



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey  
Edgardo Garcia

**SUBJECT:** SEE BELOW

**DATE:** June 22, 2020

Approved

Date

6/22/2020

**SUBJECT: FOURTH AMENDMENT TO CITY-GENERATED ZONE TOW SERVICES AGREEMENTS TO ADDRESS THE SEVERE IMPACTS TO TOW BUSINESS AS A RESULT OF COVID-19 EMERGENCY RESPONSE TO ENSURE CONTINUITY OF TOW SERVICES IN THE CITY OF SAN JOSE**

## RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute Fourth Amendments to the Agreements for City-Generated Zone Tow Services with the option to extend the terms month by month through the end of the contract term March 31, 2021 with the following tow operators:
- (1) Alongi Brothers, Inc. (San José, CA)
  - (2) Century Tow (San José, CA)
  - (3) City Towing, Inc. (San José, CA)
  - (4) Courtesy Tow Services, Inc. (San José, CA)
  - (5) Matos Auto Towing & Transport (San José, CA)
  - (6) Motor Body Company, Inc. (San José, CA)
- (b) The proposed amendment includes the following terms and conditions and revisions:
- (1) Reduce the contract compensation fee from \$41 to \$0 for a term starting retroactively from March 17, 2020 until September 30, 2020.
  - (2) Provide payment of up to \$25,000 per tow operator for a term starting retroactively from June 1, 2020 until September 30, 2020 for:
    - (a) Any “Qualified Vehicle”, including any passenger vehicles, recreational vehicles/motor homes, mobile homes (on wheels), campers, trailers, cab-over campers, house-made trailers, boats, jet skis, boat trailers, golf carts, tractor units, semi-trailers, full trailers, box trucks, buses, work vans, street sweepers, and construction equipment, such as backhoes and bulldozers, that is either
      - (1) Issued a form REG 462 (“junk slip”) by the City; or
      - (2) The operator is required to pay to dispose of the vehicle will and receive a payment at a rate of \$200 per Qualified Vehicle.
    - (b) In addition, Qualified Vehicles that meet the criteria in part (2)(a) and are also recreational vehicles/motor homes, mobile homes (on wheels),

campers, trailers, cab-over campers, house-made trailers, boats, full trailers, box trucks, buses, or work vans will receive a payment of an additional \$1,000 per Qualified Vehicle.

- (c) Compensation will be provided by the City to the tow operator on a monthly basis upon receipt of invoice and required supporting documentation such as receipts for vehicle disposal costs.
- (3) Provide compensation up to \$500 each month to each tow operator for garbage disposal or dumpster costs related to the disposal and cleaning of Qualified Vehicles, for a total maximum compensation for each tow operator of no more than \$1,500 from July 1, 2020 until September 30, 2020. This \$1,500 is in addition to the \$25,000 total maximum compensation for each tow operators. The maximum compensation for these costs across all six tow operators is \$9,000. Compensation will be provided by the City to the tow operator on a monthly basis upon receipt of invoice and required supporting documentation such as receipts for garbage disposal and dumpster equipment costs.
- (4) Suspend credits for “Qualified Vehicles” to tow operators under section 5.1 for operator expenses and lost profits related to disposing of all qualified vehicles that meet the defined criteria.
- (5) Option for City Manager to extend the terms of the fourth amendment month by month for each operator until the end of the original contract term of March 31, 2021 subject to available funds and appropriation as determined by the City Manager.
- (6) Authority for the City Manager to provide additional payments as part of the option to extend the amendment to each tow operator after September 30, 2020 as described in (2)(a) and (b) above in excess of the \$25,000 total maximum compensation to each tow operator so long as the total maximum compensation across all six operators does not exceed \$150,000 for the original term of the fourth amendment.

## **OUTCOME**

Approving the Fourth Amendment to the City-Generated Zone Tow Services Agreements will:

- Provide interim financial relief for the tow operators to address the severe impacts to tow business as a result of COVID-19 emergency response;
- Ensure continuity of tow services in the City of San José; and
- Provide the City Manager the option to extend the agreements month by month subject to available funds and appropriation until the end of the contract term March 31, 2021.

## **EXECUTIVE SUMMARY**

On January 15, 2019, the City Council accepted the City Auditor’s “Audit of Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations” and the Administration Response, and directed staff to return to the Transportation & Environment Committee (T&E) in Fall 2019 with a proposed City-Generated Tow Services Delivery Model.

Staff returned to the T&E Committee on November 4, 2019 to provide a status report on the development of the City-Generated Tow Services Delivery Model. The T&E Committee accepted staff's report including the framework for the new service model and pilot program and directed staff to return to T&E Committee in February 2020 with a final proposal for implementation of the new service model and pilot program and a proposal to provide interim financial relief for the existing tow operators. Staff returned to T&E on February 3, 2020 with a final plan for implementation of the new service model and pilot program and a proposed solution for interim financial relief, retroactive to January 1, 2020 through June 30, 2020. The T&E Committee approved staff's recommendation and directed staff to return to Council with a third amendment to the City Generated Tow Service Agreements to provide interim financial relief to the tow operators.

On March 17, 2020, City Council approved a resolution authorizing the City Manager to negotiate and execute Third Amendments to the City-Generated Tow Service Agreements. The Third Amendment, retroactive to January 1, 2020 through June 30, 2020, with one option to extend to March 31, 2021 included:

1. Decreasing the contract fee that the operators remit to the City from \$59 per tow to \$41 per towed vehicle to offset increased labor and operational costs.;
2. Expanding the list of qualified vehicles to include any vehicle that 1) has not been claimed by the vehicle owner and does not generate revenue through the lien sale process, or 2) has been issued a REG 462 form ("junk-slip") by the City; and
3. Crediting the tow operators for operator expenses and lost profits related to disposing of qualified vehicles that meet the criteria, against the \$41 contract fee that is required to be remitted to the City.

The Third Amendment to the City-Generated Tow Services Agreements for the terms stated above were executed by the City Manager and retroactive to January 1, 2020.

On March 17, 2020, the County of Santa Clara issued a Public Health Order requiring the public to shelter in place in response to the COVID-19 pandemic. As a result, various City services, including the Department of Transportation Parking Compliance Unit and Vehicle Abatement program, were suspended or significantly reduced performing only essential services and operations. These steps taken by the City to address the emergency had a significant impact on tow business and City-Generated tow services warranting action by the City. The Tow Operators and their representatives conveyed to staff the need for immediate actions to address the critical impacts of the County Public Health Order and the City's emergency response to COVID-19 on the volume of tow service requests, finances, operations, and ability to provide service.

The Fourth Amendment to the City Generated Tow Services Agreements is recommended to attempt to reasonably and fairly alleviate these impacts and ensure continuity of tow services during the County Public Health Order and City's emergency response to COVID-19.

## **BACKGROUND**

### **City-Generated Tow Services Audit and Council Direction**

On January 15, 2019, the City Council accepted the City Auditor's "Audit of Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations" Report and the Administration Response, and directed staff to return to the Transportation and Environment (T&E) Committee in fall 2019 with a proposed City-Generated Tow Services Delivery Model.

Staff developed a comprehensive Tow Audit Work Plan outlining a near- and long-term strategy to accomplish the following goals:

1. Address all 17 tow audit recommendations
2. Develop a new City-generated tow service delivery model
3. Develop Request for Proposals (RFP) and recommend award of contract(s)
4. Transition the new program model from Planning, Building, and Code Enforcement to the Police Department by June 30, 2020

### **Transportation and Environment Committee**

On November 4, 2019, as directed by Council, staff presented the Status Report on the development of the new City-Generated Tow Services Delivery Model to the T&E Committee.<sup>1</sup> The Status Report included the proposed new City-Generated Tow Services Delivery Model framework and pilot program. The T&E Committee accepted the Status Report and directed staff to:

- 1) Continue to refine the proposed service model and pilot program approach;
- 2) Explore an interim solution to provide financial relief to the six contracted tow operators, with a corresponding commitment to ensure responsive service; and
- 3) Return to T&E Committee in February 2020 with a final plan for implementation.

On February 3, 2020<sup>2</sup>, staff returned to the T&E Committee with a status report including a proposed recommendation for interim financial relief for tow operators from January 1, 2020 through June 30, 2020, with the option to extend the terms. The T&E Committee approved staff's recommendation and directed staff to return to Council with an amendment to the City Generated Tow Service Agreements to provide interim financial relief retroactively from January 1, 2020.

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<sup>1</sup> [Transportation and Environment Committee City Generated Tow Services Status Report November 4, 2019](#)

<sup>2</sup> [Transportation and Environment Committee City Generated Tow Services Status Report February 3, 2020](#)

**Third Amendment to the City-Generated Tow Service Agreements**

On March 17, 2020, City Council approved a resolution authorizing the City Manager to negotiate and execute Third Amendments to the City-Generated Tow Service Agreements. The Third Amendment, retroactive to January 1, 2020 through June 30, 2020, with one option to extend to March 31, 2021 included:

1. Decreasing the contract fee that the operators remit to the City from \$59 per tow to \$41 per towed vehicle to offset increased labor and operational costs;
2. Expanding the list of qualified vehicles to include any vehicle that 1) has not been claimed by the vehicle owner and does not generate revenue through the lien sale process, or 2) has been issued a REG 462 form (“junk-slip”) by the City; and
3. Crediting the tow operators for operator expenses and lost profits related to disposing of qualified vehicles that meet the criteria, against the \$41 contract fee that is required to be remitted to the City.

The Third Amendment to the City-Generated Tow Services Agreements for the terms stated above were executed by the City Manager and retroactive to January 1, 2020.

**County of Santa Clara Public Health Order**

On March 17, 2020, the County of Santa Clara issued a Public Health Order requiring the public to shelter in place in response to the COVID-19 pandemic. As a result, various City services, including the Department of Transportation Parking Compliance Unit and Vehicle Abatement program, were suspended or significantly reduced performing only essential services and operations.

The contracted Tow Operators contacted Code Enforcement and the Tow Contract Administrator in May 2020 to convey the need for immediate actions to be taken to address the critical impacts of the County Public Health Order and the City’s emergency response to COVID-19 on the volume of tow service requests, finances, operations, and ability to provide service.

**ANALYSIS**

Prior to the County Public Health Order, the contracted tow operators faced financial feasibility and labor intensity challenges. Community and industry challenges such as the increase in overall junk/low-value vehicle tows, the rising costs to tow and dispose of overall junk/low-value vehicles and the associated waste, and reductions in the number of towed vehicles claimed by registered owners continued to impact the operators’ financial health and their ability to sustainably provide tow services. For example, in 2019, the tow operators reported that 53% of towed vehicles went unclaimed, 10% were auctioned, and approximately 37% were disposed of or scrapped. Compounding these financial issues, the price of scrap metal has declined over the

past few years, reducing the revenue generated from salvaged vehicles; revenues generated from lien sales have declined; and labor costs have increased.

With the issuance of the County Public Health Order in March 2020 and emergency response to the COVID-19 pandemic, further challenges were placed upon the tow operators. In the weeks that followed, there was a significant reduction in City-Generated tow requests, cancellation of public auctions/lien sales at tow yards (a significant source of revenue), and a predominance of low value/junk vehicle tows requiring disposal. Together these challenges magnified the disparity between operational costs and revenue creating a critical need for financial relief and compensation for the tow operators to continue to provide City-Generated Tow Services. The operators' representative indicated in an email to staff on May 27, 2020 that "the volumes (of tows) are far below what is required to 'break even,' even on vehicles that have value" and "...the tow companies cannot continue to absorb the high costs of dealing with junk vehicles." The tow operators' representative argued further that "data provided pre-COVID show that the companies were in a weak financial condition. They are much worse off now and are operating in survival mode. If the tow companies are to survive, there are several steps that must be taken."

In response to the tow operators concerns, the Tow Audit Working Group conducted three meetings with the tow operators and their representatives between May 22, 2020 and June 12, 2020 to better understand the issues, gather current data and information to verify their claims, and develop recommendations to effectively address the critical financial and operational situation and ensure continued City-Generated Tow Services in the City of San José.

Data and information gathered by City staff supported the companies' claim that the number of tows have declined significantly since the County Public Health Order and City emergency response to COVID-19, and that action by the City was warranted. Tow data between March and May 2020 show an average decline of 41% in number of tows compared to 2019, with March seeing a 32% decline compared to the same month the previous year, April a 50% decline, and May a 41% decline. Furthermore, because the Department of Transportation Parking Compliance and Vehicle Abatement return to normal tow operations will be incremental and San José Police Department tows will likely increase in direct proportion to the amount of vehicles on the road, it is unlikely that City-Generated tow requests will increase to sufficient, sustainable levels in the near future.

Therefore, staff has developed the following proposed recommendations to amend the City-Generated Tow Services Agreements and to address the severe impacts to tow business that resulted from the COVID-19 emergency response. These recommendations aim to ensure continuity of tow services in the City of San José.

*Proposed Reduction of Contract Compensation fee from \$41 to \$0*

Staff is proposing to reduce the contract compensation fee that tow companies pay to the City for each towed vehicle from \$41 to \$0 for a term starting retroactively from March 17, 2020 until

September 30, 2020 to provide financial relief to the tow operators given the significant decline in tow requests and impact to the operators' revenue and operational costs.

*Compensation Summary for Qualified Vehicles and elated garbage disposal and dumpster costs*

Staff proposes to provide payment of \$200 per vehicle up to \$25,000 per tow company for a term starting retroactively June 1, 2020 until September 30, 2020 for any "Qualified Vehicle" (including passenger vehicles, recreational vehicles/motor homes, campers, trailers, etc.), which is either issued a form REG 462 ("junk slip") by the City or for which the tow operator has to pay to dispose of the vehicle.

In addition, Qualified Vehicles that meet the previous criteria and are also recreational vehicles/motor homes, mobile homes (on wheels), campers, trailers, cab-over campers, house-made trailers, boats, full trailers, box trucks, buses, or work vans will receive a payment of an additional \$1,000 per Qualified Vehicle. This \$1,000 per Qualified Vehicle counts towards the \$25,000 maximum compensation per tow operator. The maximum compensation for Qualified Vehicles across all six tow operators is \$150,000.

The proposed amendments also provide for compensation up to \$500 each month to each tow operator for garbage disposal or dumpster costs related to the disposal and cleaning of Qualified Vehicles, for a total max compensation for each tow operators of no more than \$1,500 from July 1, 2020 until September 30, 2020. This \$1,500 is in addition to the \$25,000 total maximum compensation for each tow operators. The maximum compensation for these costs across all six tow operators is \$9,000.

Compensation will be provided by the City to the tow operator on a monthly basis upon receipt of invoices and required supporting documentation such as proof of junk slip, receipts for garbage disposal, and dumpster equipment costs. The proposed compensation rates were set in accordance with 2019 data of the number of Qualified Vehicles including junk vehicles and motor homes/RVs and receipts of disposal costs submitted to the Finance Department by the tow operators as part of the current reimbursement model. Data showed that the tow operators had an average disposal cost of \$1,504 per vehicle with an average of 54.33 qualified vehicles towed and \$81,723.76 in average disposal expenses each quarter (see Attachment A).

*Ability to extend contract terms month by month until end of Contract Term March 31, 2021*

The proposed amendments give the City Manager the authority to extend the terms of the Fourth Amendments month by month for each operator until the end of the original contract term March 31, 2021 subject to available funds and appropriation. This will allow the City the flexibility to continue to address on-going impacts of the County Public Health Order and City emergency response to COVID-19 pandemic as necessary and ensure continuity of tow services. Moreover, at the end of the initial term on September 30, 2020, the City Manager may provide additional payments to each tow operator in excess of the \$25,000 total maximum compensation for Qualified Vehicle tows and \$1,500 for garbage disposal and dumpster equipment costs as part of the option to extend the amendment so long as the total maximum compensation across all six

operators does not exceed \$150,000 for Qualified Vehicle tows and \$9,000 for garbage and cleaning costs cumulatively across all six tow operators for the term of the Fourth Amendment.

## **CONCLUSION**

While the Third Amendment to the City-Generated Tow Service Agreements effective January 1, 2020 was intended to provide financial relief to the tow operators and offset industry challenges, the County of Santa Clara Public Health Order requiring the public to shelter in place and City response to the COVID-19 pandemic have magnified these challenges to critical levels leaving the operators in jeopardy of ceasing operations. Staff has determined that additional steps are warranted to provide financial relief and compensation to sustain tow operators and ensure continuity of City-Generated Tow Services. The recommendations of the Fourth Amendment are proposed to address the significant challenges the tow operators are facing currently and to provide the City Manager authority to extend the amendment terms should these challenges continue.

## **EVALUATION AND FOLLOW-UP**

If approved, the City Manager will negotiate and execute the Fourth Amendment to the City-Generated Tow Services Agreements:

- For the proposed changes to the contract compensation fee retroactive to March 17, 2020;
- For the proposed compensation for Qualified Vehicles retroactive to June 1, 2020;
- For a flat fee of up to \$500 per month for garbage disposal and dumpster costs starting July 1, 2020.

The above amendments will be in effect through September 30, 2020 with the option to extend month to month, provided available funding and appropriation as determined by the City Manager, to the end of the contract term March 31, 2021.

Staff will continue to negotiate with the Tow Operators to work through and resolve issues and challenges for the long term to ensure a fair, equitable, and sustainable tow service delivery model for our community, residents, operators, and City.

Staff will work to meet the milestones of the Tow Audit Framework as directed by the T&E Committee including the release of a Request for Proposals (RFP) for a technology/software platform and/or contract administration and return to Council with a recommendation for an award of the contract. Staff will bring forward proposed City-Generated Tow Services Delivery Model fees and charges, as appropriate, to support the new City-Generated Tow Services Delivery Program, software, and/or contract administration.



### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC/STAKEHOLDER OUTREACH**

Staff conducted three meetings with the Tow Operators and their representatives to understand the overall impact of the County Public Health Order and City emergency response to the COVID-19 pandemic on tow operations and services, assess the need for immediate financial relief and compensation, and develop recommendations to address those impacts and ensure continuity of City-Generated Tow Services in the City of San José.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, Finance Department, Department of Transportation, 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**

The 2019-2020 Adopted Budget includes a revenue estimate of \$360,000 from City-Generated Tow Service fees, which includes the contract compensation fee minus the credit for junk vehicles. Given the decrease in the contract compensation fee from \$59 to \$41 which was included in the Third Amendment (resulting in a reduction of \$18 per tow for tows conducted over the remainder of the fiscal year, the potential budgetary impact, on the General Fund is \$200,000 to \$250,000. This impact was factored into the development of the year-end revenue estimates for 2019-2020.

The Fourth Amendment to reduce the contract compensation fee further from \$41 to \$0 retroactive to March 17, 2020 is anticipated to have a potential budgetary impact of

\$43,750 in 2019-2020 which has been factored in the revenue estimate and \$37,500 in 2020-2021 for July 1 through September 30, 2020. If the amendment was to be extended month by month until the expiration of the existing contract in March 31, 2020, the potential maximum budgetary impact would be \$112,500 in the General Fund. With the recommendations in this memorandum, the potential maximum cost to the City will be \$150,000 for Qualified Vehicle Tows and \$9,000 for garbage and cleaning costs. It is anticipated that these costs could be absorbed by the Department of Transportation's non-personal/equipment budget in the General Purpose Parking Fund. In addition, the Administration will explore if the Coronavirus Relief Fund will be able to fund these costs as it is providing assistance to small businesses.

**CEQA**

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

/s/

EDGARDO GARCIA, Chief of Police  
San José Police Department

/s/

ROSALYNN HUGHEY, Director  
Planning, Building, and Code Enforcement

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

Attachment: Qualified Vehicle Disposal Costs Reimbursement Data Jan-Sep 2019

**Qualified Vehicles Disposal Costs Reimbursement Data for Three Quarters  
January to September 2019**

<b>Tow Operator</b>	<b>Total # of Qualified Vehicles for 3 Quarters (Jan.-Sept. 2019)</b>	<b>Total Reimbursements Claimed for 3 Quarters (Jan.-Sept. 2019)</b>	<b>Average # of Junk Vehicles per Quarter</b>	<b>Average Amount of Reimbursements Claimed per Quarter</b>	<b>Average Amount of Reimbursements per Vehicle</b>
<b>Alongi</b>	66	\$98,545.90	22	\$32,848.63	\$1,493
<b>Motor Body</b>	56	\$88,705.38	18.67	\$29,568.46	\$1,583
<b>Courtesy</b>	5	\$7,224.00	1.66	\$2,408	\$1,450
<b>Matos</b>	22	\$36,106.50	7.33	\$12,035	\$1,641
<b>City Tow</b>	14	\$14,591.00	4.67	\$4,863.67	\$1,041
<b>QUARTERLY AVERAGES</b>			<b>54.33</b>	<b>Approximately \$82,000</b>	<b>Approximately \$1,504</b>
<b>TOTALS</b>	<b>163</b>	<b>\$245,172.78</b>			

*\*Note: Century Tow did not submit reimbursements for January-September 2019 and thus is not included in this data.*