RESOLUTION

APPROVING A FIVE-YEAR AGREEMENT WITH THE NASHUA TOWING AND RECOVERY ASSOCIATION

CITY OF NASHUA

In the Year Two Thousand and Ten

RESOLVED *by the Board of Aldermen of the City of Nashua* that the attached five-year contract (July 1, 2010 to June 30, 2015) with the Nashua Towing and Recovery Association relative to the towing of vehicles for the city is hereby approved.

LEGISLATIVE YEAR 2010

RESOLUTION: **R-10-38**

PURPOSE: **Approving a five-year agreement with the Nashua Towing and Recovery Association**

ENDORSERS: **Mayor Donnalee Lozeau**

COMMITTEE ASSIGNMENT:

FISCAL NOTE: **The cost of the contract cannot be determined due to the nature of the contract**

ANALYSIS

This resolution approves a five-year renewal contract (July 1, 2010 to June 30, 2015) with the Nashua Towing and Recovery Association. This contract sets forth the terms, conditions and rates for city requested tows of vehicles involved in accidents, illegally parked, abandoned or blocking snow removal equipment. The increased rates in Appendix A are consistent with the rates charged by other state and local entities for this service. The changes to the operators' certification requirements paragraph (R) mirror the requirements established by the New Hampshire State Police.

NRO § 5-74, B states that a contract that extends from the current fiscal year into succeeding fiscal year(s) in which no funds have been appropriated nor otherwise designated for this purpose shall be approved by the full Board of Aldermen before the contract shall become binding on the City.

Approved as to form: **Office of Corporation Counsel**

By: _____

Date: July 7, 2010

VEHICLE TOWING SERVICES AGREEMENT

AGREEMENT made this ____ day of _____, 20~~05~~10, by and between the City of Nashua (hereinafter "City"), and Nashua Towing and Recovery Association, with a place of business at 49 Canal Street, Nashua, New Hampshire, and each and every participating member of the Association as set forth on the signature page hereof (the Association and its members are hereinafter collectively referred to as "Contractor").

The parties hereto, for and in consideration of the mutual benefits, covenants and other consideration noted herein, agree as follows:

A. The City hereby agrees that Contractor shall receive so-called "police preference" (accident and arrest related) calls for towing service during the period beginning as of the date of execution of this Agreement by all parties and ending on June 30, 20~~10~~15, with the exceptions noted below, and subject to the terms, conditions and provisions of this Agreement. This Agreement will automatically renew under the same terms and conditions for five (5) additional one-year terms unless the City, in its sole discretion, provides notice to the Contractor of non-renewal by March 31st of any given year. This Agreement is non-exclusive.

B. The City reserves the right to call any towing service designated by the owner of a vehicle involved in an accident who requests the officer on the scene to call such towing service.

C. The City reserves the right to call any towing service having special equipment or expertise when in the opinion of the police officer, or other emergency response official on the scene the situation requires such special equipment or expertise.

D. The Contractor agrees to maintain insurance, as follows:

1. Commercial General Liability or Garage Liability Insurance with limits of not less than $1,000,000 combined single limit for the premises and operations and products and completed operations of the garage. The General Liability and Garage Liability coverage must include garage keepers' legal liability with a limit of not less than $200,000 (this coverage protects the vehicles left in the insured's care, custody and control for loss, theft or damage to a stored vehicle). Coverage must also include hook and cargo liability coverage with a limit of not less than $100,000 to cover damage to vehicles being towed. Motor vehicle liability insurance with limits of not less than $1,000,000 combined single limit on the garage operations vehicles. All insurance is subject to the following:

a. The City of Nashua shall be named as an additional insured on all of the above policies.

b. Insurance shall remain in effect to cover all operations, including the use of any and all motor vehicles and premises, as a continuing performance of the contracted services.

c. Contractual liability covering this Agreement.

2. The Contractor shall carry Workers' Compensation Insurance at statutory limits, including employer's liability coverage in the amounts of $100,000 / $500,000 / $100,000.

3. Notwithstanding the foregoing, or any other provision of this Agreement, except for paragraph Q herein as it relates to vehicles stored at the Landfill, the Contractor covenants that it shall indemnify and hold harmless the City

of Nashua, and its employees, officers, agents, constituent departments, boards, commissions and agencies from and against any and all claims, demands, suits, judgments or other assertions of liability, and shall provide, at its expense, counsel reasonably satisfactory to the City to defend it against the foregoing assertions of liability, and shall do so in any instance wherein it is alleged that the City has acted or failed to act, or has a duty to another based upon, relating to, or arising out of, the subject matter of this Agreement, or its existence, or the identity or characteristics or actions or failure to act of the parties hereto, or other assertion of liability on the part of the City on any theory whatsoever. This covenant of indemnification shall be construed broadly to effectuate its purpose and shall be deemed to be a separate and enforceable New Hampshire contract which shall survive the termination or expiration of this Agreement and which shall not be limited or modified by the presence or absence of insurance. The Contractor shall at all times be deemed to be an independent contractor of the City.

4. The Contractor shall carry the required insurances with an insurance company licensed to do business in the State of New Hampshire and acceptable to the City of Nashua. The Contractor shall furnish insurance certificates evidencing the insurance required by this Agreement to the City of Nashua c/o Risk Management Office on or before the effective date of this Agreement and shall provide not less than thirty (30) days prior notice to the City of any cancellation or material change in the policies or the coverages to be provided. It is the responsibility of the Contractor to provide replacement or updated certificates of insurance to the City upon renewal of insurance policies so as to

insure and evidence continuous coverage throughout the duration of this Agreement.

5. No member of the Contractor association will be allowed to perform services or receive payments under this Agreement if all required insurance is not in force for that member, and the City has not received proper certificates of insurance.

6. Contractor shall provide to the City written proof (certifications) that all vehicle/wrecker operators are in compliance with all State and Federal laws, rules, and regulations pertaining to FMCSR 49 CFR Part 382 CDL Random Drug & Alcohol Testing requirements. Compliance must be in the form of a letter from the Consortium Testing Facility. Letters must be submitted to the Risk Management Department.

E. Contractor agrees to maintain the availability of the towing service on a twenty-four (24) hour per day, seven (7) day per week basis during the whole of the Agreement period.

F. The Contractor and the City will agree to a rotational call list. The City will make its best effort to adhere to the call rotation procedures, but the City will not be liable to the Contractor for any errors that may occur related to the call rotation procedure. Should a contractor be dispatched for towing service and the request for such towing service is subsequently canceled, the City shall compensate the contractor in an amount equal to the straight pick-up towing rate contained in Appendix A.

G. Contractor agrees to transport any and all vehicles to the Contractor's facility (Paragraph Q) unless otherwise directed by the owner at the scene of the accident

or as the officer on the scene may direct. Vehicles which are not Hazmat compliant due to damage may be taken to the Contractors' places of business for up to 48 hours for the sole purpose of bringing said vehicles into Hazmat compliance.

H. The Contractor shall not subcontract any of the obligations or service to be performed under this Agreement without the prior written approval of the City.

I. The Contractor agrees to maintain during the life of this Agreement ten (10) wrecker/carrier trucks meeting the following specifications:

1. Three (3) slide back carriers of at least 20,000 pounds gross vehicle weight.

2. Three (3) boom type wreckers having the following equipment:

   a. One (1) properly rated snatch block per cable.

   b. Spare cable.

   c. Spare chain.

   d. Chock block or scotch blocks.

   e. Broom.

   f. Shovel.

   g. Steering wheel lock.

   h. ABC fire extinguisher.

   i. One (1) pair of wheel skates.

3. At least one (1) of the boom type wreckers shall be four wheel drive.

4. At least one (1) boom-type wrecker of at least 32,000 lbs. gross vehicle weight.

5. At least one (1) of the boom-type wreckers shall be a maximum height of seventy-nine (79) inches to allow access into the city parking garages.

J. Contractor agrees to charge the vehicle owner for all towing services in accordance with the price schedule appended hereto as Appendix A, and not more. In the event that there are special circumstances associated with the towing services as determined by the Nashua Police Department, the Contractor and the Nashua Police Department shall determine an appropriate rate for the services rendered in accordance with Appendix A.

K. It is mutually agreed that the City may assign one or more of its officers to inspect the equipment noted herein to insure compliance with this Agreement.

L. In case of non-compliance by the Contractor of any portion of this Agreement, and notwithstanding the provisions of Paragraph A, the City may terminate this Agreement upon thirty (30) days written notice to Contractor, at any time.

M. It is understood and agreed that the Contractor shall charge the owner of the vehicle so towed and shall not charge the City for services rendered pursuant to this Agreement, except as provided in Sections F, T and Appendix A (N)~~,~~ only. Mileage shall be $3.~~0~~50 per mile for vehicles towed outside the city, beginning at the city line. No mileage fee may be charged for vehicles towed within the city.

N. Any vehicle towed pursuant to this Agreement and not claimed, shall be disposed of pursuant to current state law. When a vehicle is determined to be abandoned the contractor may report the vehicle as such to the Nashua Police Department. ~~after thirty (30) days may be considered abandoned and the Contractor may report the vehicle as such to the Nashua Police Department. The vehicle will then be~~

~~subject to the normal abandoned motor vehicle tagging and notification procedure established by the Nashua Police Department.~~ Once properly processed, including procedures required by the Nashua Police Department and state law, the vehicle may be disposed of by the Contractor as abandoned pursuant to state law.

O. The Contractor shall give to the Nashua Police Department a copy of all bills rendered to any person for the services rendered in connection with this Agreement within ~~forty-eight (48) hours~~ seven (7) days of the rendition of said bill. Ledgers and records shall be maintained for all services performed under the terms of this Agreement and of all calls made to Contractor and shall be made available for inspection by the City, or its designee, on its request.

P. City snow removal towing shall be done by Contractor on a non-exclusive basis, but pursuant to Section T of this Agreement.

Q. Contractor shall maintain secure fenced, illuminated lot(s), for any vehicles towed, excluding snow removal tows, and shall be solely responsible for such vehicles when in storage at one of its facilities, or while being towed. Said lot(s) shall be constructed so as to prevent unauthorized persons from entering and shall be posted in accordance with RSA 635:4 and will specify the name and phone number of the agency responsible for the lot. Such lots shall be subject to inspection by an authorized city representative for compliance with the provisions herein provided. This provision includes the storage, and any special requirements for that storage, of vehicles or items designated by the City, or its agent, as likely to be used as evidence in a judicial action, whether criminal or civil.

Requests to obtain personal property from towed vehicles will comply with RSA 262:35-a III, and will be granted as well as requests to recover vehicles from the storage lot on a twenty-four (24) hour a day basis. Contractor may charge a gate fee for access provided after normal business hours. Response time to any storage lot will be within thirty (30) minutes.

Contractor shall post the approved rate schedule in a conspicuous place within its businesses.

~~All non-snow tows at the City Landfill shall be removed by Contractor on or before December 1, 2005.~~

R. ~~Vehicle/wrecker operators shall be trained and certified by a recognized tow industry organization, including, but not limited to, Wreckmasters and the Towing and Recovery Association of America (TRAA). Said certification shall be a "Certified Tow Operator" as a minimum. The City shall have the right to reject certificates obtained from organizations without proper certification credentials or programs. All vehicle/wrecker operators shall be certified on or before April 1, 2006. Thereafter, vehicle/wrecker operators shall be certified prior to providing service pursuant to this Agreement.~~All tow service operators shall be certified in light, medium and/or heavy duty in the following categories:

a. Light duty and recovery certification will refer to the towing of passenger vehicles, SUV's, motorcycles and light trucks under 10,000 pounds (gross vehicle weight rating (GVWR)).

b. Medium tow and recovery certification will refer to trucks and trailers having a FVWR or gross combination weight rating (GVCR) of 10,001 pounds (4,546 kg) to 26,000 pounds (11,818 kg).

c. Heavy duty towing certifications will refer to trucks and trailers having a (GVWR) or (GVCR) of 27,001 pounds (11,819 kg) or more.

The Nashua Police Department shall conduct a background check on all employees of Contractor who intend to provide services under this Agreement. Contractor hereby agrees to provide to the Nashua Police the name, address, ~~and~~ date of birth, and license of such employees for this purpose. No employee may provide services under this Agreement until such background check is satisfactorily completed.

S. Contractor shall respond to all calls within a reasonable time, but not to exceed 30 minutes. Contractor will maintain offices and storage lots within the city, and will be staffed Monday through Friday during normal business hours, Monday through Friday, 0800 -1700 hours, excluding holidays.

T. Contractor shall, in addition to the other towing services described herein, provide towing services to vehicles that have not been involved in accidents, as well as those so involved, whether abandoned or not and whether situated on private or public property, when directed by an authorized representative of the Nashua Police Department. This obligation includes, without limitation, towing of parked or abandoned cars on account of snow, whether within a parking lot or to another location, other inclement weather, or emergencies. If the owner of the vehicle is available at the time the towing services are provided, the services shall be provided in the same manner and for

the same charges as pertain to accident or arrest related police preference tows and set forth in Appendix A - General Rates. In all other cases the following procedures apply:

Only vehicles towed as "snow tows" during a snow emergency shall be stored at the Nashua landfill. Any vehicle so towed which remains unclaimed at the landfill after thirty (30) days shall be considered abandoned and will be subject to the normal abandoned motor vehicle tagging and towing procedure established by the Nashua Police Department.

In the cases relating to payment for snow tows, the payment shall be on an hourly basis pursuant to the hourly snow tow rates found in Appendix A, paragraph F. The Contractor must submit an invoice detailing the number of tow trucks and hours worked for each which must be approved by a City representative. This billing will be on a storm by storm basis.

U. In all cases in which a vehicle is towed by the Contractor, Contractor shall render the site from which the vehicle is removed reasonably safe and clean, by sweeping up and removing debris, wreckage or parts, oil or fuel, and otherwise reasonably returning the site to its condition prior to the vehicle having been present. The City Public Works Department will provide assistance to the Contractor in cases where the Contractor cannot reasonably and expeditiously completely perform this clean up, if so requested by the Police Department. Nashua Fire Rescue shall participate in the site clean up as necessary and its direction regarding the clean up and disposal of fuel and other materials shall be followed. The responsibility of the Contractor to perform site clean up is not intended to constitute greater responsibility than for that which is towing related.

V. The Contractor shall abide by such procedures and requirements relating to the provision of services under this Agreement as the City may reasonably establish from time to time after negotiation with the Contractor. Said procedures and requirements shall not be inconsistent with this Agreement, and may pertain to such subjects as, but without limitation, the following: the establishment of response codes within the City to insure prompt response times; the giving of certain notices to the Police Department; the training of new Police Officers regarding towing principles and procedures; required forms; documentation of work; evidence of lien perfection procedure compliance; certificates and billing procedures; emergency codes; and, procedures for promptly clearing the scene of an accident vehicle blocking traffic or unsafe situation. It is intended by the parties that the Contractor shall determine the procedures for assigning towing work among its members, but the parties agree that for certain tows, the Contractor called to respond need not be the geographically closest Contractor if the next closest or another can be called to respond as quickly or almost as quickly as the one geographically closest.

W. The Contractor shall cooperate with the City, and the City with the Contractor, so as to effectuate the purposes of this Agreement, and to carry out the letter and intent of its terms. One purpose of this Agreement is to provide a reliable means of insuring that public ways and lands and private property are free of obstruction to vehicle and pedestrian traffic, and safe for passage, without the eyesore of abandoned vehicles. Contractor covenants that it, including its constituent members, shall provide workmanlike, courteous, professional service with appropriately trained personnel and well maintained modern equipment and techniques. Contractor agrees to abide by all

laws, ordinances and rules or regulations, now in effect, and/or properly adopted from time to time in the future by any authority having the power so to do, and pertinent to the conduct of the Contractor's services hereunder. If an issue arises related to one of the Contractor's members' performance, the President of the Nashua Towing Association and an assigned Nashua Police Department representative shall meet to resolve the issue and mutually determine the appropriate disposition, which may include temporary or permanent suspension of the non-compliant member of the Contractor.

X. The parties hereto agree that, except as may be specifically provided herein, this document is a complete and fully integrated expression of their Agreement which shall be interpreted without reference to their prior dealings, outside documents or other materials, all of which are deemed by them to be fully merged and integrated herein.

IN WITNESS WHEREOF, the parties hereto set their hands by the signature of their duly authorized agents this ____ day of _____, 20~~05~~10.

THE CITY OF NASHUA

By: _____
~~Bernard A. Streeter~~Donnalee Lozeau, Mayor

NASHUA TOWING AND RECOVERY ASSOCIATION

By: _____
Mike Guilbeault, President

AGREED TO BY AND FOR THE INDIVIDUAL MEMBERS OF THE NASHUA TOWING AND RECOVERY ASSOCIATION, INDIVIDUALLY BY THEIR DULY AUTHORIZED REPRESENTATIVES:

_____

Robert Ruggiero, Tilden Automotive and Truck Centers ~~Rod MacIntyre, Rod's Automotive~~

_____

Mike Guibeault, D & R Towing

_____

~~David Guichard, Decelle's Auto Clinic~~

_____

~~Don~~ Deborah Hayden, Quick Response Towing

APPENDIX A

Price Schedule - General Rates *

A.	Towing - straight pickup (vehicles under 10,000 GVW)	~~$95~~125.00
B.	Towing - any abandoned vehicle (under 10,000 GVW)	~~$75~~ 95.00
C.	Skate and snatch block use (per occurrence) ~~use~~	~~$30~~ 50.00
D.	Winching[1] / (hourly basis to be billed by the ½ hour)	~~$95~~125.00
E.	Separating vehicles (hourly basis to be billed by the ½ hour)	~~$95~~125.00
F.	Snow tows (hourly basis to be billed by the ½ hour)	~~$75~~ 95.00
G.	Waiting time (hourly basis to be billed by the ½ hour)	~~$95~~125.00
H.	Sweeping scene and ~~scene~~ clean up (including oil and gasoline collection) (hourly rate billed by the ½ hour)	~~$95~~125.00
I.	Storage rate The first 24 hours are free. ~~$35~~45.00 per 24 hour period thereafter. Vehicles not picked up within the first 24 hours will be charged from the first hour. Vehicles over 10,000 GVW	~~$35~~ 45.00 $ 65.00 per day
J.	Rate schedule for towing trucks weighing 10,001 to ~~12,001~~-20,000 lbs. Includes winching & recovery (billed at ½ hour increments.[1] /*)	$150.00/hour (nights 2 hour min) ~~$95.00~~
K.	Rate schedule for towing trucks weighing greater than 20,001 lbs. ~~and up~~ (Winching & recovery billed at ½ increments[1] /*) ~~Day: $150.00 Night: $150.00/hour, 2-hour min.~~	$175.00/hour (days) $250.00/hour (nights) (~~nights~~ 2 hour min)
L.	Motorcycles - ~~P~~ prevailing straight pickup rate (A), plus	~~$30~~ 40.00
M.	Open business after ~~normal~~ hours (~~G~~gate ~~F~~fee)	~~$30~~ 40.00
N.	Police vehicles involved in accidents and requiring tows shall be charged at current City rates. ~~Disconnect trans. linkage, etc. $95.00 (hourly basis billed on the ½ hour)~~	

* ~~Preparation for large truck tows such as releasing air brakes, running air lines, removing bumpers, and whatever is necessary for a safe, professional tow will be charged by the hour at the above rates.~~Preparation for vehicle tows greater that 10,000 pounds GVW, such as releasing air brakes, running air lines, removing bumpers, driveshafts & axles and whatever is necessary for a safe, professional tow will be charged at the hourly rates above.

[1] / Any special equipment required or needed at the scene as requested by the contractor and authorized by the Nashua Police Department in the process of rendering cleanup or vehicle recovery will be charged on a cost plus basis.

~~*~~ All tows charged to the City shall be at the rate of $~~75~~95.00 per tow or at $95.00 per hour unless special circumstances exist which warrant a higher rate and prior approval is obtained from the Nashua Police Department.

APPENDIX A

Price Schedule - General Rates*

A.	Towing - straight pickup (vehicles under 10,000 GVW)	$125.00
B.	Towing - any abandoned vehicle (under 10,000 GVW)	$ 95.00
C.	Skate and snatch block use (per occurrence)	$ 50.00
D.	Winching 1_/ (hourly basis to be billed by the ½ hour)	$125.00
E.	Separating vehicles (hourly basis to be billed by the ½ hour)	$125.00
F.	Snow tows (hourly basis to be billed by the ½ hour)	$ 95.00
G.	Waiting time (hourly basis to be billed by the ½ hour)	$125.00
H.	Sweeping scene and clean up (including oil and gasoline collection) (hourly rate billed by the ½ hour)	$125.00
I.	Storage rate The first 24 hours are free. $45.00 per 24 hour period thereafter. Vehicles not picked up within the first 24 hours will be charged from the first hour.	$ 45.00
	Vehicles over 10,000 GVW	$ 65.00 per day
J.	Rate schedule for towing trucks weighing 10,001 to 20,000 lbs. Includes winching & recovery billed at ½ hour increments. 1_/*	$150.00/hour (days) $150.00/hour (nights 2 hour min)
K.	Rate schedule for towing trucks weighing greater than 20,001 lbs. Winching & recovery billed at ½ increments 1_/*	$175.00/hour (days) (night 2 hour min) $250.00/hour (nights 2 hour min)
L.	Motorcycles, prevailing straight pickup rate (A), plus	$ 40.00
M	Open business after hours (gate fee)	$ 40.00
N	Police schedules involved in accidents and requiring tows shall be charged at current City rates.	

* Preparation for vehicle tows greater that 10,000 pounds GVW, such as releasing air brakes, running air lines, removing bumpers, driveshafts & axles and whatever is necessary for a safe, professional tow will be charged at the hourly rates above.

1_/ Any special equipment required or needed at the scene as requested by the contractor and authorized by the Nashua Police Department in the process of rendering cleanup or vehicle recovery will be charged on a cost plus basis.

All tows charged to the City shall be at the rate of $95.00 per tow or at $95.00 per hour unless special circumstances exist which warrant a higher rate and prior approval is obtained from the Nashua Police Department.

RESOLUTION **R-10-38**

Approving a five-year agreement with the Nashua Towing and Recovery Association

Endorsed by Donald Lozeau MAYOR

IN THE BOARD OF ALDERMEN

1ST READING JULY 13, 2010

Referred to:

FINANCE COMMITTEE

2nd Reading AUGUST 10, 2010

3rd Reading

4th Reading

Other Action

Passed AUGUST 10, 2010

Indefinitely Postponed

Defeated

Attest: Deputy City Clerk

President

Approved Mayor's Signature

8/11/10
Date

Vetoed:

Veto Sustained:

Veto Overridden:

Attest:
City Clerk

President