

## ***Memorandum #08-89***

***To:*** City Commission  
***From:*** Finance Officer  
***Date:*** 4/25/2008  
***Subject:*** Renewal of Contract for Private Towing Services

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Historically, the City of Yankton has had a contract with private sector towing companies to provide towing services to the City. Most services are for the removal of vehicles due to violation of the snow emergency ordinance but some are due to violations of the parking ordinance or the nuisance abatement ordinance. Our previous agreement expired in February of this year and we have been operating under the same terms and conditions as the expired agreement.

Previously, you authorized a Commission-Staff committee consisting of Commissioners Wenande and Knoff, Police Chief Heeney, and Fire Chief Kurtenbach to work with the towing companies to renew the agreement. This committee has met several times on the staff level and also with the representatives of the towing companies.

Attached is the latest compromise agreement as recommended by the Committee. New language is highlighted in red and deleted language is illustrated by a ~~strike-through~~.

Two local towing companies have agreed to the terms and conditions of this agreement and have submitted signed agreements with these changes.

Thank you,

Al Viereck  
Finance Officer

## TOWING AGENCY AGREEMENT

This is an Agreement between the City of Yankton, South Dakota, and its various departments (hereinafter City) and the below listed removal and towing agency (hereinafter towing agency):

WHEREAS, the City has a need for removal and towing services in regard to vehicles which it does not itself supply both for its own purposes or as ordered for other purposes; and

WHEREAS, it is in the best interest of the City to have available to it the resources, equipment, and storage needed for removing, towing, and storing vehicles; and

WHEREAS, it is in the best interest of the City to contract with only those private entities that can supply sufficient resources, equipment, and storage; and

WHEREAS, it will be financially beneficial to such towing agency who can have the privilege of being on the list for towing for the City, those being those towing companies that can meet the requirements of this contract, and those towing agencies with which the City wishes to contract:

NOW, THEREFORE, in consideration of their mutual benefits and covenants, the parties hereto agree and contract as follows:

1. The City hereby designates the party to this contract an authorized vehicle towing agency within the City of Yankton and designates this agency as a towing agency which will be placed on the City's tow list to fulfill the City's towing needs, except for the towing of city-owned vehicles which may be contracted by the City individually. This contract is not exclusive and several agencies shall comprise the tow list. Towing agencies shall be considered independent contractors of the City.
2. The duty tow agency agrees that it will maintain 24-hours per day, 7-days per week, service with the capability required herein. All towing agencies further agrees to make its storage lot available to the public on Monday through Friday from 8:00 a.m. until 5:30 p.m. and Saturday, from 8:00 a.m. until 12:00 noon and Sundays, holidays and evenings by appointment for which a release fee may be charged, unless requested otherwise by the City or any of its departments.
3. The City will extend to the towing agency, which is a party to this contract, all of the City's needs or requests for the removal or towing of vehicles in the City of Yankton except for routine removal or towing which can be accomplished by the City Department requiring that service and except if all of the towing agencies which are parties hereto are unable to provide that service. The City will have the right to call any towing agency for a any tow, and also if specifically requested by the owner or driver of the vehicle to be towed. If there is no owner preference expressed, the City shall normally contact agencies which are party to this agreement on a weekly rotating basis excluding snow removal alerts when all agencies are on duty tow. No abandoned vehicle nor vehicle towed due to

a police action will be removed except by a towing agency which is a party to this contract unless all agencies fail to respond.

4. The City agrees that calls for such service to or for the City will be based on the terms of this contract. If towing agency anticipates not being available, they shall notify Police Department Dispatch Center, which will not result in loss of rotation.
5. The City will *normally* dispatch the towing agency based on the weekly towing schedule. If that towing agency is then meeting its requirements under Paragraph 6 below and does not have units available, the City may dispatch another towing agency and the duty tow may be deemed in violation of this agreement and may forfeit its next rotation. If the towing agency is not meeting its requirements under Paragraph 6 and does not have a unit available, the City will do the same, but will consider it a violation of Paragraph 6.
6. The towing agency agrees that if it is on “duty tow,” the agency will have and will provide at all times the capability of physically responding to a call from the City Police or Public Works Departments at any time. If towing agency misses two calls when on rotation, this will be considered a violation which would result in loss of rotation for the balance of the week. Should a towing agency continually fail to respond to a call while on “duty tow” it will be considered a violation of this provision and shall be cause for cancellation of this contract with that agency. (Duty tow is defined as the towing agent on duty who is to receive tow requests.)
7. The towing agency agrees that they shall have, as a part of the requirement of Paragraph 6 above, or have immediately available to it on a borrow or lease basis, at least one (1) one-ton vehicle capable of towing 10,000 lbs. The tow truck shall have chassis rated by the manufacturer of a capacity of 10,000 lbs. GVW mounted on the chassis, must be a complete commercially manufactured crane and winch having a manufacturer’s rating of at least four (4) tons with at least 100 feet of 3/8 inch cable and a commercially manufactured tow sling. The tow truck body must comply with all state laws pertaining to fenders and lighting equipment, and have an appearance similar to a commercially manufactured tow truck body. All towing vehicles shall also be equipped with a cellular phone, flashing lights, a fire extinguisher with a rating of at least 2A2OBC, and a logo on the towing vehicle identifying the towing agency.
8. The towing agency agrees that when it is on that “duty tow,” the agency called by the City will have a tow vehicle on the scene after any call for a tow within 20 minutes of the original call, and will accept that call for service. The City may waive this provision and will do so upon a showing of extreme circumstances by the towing agency, but a continuing pattern of violation of this provision will be cause for cancellation of this contract with that agency. City waiver for extreme circumstances shall not be unreasonably withheld. Upon dispatch by the City, the responding towing agency will give the dispatcher its estimated time of arrival, and if substantially in excess of 20 minutes, the City reserves the right to call the next towing agency.

9. The party hereto agrees that it is essential to the City's snow removal procedures that vehicles be cleared from the street either by the owners or by towing, and the towing agency agrees to cooperate during any "Snow Removal Alert." Each towing agency, which is party to this contract, shall have one contact person available and near a telephone that can respond for the towing of vehicles. Any continuing violation of Paragraph 6 of this contract by the towing agency during a "Snow Removal Alert" will be cause for cancellation of this contract with that towing agency. The City, for its part, agrees to inform towing agencies that there will be a "Snow Removal Alert" as soon as reasonably possible.
10. The towing agency is authorized, any provision of this contract notwithstanding, to subcontract any City tow to any towing agency which is subject to this contract or to another towing service in case of actual emergency or when specialized equipment is required. It shall be the responsibility of the towing agency to make sure any subcontractor meets the requirements of this agreement.
11. The City agrees to arrange the contact of these "duty tow" agencies and any of the other towing agencies for City calls, as needed. All tows other than police tows are to be handled by the Department of Public Works. The City shall retain the unencumbered authority to call any towing agency regardless of the call schedule, when it determines in its sole discretion to be in the best interest of public safety, *or expediency, or any other immediate concerns.*
12. Towing agency agrees that it will have an impoundment area meeting the following requirements:
  - a. Sufficient area to store 20 or more vehicles. (The approval of this Agreement does not infer approval of any storage area that is not in compliance with Section 13-111 of the City of Yankton Code of Ordinances).
  - b. Completely encircled by a secure fence, not less than six (6) feet in height. (The approval does not infer approval of any storage area that is not in compliance with Section 13-111 of the City of Yankton Code of Ordinances.)
  - c. At least one gate for ingress and egress shall be kept locked at all times except when in use. The gate shall have a prominent sign affixed with the name and telephone number of the towing agency and the hours of operation.
13. The towing agency agrees that it will carry wrecker liability insurance in the amount of at least \$500,000 combined single limit liability coverage for public accidents with a vehicle, garage liability, and at least \$75,000 garage keeper's liability applying to the vehicle being towed. Proof of insurance and a copy of the policy will be provided to the City upon the signing of this contract, with acknowledgments from the insurance company that it will not cancel said policy without 15 days prior notice to the City. Insurance must remain in effect during the term of this contract.
14. Each towing agency and its agents and employees shall cooperate with and comply with the orders and directions of the representatives of the City at the scene of any tow to which they are dispatched by the City. Any disputes or issues arising at the scene shall be

resolved between the Chief of Police or his designee and the Towing Agency representative during regular working hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. All such complaints including complaints by vehicle owners shall be made in writing.

15. Each towing agency is required to remove all glass and other debris, and clean all leaking vehicle fluids (except for battery and gasoline, or diesel fuel) as a result of an accident, deposited on the roadway by the vehicle they are to tow when dispatched by the City and when reasonable. All chemicals shall be disposed of according to applicable EPA standards.
16. It is acknowledged that from time-to-time, the City of Yankton may elect to have the towing agency tow a vehicle to a facility under City control for purposes of performing criminal justice work (investigative hold). In this event, the following shall apply:
  - a. When the towing agency disconnects said vehicle on designated property, the City assumes custody and control.
  - b. All such tows are at City expense and will be paid pursuant to the City's regular bill payment schedule.
  - c. If a vehicle is towed under this section and the responsibility for the vehicle is transferred from the City to another governmental entity, the City will notify the towing agency of such transfer within ~~three (3)~~ seven (7) days of the transfer.
17. The City will pay for the following police tows (the towing agency is required to provide a billing to the City using specifically numbered receipts containing the vehicle make, license, VIN, and the time, date, and location of the tow):
  - a. Vehicles used for evidence.
  - b. Vehicles used in the commission of a crime.
  - c. Vehicles being held for investigative purposes.
  - d. All police ordered tows (abandoned vehicles, etc.) which are not claimed within 40 days.
18. The towing agency will follow all guidelines under SDCL 32-36-8 and 32-36-9 to obtain title and dispose of abandoned vehicles. The City will assist in obtaining owner records. This procedure will be conducted in accordance with all applicable State and local codes dealing with the disposition of abandoned vehicles.
19. The City will not be responsible for claiming accident vehicles or other tows not ordered by the City, but will assist the towing agency in identifying registered owner for other unclaimed vehicles.
20. Any liability occurring from the towing of a vehicle which is ordered towed by the City will be the responsibility of the towing agency for physical damage to, or loss of, any vehicle or the contents of the vehicle being towed, the towing vehicle, or any equipment. The towing agency shall indemnify and hold the City, its' employees, officers, agents, in whole or in part, harmless from any such liability any claim, loss, damage or expenses arising as a result of any services performed under this agreement. Each towing agency

will be solely responsible for any towed vehicle from the point at which it is allowed its fee as described in Paragraph 26 below. The officer shall provide a duplicate inventory list to the towing agency at the scene of the tow.

21. If the City requests a towing agency to go onto private property to abate a nuisance by removing a vehicle or vehicles, the City accepts full responsibility for entry onto the real property under authority granted by the State, to include any liability for property damages which are not caused by the negligence of the towing agency. City further accepts responsibility for any vehicles so removed, except for any damage caused by the towing agency which is not the direct result of the City requesting the tow, until the vehicle has been towed off of private property, at which time the responsibility lies with the towing agency.
22. If the City requests a towing agency to tow a vehicle or vehicles from private property without the consent of the owner to abate a nuisance, the City of Yankton Police Department will, upon request, supply a police unit (officer and marked vehicle) to stand by at the tow site to prevent any violence. This shall be on an “as available” basis but the towing agency may, without penalty, refuse such tow so long as no police unit is available.
23. A towing agency shall make no repairs or cause any repairs to be made to any towed vehicle without the authorization of the person to be charged for the tow and except such repairs as are necessary for the movement of the vehicle.
24. The City and towing agency agree that the following are the rates for towing and related services. The towing agency will not charge more for these services than is indicated by this schedule when a tow is requested by the City:
  - a. Automobiles, pickups (one-ton or less) ~~up to \$75.00~~ \$80.00, and motorcycles ~~up to \$85.00~~ ~~-\$90.00~~. During snow emergencies or snow alerts, the towing agencies may charge up to \$100.00 for automobiles, pickups (one-ton or less), and motorcycles.
  - b. Storage rates are based on 24 hours per day; said day begins at the time of tow
    1. Cars, pickups (one-ton or less), and motorcycles – up to \$15.00 per day.
    2. Enclosed storage - up to \$20.00 per day or \$35.00 per day if large truck or equipment.
    3. The City will not pay for storage.
    4. After hours gate charge up to \$20.00.
  - c. Second tow from “investigative hold”
    1. Automobiles, pickups (one-ton or less), and motorcycles (refer to Paragraph a. above)
  - d. City owned vehicles
    1. Towing
      - a. Cars, pickups (one-ton or less), and motorcycles - ~~up to \$75.00~~ \$80.00 City ordered towed vehicles from private property
    1. Towing (preauthorized by City Purchase Order only)

- a. Cars, pickups (one-ton or less) ~~up to \$75.00~~ \$80.00, motorcycles ~~up to \$85.00~~ \$90.00.
  - e. Recovery vehicles:
    - 1. Recovery vehicles shall be defined as, but limited to: extraordinary or unusual tows such as vehicles in a ditch or creek, ~~blizzard-like conditions or large accumulations of snow, and any unusual clean up such as car parts, large amounts of glass, etc.~~ Towing agency may charge up to \$110.00 per tow as a surcharge to the basic fee.
  - f. Unusual clean up:
    - 1. Towing agency may charge up to \$35.00 as a surcharge to the basic fee for any unusual clean up such as extremely large amounts of car parts or glass. The towing agency may also charge the customer for any direct landfill disposal charges incurred.
25. The right of the towing agency to be paid its towing fee from the owner, for purposes this contract only and subject to negotiation or legal action between the towing agency and said responsible party, shall begin after the arrival of the tow truck at the site of the vehicle to be towed and substantial action being taken to effect the tow or the vehicle being hooked on.
  26. Each towing agency will maintain a log of services performed at the request of the City of Yankton for at least 12 months, to include the following:
    - a. Date and time of service
    - b. Location from which towed
    - c. Vehicle description (make, model, year, color, license number, and vehicle identification number)
    - d. Date and method of disposition
  27. Each towing agency agrees it shall be responsible for collecting any fee for services due and owing, and will assert no claim or demand for payment from the City for any service except as set forth under sections 16, 17 & 21.
  28. Unless terminated by the City for cause, the terms and conditions of this contract shall be in full force and effect as to each towing agency signing this contract as a two year contract. This contract may be terminated and canceled by either the City or the towing agency upon 30-days written notice to the other party. It may be terminated immediately by the City, for cause, for reasons listed in this contract, or for violation of any state or local laws by the towing agency, its agents, or employees while acting as a towing agency or for a general failure to perform, or for failure to perform safely. This agreement shall remain in effect with ~~less than three (3) towing agents~~ any remaining towing agencies as a result of an agency termination for any reason contained herein.
  29. If the retail price of No. 2 diesel fuel or regular unleaded gasoline exceeds \$5.00 per gallon in any 30 consecutive day period during the term of this agreement, the City will, upon the request of all the towing agencies, negotiate in good faith an amendment to this agreement.

30. A waiver or breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provisions, nor shall any failure to enforce any provision hereunder operate as a waiver of any provisions hereunder.
31. This agreement may be modified or amended only upon written agreement of all parties.
32. This agreement represents the entire Agreement of the parties and no other agreements, whether written or oral, exist between or among the parties relating to the services and obligations hereunder.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008, at Yankton, South Dakota.

\_\_\_\_\_  
C. N. Gross, Mayor

Attest: \_\_\_\_\_  
Al Viereck, Finance Officer

\_\_\_\_\_  
Towing Agency

\_\_\_\_\_  
Signature