qualified tow truck operator on duty when it is called in rotation, the Agency will forfeit its turn in rotation and will not again be called upon until all other agencies on the list have been called.

- C. The Towing Agency hereby agrees that it has, or will have, on its staff and will retain during the term of this Agreement, all required professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- D. The Towing Agency further agrees to insure that its agents or employees shall possess the training, experience, knowledge and character necessary to qualify them individually for the particular duties they will perform under this Agreement.

Section 2.05 Tow Trucks

- A. The Towing Agency must own or possess at least four (4) operating tow trucks on a year-round basis, which trucks must be capable of performing all work under this Agreement.
 - 1. A tow truck is herein defined: A motor vehicle which has been designed, manufactured, equipped for and used in the business of towing other vehicles by hoist, tow-bar, tow-line, or dolly or is otherwise used to render assistance to other vehicles by crane or winch, special tools, or special electrical and hydraulic connections.
 - 2.
 - a. Tow truck chassis shall be manufacturer's rated three-quarter (3/4) ton capacity, four (4) wheel drive and/or manufacturer's rated one (1) ton capacity, two (2) wheel drive with dual rear wheels.
 - b. Wrecker (broom and winch) shall be manufacturer's rated three (3) ton capacity, capable of towing all makes and models of automobiles and pick-up trucks.
 - 3. Of the four (4) required operating tow trucks, a minimum of one shall be a flat bed truck.

WHEEL LIFT - GENERAL SPECIFICATIONS

- a. Wheel lift boom shall be hydraulically extended and retracted, lowered and lifted, and titled up and down by means of 3 independently controlled cylinders.
- b. WHEEL CARRIAGE

The wheel lift shall be equipped with a wheel carriage that is easily adjustable in width by use of positive locking plunger pins.

4. A tow truck shall not be equipped with a siren or display the word "police".
5. Equipment utilized under this Agreement shall comply with the Vehicle and Traffic Law of the State of New York and all applicable rules and regulations of the Commission of Motor Vehicles. The equipment shall be in excellent operating condition and shall be subject to the inspection of the Police Department. All equipment utilized under this Agreement must be approved by the Chief of Police and the City Fleet Services Manager.
6. To avoid confusion by vehicle owners, any insignias or signs for private road service businesses such as AAA or similar companies which are displayed on tow trucks, shall be removed or covered when providing towing services under this Agreement.

Section 2.06 Carry-On Equipment

- A. The following minimum equipment shall be carried by each truck while on call:
1. One (1) heavy duty push boom.
 2. One (1) shovel to spread absorbent material, over oil slicks on streets and highways.
 3. A flashing amber light mounted on the cab or top of the boom, visible to all approaching traffic under normal atmospheric conditions from a distance of five hundred (500) feet in compliance with Section 375(41) of the New York State Vehicle and Traffic Law.
 4. Two (2) while sealed-beam spotlights with a minimum lens diameter of four (4) inches mounted on the rear so as to illuminate the scene at night.
 5. All clearance lamps, head lamps, tail lamps, stop lamps, flags, flares and fuses necessary to comply with the New York State Statutes and the Code of the City of Rochester.
 6. One (1) pitch-bar or crow-bar thirty-six (36) inches in length.
 7. One (1) U.L. Approved, dry-chemical fire extinguisher of not less than five (5) pound capacity.
 8. One set of tools used for opening vehicles.
 9. All tow trucks shall be properly identified by displaying in a conspicuous location, on both sides of all tow-trucks, the name, business address, and

business number of the Towing Agency, in letters not less than three (3) inches in height, of a color contrasting to the background upon which they are painted.

10. A twenty-five (25) pound supply of absorbent material to be used to spread over oil slicks on streets and highways.
11. A dolly or suitable device to transport vehicles, in the event the usual wheels are inoperable, must be immediately available if not actually carried on the tow truck itself.
12. A two way communications system between the tow truck operator and ECD, to consist of either:
 - a. A two-way radio capable of operation with ECD on the Monroe County trunked radio system.
 - b. A mobile/cellular phone capable of direct communications from the tow operator to ECD.

ARTICLE III. TERM OF AGREEMENT

This Agreement shall take effect on _____ and shall terminate on _____.

ARTICLE IV. FEES

A. Generally

1. The Towing Agency agrees to accept the fees for towing services rendered under this Agreement as set forth in Appendix A, attached hereto and made a part hereof. No other fees may be levied without the prior written approval of the City. During the term of this Agreement, the Towing Agency may request approval from the City to impose charges only for new services that were not offered at the time of the commencement of this Agreement, and which were not contemplated or generally accepted as a towing service at the time of the commencement of this Agreement.
2. All fees stated herein are subject to the approval of the City Council of the City of Rochester.
3. The fees set forth in Appendix A shall apply in all weather conditions and during all times of the day and shall include all activities normally required in conjunction with towing a vehicle. In his sole discretion, the Chief of Police

may authorize fees for additional towing related services performed by a Towing Agency, where such services are necessitated by extreme weather conditions or other exceptional circumstances surrounding the vehicle to be towed or the towing site. Requests for payment for additional services shall be submitted with the towing report that is submitted when a vehicle is brought to the Auto Pound. The request must include a complete explanation of the justification for additional services in sufficient detail to allow the Chief of Police to make a decision as to whether the additional services were warranted.

4. The Towing Agency must submit duly executed and itemized vouchers to the City of Rochester on a monthly basis. No payment shall be made to a Towing Agency except upon submission of a duly executed voucher.
5. Charging fees in excess of those set forth in Section 111-72 of the Code of the City of Rochester, or in excess of reasonable fees (by local standards) for services performed where no fee is set forth herein shall be cause for termination of the Agreement by the City.
6. The Towing Agency must submit on the RPD Tow Report an itemization, by fee and by service rendered, if the Tow Agency seeks, at any time, a combination of the fees set forth in Appendix A. All final decisions concerning payment of fees shall be in the sole discretion of the Chief of Police.

B. Storage Fees

The storage fees set forth in section 111-72G of the City Code, for storage of a vehicle at the Towing Agency's premises, shall be paid by the owner or operator of the vehicle directly to the Towing Agency.

C. Mileage Fees

Except as specifically authorized in Article II, Section 2.01G, when a Towing Agency tows a vehicle pursuant to a call from ECD, the Towing Agency shall not add any mileage fees to the towing fee for towing within the City, or to the Towing Agency's premises.

D. Service Calls

When a Towing Agency is assigned to a call by the Dispatcher and is required only to provide service to a vehicle at the scene, without a tow, the service fees shall be agreed to between the owner of the vehicle and the Towing Agency, provided that such fees shall not exceed those set forth in Appendix A for all charges connected with a normal call including all charges for up to twenty (20) minutes of diagnosis or

correction of fuel, ignition or power train failures, changing of one (1) wheel, tire, recharging a battery or moving a disabled vehicle to the road shoulder. Additional reasonable fees may be added if further services are required. Service fees shall be paid by the owner or operator of the vehicle directly to the Towing Agency. Service calls for RPD vehicles shall be paid by the City at the rate set forth in Appendix A. There shall be no additional charge for multiple services during a service call, (e.g. tire change and jump start).

ARTICLE V INDEMNITY AND INSURANCE

Section 5.01 Towing Agency's Liability

The Towing Agency hereby agrees to defend, indemnify and save harmless the City against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of carrying out of any of the provisions or requirements of this contract, where such loss or expense is incurred directly or indirectly by the City, its employees or agents, as a result of the negligent act or omission, breach or fault of the Towing Agency, its agents, employees or contractors. If a claim or action is made or brought against the City and for which the Towing Agency may be responsible hereunder in whole or in part, then he shall be notified and shall be required to handle or pay for the handling of the portion of the claim for which he is responsible as a result of this contract and the services performed pursuant thereto.

A. Notice of Complaints

The Towing Agency hereby agrees to notify the City, in writing, within ten (10) days of receiving any complaint or claim relative to any towing service provided by the Towing Agency, or any charge for such service covered by this Agreement. The Towing Agency agrees to cooperate with the City, with the Better Business Bureau of Rochester, Inc., and with any other investigative organization in the investigation of the validity of such complaint.

B. Notice of Claim

The Towing Agency hereby agrees to notify the City, in writing within ten (10) days of receiving written notice of any action or proceeding in law that has been or will be made against the Towing Agency where it reasonably appears that a recovery in such action or proceeding may exceed the Towing Agency's insurance policy limits. The Towing Agency further agrees to report to the City, in writing, of the progress of such action or proceeding in law, until such time that such action or proceeding has been withdrawn or settled.

Section 5.02 Insurance

- A. The Towing Agency, in its own name, shall secure and keep fully in effect for the period of this Agreement, and pay the premiums for all policies of insurance set forth in B. below. Such insurance shall be from an insurer licensed in the State of New York with a BEST rating of no less than A with a financial strength of X. At the time of execution of this Agreement and before commencing work, the Towing Agency shall furnish to the City's Agent a certificate (or certificates) of insurance, in a form satisfactory to the City, showing that it has complied with this section. The certificate (or certificates) shall provide that the insurance policies not be changed or canceled without thirty (30) days prior written notice to the Chief of Police.

- B. The certificate shall also provide that the City is an additional named insured on the insurance policies enumerated below and the policies shall provide that municipal operations, employees and property are not excluded from coverage. The kinds and amounts of insurance required are as follows:
 - 1. Liability Insurance in amounts of not less than One Million Dollars (\$1,000,000), each person for bodily injury each occurrence, with a Two Million Dollar (\$2,000,000) umbrella coverage and Three Hundred Thousand Dollars (\$300,000) for property damage with an insurance company acceptable to the City of Rochester.

 - 2. Garage Keepers Legal Liability Insurance covering damage to vehicles while stored on the Towing Agency's premises in an amount of Three Hundred Thousand Dollars (\$300,000).

 - 3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles in amounts as indicated in paragraph 1 above.

ARTICLE VI. TERMINATION

Section 6.01 Default by Towing Agency

- A. This Agreement may be terminated immediately by the City whenever the Towing Agency is in default in the performance of this Agreement. Failure to comply with or perform any material provision or requirement of this Agreement shall constitute a default and any such default shall not be limited to the specific instances of default set forth throughout the Agreement. This Agreement will terminate immediately upon delivery of a written notice to the Towing Agency in default.

- B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Towing Agency shall be liable to the City for any excess cost occasioned thereby.

- C. In the event of termination, the Towing Agency shall be paid the fees for services rendered prior to the termination.
- D. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Towing Agency was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the Section 6.02 of this Agreement entitled "Termination for the Convenience of the City."
- E. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

Section 6.02 Termination for Convenience of the City

This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Towing Agency. The Towing Agency shall be paid the fees for services already rendered.

Section 6.03 Alternative to Default Termination

In lieu of termination for default, the City may, in its sole discretion and for any reason whatsoever, elect to take the defaulting Towing Agency out of the rotation system for a period of two (2) weeks, during which time the Towing Agency must establish to the City's satisfaction that the default in performance of the terms of this Agreement have been corrected and will not reoccur.

ARTICLE VII RECORDS

Section 7.01 Requirements

- A. During the term of this Agreement and for a period of three (3) years from the date this Agreement expires, the Towing Agency shall keep and maintain appropriate records (hard-copy records in addition to any computer records), satisfactory to the City of Rochester, which provide complete details concerning calls for towing service pursuant to this Agreement including but not limited to: vehicle description and vehicle identification number, license number, reason for tow service, owner/operator's name, condition of towed vehicle, date towed, date disposed of by towing agency, written inventory of personal property, if any, inside towed vehicle, including trunk, if accessible.

- B. The Towing Agency shall keep and maintain records of revenues derived from this Agreement by the Towing Agency. Such records of revenues shall be classified into specific categories, as outlined in the fee schedule attached hereto as Appendix A.

Section 7.02 Audit and Inspection

- A. The City shall have the right throughout the term of this Agreement, and without advance notice and until three years after expiration of this contract, to remove and examine any books, ledger, documents, papers and records concerning this Agreement. In addition, the towing Agency agrees to provide the necessary staff support to assist the City in its audit.
- B. In addition, the City may, from time to time, request information from the Tow Agency, at no cost to the City, in order to review billings to determine appropriateness of charges consistent with this Agreement, and the frequency of such charges. In addition, the City may request, at no charge to the City, copies of records relating to specific towed vehicles.
- C. In addition, the City shall be permitted to inspect the Towing Agency's premises and equipment without advance notice.

Section 7.03 Financial Integrity

- A. Upon request at any time during the period of this Agreement, the Towing Agency shall provide to the City, any information reasonably requested by the City, concerning financial responsibility of the Towing Agency, proof of ownership, or availability of any land, equipment, facilities, supplies and personnel required pursuant to this Agreement.
- B. The Towing Agency shall demonstrate to the reasonable satisfaction of the City that it possesses the requisite financial ability to acquire and maintain all equipment and facilities required pursuant to the Agreement for the full term of this Agreement, and that it possesses the requisite personnel and technical skill to perform towing services at a professional level of competence, considering particularly the scope of services required pursuant to this Agreement.

ARTICLE VIII.

ADDITIONAL LEGAL PROVISIONS

Section 8.01 Authorized Agents for the City and the Towing Agency

- A. The City hereby designates:
Commanding Officer Technical Services
Rochester, New York 14614
(585) 428-6723
- B. The Towing Agency hereby designates:
Contact Person
Towing Agency
Address
Rochester, New York _____
Phone

or their authorized representatives in case of absence as the Authorized Agents of the City or the Towing Agency for receipt of all notices, demands, vouchers and other communications and all orders, permissions, and directions pursuant to this Agreement, which shall be sufficiently communicated, given and/or delivered if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The City and the Towing Agency reserve the right to designate other or additional Authorized Agents upon written notice to the other party which shall be signed by the Authorized Agent of the part designating such additional Authorized Agents.

Section 8.02 Meetings

Representatives from the Towing Agencies and the City shall meet from time to time to discuss the implementation of this Agreement and to develop solutions to any actual or potential problems arising out of the implementation of this Agreement. No representative shall have the authority to change any provision of this Agreement except as provided herein.

Section 8.03 Workers' Compensation

This Agreement shall be void and of no effect unless the Towing Agency shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the state of the Towing Agency's residence, whichever may apply. The Towing Agency shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage have been secured. In the alternative, Towing Agency shall provide proof of self-insurance or shall establish that Workers' Compensation

and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.

Section 8.04 Compliance With Labor Laws

The Towing Agency specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220-a, 220-d, 220-3, and 222 of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Towing Agency shall, however, comply with all state, federal and local non-discrimination and equal opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Towing Agency has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

Section 8.05 Compliance with All Laws

The Towing Agency agrees that during the performance of the work required pursuant to this Agreement, it, and all employees working under its direction shall strictly comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of the work required by this Agreement. Furthermore, each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

Section 8.06 Prohibition Against Assignment

The Towing Agency is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any of its contents, or of any right, title or interest therein, or of the power to execute this Agreement, to any other person or corporation without the previous consent, in writing, of the City of Rochester, which shall not be unreasonably withheld.

Section 8.07 Equal Employment Opportunity

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV - Contract Compliance. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall comply with all State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

C. Compliance

The Towing Agency shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Towing Agency shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status in the performance of services or programs pursuant to this agreement. The Towing Agency agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Towing Agency, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status or discriminate against any person who is qualified and available to perform the work to which the employment relates. The Towing Agency agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and

other forms of compensation, and selection for training, including apprenticeship. The Towing Agency agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Towing Agency, reflecting this non-discrimination policy.

2. If the Towing Agency is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status, by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination, and the Towing Company shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Towing Agency can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
3. The Towing Agency shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

Section 8.08. Living Wage Requirements

A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Consultant under this Agreement shall equal or exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to equal or exceed fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made

on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

Section 8.09 Compliance With MacBride Principles

The Towing Agency agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride Principles. A copy of the MacBride Principles is on file in the Office of the Director of Finance.

Section 8.10 Status as Independent Contractor

The Towing Agency, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Towing Agency shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

Section 8.11 No-Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

Section 8.12 Law

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

Section 8.13 Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's authorized agent, except for those amendments provided for in this Agreement.

Section 8.14 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

Section 8.15 Title VI of the Civil Rights Act of 1964

The City of Rochester hereby gives public notice that it is the City's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with the City. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

Section 8.16 Freedom of Information Law

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Towing Agency provide the City with any records it deems confidential and exempt from FOIL, Towing Agency shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Towing Agency of the request and give Towing Agency ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records shall be disclosed, Towing

Agency may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Towing Agency's appeal within ten (10) business days. If the City issues an adverse determination, Towing Agency may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

Section 8.17 Obligations Limited to Funds Available

The parties specifically agree that the Towing Agency's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Towing Agency, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

CITY OF ROCHESTER

By: _____
Lovely A. Warren
Mayor, City of Rochester

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this _____ day of _____, 2021, before me the subscriber, personally came LOVELY A. WARREN, known, who being by me duly sworn, did depose and say that she resides in the City of Rochester; that she is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that she signed her name to the foregoing instrument by virtue of the authority vested in her by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

Notary Public

TOWING AGENCY

By: _____
Name:

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On the _____ day of _____, 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

APPENDIX A

Towing Rate Schedule

<u>Service</u>	<u>Rate</u>
Standard tow fee (regular/flatbed)	\$ 114
MVA, traffic violations, mechanical problems, snowbound vehicles, snow emergencies, etc.	
Relocate vehicles	
First vehicle- standard tow fee applies.....	\$ 114
Additional vehicles (including chip-seal, parades, construction, etc.)	\$ 25
Additional snowbound vehicles.....	\$ 54
Additional services	
Brake inspections requested by RPD and additional services approved by the Chief of Police to include but not limited to winching, use of go-jacks, removal from parking garages, etc. (15 minute increments)	\$ 77/hour
In Pound towing	
Per tow truck/per hour (15 minute increments)	\$ 77/hour
Towing RPD vehicle within Monroe County	no charge
Towing RPD vehicle outside of Monroe County	
Per mile beyond the Monroe County line (round trip)	\$ 3 per mile
Towing private vehicles outside of Monroe County	
Standard tow fee applies. Mileage per mile beyond the Monroe County line (round trip)	\$ 3 per mile
Service Call- RPD or private vehicle (<i>only one fee per event</i>)	\$ 77
Jump starts, lock outs, out of gas, tire change, moving a disabled vehicle to the shoulder of the road, etc. (<i>Service calls provided to private vehicles must be billed directly to vehicle owner and will not be paid by City</i>)	
Special Event or Emergency Standby	\$ 55/hour
(per hour in 15 minute increments with a minimum of one hour)	
<ul style="list-style-type: none">Special Event standby will be requested in advance of the event. (This rate will include relocations)	
<i>(If a vehicle is impounded, the normal towing rate will apply and the standby rate will cease during the towing and impound period.)</i>	

*Emergency standby will be used for a critical incident.

*No standby time will be paid for a standard tow.