



REQUEST FOR PROPOSALS (RFP)
TOWING AND IMPOUND SERVICES FOR THE CITY OF FARGO

The City of Fargo, is seeking proposals from qualified vendors interested in providing towing and impound services to the City.

If you have an interest in acting as the City of Fargo's Towing and Impound Services vendor please reply by **2:00 PM on Friday, March 12, 2021**. The requirements for submitting a Proposal are stated in the attached Request for Proposal (the "RFP"). Please review them carefully.

Proposals received after the above cited date and time will be considered late and will not be accepted.

All Proposals (Two (2) hardcopies of your completed proposal as well as one (1) electronic copy): must be submitted to

City of Fargo Auditors Office
225 4th Street N.
Fargo, ND 58102

Office hours are 7:45 am to 4:30 pm, Monday through Friday, excluding holidays.

Please make sure the envelope or package is marked:

"Towing and Impound Services"

Thank you for your interest.



REQUEST FOR PROPOSALS (RFP)
TOWING AND IMPOUND SERVICES FOR THE CITY OF FARGO

REQUEST FOR PROPOSAL

The City of Fargo, is requesting proposals from qualified firms to provide Towing and Impound Services. The successful Service Provider will work closely with the Department of Public Works and the Fargo Police Department, to meet the City's needs twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

This Request for Proposals (RFP) does not commit the City to award a contract or contracts and is a proprietary document issued solely for the benefit of the City of Fargo. Any response, including written documents and verbal communications, by any Service Provider to this RFP, shall become the property of the City and may be subject to disclosure pursuant to state law.

Service Providers responding to the RFP must submit two (2) hard copies, and one (1) electronic copy via USB Flash Drive, of their Proposal signed by a representative authorized to bind the services of the company in a sealed envelope by **2:00 PM on Friday, March 12, 2021** to:

City of Fargo Auditors Office
225 4th Street N.
Fargo, ND 58102

Incomplete proposals or proposals submitted after the above specified date and time will be rejected. Oral, electronic or emailed proposals will not be accepted as fulfilling the requirements.

No Proposal shall be accepted from or contract awarded to, any firm in which any City of Fargo employee, or official, has a direct or indirect financial interest. Entities that are legally related to each other or to a common entity which seek to submit separate and competing Proposals must disclose the nature of their relatedness.

The City of Fargo shall not be not liable for any cost associated with the development, transmittal, or presentation of any Proposals submitted in response to this RFP. It shall be the Service Provider's responsibility to review and verify the completeness of its Proposal.

Any questions concerning this RFP must be submitted in writing to Allan Erickson or Tanner Smedshammer.

Allan Erickson
aerickson@FargoND.gov
P: (701) 241-1439

Tanner Smedshammer
Tanner.Smedshammer@FargoND.gov
P: (701) 241-1460

The City assumes no responsibility for conclusions or interpretations derived from the information presented in this RFP, or otherwise distributed or made available during this procurement process.

In addition, the City will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by the City other than those provided by the City through the issuance of addenda. In no event may a Service Provider rely on any oral statement by the City or its agents, advisors or consultants. Should a Service Provider find discrepancies or omissions in this RFP or any other documents provided by the City, the Service Provider should immediately notify the City of such potential discrepancy in writing, and if the City determines clarification to be necessary, a written addendum will be posted with the RFP on the City's website at:

<https://fargond.gov/work/bids-rfqs-rfps>

Each Service Provider requesting an interpretation will be responsible for delivering such requests to the City's designated representative as indicated.

CITY RIGHTS AND OPTIONS

The City at its sole discretion reserves the following rights:

1. To cancel this RFP with or without the substitution of another RFP;
2. To take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City;
3. To issue additional requests for information;
4. To require one or more Service Providers to supplement, clarify or provide additional information in order for the City to evaluate the Proposals submitted;
5. To conduct investigations with respect to the qualifications and experience of each Service Provider;
6. To waive any defect, formality or irregularity in any Proposal received;
7. To reject any or all Proposals;
8. To award all, none, or any part of the Services that is in the best interest of the City, with one or more of the Service Providers responding, which may be done with or without re-solicitation;
9. To discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms; and
10. To enter into any Contract deemed by the City to be in the best interest of the City, with one or more of the Service Providers responding.

PROPOSAL CONTENT AND FORMAT

The proposal should include all of the following information:

1. Contractor's qualifications, years in business, experience in providing the level and type of service specified in the proposal.
2. At least three (3) current references of former agreements covering similar services listed in the proposal. Include company name, contact name and phone number.
3. A fully executed proposal form with signatures (Exhibit A).
4. A list of major equipment owned that would be used in association with this proposal.
5. Proposals should be prepared simply and economically providing a straight-forward, concise description of the contractor's ability to meet the requirements of the RFP. Proposal shall be written in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed by the person signing the proposal.

SCOPE OF WORK

It is the intent of this RFP to establish a Professional Services Contract with one Service Provider for all towing needs related to vehicular accidents and impound services for the City of Fargo Police Department. This Contract shall have an initial term of three (3) years from the effective date. Upon expiration of the initial term, this agreement shall automatically renew for successive periods of three (3) years. The City reserves the right to negotiate a different length of the Contract at its sole option. Service Provider, must have at minimum, sufficient towing vehicles, and administer the city storage lot for impounded vehicles to City requirements.

The general scope of the Service Provider's duties will be to tow and deliver vehicles and/or other property to the City Impound Lot and to store, manage, and release such vehicles or other property.

Service Provider must be able to provide services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

Vehicles to be towed and stored will include, but not be limited to: cars, vans, 4 x 4 trucks, light duty trucks, heavy-duty trucks, fully loaded tractor trailers, boats, RV's and motorcycles.

Service Provider will provide towing and/or impound services for non-vehicular items as designated by the Fargo Police Department, i.e., ATM machines, safes, etc.

Service Provider will conduct towing and impound services as needed in connection with clearing motor vehicle accidents, conducting criminal investigations, impounding abandoned vehicles, and enforcing motor vehicle traffic/parking violations.

Service Provider shall maintain complete up-to-date records related to each tow, and cooperate with an independent review of this program to be performed annually at the Service Provider's expense.

Service Provider will invoice the owners of towed vehicles, detailing all towing and storage charges within the parameters of the City of Fargo Municipal Code 11-04 and any other applicable laws. Service Provider

must cooperate with an independent reviews of this program to be performed annually at the Service Provider's expense.

A. TOWING

Equipment

1. Service Provider must have available, at all times, a minimum of eight (8) standard duty or heavier wreckers, including ownership of at least four wreckers having four wheel drive capability. The Service Provider must be able to provide light duty, medium duty, heavy-duty and super heavy-duty wreckers if needed.
2. Service Provider must have access and usability of flatbed and lowboy tilt trailer.

Response Time

The awarded Service Provider must respond within the time frames specified under "scheduling". Failure to adhere to the stated response time will be considered as non-performance on the part of the Service Provider. Any changes in response time requirements can only be made in writing by the Public Works Director of Operations.

Scheduling

The City is not setting mandatory on-street truck and equipment requirements for this contract (e.g., three tow trucks and one flat bed for morning and evening rush hours). Service Provider will be responsible for meeting certain response times. Should Service Provider demonstrate a chronic pattern of poor response times, and response delays have a negative effect on the delivery of police services and public safety, the Service Provider may be penalized financially when the response times are not achieved. It will be the Service Provider's responsibility to have a sufficient number of trucks available to perform City tows to insure that it achieves the response time requirements.

<u>Time of day</u>	<u>Response time</u>
Rush hour, Mon - Fri 7:00 a.m. – 9:00 a.m. 4:00 p.m. – 6:00 p.m.	immediate to 20 minutes
Other daylight hours Daily	20 – 30 minutes
Holidays (does not include special events)	20 – 30 minutes
Special events	immediate to 20 minutes

Special Events

1. Special events will include, but not be limited to, snow storm/removal events, rain events, sporting events, concerts, conferences, parades, festivals and various race events.

2. The Service Provider will be notified approximately eight (8) hours prior to the event. The number of tow trucks, which may be required, will be identified at the time.
3. City may require Service Provider be available for immediate response time. This will require that tow trucks be waiting on the site of the event.
4. Service Provider will be responsible for a minimum of eight (8) tow vehicles on-site or as required by the City, or as indicated in the “scheduling” section.

Debris Cleanup

The Service Provider’s personnel responding to the City’s towing request are responsible for cleaning up all accident-related debris at the scene.

Additional Labor

If additional labor is essential and/or required, such additional labor shall be provided by the carrier at the rate presented within Exhibit B. Additional labor is only allowable when a laborer is essential to towing and/or recovery services.

B. STORAGE LOCATION ADMINISTRATION

The City owned Impound Lot shall be used for City-ordered impounds only.

Service Provider shall keep and maintain the premises, other than the building, including access areas, walkways, and areas adjoining the building in a clean and orderly condition, free of accumulation of dirt and rubbish.

Hours of Operation

At a minimum, the Service Provider shall maintain the following hours of operation for the release of vehicles towed under this Contract: Monday through Sunday 8:00 a.m. to 6:00 p.m., excluding all legal holidays. At all other times the Service Provider shall release vehicles or other property from the Impound Lot within 90-minutes of such request. Nothing in this section, however, shall prohibit the City from requesting or authorizing the release of a vehicle on days and times other than those set forth herein.

C. COLLECTION OF FEES / RELEASE OF VEHICLE

Service Provider must collect all fees from vehicle owner at the time the vehicle is released from the Impound Lot. The Service Provider is prohibited from assessing, charging or collecting any fees or charges to the person claiming the vehicle that are not specified in the fee schedule.

D. PUBLIC SALE OF IMPOUNDED PROPERTY

Service Provider agrees to assist with all public sale of impounded property in conjunction with the designated auction service according to Article 11-04 of the Fargo Municipal Code. Contractor shall receive fifty percent (50%) of the net sale proceeds, of impound property only, as reimbursement for its costs and as reimbursement for expenses which remain unpaid because the owner does not

claim the vehicle. Service Provider will not be entitled to any portion of any amount received from the sale of any seized or forfeited vehicle or other property.

E. RECORD KEEPING AND FINACIAL REVIEW

Awarded Service Provider must keep any information as deemed necessary by the City. All forms must be filled out completely, legibly, and submitted in a timely fashion.

The Service Provider shall maintain complete, up-to-date records of all vehicles towed at the request of the City. At a minimum, such records must contain the following information:

- a. Date and location of the tow
- b. Make, model and year of the vehicle towed
- c. Serial number of the vehicle towed
- d. License plate number and issuing state
- e. Total cost of each tow, with a breakdown of all costs
- f. Copy of receipt provided to claimant showing claimant's signature
- g. Date of release
- h. Copy of claimant's proof of ownership and identification

F. OTHER

Body shop affiliation

Towing contractors, vendors, or sub-contractors are not to be affiliated with any body shop. The awarded Service Provider may neither perform body repairs nor direct / refer to another body repair shop, any accident-damaged vehicles from City-requested tows.

Personnel

The awarded Service Provider will do criminal background checks upon request from the City of Fargo, on any/all employees or prospective employees at the awarded Service Provider's expense. A copy of the requested background check must be supplied to the City of Fargo.

The Service Provider represents that all of its drivers operating tow equipment possess a valid driver's license with a "CDL" endorsement as is applicable and required for that vehicle. The Service Provider shall verify, semi-annually, that the licenses of its personnel are valid and current. The Service Provider shall keep such reports and records related to this verification at its place of business, and the City shall have the right to verify and inspect same.

The Service Provider shall insure that its personnel will display patience, tact, and courtesy when dealing with persons claiming ownership of towed vehicles. The Service Provider shall not knowingly or negligently create situations that would cause unfavorable attitudes toward the City of Fargo.

GENERAL ADMINISTRATIVE REQUIREMENTS AND CONDITIONS

A. CONFIDENTIALTY

Service Provider agrees that any information derived from or on behalf of the City, whether proprietary or not, made known to or discovered by Service Provider in connection with this RFP or during the performance of any contract resulting thereof will, be kept confidential and not be disclosed to any person, unless released by the City.

B. CONFLICT OF INTEREST

Service Provider, by submission of a Proposal to this RFP, agrees that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services required under this RFP. Without limitation, Service Provider represents to and agrees with the City that the Service Provider has no conflict of interest between providing the City with services hereunder and any interest the Service Provider may have with respect to any other person or entity (including, but not limited to, any federal or state regulatory agency) which has any interest adverse or potentially adverse to the City.

C. CANCELLATION

The City will maintain a strict right to cancel any contracts awarded under this RFP, in whole or in part, if the Service Provider willfully fails to perform any of the provisions in the contract or fails to make reports within the time stated, unless the time is extended in writing by the City.

D. ASSIGNMENT AND SUBCONTRACTING

Any contract awarded under this RFP shall strictly be enforced to adhere to the City's guidelines. All assignees and subcontractors shall be held to the same confidentiality as the awarded Service Provider and shall be considered by the City to be part of the Service Provider's organization.

E. TERMS OF PROFESSIONAL CONTRACT

Service Provider will comply with the standard terms of the City's Contract for Towing and Impound Service Contract, a sample of which is attached as Appendix A.

EVALUATION OF PROPOSALS

The City of Fargo reserves and may exercise the following rights and options with respect to selection process.

1. To reject any and all Proposals and reissue the RFP at any time prior to execution of a final contract, if, in the City's sole discretion, it is in its best interest to do so.
2. To supplement, amend, substitute, or otherwise modify this RFP at any time prior to selection of one or more Service Providers for negotiation and to cancel this RFP with or without issuing another RFP.
3. To accept or reject any or all of the items in any Proposal and award the contract in whole or in part if it is deemed in the City's best interest to do so.

4. To reject any Service Provider who, in the City of Fargo's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City, is financially or technically incapable or is otherwise not deemed a responsible Service Provider.
5. To reject as non-responsive any Proposal which, in the City's sole judgment, is incomplete, is not in conformity with applicable law, is conditional in any way, or deviates from the mandated requirements of the RFP.
6. To waive any defect, non-responsiveness and or deviation from this RFP that is not, in the City's sole judgment, material to the Proposal.
7. To permit or reject, at the City's sole discretion, amendments (including inadvertently omitted), modifications, alterations and or corrections to Proposals by some or all of the Service Providers following submission of the Proposal.
8. To request that some or all of the Service Providers modify Proposals.
9. Preference will be given to Service Provider's that maintain business operation within the corporate limits of the City of Fargo

CONTRACT AWARD

The City of Fargo reserves the right to award the contract to a Service Provider other than the Service Provider presenting the lowest price. The contract resulting from the RFP will be awarded to the qualified, responsible and responsive Service Provider whose Proposal the City believes will be the most advantageous to it.

Award and development of Final Contract will be conditioned on compliance with the standard terms and conditions of the Towing and Impound Services Contract. (Exhibit B.) The City reserves the sole right to revise said Contract as may be applicable.

EXHIBIT A

Standard Tow for Non-Accident Services

Wrecker trucks for non-accident towing services such as disabled vehicle towing, impounds and traffic violation tows.

Vehicles	Rate
Additional Labor	\$
<u>Light Duty Towing</u> Passenger cars, motorcycles and trucks with GVW of 7,000 lbs. or less	\$
<u>Medium Duty Towing</u> Passenger cars, motorcycles and truck with GVW of 7,001 lbs. to 10,000 lbs.	\$
<u>Heavy Duty Towing</u> Mid-size vehicles, delivery trucks, utility vehicles, motor-homes, parcel trucks, ambulances, small dump trucks, landscape trucks, flatbed trucks, refrigerated and box trucks, small and medium school buses with GVW of 10,001 lbs. to 26,000 lbs.	\$
<u>Super Heavy Duty towing</u> Large vehicles, large delivery trucks, motor-coaches, refuse trucks, cement mixers and tractor trailer combination with GVW over 26,001 lbs.	\$

Accident and Recovery Rates

Wrecker trucks for all accident related towing services.

Vehicles	Rate
Additional Labor	\$
<u>Light Duty Towing</u> Passenger cars, motorcycles and trucks with GVW of 7,000 lbs. or less	\$
<u>Medium Duty Towing</u> Passenger cars, motorcycles and truck with GVW of 7,001 lbs. to 10,000 lbs.	\$
<u>Heavy Duty Towing</u> Mid-size vehicles, delivery trucks, utility vehicles, motor-homes, parcel trucks, ambulances, small dump trucks, landscape trucks, flatbed and stake trucks, refrigerated and box trucks, small and medium school buses with GVW of 10,001 lbs. to 26,000 lbs.	\$
<u>Super Heavy Duty towing</u> Large vehicles, large delivery trucks, motor-coaches, refuse trucks, cement mixers and tractor trailer combination with GVW over 26,001 lbs.	\$

Impound Gate Fee

Service Provider must be able to provide services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

Impound Vehicle Release	Release
Flat rate to release impound vehicles	\$

FEE'S PAYABLE TO "CITY"

<u>CITY ordered tow (per tow cost)</u>	\$	40.00
<u>Storage Fee for Towed Vehicles (per day)</u>	\$	20.00

Company Representative _____

(Name)

(Phone Number)

APPENDIX B:

SERVICES CONTRACT

TOWING AND IMPOUND SERVICES CONTRACT

THIS IS AN CONTRACT effective as of _____ ("Effective Date")
between the City of Fargo, North Dakota, a municipal corporation ("CITY"), and
_____ located at _____
("SERVICE PROVIDER ").

WITNESSETH:

WHEREAS, CITY requires assistance for Towing Services and Impound Lot Management; and

WHEREAS, SERVICE PROVIDER possesses the professional expertise to provide these services; and

WHEREAS, CITY desires to engage SERVICE PROVIDER upon the terms and conditions hereinafter set forth, and SERVICE PROVIDER is willing to accept such engagement upon such terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and intending to be legally bound hereby, the parties agree as follows:

1. **SCOPE OF WORK:** CITY hereby engages SERVICE PROVIDER as an independent contractor to provide Towing Service and Lot Management for Impounded Vehicles for the CITY.

A. SERVICE PROVIDER agrees to provide comprehensive impound towing services and lot management for the CITY under the terms and conditions described herein. The general scope of SERVICE PROVIDER'S duties under this Contract will be to tow and deliver vehicles and/or other property to the City Impound Lot and to manage, and release such vehicles or other property from said impound lot. Such duties shall include impounding and towing of vehicles, including, but not limited to, automobiles, trucks, tractor/trailer combinations, trailers, motorcycles, boats.

B. SERVICE PROVIDER agrees to provide towing and/or impound services for non-vehicular items as designated by CITY Police Department, i.e., ATM machines, safes, etc. SERVICE PROVIDER also agrees to provide such towing and impound services as needed in connection with clearing motor vehicle accidents,

conducting criminal investigations, impounding abandoned vehicles, and enforcing motor vehicle traffic/parking violations.

C. SERVICE PROVIDER agrees to perform the necessary and related administrative duties concerning inventory and release of impounded vehicles, and any other impounded property.

D. SERVICE PROVIDER will provide personnel to manage and staff the Impound Lot, handle vehicle releases, and collect any applicable fees.

E. SERVICE PROVIDER understands and agrees that the storage, release, and associated administrative duties related to impounded vehicles and/or property is governed by CITY Municipal Code § 11-04, a copy which is attached hereto as Exhibit B and made part of this Contract by reference. SERVICE PROVIDER also agrees to comply with all provisions of CITY Municipal Code § 11-04 concerning services provided under this Contract.

2. **OTHER GENERAL DUTIES:** In addition to any other requirements mandated by this Contract, SERVICE PROVIDER agrees to perform and be responsible for the following:

A. Respond to any request for service (towing, impound, storage, release of vehicles or personal property) by CITY;

B. Remove debris from an accident scene, to include sweeping and removal of all broken glass and/or all miscellaneous debris.

C. Provide notice to the last registered owner and lien holder(s) of impounded vehicles as required by CITY Municipal Code § 11-0403. City, through the Police Department, will provide SERVICE PROVIDER with relevant information to assist SERVICE PROVIDER in notifying the last registered owner and or any lien holder(s) of impounded vehicles in a timely manner.

D. Provide a fax, telephone/mobile, and business email, with phone access available 24 hours per day, 7 days per week, without exception.

E. Employ no fewer than eight qualified tow-truck operators, with at least one operator having a valid CDL license.

F. Provide (upon request) proof of ownership of a minimum of eight standard duty or heavier wreckers including ownership of at least four tow-trucks having four-wheel drive capability. Proof of ownership may include any valid lease Contract that is in force for the term of this Contract. SERVICE PROVIDER shall dedicate eight tow-trucks exclusively to serving the towing needs of the City of Fargo on a regular basis. During, and the immediate 24 hours following snow storm events with accumulation greater than four inches and a single rainfall event totaling more than two inches, SERVICE PROVIDER will exclusively dedicate all eight tow-trucks to serving the CITY'S needs.

G. Establish and enforce an employment policy prohibiting the use of alcohol and/or other controlled substances by employees while on duty.

H. SERVICE PROVIDER shall, at its sole expense, keep and maintain the impound lot in a clean, safe, and sanitary condition, and in compliance with all applicable laws and regulations pursuant of municipal code § 11-0807.

I. SERVICE PROVIDER shall keep and maintain the premises, other than the building, including access areas, walkways, and areas adjoining the building in a clean and orderly condition, free of accumulation of dirt and rubbish.

J. SERVICE PROVIDER will perform all snow removal for the Impound Lot to include gates and building entry areas.

3. **DESIGNATION OF IMPOUND LOT**

A. The parties recognize that the CITY owns real property located on the northeast corner of 17th Street North at 7th Avenue North in the CITY, having an address of 715 17th Street North, Fargo, and which shall be known as the CITY'S "Impound Lot" and shall be strictly used for all CITY ordered impounds only. The Impound Lot consists of approximately 70,000 square feet. CITY otherwise has right of ingress/egress to the Impound Lot and building at all times.

B. SERVICE PROVIDER shall be restricted from storing any vehicles or property associated with private towing service.

C. The building located on the premises shall remain under the ownership and control of the CITY. SERVICE PROVIDER shall have no right of access or entry to the building unless accompanied by a CITY police officer or the CITY Police Department's Evidence/Property Manager. CITY remains responsible for maintenance and upkeep of the building. SERVICE PROVIDER remains responsible for all maintenance associated with the Impound Lot, excluding the before said building, security cameras, security alarm and fence on the premises. The entire lot is protected by a security system.

D. In the event of any damage or destruction to the Impound Lot by fire or other cause during the term hereof, the parties will negotiate in good faith to decide upon any restoration.

E. Upon end or termination of contract, SERVICE PROVIDER shall surrender the impound lot to CITY in as good a condition as at the contract commencement.

4. **PUBLIC SALE OF IMPOUNDED PROPERTY** SERVICE PROVIDER agrees to assist with the public sale of impounded property in conjunction with the designated auction service according to CITY Municipal Code § 11-04, a copy of which is attached hereto as Exhibit B, at least two times per year. The city and/or other governmental agencies directed by the CITY retain the right to sell any CITY owned assets in conjunction with impound property on public sale. The time, date and auctioneer to conduct the sale will be decided by the CITY and SERVICE PROVIDER. SERVICE PROVIDER shall receive fifty percent (50%) of the gross sale proceeds, of impound property only, as reimbursement for its costs and as reimbursement for expenses which remain unpaid because the owner does not claim the vehicle. SERVICE PROVIDER is not entitled to any portion of any amount received from the sale of any seized or forfeited vehicle or other property.

5. **RELEASE OF VEHICLES AND PROPERTY, RESPONSE TIME, FORFEITURE OF FEES, GROUNDS FOR TERMINATION**

A. During the period from 8:00 a.m. to 6:00 p.m., Monday through Sunday, SERVICE PROVIDER shall release vehicles or other property from the Impound Lot within 30-minutes of a request. At all other times SERVICE PROVIDER shall release vehicles or other property from the Impound Lot within 90-minutes of such request. SERVICE PROVIDER'S staff responding to requests for releases of vehicles or property must be authorized to handle such releases and to collect required fees.

B. Failure by SERVICE PROVIDER to properly respond to a request for the release of a vehicle or other property within the designated response time, or failure to timely respond to a tow request, will result in a forfeiture of fees otherwise payable to SERVICE PROVIDER for that service, as listed in the Rate Schedule attached hereto as Exhibit A. For purposes of this section timely response to a tow request is as follows:

<u>Time of day</u>	<u>Response time</u>
Rush hour, Mon - Fri 7:00 a.m. – 9:00 a.m. 4:00 p.m. – 6:00 p.m.	immediate to 20 minutes
Other daylight hours Daily	20 – 40 minutes
Holidays (does not include special events)	20 – 40 minutes
Special events	immediate to 20 minutes

C. CITY may, at its discretion, terminate the Contract if there are five instances during one calendar year, where SERVICE PROVIDER has failed to meet the required response times for vehicle or property release. The CITY will notify SERVICE PROVIDER by the fifth business day of the month following each instance where SERVICE PROVIDER has failed to comply within the response times.

6. **COMPENSATION:**

A. SERVICE PROVIDER will invoice owners of towed vehicles directly for services rendered, subject to monitoring and review.

B. SERVICE PROVIDER shall be entitled to all towing fees, per attached Rate Schedule (Exhibit A), collected upon release of vehicles from the Impound Lot.

C. SERVICE PROVIDER shall receive fifty percent (50%) of the net sale proceeds, of impound property only, as reimbursement for fees related to towing of unclaimed vehicles and cost of impounded vehicle administrative duties.

D. The amount SERVICE PROVIDER charges citizens utilizing the CITY'S towing contractor for private tow (i.e., accidents) must be consistent with the prescribed rate schedule charged for CITY ordered impounds or tows.

K. SERVICE PROVIDER will not charge a fee if a request for service is cancelled before arriving on scene.

L. SERVICE PROVIDER will only be entitled to one-half (1/2) of the regular towing fee if vehicle does not leave premises prior to owner/operator producing the ignition keys and moving vehicle.

E. SERVICE PROVIDER shall not be allowed to charge "additional fees" to the CITY for extra services.

F. All storage fees must be paid by the vehicle owner at the time the vehicle is released from the Impound Lot.

G. All payments made to SERVICE PROVIDER by CITY will be by, either Credit Card Transaction or Electronic Funds Transfer (EFT)

H. The parties hereby agree and understand that the compensation and fees listed in the Rate Schedule may be amended from time to time, via separate resolution approved by the board of city commissioners, without affecting the terms and conditions of this Contract, which shall otherwise remain in full force and effect.

7. **POSTING OF FEES:** SERVICE PROVIDER shall prominently display appropriate signage at the Impound Lot listing the fees and charges associated with towing, impound, storing, and retrieval of property as well as contact information for SERVICE PROVIDER.

8. **DELINQUENT PARKING TICKETS:** SERVICE PROVIDER shall not release any impounded motor vehicle before confirming with the CITY that any delinquent parking tickets owed by the owner of the impounded vehicle have been paid to the CITY.

9. **METHOD OF PAYMENT:** Payment of said fees shall be made by the owners of towed vehicle directly to SERVICE PROVIDER, subject to monitoring and review. Where CITY or its Authorities have used this contract to tow its own vehicles, payment will be made to SERVICE PROVIDER by the Department incurring those costs.

10. **PAYMENT OF TAXES AND SET-OFF:** SERVICE PROVIDER warrants that any and all taxes or municipal claims that may be payable to the CITY by SERVICE PROVIDER are current and not delinquent. If CITY determines that there is an outstanding delinquency or if any taxes or municipal claims become delinquent and owing during the term of this contract or prior to final payment by CITY, SERVICE PROVIDER hereby grants CITY the right to set-off

that indebtedness against any amounts owing to SERVICE PROVIDER under the terms of this contract. CITY reserves the right to apply set-off payments in whatever manner it deems appropriate.

11. **ACCOUNTING:**

A. SERVICE PROVIDER agrees to furnish a monthly accounting report and all accounts payable to CITY on or before the 5th business day of the month following the month for which the report is made. This accounting shall disclose all fees which have been collected by SERVICE PROVIDER on the CITY'S behalf. SERVICE PROVIDER shall deliver monthly accounting report and all accounts payable to the CITY Public Works Director.

City of Fargo Public Works
402 23rd St N
Fargo, ND 58102

Office hours are 7:45 am to 4:30 pm, Monday through Friday, excluding holidays.

B. SERVICE PROVIDER shall submit requests for payment to CITY on or before the 5th business day of the month, following the month for which a reporting is made. Payment will be made by the CITY to SERVICE PROVIDER within 30 days of receipt of invoice. All payments made to SERVICE PROVIDER by CITY shall be by, either Credit Card Transaction or Electronic Funds Transfer (EFT) at no additional cost to the CITY. The CITY retains the right to review the financial records of the SERVICE PROVIDER at any time as the same relates to the impoundment of vehicles and/or other property at the CITY Impound Lot.

C. Payments not paid when due from SERVICE PROVIDER to CITY shall bear interest at the rate of nineteen percent (19%) per annum until paid.

12. **TERM OF CONTRACT:** This Contract shall have an initial term of three (3) years from the effective date. Upon expiration of the initial term, this agreement shall automatically renew for successive periods of three (3) years. The City reserves the right to negotiate a different length of the Contract at its sole option. This contract can be cancelled by either party upon the giving of ninety (90) days written notice to the other party. In the event that this Contract continues on a three (3) year basis and any party to this Contract desires to modify or alter the Contract, such party must provide the other party with sixty (60) days notice of such modification/amendment. The other party shall have thirty (30) days thereafter to provide notice of its intent to cancel the Contract or during the 30-day period, enter into a mutually agreeable modification of this Contract.

13. **INTERRUPTION: POSTPONEMENT: ABANDONMENT:** In the event that the work herein contemplated, or any part thereof, shall be interrupted, postponed, or abandoned due to circumstances which CITY considers to be in its best interests, SERVICE PROVIDER shall not be entitled to any further payment for such work or portion thereof beyond and in excess of the amount due at that time, in accordance with Paragraph 9 hereof; and final payment shall be based on the proportionate amount of the fee earned to such date.

14. **MONITORING AND EVALUATION:** All services provided under this Contract shall be subject to monitoring and evaluation by CITY or its authorized representatives. SERVICE PROVIDER shall supply CITY with written reports on program activity, in a form approved by CITY, as CITY may, from time to time, require. SERVICE PROVIDER shall provide CITY with such additional information and data as may be periodically required by federal or state authorities, or by CITY itself. Authorized representatives of CITY shall have access to the books and records maintained by SERVICE PROVIDER with respect to any services or materials provided to CITY pursuant to this Contract at all reasonable times and for all reasonable purposes, including, but not limited to, inspecting and copying any books, records, memoranda, checks, correspondence or other relevant documents. All such books and records shall be preserved by SERVICE PROVIDER for a period of three (3) years after the termination of this Contract.

15. **RIGHTS IN DATA; COPYRIGHTS; DISCLOSURE:**

A. Definition. The term "data", as used in this Contract, includes written reports, studies, drawings, or other graphic, electronic, chemical or mechanical representations.

B. Rights in data. All data developed pursuant to this Contract shall belong solely and exclusively to CITY, and CITY shall have the full right to use such data for any official purpose and in whatever manner is deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval by SERVICE PROVIDER. CITY shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any data developed or prepared under this Contract.

C. Copyrights. No data developed or prepared in whole or in part under this Contract shall be subject to copyright by SERVICE PROVIDER in the United States of America or in any other country. SERVICE PROVIDER hereby relinquishes, or shall cause to be relinquished, any and all copyrights and/or privileges to data developed or prepared under this Contract without any additional payment to SERVICE PROVIDER therefore. SERVICE PROVIDER agrees at the request of the CITY to include a copyright notice indicating the date of publication and identifying CITY as the copyright owner on any materials produced under this Contract. SERVICE PROVIDER shall not include in the data any copyrighted matter unless SERVICE PROVIDER obtains the prior written approval of the City Solicitor and provides written permission of the copyright owner for SERVICE PROVIDER to use such copyrighted matter in the manner provided herein.

16. **CONFIDENTIALITY:** SERVICE PROVIDER agrees not to divulge or release any information or data developed or obtained in conjunction with any aspect of its performance under this Contract, except to authorized CITY personnel or upon prior written approval of the City Solicitor.

17. **COMPLIANCE WITH LAWS:** SERVICE PROVIDER shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are or should be applicable to any work performed under this Contract.

18. **ASSIGNMENT: SUBCONTRACTING:** SERVICE PROVIDER shall not assign this Contract or any right to monies to be paid hereunder without the written consent of CITY. None of the services covered by this Contract shall be subcontracted without the prior written approval of CITY.

19. **INTERPRETATION:** In the event of any dispute as to the interpretation of the terms of this Contract, the decision of the CITY Commission shall be final. Nothing in this section will preclude a party's recourse to a court of competent jurisdiction (a) to seek de novo review; (b) to seek temporary equitable relief necessary to protect its interests; or (c) to recover specific property, including an action in replevin.

20. **INSURANCE:** SERVICE PROVIDER shall obtain, as a condition precedent to the exercise of any part of this Contract, the following insurance coverage. The SERVICE PROVIDER shall keep the CITY as an additional insured as to general liability insurance on such policy throughout the term of this Contract. SERVICE PROVIDER shall supply a certificate of insurance duly executed by the officers or authorized representatives of a responsible and non-assessable insurance company, evidencing the following minimum coverage and specifically identifying the City as an additional insured as to general liability, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to the City:

- | | |
|--|-------------------------------|
| a. Worker's Compensation | Applicable State Requirements |
| b. Garage Keepers Physical Damage Insurance
(Both comprehensive and collision with the CITY
as a named insured on the policy) | \$150,000 |
| c. Garage Liability Insurance
(For vehicles left in storage) | \$1,000,000 |
| d. Public Liability Insurance
(Bodily injury and property damage, with the CITY
named as an insured on the policy) | \$1,000,000 per
occurrence |
| e. Automobile Insurance
(Bodily injury and property damage, with the CITY
named as an insured on the policy) | \$1,000,000 per
occurrence |
| f. Umbrella Liability Insurance | \$1,000,000 |

All premiums shall be at the expense of the SERVICE PROVIDER.

Each and every such policy as aforesaid shall expressly provide therein that coverage includes the contractual liability assumed by the SERVICE PROVIDER pursuant to this Contract. Furthermore each policy and every such policy shall be endorsed to show the CITY as an additional named insured.

At the time of any contract renewal, SERVICE PROVIDER shall provide sufficient proof that all coverage listed above is in effect. Additionally, CITY may request certificate of insurance to verify insurance coverage at any time.

21. **TIME OF PERFORMANCE:** SERVICE PROVIDER shall commence performance no later than _____.

22. **INDEMNIFICATION:** SERVICE PROVIDER hereby agrees to indemnify, save and hold harmless, and defend CITY, its officers, agents and employees from and against all liens, charges, claims, demands, losses, costs, judgments, liabilities, and damages of every kind and nature whatsoever, including court costs and attorney's fees arising by reason of: the performance by SERVICE PROVIDER of any services under this Contract; any act, error or omission of SERVICE PROVIDER or of an agent, employee or licensee of SERVICE PROVIDER or subcontractor of SERVICE PROVIDER and any breach by SERVICE PROVIDER of any of the terms conditions or provisions of this Contract.

23. **AMENDMENT:** This Contract contains all terms and conditions agreed upon by the parties hereto, and no other Contract, oral or otherwise, regarding the subject matter of this Contract, shall be deemed to exist or to bind any of the parties hereto. This Contract may not be changed, modified, discharged or extended except by written amendment, duly executed by the parties.

19. **TERMINATION:** If either SERVICE PROVIDER or CITY fails to cure any default of the terms or conditions of this Contract within a timely manner the non-defaulting party shall have the right to terminate the Contract by specifying the date of termination and giving notice in writing thereof to the defaulting party at least sixty (60) days before the termination date. In the event of termination, SERVICE PROVIDER shall be entitled to just and equitable compensation for any satisfactory work completed at the date of termination. SERVICE PROVIDER shall not be liable to the CITY for any damages, sums of money, lost profits, or costs involved in retaining the services of a new contractor to perform the terms and conditions of this Contract or one similar.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, the Effective Date of

_____.

SERVICE PROVIDER:

By: _____

Its: _____

CITY:

THE CITY OF FARGO, NORTH DAKOTA,
a municipal corporation

By: _____
Dr. Tim Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor