

CITY OF CLAYTON, OHIO

RESOLUTION NO. R - 08 - 20 - 37

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT PROPOSAL OF AND ENTER INTO A SERVICE AGREEMENT WITH ENGLEWOOD TRUCK TOWING AND RECOVERY

WHEREAS, the City of Clayton Police Department issued a Request for Proposals for non-consent towing services; and

WHEREAS, as a result of the request for proposals, City Staff has recommended accepting the proposal submitted by Englewood Truck Towing and Recovery as being the best, most favorable proposal and in the best interests of the City.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is hereby authorized to accept the proposal of Englewood Truck Towing and Recovery as being the most favorable proposal and in the best interests of the City and enter into an agreement with Englewood Truck Towing and Recovery for non-consent towing services, consistent with the Request for Proposals issued.

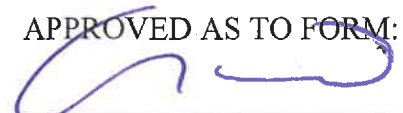
ADOPTED BY COUNCIL ON AUGUST 6, 2020.

AUTHENTICATION:


Mike Stovens
Mayor (Presiding Officer of Council)


Barbara Jan
Clerk of Council

APPROVED AS TO FORM:



Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Brookville Star

Date of publication

Aug. 12, 2020

Barbara Stein
CLERK

**CITY OF CLAYTON POLICE DEPARTMENT
TOWING AGREEMENT (NON-CONSENT TOWS)**

THIS AGREEMENT is made and entered into this 6th day of August, 2020, by and between Englewood Truck Towing & Recovery (“Tow Company”), whose address is 7510 Jacks Lane, Clayton, Ohio 45315, and the **City of Clayton, Montgomery County Ohio**, under the following conditions and circumstances:

WHEREAS, (Tow Company) is in the business of providing towing and storing services for vehicles; and

WHEREAS, (Tow Company) warrants that it has adequate equipment and personnel to service the City of Clayton and its needs with respect to its towing and storage requirements for non-consent tows; and

WHEREAS, the City of Clayton desires that **(Tow Company)** provide it with the services specified herein and in the Request for Proposal and **(Tow Company)** desires to provide the City of Clayton with the services specified herein and in the Request for Proposal on the terms and subject to the conditions set forth below:

NOW, THEREFORE, the parties agree as follows:

1. The Clayton Police Department shall call upon **(Tow Company)** to remove and/or store non-consent vehicles, including but not limited to, illegally parked vehicles, inoperable vehicles, or vehicles that, in the judgment of the Clayton Police Department, require towing.
2. At the request of the Clayton Police Department, **(Tow Company)** shall tow the vehicles to **(the specified tow storage lot)**, or designated storage area provided by the **(Tow Company)**, or a designated storage area provided by the Clayton Police Department. The place of storage will be at the Clayton Police Department’s discretion.
3. **(Tow Company)** shall provide services hereunder for all vehicles weighing up to 80,000 GVW.
4. **(Tow Company)** shall not respond to the scene of a traffic crash for the purpose of providing services unless contacted by the Clayton Police Department or a third party having a direct interest in such traffic crash. Violation of this provision shall be sufficient cause for termination of this Agreement.
5. **(Tow Company)** shall not charge fees in excess of the following:

Types of Vehicles and Towing Charges

During the term of this agreement, **(Tow Company)** may charge no more than the maximum tow fee of One Hundred Forty Five Dollars **(\$145.00)** for any standard tow of any vehicle or motorcycle less than 8000 GVW and may charge no more than a maximum tow fee of One Hundred Forty Five Dollars **(\$145.00)** for requested flatbed service. Vehicles over 80,000 pounds gross weight are not addressed by this agreement and would require proper equipment.

Labor Rate Fee

Tow Company *shall not* be permitted to charge a labor rate fee unless the tow involves any of the below listed services:

1. Extricating a vehicle from snow or mud;
2. Winching a vehicle to the highway from over an embankment;
3. Four-wheel lift or dolly job;
4. Separating or righting a vehicle.

In all instances where the Tow Company is permitted to charge a Labor Rate Fee, Tow Company shall not be permitted to charge a Labor Rate Fee in excess of:

Twenty Dollars (**\$20.00**) per quarter hour for a vehicle under 8000 GVW.

6. **Dead Runs**

The call is to be considered a dead run if the wrecked or illegally parked vehicle is not physically removed by the Tow Company from where it was standing but the company was called and was en route. This is the case even though it may have been hooked up to the tow truck or the request for a Tow truck is canceled after the tow truck is en route. Receipts will be issued when collecting for dead runs and shall contain the name of the Tow Company and individual acting on behalf of the Tow Company. Maximum tow fee will be at a rate of no more than half of a standard tow rate (**\$72.50**) or half the standard service of a flat bed (**\$72.50**).

7. **Storage**

A day is defined as each twenty-four (24) hour period, or a fraction thereof, beginning after the expiration of the first free twelve (12) hours. A day begins at the time the vehicle is placed in storage. Storage fees shall not exceed Twenty-Five Dollars (**\$25.00**) per day.

If the vehicle is stored at a location other than where the office is located, it shall be the responsibility of the Tow Company to promptly provide transportation to the storage location for the person claiming the vehicle.

8. **Other Additional Charges Permitted**

Flat Service Fees:

Unlocking

Delivering Fuel

Changing Wheels

Starting – Dead Battery

Use of fluid absorbents, fire extinguisher, or other needed disposable products.

Other additional Charges will not exceed the posted Fee Schedule and the Tow Company shall not charge any fee which is not specified in the posted Fee Schedule. The Fee Schedule will be added to the contract upon execution of same by both parties.

For the purpose of this Agreement, any vehicle disabled on the traveled portion of the berm or a roadway capable of being removed by a service truck or a tow truck shall be considered a straight ordinary tow job.

When the owner or operator of a vehicle requests his/her vehicle be towed to a location other than that of the Tow Company or Tow Company storage area, an additional charge of **\$3.50** or less per mile shall be permitted to be charged by the Tow Company in addition to the straight tow job. All charges must be computed on any distance the tow truck must travel as compared to the distance to the Tow Company's lot or storage area. If it is no further than it is from the actual scene to the Tow Company's lot or storage area, then no additional charge may be made. The actual additional miles traveled in one direction shall determine the permissible additional mileage charge.

9. **No Additional Charges Are to be Made for Any of the Following:**

No additional charges shall be made by the Tow Company for any work required to prepare the vehicle for towing, except as stated above. This shall include the following as necessary preparation for towing:

1. Removing or disconnecting the drive shaft; or
2. Loading or tying on parts; or
3. Any other work required, not specifically mentioned under the heading Additional Charges Permitted.

10. **Owners Request:**

Nothing in this agreement precludes the owner or operator of a vehicle from requesting a towing service of their choice.

The owner or operator shall be responsible for the fees set forth above. If the vehicle is towed to the Clayton Police Department in connection with a criminal investigation, Clayton Police shall be responsible for payment if the owner or operator fails to make such payment, subject to the limitations set forth in Section 13 below. The Clayton Police shall be responsible for payment to the Tow Agency for a dead run call, as defined in Section 6 of this Agreement, if the Police requests services from the Tow Company, but releases the vehicle prior to the time the Tow Company truck arrives without advising Tow Company prior to arrival not to respond. If the Police advise Tow Company not to respond at any time prior to arrival at the scene, then Clayton Police shall not be responsible for a dead run call.

11. The Tow Company shall retain all records made in connection with Services provided at the request of the Clayton Police for the term of this Agreement. The Tow Company shall provide the Police with access to such records at all reasonable times.

12. The Tow Company shall not release any vehicle stored at the request of the Clayton Police, without an **Order to Release** form or verbal confirmation from the Clayton Police Department. The Police shall furnish the Tow Company with a Tow Ticket form relating to all Clayton Police Tows, a copy of which shall be maintained at the Police Department and **(Release)** copy will be given to the verified owner of the vehicle, upon release of the vehicle.

13. If a vehicle upon which the Tow Company provided services is sold at auction and the Tow Company was not compensated for services provided by the owner or operator, the Tow Company shall be paid for the services from the proceeds of the auction or sale to the extent the proceeds from such auction or sale are sufficient to cover the Tow Company expenses. If the amount received from the auction or sale of the vehicle is less than the expenses incurred by the Tow Company under the terms of this Agreement, the City of Clayton shall not be liable to the Tow Company for any deficiency.
14. Unclaimed Vehicles shall be disposed of in accordance with Ohio Revised Code 4513.60, 4513.61, 4513.62, and 4513.63. Both the City of Clayton and the Tow Company shall execute all applications, affidavits, and other documents necessary to comply with the above listed sections of the Ohio Revised Code.
15. The Tow Company agrees to indemnify and hold harmless the Clayton Police Department, the City of Clayton, and its elected and appointed officials, its officers, and employees, against any and all claims for injury or damage to persons or property in any way connected with or arising out of the Tow Company towing or otherwise removing or storing of vehicles, and to defend at its own expense any suit or claims for damages therefore against the Clayton Police Department, the City of Clayton, and its elected and appointed officials, its officers, and employees. The City of Clayton shall however, defend any suit or prosecution against the Tow Company, its owners, officers, and employees, insofar as such suit is based upon the claim that the illegally parked, inoperable, or the impounded vehicle involved was wrongfully ordered to be towed away or impounded by Clayton Police. The Tow Company hereby assumes all liability to the vehicle owners for any damage or thefts to or from the vehicle being towed or stored through negligence or misconduct of the Tow Company owners, officers, or employees.
16. This Agreement shall not be valid until Tow Company has deposited with the City of Clayton copies of the following valid insurance policies.
 - A. **Garage Keepers Policy** - A Garage keeper's legal liability policy covering at least fire, theft, vandalism, and explosion in the minimum of \$300,000 with each vehicle suffering damage deemed a separate claim.
 - B. **Garage Liability Policy** - A garage keeper's liability policy covering the operation of the owners' business, premises liability, equipment or other vehicles, for any bodily injury or property damage. This policy shall be in a minimum amount of \$1,000,000 for any one person injured or killed and a minimum of \$1,000,000 for more than one person killed or injured in any accident, and an additional \$100,000 for property damage.
 - C. **Cargo Load Insurance** - \$300,000 minimum required.
 - D. Each policy required under this Section must contain an endorsement by the carrier providing ninety (90) days notice to both the City of Clayton and the insured in the event of any change in coverage under the policy. No less than ten (10) days advance notice of cancellation of the insurance policy shall be given to the City of Clayton by the insurer. **The Clayton Police Department, the City of Clayton, and its appointed and elected officials and employees, must be named as additional insureds on said policies (City of Clayton: 6996 Taywood Rd. Englewood Ohio 45322).**

- E. Failure to acquire and/or maintain all of the insurance coverages specified herein for the entire term of this Agreement is sufficient cause for immediate termination of this Agreement by the City of Clayton.
 - F. **If the laws of the State of Ohio require greater insurance coverage amounts than specified herein, then Tow Company shall comply with State law requirements.**
17. There shall be no assignment of any rights or duties under this Agreement by the Tow Company without previous written approval of the Clayton City Manager and the Clayton Police Department. It is agreed that without such approval any purported assignment to or assumption by a third party of responsibilities under this agreement shall not be considered a defense to or mitigation of the legal liability of the Tow Company so assigning for breach of this Agreement.
18. The Tow Company agrees that the following conditions and requirements are acceptable and will lawfully abide by the same:
- A. The Tow Company's primary place of business shall be within an 8-mile radius of City of Clayton, inclusive of Montgomery County only, and meet all applicable zoning regulations.
 - B. The Tow Company must have available storage space for a minimum of ten (10) vehicles. This includes storage of vehicles of a gross weight of 80,000 pounds when the occasion is required. Storage areas, if not enclosed, must at a minimum, be secured by 8-foot chain link fencing with adequate lighting.
 - C. Towed vehicles shall not be stored upon public streets, alleys, or any other public way, or any place other than agreed to in this Agreement.
 - D. The Tow Company shall properly secure all vehicles towed at the request of the Clayton Police Department.
 - E. Electronic or mechanical alarms shall be required and in use at any satellite storage area not connected to the Tow Company's primary place of business.
 - F. The Tow Company must maintain twenty-four (24) hour service and provide for the release of vehicles to their owners from 8:00 AM to 6:00 PM, Monday thru Saturday, and from 8:00 AM to 12:00 Noon on Sunday. Personal property cannot be held in lieu of payment. Any claim on payment would be on the vehicle itself, and all personal property would have to be released upon request (does not include mounted items such as radio, etc.).
 - G. The Tow Company employees shall display patience, tact, and courtesy when dealing with persons claiming their vehicles.
 - H. The Tow Company shall not knowingly or negligently create situations which would cause unfavorable attitudes towards the City of Clayton, its officers or employees.
 - I. The Tow Company's wreckers must meet or exceed all legal requirements mandated by all applicable laws, rules, and regulations. All wreckers must be equipped with one or more flashing or rotating amber warning lights visible from 360 degrees and a distance of at least 500 feet.

- J. Towing operators shall keep and maintain towing equipment which is adequate to perform towing services in an efficient, safe, and professional manner.
- K. Each wrecker shall be equipped with at least one two-pound dry chemical fire extinguisher or one five-pound carbon dioxide fire extinguisher capable of extinguishing a fire of flammable liquid.
- L. The Tow Company shall be equipped with dollies or other mechanical means for removing severely disabled vehicles at each location where a garage is maintained.
- M. Towing operators shall be responsible for cleaning all debris from the roadway at any traffic crash and as such it will be required that each wrecker be equipped with at least one broom and one shovel.
- N. Each wrecker shall be made available for inspection at the request of the Clayton Police Department. Any wrecker found not complying with the provisions of this Agreement or in such condition as to present a hazard to the tow truck operator, Clayton Police Department personnel, or any other person, may be excluded from being used for services under this Agreement. Before being placed back into service, the tow truck shall be re-inspected by the Clayton Police Department for its conformity with this Agreement.
- O. The Tow Company must provide, at no expense to the Clayton Police Department, telephone communications for the requesting of service by the Clayton Police Department to the Tow Company and the Tow Company's personnel twenty-four (24) hours a day.
- P. The Tow Company shall provide inside storage or transport vehicle(s) to a storage facility designated by the Clayton Police with respect to vehicles involved in criminal activity that the Clayton Police Department deems necessary to process for evidence not to exceed forty-eight (48) hours in duration.
- Q. It is recommended that the Tow Company wreckers be equipped with a functional two-way communications radio unit to maintain contact between the Tow Company's place of business and the wrecker.
- R. The Tow Company shall keep its office and area where business is transacted in a clean, neat, professional orderly condition at all times.
- S. The Tow Company shall post, in a prominent place at its business location, and storage lots, if applicable, a complete listing of the charges/Fee Schedule permitted under this Agreement.
- T. The Tow Company shall keep complete, up-to-date records of all vehicles towed at the request of the Clayton Police Department. The information shall contain the date and time, location of the tow, make, model, year, color, state of issue of license, license number, vehicle identification number of each vehicle towed and/or stored. The records are to include the total cost of each tow with a breakdown of the costs. The Chief of the Clayton Police Department reserves the right to have the records inspected by himself or his designee at any reasonable hour.

- U. The Tow Company agrees to furnish to the Clayton Police Department on the first day of each month, excluding Saturday, Sunday, and legal holiday, a form containing information regarding vehicles that were towed in during the previous month at Police request. If the first day of the month falls on a Saturday, Sunday, or legal holiday, then said form shall be furnished on the next business day. This form shall separate those vehicles already released from those vehicles which have not been claimed at the end of that month.
- V. It is further agreed all previous contracts, rights, and duties agreed to by the Tow Company and the City of Clayton, if any, regarding the towing and storage of vehicles are expressly rescinded and superseded by this Agreement.
- W. The Tow Company will respond, within thirty (30) minutes to a call for service from the Clayton Police Department, its officers or employees, without unnecessary delay, with wrecker or wreckers of sufficient size and weight to remove any vehicle requiring towing. It is also agreed upon, that the City of Clayton reserves the right to call another Tow Company, when the primary Tow Company fails to respond, fails to answer their phone, or is unable to perform the required service, or service is unavailable in a reasonable length of time, in the opinion of the City of Clayton, its officers, or employees.
- X. The Tow Company shall require All tow truck drivers are to have a valid Ohio operator's license to drive said vehicles, and in the event a driver is determined to not have a valid Ohio operator's license the City of Clayton may terminate this Agreement.
- Y. This Agreement shall be in effect commencing on the 6th day of August 2020, and shall continue for a period of two (2) years unless earlier terminated as provided herein. This Agreement may be terminated for the reasons listed below:
 1. By either party upon thirty (30) days written notice to the other party.
 2. If this Agreement was secured by fraud or by concealment of a material fact by the Tow Company and such fact, if known, would have caused refusal by the City of Clayton to enter into this Agreement.
 3. The City of Clayton is not satisfied with the general services of the Tow Company, its owner(s), and/or employees, or with the cooperation it has received from the Tow Company in the rendering of the services.
 4. The Tow Company has violated any of the terms of this Agreement and failed to cure such violation within a reasonable period of time and to the satisfaction of the City of Clayton.
 5. The Tow Company has overcharged or made unauthorized extra charges for services performed at the request of City of Clayton.
 6. Failure to respond to calls from the Clayton Police Department shall be considered sufficient grounds for termination of this Agreement.

7. Sale of or change in ownership or declaration of bankruptcy of the Tow Company shall automatically terminate this Agreement. The Tow Company shall be required to notify the City of Clayton of such sale or change in ownership at least thirty (30) days prior to such action.

Clayton Police Department
Englewood, Ohio, Montgomery County.

By: Matthew T. Hill

Title: Chief of Police

Tow Company - Englewood Truck Towing +
Recovery

By: [Signature]

Title: Vice President

Address: 7510 Jacks Ln.

City: Clayton, OH 45315

City of Clayton City Manager

By: [Signature]

Title: City Manager

Date: 8/7/2020

Authorized By City of Clayton Resolution No. R-8-20-37 on August 6, 2020.

CERTIFICATE OF FISCAL OFFICER

As Finance Director for the City of Clayton, Montgomery County, Ohio, I hereby certify that the funds for the purpose of meeting the obligations of this contract have been lawfully appropriated and that they are in the treasury or in the process of collection free from any previous encumbrances.

Dated: 8-10-20

By: [Signature]

Kevin Schweitzer, Finance Director
City of Clayton, Ohio