



BURLINGTON POLICE DEPARTMENT
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TO: **Board of Finance**

FROM: Lise E. Veronneau, Business Administrator 
BURLINGTON FIRE & POLICE DEPARTMENTS

DATE: November 22, 2011

RE: Tow Contract for 2011 - 2015

To follow-up on the update given to the Board of Finance on October 17, 2011 requesting an extension on the current Tow Contract and subsequently having been granted permission to extend the current agreement till January 2012, we now have a final draft of the edited contract as reviewed and approved by the City Attorney.

Gene Bergman has also drafted the resolution for the City Council, copy attached, should the Board of Finance approve this contract award to Spillanes Towing and Recovery located at 7 Commerce Avenue in South Burlington, Vermont.

There are some operational and security language edits that were made to the 2007 agreement and are reflected in the attached agreement that is to run through June 30, 2015.

Thank you for your attention and consideration of this request.

CC: Michael Schirling, Chief of Police
Walter Decker, Deputy Chief
Eugene Bergman, City Attorney
John King, Parking Manager

Respect ~ Honor ~ Remember
Officer James W. McGrath, end of watch May 12, 1904; Officer J. Albert Fisher, end of watch December 15, 1947

AGREEMENT FOR TOWING SERVICES

THIS AGREEMENT, made and entered into this ____ Day of November, 2011 by and between the City of Burlington Police Department (hereafter referred to as DEPARTMENT) and Spillanes Towing and Recovery (hereinafter referred to as Towing Service) located at 7 Commerce Ave, S Burlington, VT.

W I T N E S S E T H :

WHEREAS, the DEPARTMENT is authorized to enforce the laws of the City of Burlington and the State of Vermont, including those pertaining to the parking and operation of motor vehicles within the City of Burlington, as well as being authorized to conduct civil ordinance violation and criminal investigations; and

WHEREAS, the DEPARTMENT from time to time must arrange for the removal of vehicles parked or left in violation of a declared snow emergency parking ban pursuant to Burlington Code of Ordinances section 20-56, as well as arrange for the removal of vehicles subject to removal pursuant to Articles III and VI of Chapter 20 the Burlington Code of Ordinances, including but not limited to §§ 20-63, 20-71, 20-79, and 20-158 thereof; and

WHEREAS, the DEPARTMENT is authorized and may be required to remove and impound vehicles pursuant to a police investigation or other lawful process, where the vehicle impounded may be towed to DEPARTMENT headquarters, another authorized location or directly to a designated impoundment lot without the approval or knowledge of the registered owner or operator; and

WHEREAS, vehicles removed from such areas of the City may be removed to

another street or if warranted may be impounded and transported to a remote site within a five (5) mile radius from the boundaries of the City until such time as the vehicle may be released to its owner or other lawful authority; and

WHEREAS, Towing Service is able and willing to remove vehicles to another street during a declared parking ban at the request of the DEPARTMENT; and

WHEREAS, Towing Service is able and willing to remove vehicles and have them securely stored on a remote site during a declared parking ban or when otherwise requested by the DEPARTMENT.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Towing Service is hereby designated as the Towing Service which the DEPARTMENT may call upon for the purpose of removing and storing vehicles (including but not limited to cars, trucks, and motorcycles) during a Declared Snow Emergency Parking Ban or for other reasons allowed by law. Such Towing Service is an independent contractor, not an employee of the DEPARTMENT or the City of Burlington, for purposes of the performance of this contract.
2. The term of this Agreement shall be from November ____, 2011 to June 30, 2015.
3. Towing Service shall make available to the DEPARTMENT a list of the names, addresses, and phone numbers, and drivers license numbers of employees of the Towing Service that the Towing Services proposes to provide the DEPARTMENT with any services. Towing Service shall not contract with, employ, or otherwise use any

subcontractors in service and performance of this Agreement unless otherwise provided for by this Agreement. DEPARTMENT shall conduct criminal and motor vehicle record checks on all employees proposed to perform services under this Agreement and indicate if they are accepted by the DEPARTMENT to provide services to the City. An employee shall not be accepted to provide services to the City if any of the following apply: (A) conviction of a felony; (B) conviction of a misdemeanor involving moral turpitude or physical violence upon another; (C) finding of negligence in a civil action for damages in more than two (2) motor vehicle accidents in a five-year period immediately preceding this contract; (D) conviction of driving under the influence or careless and negligent operation pursuant to 23 V.S.A. §§ 1201 and 1091 or a like statute in another state at any time in a five-year period preceding this contract; (E) conviction of any motor vehicle offense which resulted in the loss of a persons right to drive in the State of Vermont or other state at any time in a five-year period preceding this contract; or (F) has any pending criminal charges. In addition, DEPARTMENT may decide that any employee proposed by the Towing Service to provide services under this Agreement is not accepted for any reason it deems in its sole discretion to be in the best interests of the DEPARTMENT and the City. Towing Service shall not employ employees in the discharge of services to the DEPARTMENT rendered under this contract that are not accepted by the DEPARTMENT. Employees of the Towing Service discharging services rendered under this contract shall have a continuing obligation to disclose to the Towing Service any such convictions or civil judgments that may be issued subsequent to their rendering services under this contract. Towing Service has a continuing obligation to

disclose such information to the DEPARTMENT in a timely manner and shall discontinue the employment of any such employee in the further discharge of services rendered under this contract. In the event that subsequent to its acceptance of an employee DEPARTMENT determines that an employee is no longer acceptable, DEPARTMENT shall provide notice of such unacceptability to the Towing Service and after the receipt of such notice period Towing Service shall not employ such employee in any service rendered under this Agreement.

4. Towing Service shall tow and release any vehicles only in accordance with Division 2 of Article III of Chapter 20, and Article VI of Chapter 20 of the City of Burlington Code of Ordinances.

5. Towing Service shall provide a storage area within the City or within a five-mile radius from the boundaries of the City for the storage of vehicles. Said storage area shall be capable of safely and conveniently storing a minimum of 50 vehicles. Towing Service shall, on said storage area and any buildings utilized by for the conduct of its operations, conspicuously display in a manner as to be readily visible to the public signs indicating business hours and instructions as to how to contact Towing Service during non-business hours. Towing Service shall post directional signs on roads leading to any storage facility outside the boundaries of the City informing the public as to how to get to that facility. Towing Service shall make available to persons inquiring about the redemption of a vehicle the location of the storage area and directions as to how to get to the storage area. Towing Service shall not disable any vehicles to prevent removal from its storage area.

6. Towing Service shall own at least eight (8) wreckers and have access to at least four (4) additional wreckers with radio transmitting capability on a frequency designated by the DEPARTMENT. All vehicles and/or equipment utilized by Towing Service in connection with its obligations hereunder shall be maintained at all times in good mechanical condition, properly equipped and in full compliance with 23 V.S.A. Chapter 13, subchapter 14. All vehicles utilized by Towing Service will be made available for inspection by the DEPARTMENT and shall be properly registered and inspected pursuant to the laws of the State of Vermont. All vehicles utilized by Towing Service shall be equipped with yellow lights. Said lights shall be activated by Towing Service upon arrival at the scene of a tow and shall be operated continuously while towing a vehicle.

7. All vehicles utilized by Towing Service shall have the full name of the Towing Service painted on each side of the vehicle in letters at least three inches high and each vehicle shall have the telephone number of the place of business of the Towing Service painted conspicuously upon the vehicle.

8. Towing Service shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 for each occurrence and \$2,000,000 general aggregate. The City of Burlington shall be named as an additional insured on such insurance policy. Towing Service shall be responsible to ensure that all

subcontractors shall maintain the same insurance as is required of Towing Service.

Prior to the execution of this Agreement, Towing Service shall furnish the DEPARTMENT with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance. It is the responsibility of Towing Service to ensure that a current certificate of insurance is on file with the DEPARTMENT at all times. Failure to furnish and maintain a current certificate of insurance on file with the DEPARTMENT will result in a hold on all outstanding pay requisitions until such time as the current certificate of insurance is on file. Prior to the use of any subcontractor authorized to provide services under this Agreement, Towing Service shall furnish a certificate of insurance evidencing that the all subcontractor has all of the required insurances in effect. Such certificates shall be executed by the insurance company or its licensed agent(s) stating that with respect to the Agreement that Towing Service carries insurance in accordance with the following requirements:

- A. Workers Compensation Insurance: With respect to all services performed, Towing Service shall carry Workers Compensation Insurance in accordance with the laws of the State of Vermont. The Contractor shall also ensure that all subcontractors carry Workers Compensation Insurance for all Work performed by them.
- B. Public Liability and Property Damage Insurance: With respect to all services performed by Towing Service or any authorized subcontractor, Towing Service shall carry Public Liability and Property Damage Insurance providing all major divisions of coverage including, but not limited to:

Premises – Operations; Products and Completed Operations; Personal Injury Liability; Form Property Damage; Collapse and Underground (CU) Coverage; Explosion (X) Coverage, unless this requirement is waived in writing.

a) If the Public Liability Coverages are provided under a Commercial General Liability Policy, coverage shall be provided on an Occurrence form. Limits of Coverage shall be not less than \$1,000,000 Each Occurrence.

b) If the Public Liability Coverages are provided under a Comprehensive General Liability Policy, Limits of Coverage shall be not less than \$1,000,000 Each Occurrence, \$2,000,000 Aggregate or Combined Single Limit: \$2,000,000 Each Occurrence, \$2,000,000 Aggregate

C. Automobile Liability Insurance: Towing Service or any authorized subcontractor shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than: Bodily Injury: \$500,000 Each Person, \$1,000,000 Each Occurrence; Property Damage: \$500,000 Each Occurrence or: Combined Single Limit: \$1,500,000 Each Occurrence.

D. General Insurance Conditions: The insurance hereinbefore specified under parts 1-3 shall be maintained in force until the termination or expiration of this Agreement.

Each policy shall name City of Burlington as an additional insured for the possible liabilities resulting from the Towing Service's or subcontractor's actions or omissions. Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above. Claims made

coverage forms are not acceptable without the prior written consent of the DEPARTMENT. The Insurance Company shall agree to investigate and defend all claims against the insured for damages covered, even if groundless. Each policy furnished shall contain a rider or non-cancellation clause reading in substance as follows: Anything herein to the contrary notwithstanding, no cancellation, termination or alteration of this policy by the company or the assured shall become effective unless and until notice of cancellation, termination or alteration has been given by registered mail to City of Burlington at least thirty (30) calendar days before the effective cancellation, termination or alteration date unless all services required to be performed under the terms of the Agreement are satisfactorily completed.

This provision shall not create any third party rights and shall not be interpreted as a waiver by the City of Burlington of any immunities or limitations on damages available to the City of Burlington pursuant to applicable law.

9. Towing Service agrees to indemnify, defend, and save harmless the City of Burlington, its agents, officers and employees from and against all liability for injuries to persons or damage to property occasioned by the negligence or willful misconduct of the Towing Service, its officers, agents or employees or by order or regulation by the Towing Service, its officers, agents or employees. Such indemnification shall include all reasonable expenses incidental to the investigations and defense of any claims made or suit served, including reasonable attorney's fees. Towing Service shall give to the DEPARTMENT prompt and timely notice of any claims made or service of process in any suit concerning such injury or damage, including but not limited to suits initiated in

small claims court. Notice of claims must be in writing and addressed to the attention of the Chief of Police of the DEPARTMENT.

10. In the event that a judgment is entered against the City of Burlington, its agents, officers and employees involving a claim, loss or expense arising out of injuries to persons or property or death, if such judgment is not paid within the time required by law or within a reasonable time if no time is specified, the Towing Service shall be liable for all attorney's fees and expenses incurred by the City of Burlington in securing or facilitating such payment. For purposes of this Agreement, a reasonable time shall be defined as a period not in excess of sixty days.

11. Towing Service shall carry worker's compensation insurance as required by the laws of the State of Vermont.

12. The Towing Service shall provide the information listed in the DEPARTMENT'S "Scope of Proposals to be submitted." (See Attached). The Towing Service shall thereafter notify the DEPARTMENT of any change in ownership of the Towing Service, including addition of partners or shareholders, within three (3) days of such change. The Parties agree that no person employed by the DEPARTMENT or the City of Burlington's Department of Public Works has or will have during the pendency of this contract a financial interest in the ownership of the Towing Service or has or will be employed by the Towing Service.

13. The Towing Service is responsible for the supervision of its employees. Notwithstanding such responsibility, all employees of the Towing Service shall follow the orders or instructions of the DEPARTMENT'S enforcement officers who are present

during the discharge of the obligations under this contract. All employees of the Towing Service must also conduct themselves at all times in a courteous manner toward the public. The operations of the Towing Service and its employees shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others.

14. Towing Service shall comply with all ordinances of the City of Burlington, statutes of the State of Vermont, and rules and regulations of the DEPARTMENT in fulfillment of its obligations hereunder.

15. Towing Service shall be entitled to towing charges as follows.

(a) During declared parking bans, the Towing Service shall receive a minimum payment of \$400.00 until the point where the number of cars towed under the fee schedule is greater than \$400.00. To be counted as present and operating throughout the entire performance of the job, Towing Service must have all wreckers requested present at the Burlington Police Station, 1 North Ave., Burlington, VT at the start of the job, which is 2200 hours unless otherwise communicated by the DEPARTMENT to the Towing Service and must be verified by the DEPARTMENT's designated employee at the end of the job as having performed the towing services assigned to it under this contract.

Notwithstanding the payment schedule, in the event that a Snow Emergency Parking Ban is declared and the Towing Service is requested to be present and the request is cancelled after 2100 hours the Towing Service shall be paid \$400.00. Towing Service shall also provide the DEPARTMENT with a list of all wreckers and the names of the persons assigned to each wrecker at the start

of the job. In the event that any of Towing Service's wrecker operators desire or need to leave the job prior to the completion of the job, Towing Service shall require that operator to notify the DEPARTMENT's designated employee(s) immediately and state the reason for doing so. The DEPARTMENT may, upon a reason deemed acceptable by the DEPARTMENT, count the wrecker as being present and operating throughout the entire performance of the job; a list of acceptable reasons shall be provided to Towing Service and placed on file at the DEPARTMENT.

Although the DEPARTMENT's designated employee(s) shall notify Towing Service's wrecker operators when the job is completed, it shall be the responsibility of Towing Service wrecker operators to notify the appropriate DEPARTMENT's designated employee(s) that they have been released from service and are leaving the job. When wreckers are required to stand by at the start or completion of any towing operation or any other request for a wrecker, each wrecker shall be compensated at a rate of \$35.00 per hour.

Notwithstanding the above-stated charges, the DEPARTMENT may require the Towing Service to release up to thirty-six (36) cars per year without collecting towing or parking or storage charges.

(b) Towing service shall be paid at the following rates for non-parking ban towings:

- * \$50.00 for any vehicle towed street to impoundment lot
- * \$45.00 for any vehicle moved by the operation of the wrecker

- * \$35.00 per hour per wrecker when requested to stand by
- * \$35.00 for any vehicle which meets the conditions of impoundment as defined in BCO 20-74 and prior to being moved by the operation of the wrecker.
- * \$10.00 additional when second person is requested by the Department per wrecker
- * \$0.00 for any vehicle that is not subject to above.
- * Storage - \$7.50 day vehicle towed, \$15.00 per day additional days. Additional storage days shall start at 12:00 A.M. and end at 12: A.M.
- * In the event less than the requested number of wreckers is available each above fee shall be reduced by \$5.00 for each wrecker not present.
- * No other charges shall be charged with out the authorization of the Department.
- * Towing service shall either by its own equipment or subcontracting remove any vehicle over one ton at a hourly rate of \$175.00. Rates shall apply from the time the tow vehicle leaves the impoundment lot to returns to the impoundment lot.
- * Vehicles impounded outside of the City Limits and towed to Burlington or from Burlington to a location outside of the City Limits shall be compensated at a rate equal to the current rate for the Vermont AAA.
- * Towing service may also charge a addition rate (\$35.00 per hour) for roadway clean up or removal of vehicles which occur as a result of a traffic accident. Storage fee's as a result of a traffic accident may be up to \$50.00 per day.

16. The Towing Service shall accept towing charges directly from the owner of the vehicle towed and any owed fines or fees associated with the vehicle, such fines and fees to be reimbursed to the Department by the Towing Service. In such cases, the Department shall not be liable for any towing charges. A person hired to remove illegally parked vehicles is required to accept a bank certified check and must also recognize at least two (2) national bank credit cards, all of which may be used as payment for any towing and storage charges.

17. The Towing Service shall maintain records of vehicles towed and fees received for three (3) years, including fees received directly from the owner of the vehicle.

18. The Towing Service shall allow personal items not part of the vehicle to be removed by the owner of the vehicle. Request to remove items shall be made and occur during normal business hours of the towing service.

19. The Towing Service shall have all the rights and responsibilities of a towing service provided for in title 23 of the Vermont Statutes Annotated, chapter 21, subchapter 7, the laws related to abandoned vehicles, including but not limited to the rights and responsibilities related to abandoned motor vehicle certification set forth in 23 V.S.A. §§ 2153 and 2156.

20. The DEPARTMENT reserves the right to develop procedures consistent with this contract that shall be applicable to Towing Service's discharge of its duties under this contract. Such procedures may include but shall not be limited to the towing of vehicles, storage of vehicles, the acceptance of payments of charges for violation of motor vehicle and traffic offenses, and the release of vehicles. Towing Service shall be obligated to adhere to such procedures when they are developed and in effect.

20. Either party may terminate this Agreement for cause pursuant to this provision. Upon written notification by a party that the other is in breach of its obligations under this agreement, the party noticed of breach shall have a reasonable period under the circumstances to cure the breach, if cure is possible.

21. Subject to the exception set forth in this provision, this Agreement is an exclusive agreement and Towing Service acknowledges that the DEPARTMENT shall not contract

with others to provide the services provided for herein. The Parties agree that in the event that Towing Service cannot respond to calls for service related to accidents or emergencies within a reasonable period of time the DEPARTMENT may call upon the services of an alternative towing service or its own resources. Furthermore, the Parties agree that in the event that Towing Service's access to the requisite 12 wreckers does not provide the level of service required by the City under the circumstances, the DEPARTMENT may call upon the services of an alternative towing service or its own resources. The Parties agree that in the further event that Towing Service does not have access to the requisite number of wreckers, the DEPARTMENT may call upon the services of an alternative towing service or its own resources. Any use by the DEPARTMENT of an alternative service or its own resources shall not constitute a waiver of any rights the DEPARTMENT may have under this contract. Towing Service shall notify the DEPARTMENT as soon as it becomes aware that it cannot respond to an accident or emergency call or does not have access to the requisite number of wreckers within a reasonable period of time. In the event an alternative service or the DEPARTMENT'S own resource is utilized, Towing Service shall allow its storage area to be to store the vehicles towed under this exception to this exclusivity provision.

22. This Agreement is executed in duplicate and no provision hereof may be altered, deleted, or added except by writing executed by both parties.

DATED this ____ day of _____, _____ at Burlington, Vermont.

IN THE PRESENCE OF:

Towing Service:

By: _____

Duly Authorized Agent
BURLINGTON POLICE DEPARTMENT

By: _____
Duly Authorized Agent

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