

Resolution 2014-43

A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO A TOWING AGREEMENT WITH E&E TOWING LLC AND DECLARING AN EMERGENCY

WHEREAS, the Minerva Park Police Department requires the services of towing companies for police business; and

WHEREAS, the agreement with E&E Towing LLC has lapsed;

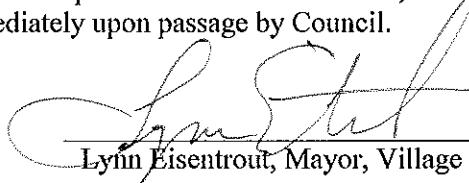
NOW THEREFORE, be it resolved by the Council of the Village of Minerva Park, Franklin County, State of Ohio, that:

Section 1. The Mayor and Fiscal Officer of Minerva Park are hereby authorized to enter into a Towing Agreement, in a form substantially similar to the agreement attached hereto as Exhibit A and incorporated herein by reference.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

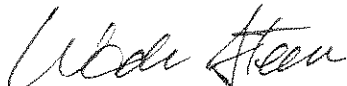
Section 3. All prior legislation, or any parts thereof, which is/are inconsistent with this Resolution is/are hereby repealed as to the inconsistent parts thereof.

Section 4. Council declares this to be an emergency measure necessary for the health, safety and welfare of the residents of Minerva Park, such emergency arising out of the necessity of the police department to maintain towing services for police business. Wherefore, this Resolution shall take effect and shall be in force immediately upon passage by Council.

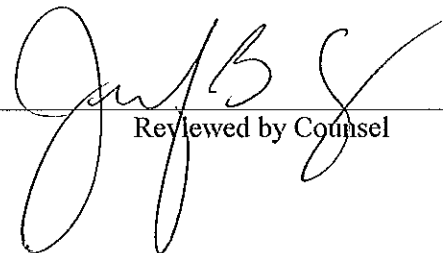


Lynn Eisentrout, Mayor, Village of Minerva Park

First Reading: November 10, 2014
Second Reading: December 8, 2014
Third Reading: waived
Passed: December 8, 2014



Attest Wade Steen, Fiscal Officer,
Village of Minerva Park



Reviewed by Counsel

TOWING AGREEMENT

This Village of Minerva Park Agreement for towing services ("AGREEMENT") is made and entered into on this the ____ day of _____, 20__ by and between the Village of Minerva Park, Ohio ("MINERVA PARK"), an Ohio Municipal Corporation, and E&E Towing, LLC ("COMPANY"), an Ohio Corporation.

In the event of a conflict between the language or intent of this AGREEMENT and any attached or supporting documents, the terms and conditions of this AGREEMENT shall control.

RECITALS

MINERVA PARK desires to have COMPANY provide towing service ("SERVICE") for MINERVA PARK.

COMPANY is an entity which desires to provide SERVICE for MINERVA PARK.

Therefore, the parties agree as follows:

I. DEFINITIONS

For purposes of this AGREEMENT, the terms below will have the following definitions:

- A. SERVICE shall mean the towing, heavy towing, storage, or impoundment of motor or non-motor vehicles in accordance with federal, state, and local laws at the direction of any member of the Minerva Park Division of Police ("POLICE") or any other authorized agent of MINERVA PARK. SERVICE shall also include the providing of assistance to disabled vehicles, including but not limited to, the changing of flat tires and the recharging of batteries (jump starts), at the direction of POLICE or any other authorized agent of MINERVA PARK.
- B. "Heavy wrecker" includes the necessary equipment to render an overturned semi-truck and trailer upright, and ability to tow the same.
- C. "Proper release authorization," includes a written release or authorization from POLICE, MINERVA PARK Mayor's Court or any member thereof, MINERVA PARK prosecuting attorney, or any other authorized agent of MINERVA PARK.

II. RELATIONSHIP OF PARTIES

- A. The parties acknowledge and agree that COMPANY is an independent contractor and is not an agent or employee of MINERVA PARK. COMPANY has been retained by MINERVA PARK to provide SERVICE on an as needed basis for MINERVA PARK.
- B. It is fully understood and agreed that COMPANY nor its personnel as an independent contractor shall at any time, or for any purpose, be considered as agents, servants, or employees of MINERVA PARK, or as public employees for the purpose of Ohio Public Employees Retirement Systems benefits.
- C. This AGREEMENT and the attached documents are the sole and complete consensus between the parties with respect to the SERVICE. Nothing in this AGREEMENT shall be construed to constitute the relationship between COMPANY with MINERVA PARK as a partnership, association, or joint venture.

III. MINERVA PARK'S PERFORMANCE

- A. MINERVA PARK hereby agrees to utilize COMPANY, on a rotational basis, to provide SERVICE for MINERVA PARK. Such rotation shall be at the sole discretion of MINERVA PARK, subject to the availability of COMPANY and the needs of MINERVA PARK. Such utilization of the COMPANY for towing services shall be solely at the request of MINERVA PARK.
- B. Nothing within this AGREEMENT shall prevent MINERVA PARK from entering into a similar agreement with other towing companies including, but not limited to, placing said towing companies in a rotation for towing services similar to or identical to this AGREEMENT.

IV. COMPANY PERFORMANCE

- A. COMPANY agrees to be available to provide SERVICE twenty-four (24) hours a day, seven (7) days a week, and every day of the year including legal holidays.
- B. When contacted to provide SERVICE by MINERVA PARK and/or POLICE, COMPANY must be on site and able to provide SERVICE within a period of time that does not exceed thirty (30) minutes from the original request, contact, or communication to COMPANY. If COMPANY is unable to be on site and provide SERVICE within the time period stated herein, such information shall be relayed to MINERVA PARK when the original request, contact, or communication to

COMPANY is made and MINERVA PARK shall have the right, without penalty or obligation, to obtain SERVICE from another towing company.

- C. MINERVA PARK, after contacting COMPANY to provide SERVICE, may, at its sole discretion and without liability, cancel the call for SERVICE at any time prior to COMPANY being authorized to take possession of the vehicle as evidenced by a fully executed impound form.
- D. COMPANY must possess the capability to respond with at least two (2) light wreckers with dollies or roll back, and/or (1) heavy wrecker.
- E. COMPANY must obey all lawful instructions of POLICE or other authorized representative or any other authorized agent of MINERVA PARK.
- F. COMPANY is solely responsible for the clean-up and removal of all glass, debris, impediments or other injurious material from an accident scene to which COMPANY provides SERVICE.
- G. Upon proper release authorization by the MINERVA PARK, the COMPANY agrees to provide access to the vehicle by the owner for the purpose of retrieving and/or securing personal property.

V. RELEASE OF VEHICLES

- A. COMPANY will be available to release towed and/or impounded vehicles from their custody twenty-four (24) hours per day, seven (7) days per week, and every day of the year including legal holidays, on receipt of payment of the proper fee as set forth in Section VIII.
- B. Any vehicle impounded at the direction of POLICE or Court of competent jurisdiction shall not be released without proper release authorization as defined in Section I.

VI. RECORDS/COMPLAINTS

- A. COMPANY is required to keep and/or maintain all records, books and other pertinent information relating to towing and/or impounded vehicles under this AGREEMENT for the entire term of this AGREEMENT. All records, books and other pertinent information must be made available to any authorized agent of MINERVA PARK at any time Monday through Friday, between the hours of 9:00 AM and 5:00 PM.
- B. COMPANY is required to accept and maintain any and all written complaints filed by any individual, whether filed internally with COMPANY or with any external public or private agency, as a result of or

in connection with SERVICE under this AGREEMENT. Any such complaints shall be forwarded to MINERVA PARK for review within thirty (30) days of receipt.

VII. LIABILITY

- A. COMPANY is solely responsible for any and all damage that occurs as a result of providing SERVICE under this AGREEMENT.
- B. COMPANY is solely responsible for the safe transport and/or storage of vehicles pursuant to this AGREEMENT.
- C. COMPANY must maintain a secure, well lit, fenced storage lot or building to store vehicles that have been towed and/or impounded pursuant to this AGREEMENT. COMPANY will immediately notify MINERVA PARK, vehicle owners, and law enforcement officials with venue of any damage or reported thefts occurring on the lot or in transit to vehicles towed at the direction of MINERVA PARK. COMPANY will cooperate with formal reporting and investigations of damaged or reported thefts, as well as any security breaches to the impound lot.
- D. The storage lot or building used by COMPANY to perform its obligations under this AGREEMENT are subject to inspection at any time by MINERVA PARK or any other authorized agent of MINERVA PARK.

VIII. RATES

- A. In extraordinary circumstances and pursuant to a written request from MINERVA PARK or POLICE, COMPANY shall immediately release a towed and/or impounded vehicle without charge.
- B. Subject to stated exceptions, the owner and/or operator of a vehicle that is towed and/or impounded under this AGREEMENT shall be solely responsible for paying any costs, expenses and/or fees for SERVICES rendered by COMPANY. Rates charged by COMPANY for SERVICE shall be in accord with uniform and customary rates for similar SERVICES as stated in Appendix I. MINERVA PARK, at its sole discretion, may request a written fee schedule from COMPANY.
- C. Storage charges will be waived on any vehicle held pending seizure/forfeiture proceedings, or held as evidence on behalf of MINERVA PARK. Vehicles that are not held on behalf of MINERVA PARK are subject to storage fees as stated in Appendix I. Storage fees will begin no sooner than midnight of the day the vehicle was towed. Storage will not be charged for a vehicle on days when the vehicle is not available for release.

- i. Storage Fees will not be charged upon COMPANY receipt of Law Enforcement Affidavit, BMV Form 3701.
- D. MINERVA PARK shall be responsible for charges relating to SERVICE for MINERVA PARK vehicles only but may, at its sole discretion, assume responsibility for any costs, expenses and/or fees for vehicles towed and/or impounded under this AGREEMENT.
- E. MINERVA PARK will have no responsibility in collecting any costs, expenses and/or fees due to COMPANY for SERVICE rendered under this AGREEMENT. Nor will MINERVA PARK be responsible for the storage and/or disposition of any unclaimed vehicles.

IX. INDEMNIFICATION

COMPANY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS MINERVA PARK AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, AND VOLUNTEERS FROM AND AGAINST ANY CLAIMS, COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS), EXPENSES, DAMAGES, LIABILITIES, LOSSES OR JUDGMENTS TO THE EXTENT ARISING OUT OF, OR IN CONNECTION WITH, ANY CLAIM, DEMAND OR ACTION MADE BY ANY THIRD PARTY, IF SUCH ARE SUSTAINED AS A CONSEQUENCE OF SERVICE.

X. INSURANCE/BOND

- A. The COMPANY shall maintain adequate liability and property damage insurance as outlined below and shall provide proof thereof to MINERVA PARK prior to the execution of this AGREEMENT. The COMPANY agrees to provide a copy of its current policy: upon the policy's renewal, update, change in carrier, or similar modification or change, so that a current copy is always on file. Additionally, proof of this insurance coverage may be verified and inspected by MINERVA PARK at any time.
- B. The COMPANY shall maintain on deposit with MINERVA PARK a copy its existing insurance policy or evidence acceptable to MINERVA PARK of such policy issued by an insurance company duly licensed to transact such business in the State of Ohio, or of an insurance company not authorized to transact business in the State, provided such insurance is written through a citizen of the State duly licensed as provided by Ohio R.C. 3905.30, et seq., insuring within the amounts specified in such policy the owner of such tow truck and also any person operating the same in MINERVA PARK under the authority of such owner, whether such authority be under contract or employment, lease or other transaction of the owner or owner's assignee or lessee and such person operating such wrecker against loss from the liability imposed by law for damages on account of bodily injuries or death or for damages to property, other than

employees, resulting from such ownership, maintenance or use of such wrecker in MINERVA PARK, and agreeing to pay to any judgment creditor to the extent of the respective amounts specified in such policy, and final judgment rendered against the insured or such operator by reason of such liability.

- C. COMPANY shall provide MINERVA PARK with a copy of an appropriate Certificate of Insurance or similar Bond that encompasses comprehensive general liability policy (occurrence form) including endorsements for errors or omissions, personal injury liability, broad form property damage, operations liability, and contractual liability in an amount not less than One Million Dollars and No Cents (US \$ 1,000,000.00) which covers the direct and indirect acts and omissions of COMPANY, their agents, contractors, employees, members, or guests. Any Insurance and/or Bond required herein shall include a deductible of not more than One Thousand Dollars and No Cents (US \$ 1,000.00).
- D. COMPANY shall provide MINERVA PARK with a copy of COMPANY's workers' compensation certificate, in amounts sufficient to satisfy local legal requirements, which covers its employees and/or agents.

XI. JUNK/ABANDONED TITLE

- A. The COMPANY agrees to strictly comply with the procedure set forth under Ohio law for obtaining a junk/abandoned title and subject to the terms below.
- B. The COMPANY may not seek title to a towed vehicle if such vehicle was towed pursuant to the order of an officer with a proper impound form. Title will be sought by MINERVA PARK unless MINERVA PARK determines otherwise. The COMPANY may only seek title of a towed vehicle when the COMPANY has received written acknowledgement from MINERVA PARK indicating that a junk/abandoned title may be obtained.
- C. The COMPANY will submit a status report to MINERVA PARK every 30 days listing all vehicles towed by the COMPANY at the request of the City. The report will include a description of the vehicle, the date towed, if the vehicle is being held or has been released, and if released, the terms of the release.
- D. In the event that the COMPANY sells or obtains the title for a vehicle in contravention of the above terms, the COMPANY shall pay MINERVA PARK for the vehicle. The value of the vehicle shall be determined by using either the NADA Black book retail value of the vehicle, or the amount for which the vehicle was sold, whichever is higher.

XII. TERM OF AGREEMENT/TERMINATION

- A. This AGREEMENT shall be for a period of one (1) year commencing on _____, 20__ and ending on _____, unless terminated earlier, as provided in this AGREEMENT. This AGREEMENT will automatically renew for a one year period unless terminated earlier, as provided in this AGREEMENT. Appendix I may be reviewed and amended annually without changing other terms of this AGREEMENT.
- B. If MINERVA PARK determines that COMPANY is in breach of any provision of this AGREEMENT, MINERVA PARK reserves the right to immediately suspend COMPANY from the rotational list and/or terminate this AGREEMENT upon written notice to COMPANY.
- C. Either party to this AGREEMENT may cancel and terminate this AGREEMENT, without cause or penalty, by giving thirty (30) days written notice to the other party indicating the intent to terminate.

XIII. MODIFICATION OF CONTRACT

This AGREEMENT may not be changed, modified, or altered except by an instrument, in writing, signed in accordance with the laws of the State of Ohio. This AGREEMENT may not be assigned or changed, modified, or altered except by an instrument, in writing, mutually agreed to and signed by all parties.

XIV. DISCRIMINATION

- A. No discrimination for reason of race, religion, sex, age or country of national origin shall be permitted or authorized by MINERVA PARK and/or AGENCY in connection with SERVICE.
- B. Nothing in this AGREEMENT shall require the commission or any act contrary to any federal, state, or local law, ordinance, resolution, or rule. Nor shall anything in this AGREEMENT require the commission or any act contrary to any rules or regulations of any public entity or body having jurisdiction over COMPANY or SERVICE.
- C. Whenever there is any conflict between any provision of this AGREEMENT and new law, rule, or regulation, such law, rule or regulation shall prevail and this AGREEMENT shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict.

XV. CHOICE OF LAW/FORUM

Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation, or other legal theory, related directly or indirectly to this AGREEMENT, whether between the parties, or of any of the party's employees, agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction.

XVI. CAMPAIGN CONTRIBUTION CERTIFICATION

- A. COMPANY certifies that it is not disqualified under *Ohio Revised Code §3517.13* from entering into this AGREEMENT.
- B. COMPANY certifies that any and all individual campaign contributions made on or after April 4, 2007, by partners, shareholders, or other owners of COMPANY as well as their spouses, children, or political action committees affiliated with COMPANY, as well as the aggregate contributions of the same are in compliance with *Ohio Revised Code §3517.13*.
- C. COMPANY is aware that during the term of this AGREEMENT and for one year after the culmination of this AGREEMENT, no partner, shareholder, or other owner of COMPANY as well as their spouses, children, or a political action committee affiliated with COMPANY may individually or collectively make campaign contributions in violation of *Ohio Revised Code §3517.13* to MINERVA PARK officials.
- D. COMPANY is aware that any violations of *Ohio Revised Code §3517.13* may cause this AGREEMENT to be rescinded and that fines three times any amount contributed in violation of *Ohio Revised Code §3517.13* may be recoverable against COMPANY by the State of Ohio.
- E. COMPANY further recognizes that, pursuant to *Ohio Revised Code 3517.992(R)(3)*, knowingly making a false statement on a campaign contribution certification is a fifth degree felony.

XVII. PARAGRAPH HEADINGS

Paragraph headings are inserted in this AGREEMENT for convenience only and are not to be used in interpreting this AGREEMENT.

VILLAGE OF MINERVA PARK, OHIO (“MINERVA PARK”)

BY: _____
Lynn Eisentrout, Mayor

E&E TOWING LLC (“COMPANY”)

BY: _____

Title: _____

APPROVED AS TO FORM:

Reviewed by Counsel

Appendix I

Light Duty Wrecker Service

Light Duty Per Impound Unit	\$130.00
Crash Scene Clean up (includes all Supplies)	\$25.00
Per loaded mile (Unless taken to impound lot or police storage)	\$4.00
Per Day Storage	\$18.00
Drop/re-connect a drive shaft, if required	\$50.00
Extra reasonable charges may be added for additional equipment, removing vehicles from non-travel areas, separating vehicles, etc.	

Heavy Wrecker Service

Based on uniform and customary rates in accordance with fee schedule provided.