



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey  
David Tindall

**SUBJECT:** SEE BELOW

**DATE:** March 15, 2021

Approved

Date

**3/19/2021**

**SUBJECT: FIFTH AMENDMENT TO CITY-GENERATED ZONE TOW SERVICES AGREEMENTS**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to negotiate and execute Fifth Amendments to the City-Generated Zone Tow Services Agreements with Alongi Brothers, Inc., Century Tow, City Towing, Courtesy Tow Services, Inc., Matos Auto Towing & Transport, and Motor Body Company, Inc. to extend previously amended terms that otherwise expire on March 31, 2021 for the duration of the Agreement, which is currently through March 31, 2022 but may be extended year-by-year through March 31, 2026 at the City's option. These Fifth Amendments to include:

1. All the terms amended by the Second and Third Amendments, including the reduction of the tow operator's security deposit from 25,000 to 5,000, and
2. Reduction of the Contract Compensation Fee to \$0, as amended in the Fourth Amendment.

## **OUTCOME**

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

- 1) Extend key terms of the Second, Third, and Fourth amendments to the contract agreements previously adopted by resolution and expiring on March 31, 2021; and
- 2) Retain service improvements and audit recommendations, implemented or partly implemented; and
- 3) Continue to alleviate impacts of the COVID-19 pandemic on City-generated tow services and ensure continuity of tow services during the County Public Health Order and City's emergency response to COVID-19.

## **EXECUTIVE SUMMARY**

The initial term of the City-Generated Zone Tow Services Agreements, in which the operators provide tow services on public property at the request of City Departments, will expire March 31, 2021. The Second, Third, and Fourth Amendments to the Agreements will also expire March 31, 2021. Pursuant to the terms of the Agreements, the City reserves the right to extend the City-Generated Zone Tow Services Agreements for five (5) additional one-year periods (“Option to Extend”) based upon the same conditions of the initial terms. However, the Second, Third, and Fourth Amendments to the Agreements expire by their own terms and cannot be extended through the Option to Extend.

In addition, the County of Santa Clara Public Health Order and City’s emergency response to the COVID-19 pandemic continue to impact City-generated tow services resulting in continued reduced tow volume, disparity between operation costs and revenues, and risk to continuity of operations. The Tow Audit Work Plan timelines and milestones, including the release of the Request for Proposal to secure tow software and contract administration, have also been delayed as staff resources have been redirected to COVID-19 emergency response efforts.

Staff is recommending the City Council extend the terms of the Second, Third, and Fourth Amendments through the duration of the Agreements including extensions, which currently expire on March 31, 2022 but may be extended year-by-year through March 31, 2026 at the City’s option: maintain process improvements and implemented or partly implemented Audit recommendations; continue to provide financial relief to operators; ensure continuity of tow services; and provide ample time for staff to complete the Tow Audit Work Plan.

## **BACKGROUND**

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. 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 the Department of Planning, Building, and Code Enforcement to the Police Department by June 30, 2020

Between January 15, 2019 and March 17, 2020, staff completed key milestones of the Tow Audit Work Plan including providing status reports to the Transportation and Environment Committee on November 4, 2019<sup>1</sup> and February 3, 2020<sup>2</sup>, Council Policy #9 revision, and adoption of Second and Third Amendments to the City-Generated Zone Tow Services Agreements to

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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](#)

implement or partially implement Audit recommendations and address on-going tow services issues and challenges.

*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.

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.

Data and information gathered by City staff between, May 22, 2020 and June 12, 2020, confirmed that the number of tows has declined significantly since the County Public Health Order and City emergency response to COVID-19, and that action by the City to provide relief to tow operators was warranted.

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

On June 30, 2020 the City Council authorized the City Manager to negotiate and execute Fourth Amendments to the City-Generated Tow Services Agreements to alleviate the impacts of the COVID-19 pandemic on City-generated tow services and ensure continuity of tow services during the County Public Health Order and City's emergency response to COVID-19, including the reduction of the contract compensation fee paid by the operator to the City from \$41 to \$0.

*City-Generated Zone Tow Services Agreements' Expiration*

The initial term of the City-Generated Zone Tow Services Agreements with all six tow operators will expire March 31, 2021. The Second, Third, and Fourth Amendments to the Agreements will also expire March 31, 2021. Pursuant to the terms of the Agreements, the City reserves the right to extend the City-Generated Zone Tow Services Agreements for five (5) additional one-year periods ("Option to Extend") based upon the same conditions of the initial terms. This Option to Extend can be exercised by the City Manager by providing prior written notice to the contractor before the end of the initial term, March 31, 2021. The Second, Third, and Fourth Amendments to the Agreements, however, expire by their own terms and cannot be extended through the exercise of the Option to Extend.

## **ANALYSIS**

### *Status of City-Generated Tow Services*

Following a decline in Q1 and Q2 of 2020, City-generated tows have increased in Q3 and Q4 2020 as city services resumed. However, overall tow volume continues to be reduced. Tow data for 2020 show the number of tows is down approximately 21% (or 3,056 tows) from the prior calendar year and approximately 26% (or 4,134 tows) compared to 2018. Data provided by five of the six tow operators indicate an average annual reduction of 510 tows per operator in 2020 from the previous year and an average release (or claimed) vehicle rate of 53.2%.

The implementation of process improvements and audit recommendations, Amendments to the agreements, and coordinated efforts and communication between City staff and the tow operators have resulted in improved service delivery, specifically, a significant reduction in late tows and tow refusals. Since 2018, late tows have declined from 4.5% of tows to 0.7% of tows (or 686 to 81) annually. Tow refusals have dropped from 1.9% of tows in 2018 to 0.03% of tows in 2020 (or 297 to 3 refusals).

### *Tow Audit Work Plan*

While staff had made significant progress on the Tow Audit Work Plan, the County Public Health Order and City's emergency response to the COVID19 pandemic impacted staff's ability to drive objectives and meet target milestones. The timelines to release the Request for Proposals for tow contract administration and/or software and new City-Generated Zone Tow Services Agreements and transition of the tow program to the Police Department have been delayed. Exercising the Option to Extend the agreement for one year will provide the additional time needed to complete the Tow Audit Work Plan and ensure continuity of tow services. A more detailed overview of the impacts to the Tow Audit Work Plan, including revised work plan scope and timelines, will be provided in a status report to the Transportation and Environment Committee on May 3, 2021.

### *Amendments Proposed for Extension*

The Second, Third, and Fourth amendments to the Agreements have implemented service improvements and audit recommendations that have improved City-generated tow services and ensured continuity of tow services. Additionally, the Amendments have provided financial relief to the tow operators to address the disparity between operation costs and revenues prior to and throughout the County Public Health Order and City's emergency response to COVID-19. Lastly, extending the terms of the Second, Third, and Fourth Amendments for the duration of the Agreement will ensure the improvements to tow services continue; tow services remain ongoing; and the Tow Audit Work Plan can be completed. The terms of the Second, Third, and Fourth Amendments will expire on March 31, 2021 unless extended by the Fifth Amendment. The term of the Fifth Amendment will be for the duration of the Agreement, which is currently through March 31, 2022 but may be extended year-by-year through March 31, 2026 at the City's option. The terms of the amendments to the Agreements proposed for extension include:

- (1) Reduction of the Contract Compensation Fee from \$80 to \$0;
- (2) Reduction of the tow operator's security deposit from \$25,000 to \$5,000;
- (3) List of qualified vehicles expanded 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;
- (4) Language clarifying hazardous waste disposal and documentation requirements for contracted tow operators;
- (5) Citywide maximum tow services rate set at the rate of the California Highway Patrol for the Golden Gate Region-San Jose Offices, as amended, in alignment with Council Policy #9;
- (6) Addition of a performance standard breach of \$50 for "Refusal to Tow";
- (7) Performance standard breach increase for failure to respond within 25 minutes from \$35 to \$100;
- (8) Elimination of 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;
- (9) Combined billing of dispatch and contract compensation fees into a single invoice;
- (10) Language clarifying City-Generated Zone Towing Services for Code Enforcement tows from private property;
- (11) Language clarifying 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
- (12) City Manager or designee authorization to terminate the Agreement on behalf of the City.

## **CONCLUSION**

The County of Santa Clara Public Health Order and City's response to the COVID-19 pandemic continue to impact City-generated tow services resulting in continued reduced tow volume, disparity between operation costs and revenues, and risk to continuity of operations. The Tow Audit Work Plan timelines and milestones have also been delayed as staff resources have been redirected to COVID-19 emergency response efforts. The recommendation to extend the terms of the Second, Third, and Fourth Amendments through the duration of the Agreements, which are currently through March 31, 2022 but may be extended year-by-year through March 31, 2026 at the City's option, will maintain key process improvements and Audit recommendations; continue to provide financial relief to operators; ensure continuity of operations during the County Public Health Order and City's emergency response to COVID-19. This Amendment will also align with the Option Period exercised by the City Manager to extend the Agreements for one year; and will provide ample time for staff to complete the Tow Audit Work Plan.

### **EVALUATION AND FOLLOW-UP**

If approved, the City Manager will negotiate and execute the Fifth Amendment to the City-Generated Tow Services Agreements extending the terms of the Second, Third, and Fourth Amendments as described above including the reduction of the tow operator's security deposit from \$25,000 to \$5,000 and the Contract Compensation fee to \$0 for the duration of the Agreements as extended. The Agreements are currently through March 31, 2022 but may be extended year-by-year through March 31, 2026 at the City's option. Staff will provide a status report of the Tow Audit Work Plan to the Transportation and Environment Committee on May 3, 2021.

### **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 on May 22, 2020, June 12, 2020, and September 23, 2020 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. Staff coordinated again with the Tow Operators representatives on January 12, 2021 and February 9, 2021 to discuss the status of the Tow Audit Work Plan and ongoing conditions of City-generated Tow Services.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, City Manager's Office, and City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

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

HONORABLE MAYOR AND CITY COUNCIL

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### **FISCAL/POLICY ALIGNMENT**

This action is consistent with the City's 2020-2021 Operating Budget City Service Areas Delivery Framework for Performance-Driven Government for Operational Services.

### **COST SUMMARY/IMPLICATIONS**

The 2020-2021 Adopted Budget includes a revenue estimate of \$150,000 from City-Generated Tow Service fees. The Fourth Amendment which reduced the contract compensation fee from \$41 to \$0 retroactive to March 17, 2020 has an estimated budgetary impact of \$150,000 in 2020-2021 for July 1 through March 31, 2021. Extension of the reduced Contract Compensation Fee through March 31, 2022 will have a potential budgetary impact of \$50,000.

### **CEQA**

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

/s/

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/s/

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For questions, please contact Rachel Roberts, Deputy Director of Code Enforcement, at [rachel.roberts@sanjoseca.gov](mailto:rachel.roberts@sanjoseca.gov).