



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: June 12, 2019

Approved

D. D. S. L.

Date

6/14/19

SUBJECT: SECOND AMENDMENT TO CITY-GENERATED ZONE TOW SERVICES AGREEMENTS

RECOMMENDATION

- a) Adopt a resolution authorizing the City Manager to negotiate and execute a Second Amendment to the Agreements for City-Generated Zone Tow Services for a term commencing July 1, 2019, and ending on or around March 31, 2021, with the following tow operators:
- Alongi Brothers, Inc. (San José, CA)
 - Century Tow (San José, CA)
 - City Towing, Inc. (San José, CA)
 - Courtesy Tow Services, Inc. (San José, CA)
 - Matos Auto Towing & Transport (San José, CA)
 - Motor Body Company, Inc. (San José, CA)

The proposed amendment includes the following terms and conditions and revisions:

1. Continues the provisions of the City-Generated Zone Tow Services Agreement Amendment (Pilot Compensation Program) approved by Council on October 31, 2017, and expiring June 30, 2019. Specifically, the Pilot Compensation Program decreased the contract compensation fee from \$80 to \$59 per tow; allowed contracted tow operators to be credited for lost profits and expenses related to the disposal of vehicles that have no value against the \$59 contract fee; and reduced each tow operator's security deposit from \$25,000 to \$5,000;
2. Clarifies hazardous waste disposal and documentation requirements for contracted tow operators;
3. Sets the citywide maximum tow services rate set by the California Highway Patrol for the Golden Gate Region-San Jose Offices, as amended;
4. Adds a performance standard breach of \$50 for "Refusal to Tow;"

5. Increases the performance standard breach for failure to respond within 25 minutes from \$35 to \$100;
 6. Eliminates the service call fee paid by the City to tow contractors for cancelled tows if the reason for the cancellation is the tow contractor's failure to timely arrive at the scene;
 7. Combines billing of dispatch and contract compensation fees into a single invoice;
 8. Clarifies language regarding City-Generated Zone Towing Services for Code Enforcement from private property;
 9. Clarifies the City's right to have a vehicle towed, by whatever means deemed necessary, including having the vehicle towed by a company that does not have an agreement for City-Generated Zone Towing Services; and
 10. Authorizes the City Manager or designee to terminate the Agreement on behalf of the City.
- b) Adopt a resolution approving the proposed revisions to City Council Policy 9-8 "Rate Review Process for Tow Car Services" to set citywide tow rates at an amount not to exceed the California Highway Patrol rates for the Golden Gate Region-San Jose Offices, as amended, without annual Council approval.
- c) Accept the status report on the Contingency City-Generated Tow Services.

OUTCOME

Second Amendment to City-Generated Zone Tow Services Agreements (Pilot Compensation Program)

Approving the Second Amendment will: 1) maintain a towing services program for city-generated tows that continues to meet the City's operational requirements; and 2) provide fair compensation to the tow operators; and 3) address the City Auditor's Tow Audit recommendations 2, 5, 6, 7, and 8, in whole or in part, until such time that a new city-generated zone tow service delivery model and program can be developed, approved, and implemented.

Council Policy 9-8

Approving the proposed revisions to City Council Policy 9-8 "Rate Review Process for Tow Car Services" will maintain consistency with the proposed amendments to the Agreement and Audit recommendation #2, provide consistency in rates paid by San Jose residents, and streamline the process to annually amend tow rates improving efficient use of City resources.

Contingency City-Generated Tow Services

Accepting the status report on the Contingency City-Generated Tow Services will allow staff to continue reaching out to tow companies to secure a backup vendor in the event one of the six primary contractors refuses to perform a tow.

BACKGROUND

The City has agreements for City-Generated Zone Towing Services with six tow companies that were approved by Council on March 29, 2016¹. Each operator services one of six geographic tow zones within the city and tows at the request of the City from public property within their exclusively designated zone. The City may request towing services from public property for a variety of reasons such as accidents, vehicle violations, evidence in criminal cases, and abandoned, inoperable, and illegally stored vehicles on the public right-of-way. The operators do not perform tows on behalf of private property owners, such as those from shopping center parking lots and private driveways.

The operators for City-generated public property tows are as follows:

- Zone 1: Matos Auto Towing & Transport
- Zone 2: City Towing, Inc.
- Zone 3: Century Tow
- Zone 4: Motor Body Company, Inc.
- Zone 5: Courtesy Tow Services, Inc.
- Zone 6: Alongi Brothers, Inc.

Second Amendment to City-Generated Zone Tow Services Agreements Pilot Compensation Program)

On October 31, 2017, Council approved the First Amendment to the City-Generated Zone Tow Services Agreements (Pilot Compensation Program) decreasing the contract compensation fee from \$80 to \$59 per tow; allowing contracted tow operators to be credited for lost profits and expenses related to the disposal of vehicles that have no value against the \$59 contract fee that is required to be remitted to the City; and reducing each tow operator's security deposit from \$25,000 to \$5,000.² The First Amendment is due to expire on June 30, 2019.

On January 15, 2019, Council accepted the City Auditor's Report, "Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations", and the City Administration Response to the Audit Report in which the administration accepted all 17 recommendations including the development of a new city-generated tow services model and

¹ March 29, 2016 Council Memo:
http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2129&meta_id=563758

² October 31, 2017 Council Memo:
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3159318&GUID=F98E0045-1D54-4FB5-9540-66E4BAAF1AED&Options=&Search=>

program, Request for Proposal, and consolidation of the tow program in the San Jose Police Department by July 1, 2020.³

The City Administration presented to Council a long-term plan to address the 17 recommendations that included, among other key items, negotiating an extension and expansion of the First Amendment to the City-Generated Zone Tow Services Agreements (Pilot Compensation Program) until such time that a new service delivery model and program is implemented. Consistent with the Administration's Response, Planning, Building, and Code Enforcement, in coordination with the City Attorney's Office, City Manager's Office, the Finance Department, and the Police Department, is proposing a Second Amendment to the tow agreements to extend the Pilot Compensation Program and align the agreements with audit recommendations 2, 5, 6, 7 and 8.⁴

Council Policy 9-8

City Council Policy 9-8 went into effect on October 11, 1983, and was amended on March 25, 2008. The purpose of the policy is to set forth the method and standard for establishing tow rates and city contractual compensation for the City-Generated Zone Towing Services. Staff reviews the rates annually and, if necessary, makes a recommendation to the City Council to adjust the fee schedule to remain consistent with the California Highway Patrol (CHP) Tow Services Agreement for the Golden Gate Region-San José Office.

The tow rates are set in accordance with the CHP Tow Services Agreement for the Golden Gate Region-San José Office. Specifically, the local CHP Area Commander conducts a market rate survey of their area (Santa Clara County) based on the data of operational costs received by all tow companies who submit an application to provide CHP tow services. The Area Commander then uses the data to set the maximum local rate allowed for CHP tow services.

Council passed resolutions in 2009, 2012, 2013 and 2017 to adjust the fee schedule to remain consistent with the tow rates allowed by the CHP Tow Services Agreement for the Golden Gate Region-San José Office.

City Audit recommendation #2 of the audit report advised that the City should clarify that towing contractors may charge no more than the CHP approved tow rates and should structure any future towing services agreements as such.

³ January 15, 2019 Council Memos:
<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3786924&GUID=817BC821-D233-4104-92E5-456CABCC76AE&Options=&Search=>

⁴ City Auditor Report: "Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations" <http://www.sanjoseca.gov/DocumentCenter/View/81929>

Contingency City-Generated Tow Services

From 2017 through 2018, the City experienced an increase in contracted companies refusing to tow certain vehicles. Specifically, tow refusals increased by 179% over a 12-month period with approximately 72 tow refusals between January and June 2018 and approximately 201 tow refusals between July and November of 2018 citywide.

Thus, staff began developing a contingency plan to create a mechanism for vehicles to be towed off city streets when a contracted tow provider refused to perform the tow.

ANALYSIS

Second Amendment to City-Generated Zone Tow Services Agreements (Pilot Compensation Program)

Over the past few years, changes in market conditions and industry challenges have affected the contracted tow operators' ability to provide consistent City-generated zone tow services. Namely, there has been an increase in the number of recreational vehicles and motor homes on city streets that require towing, as well as an increase in the number of low value vehicles needing to be towed off city streets. In addition, tow vendors face challenges disposing of hazardous waste found in towed vehicles. These and other industry factors have contributed to a rise in the number of tow refusals with insufficient yard space cited as the primary reason for the refusal.

Current market conditions appear to continue impacting profitability for the tow operators. Since implementation of the Pilot Compensation Program, tow operators appear to be better equipped to endure market conditions and the costs of disposing of low value vehicles. Additionally, since January 2019, tow refusals have decreased with only 69 tow refusals so far this year.

Approving the Second Amendment will continue the provisions of the Pilot Compensation Program through at least June 30, 2020, and address important audit recommendations that rectify a contract loophole, incentivizes meeting performance standards such as timeliness, and discourages tow refusals. This will allow tow operators to continue to provide contracted tow services and meet the City's operational requirements for fair compensation until such time that a new City-generated tow service delivery model and program can be developed, approved, and implemented, currently anticipated by July 2020.

Additionally, the Second Amendment to the agreement addresses in whole or in part the City Auditor's tow audit recommendations 2, 5, 6, 7, and 8. These recommendations include: clarifying contract expectations and requirements related to hazardous waste disposal and City-generated private property tows; streamlining the process for dispatch and contract compensation fee billing and to allow operators to charge annually approved CHP tow rates as amended; eliminating the discrepancy regarding service call fees paid by the City when the tow is

cancelled due to a contractor's failure to meet timeliness standards; and clarifies the City's right to tow a vehicle by any means deemed necessary when there is a failure to perform.

Without Council approval of the Second Amendment to the tow agreements, the contract will revert to its original terms and conditions on July 1, 2019, which will impact the ability for contracted tow operators to provide City-generated tow services and will not advance the City's goal of developing a new tow service delivery model and program that meets the changing needs and realities of the tow industry while providing adequate tow services to San José residents and efficient use of City resources.

Council Policy 9-8

Previously, Council Policy 9-8 required staff to bring the tow rates before Council each year following CHP's publication of its new tow rates. The Second Amendment provides that the citywide tow fees shall not exceed the tow-related fees set by CHP, as those fees may be amended. This eliminates the need to bring the tow rates to Council each time CHP updates its fee schedule. Staff would continue to analyze CHP tow rates each year to ensure that they are balancing the needs of the community. These changes are proposed in alignment with Audit Recommendation #2.

Contingency City-Generated Tow Services:

Without approval of the Second Amendment, the original contract language only allows the City to use another one of the six contracted vendors to tow a vehicle when the tow operator assigned to that zone refuses. With the approval of the Second Amendment, the City could use any other tow company outside of the six to perform a tow if one of the contracted operators refuses.

While tow refusals have decreased by approximately 32% from Q2 to Q3 of FY 18-19, they continue to impact service delivery often resulting in delays and/or vehicles being left on the street and additional time expended by City staff. As of March 2019, there have been 55 tow refusals, which is down from the 81 refusals documented between October and December 2018. To secure backup tow operators, on May 20, 2019, the Finance Department issued a Request for Proposal (RFP) on its e-Procurement system to seek qualified operators to provide contingency City-generated tows when a contractor fails to perform. The RFP was set up as a simple prequalification process in which an interested respondent was asked to complete a checklist that demonstrated it met the City's minimum qualifications and could substantially comply with the City's exemplar agreement. The exemplar agreement was substantially similar to the City's agreements with the current six tow operators, with the exception of assigned zones.

Staff conducted outreach by phone and email to over 40 different tow operators that are permitted by the San José Police Department to operate in San José to encourage participation in the RFP. Four companies viewed the RFP, but the City received no submissions by the RFP deadline on May 31. Following the RFP closure, staff contacted the potential bidders and learned that the primary reasons the operators did not bid was: the amount of the contract compensation fee and performance standard breaches; concern over lack of profitability for towing low value

vehicles; the response time requirement to respond to calls for service citywide; and the timeframe to respond to the RFP.

City staff continues to work on securing a contingency tow provider and plans to release a modified RFP that addresses the above concerns, including but not limited to increasing the required call for tow response time and providing a longer timeline to respond to the RFP. If successful, staff anticipates returning to Council in August/September 2019 for authorization to negotiate and execute Contingency City-Generated Tow Service Agreements.

Although the initial RFP was not successful, the approval of the Second Amendment will ensure the City's ability to reach out to any tow company (outside the contracted six) to provide back-up tows while a permanent back-up tow provider is procured.

EVALUATION AND FOLLOW UP

If approved, the Second Amendment will be effective on July 1, 2019. Staff will return to Council for authorization to negotiate and execute Contingency City-Generated Tow Services Agreements once a vendor is procured, anticipated by August/September 2019.

This item is part of the City Administration's overall long term plan to develop, approve, and implement a new tow services delivery model and program for City-generated tows by July 1, 2020, and address all 17 tow audit recommendations.

PUBLIC OUTREACH

Staff met with each of the contracted tow operators in the month of May 2019 to present and discuss the proposed changes of the Second Amendment to the tow agreements.

This memorandum will be posted on the City's Council Agenda website for the June 25, 2019 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, Finance Department, San Jose Police Department, Budget Office, and City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

This item does not have input from a board or commission.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's 2019-2020 Operating Budget City Service Areas Delivery Framework for Performance-Driven Government for Operational Services.

COST SUMMARY/IMPLICATIONS

Council authorized the pilot compensation program to start from January 2018 through June 2019. During the first 12-month period of the pilot compensation program, the annual loss in projected revenue was approximately \$630,000, which included a reduction of \$324,000 due to the decrease in the tow fee from \$80 to \$59 per and a reduction of \$306,000 due to the credits claimed by tow operators for the disposal of junk vehicles or lost profit. The estimated revenue loss in 2017-2018 was \$315,000 or half the annual total. The estimated revenue loss in Fiscal Year 2018-2019 is \$735,000.

Extending the pilot compensation program through June 2020 will likely bring a similar trend. The projected calendar year FY 2019-2020 annual loss in projected revenue is \$877,000, which includes a reduction of \$364,000 due to continued decrease in the tow fee from \$80 to \$59 per tow and a reduction of \$513,000 due to projected increase in credits claimed by tow operators for the disposal of junk vehicles or loss profit.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
ROSALYNN HUGHEY, Director
Planning, Building, and Code Enforcement

For questions, please contact Rachel Roberts, Acting Deputy Director of Code Enforcement, at (408) 535-7719.