REQUEST FOR PROPOSAL

FOR

TOWING SERVICES

RFP No. 17-06

Costa Mesa

Police Department

CITY OF COSTA MESA

Released on January 25, 2017
REQUEST FOR PROPOSAL
FOR
TOWING SERVICES

The City of Costa Mesa (hereinafter referred to as the “City”) is requesting Proposals from qualified towing service companies (hereinafter referred to as “Proposer”) to provide police towing. The awarded Contractor, (hereinafter referred to as “Contractor”) in accordance with the Sample Professional Service Agreement terms, conditions, and scope of work “Appendix A”. Prior to submitting a Proposal, Proposers are advised to carefully read the instructions below, including the Sample Professional Service Agreement and any solicitation attachments/exhibits. The term is expected to be for five (5) years with two (2) one-year options to renew.

1. GENERAL INFORMATION

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with an annual General Fund budget of over $119 million and a total budget of over $154 million for fiscal year 2015-2016.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 110,757 and has a land area of 16.8 square miles. It is located in the northern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine.

The City is a “full service city” providing a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs.

The City of Costa Mesa is home of the Segerstrom Center for the Arts, Orange County Fairgrounds, South Coast Repertory Theater and the South Coast Plaza Shopping Center, which is the single largest commercial activity center in the City. The volume of sales generated by South Coast Plaza secures its place as the highest volume regional shopping center in the nation.

The successful Proposer, shall have at least five years of prior experience on similar types of services. All Proposers responding to this Request for Proposal (RFP) will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, ability to meet the requested services, adequate staffing, reference check, understanding of services, cost and responsiveness to the needs and concerns of the City of Costa Mesa.

1. Important Notice: The City has attempted to provide all information available. It is the responsibility of each Proposer to review, evaluate, and, where necessary, request any clarification prior to submission of a Proposal. Proposers are not to contact other City personnel with any questions or clarifications concerning this Request for Proposal (RFP). The City’s Purchasing Department contact set out in RFP, Section II, Subsection 2, Inquires, will provide all official communication concerning this RFP. Any City response relevant to this RFP
other than through or approved by City’s Purchasing Department is unauthorized and will be considered invalid.

If clarification or interpretation of this solicitation is considered necessary by City, a written addendum shall be issued and the information will be posted on the City’s website at

www.costamesaca.gov. Any interpretation of, or correction to, this solicitation will be made only by addendum issued by the City’s Purchasing Department. It is the responsibility of each Proposer to periodically check the City’s website to ensure that it has received and reviewed any and all addenda to this solicitation. The City will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

2. Schedule of Events: This Request For Proposal shall be governed by the following schedule:

- **Release of RFP**: January 25, 2017
- **Mandatory Pre-Proposal Conference**: February 1, 2017 at 10:00 a.m.
- **Deadline for Written Questions**: February 7, 2017 at 11:00 a.m.
- **Responses to Questions Posted on Web**: February 9, 2017
- **Proposals are Due**: February 15, 2017 at 11:00 a.m.
- **Interview (if held)**: March 13, 2017 – March 15, 2017
- **Approval of Contract**: TBD

**All dates are subject to change at the discretion of the City.**

**Pre-Proposal Conference:** A MANDATORY pre-Proposal conference will be held on Wednesday, February 1, 2017 at 10:00 a.m. in Conference Room 1A at City Hall, 77 Fair Drive, Costa Mesa, CA 92626. A pre-Proposal conference is held to allow for questions and clarification concerning the City’s RFP process, scope of services and subsequent contract award.

II. GENERAL INSTRUCTIONS AND PROVISIONS

1. Proposal Format Guidelines: Interested entities or contractors are to provide the City of Costa Mesa with a thorough Proposal using the following guidelines: Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, graphic exhibits and pricing forms. Each Proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide “layman” explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following Proposal sections are to be included in the Proposer’s response:

   - **Vendor Application Form and Cover Letter**: Complete Appendix B, Forms and attach this form to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the Proposal. An individual authorized to bind the Contractor must sign the letter. Indicate the address and telephone number of the contractor’s office
located nearest to Costa Mesa, California, and the office from which the project will be managed.

- **Background and Project Summary Section:** The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Attachment A, Scope of Work, of this RFP.

- **Method of Approach:** Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Method of Approach should include:

  1. Describe, in detail, the company’s method of approach to the Scope of Work as defined in Exhibit 1 Police Tow Policy Guidelines and Requirements. Address the manner in which the firm proposes to meet the specific requirements of the scope of work including, but not limited to, response time, business office and hours, 24-hour availability and reporting requirements.

  2. List the names, titles, responsibilities and telephone numbers of the persons to be contacted, at any hour, in the event of an emergency.

  3. Provide information on whether any of the services in this towing contract will be subcontracted out to another company and if so, then describe the portion of work and who will be providing the service.

  4. Describe in detail the company’s proposed procedures for the release of a vehicle under this contract.

  5. Describe the company’s proposed policies and procedures for allowing access to vehicles by owners. Additionally, state procedures for the following:
     a. Allowing the owner to cover the vehicle or take other protective measures.
     b. Allowing the owner to remove personal effects or other articles from the interior of the vehicle.
     c. Allowing the owner, an authorized non-owner and an unauthorized non-owner (such as a private investigator not employed by the owner) to photograph or take notes about the condition of the vehicle.

  6. For vehicles in its care, state the firm’s policies and procedures for:
     a. Determining whether or not a vehicle was damaged.
     b. Determining whether or not a vehicle was stolen.
     c. Determining whether or not a vehicle was stolen from.
     d. Making restitution to the owner in the event that a vehicle is damaged, stolen and/or stolen from.

  7. State the company’s policies and procedures for:
     a. Determining whether or not private property was damaged in the course of the firm’s duties.
     b. Making restitution to the owner or restoring the property if so determined.
8. State the company’s policies and procedures for informing a vehicle owner:
   a. A vehicle is in the firm’s possession
   b. The location of the vehicle
   c. The condition of the vehicle

9. State the company’s policies and procedures for receiving and resolving complaints from the public. Provide the name, qualifications, and contact information for the person(s) responsible for receiving and resolving complaints.

10. Describe the manner in which the company will inform the City and the public of changes to policies and procedures. Include samples of any informational materials the company would use. Describe the procedures for monitoring employee adherence to procedures, whether new or established.

11. Describe in detail the manner in which the company intends to meet the reporting requirements of Exhibit 1 Police Tow Policy Guidelines and Requirements. Include a detailed description of the company’s record keeping tools and methods. Describe any additional information the company is capable of recording that may be of use to Costa Mesa Police Department.

12. Propose a method of receiving completed release forms electronically from Costa Mesa Police Department by the firm, if one is available.

13. Propose a method of delivering the monthly report of released vehicles to Costa Mesa Police Department electronically, if available.

14. Propose any informational or reporting enhancements the company is capable of providing. Example: secure web-based access to the company’s inventory of vehicles towed and stored under this contract by Costa Mesa Police Department.

15. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider Proposals that offer alternative service delivery means and methods for the services desired.

- **Qualifications & Experience:** The information requested in this section should describe the qualifications of the company or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

   1. If the owner is a corporation please provide: list name of corporation, corporate office street address, city, state, and zip code, state where incorporated, date of incorporation, first and last name of officers, local office address, city, state & zip, and the date local office opened its doors for business.
2. If the owner is partnership or joint venture, please provide: the name of partnership or joint venture, principal office street address, city, state, and zip code, state of organization, date of organization, first and last name of general partner(s), local office address, city, state, and zip code, and date local office opened its doors for.

3. List all businesses owned or controlled by yourself (applicant) or business manager doing similar business in California under another name. List business name and address and specify who owns or controls the business (e.g., self, business manager, etc.).

4. List all businesses for which you or your business manager is or was an officer, director, or partner doing similar business in California under another name. List business name and address, title, date(s) in position; specify who was in position (e.g., self, business manager, etc.).

5. How many years have you been in business under your present business name?

6. List all business names that you operate as a towing service in the County of Orange.

7. List all businesses for which you or your business manager have filed for bankruptcy protection while operating under a towing service contract.

8. Provide a list of current and previous contracts similar to the requirements for Costa Mesa. Include all public agencies served. For each, provide a brief description of the scope of work, the length of time the firm has been providing services and the name, title and telephone number of the person who may be contacted regarding the firm’s service record.

9. Submit a description of the firm’s qualifications, experience and abilities that make it uniquely capable to provide services under this contract.

10. Provide a detailed list of subcontractors proposed to be used, if any. For each, submit a description of the services the subcontractor will perform and specific qualifications and experience.

11. Provide copies of the firm’s ethical standards, confidentiality policies, managerial philosophy, customer service standards and standards of service quality. State the manner in which these standards will be evaluated and maintained. The materials may include, but are not limited to:

   a. Membership in and/or good standing with an organization that is devoted to ensuring high standards of customer service and consumer protection, such as the Better Business Bureau.
b. Membership in and/or good standing with a professional organization devoted to encouraging and maintaining ethical or service standards.

c. Evidence of training and education in customer service, maintaining quality standards and/or maintaining quality standards received by the firm, its employees and its subcontractors.

d. Letters of recommendation from customers and contracting agencies.

e. Copies of instructional material used to ensure employee adherence to ethical, quality and customer service standards.

f. A list of references that will attest to the firm’s ethical, quality and service standards. The list should include the name, address and telephone number of the person who may be contacted and a description of the relationship between the firm and the reference.

13. The City of Costa Mesa is interested in knowing how Proposers support the communities that they serve. Please provide information on your company’s participation in local community, charitable and civic organizations and events, including membership in the Costa Mesa Chamber of Commerce, charitable contributions made by your company, etc., for consideration in the RFP evaluation.

Any public entity which submits a Proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Equipment & Facilities:** The information requested in this section should describe the company or entity’s equipment and facilities. Information shall include:

  1. Provide a list and short description of all of the vehicles proposed to be used in the performance of services. In the event that the firm does not currently own or lease a sufficient amount of vehicles, provide a description of the firm’s plan to acquire the necessary equipment.

  2. Describe the radio equipment proposed to be used in the dispatching of tow vehicles. If dispatching is aided by equipment in addition to radios, describe that equipment.

  3. Provide a detailed description of the firm’s facilities including storage lots and business offices. In the event that the firm does not currently own or lease sufficient facilities, provide a description of the firm’s plan to acquire the necessary facility.

  4. Provide a detailed description of facility security.
• **Financial Capacity:** Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

• **Staffing:** It is essential that the proposer provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions. Provide a list of staff who will be assigned under this contract.

  A. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.

  B. If key personnel are not available for work under this contract for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

• **Cost Proposal:** All Proposers are required to use **Attachment B, Cost Proposal** to be submitted with their Proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Proposals shall be valid for a minimum of 180 days following submission.

• **Disclosure:** Please disclose any and all past or current business and personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee. **Any past or current business relationship may not disqualify the firm from consideration.**

• **Sample Professional Service Agreement:** The firm selected by the City will be required to execute a Professional Service Agreement with the City. A sample of the Agreement is enclosed as **Appendix A**, but may be modified to suit the specific services and needs of the City. **If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.** See No. 12 of this RFP below.

• **Checklist of Forms to Accompany Proposal:** As a convenience to Proposers, following is a list of the forms, included as appendices to this RFP, which should be included with Proposals:

  1. Vendor Application Form
  2. Company Profile & References
2. **Process for Submitting Proposals:**

- **Content of Proposal:** The Proposal must be submitted using the format as indicated in the Proposal format guidelines.

- **Preparation of Proposal:** Each Proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Cost for Preparing Proposal:** The cost for developing the Proposal is the sole responsibility of the Proposer. All Proposals submitted become the property of the City.

- **Number of Proposals:** Submit one original, five (5) hard copies plus one electronic copy/flash drive of your Proposal in sufficient detail to allow for thorough evaluation and comparative analysis. In the event of a conflict between the original and any hard copy or disk copy, the original shall control.

- **Submission of Proposals:** Complete written Proposals must be submitted in sealed envelopes marked and received no later than **11:00 a.m. (P.S.T) on February 15, 2017** to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed Proposals will not be accepted. NO EXCEPTIONS.

  City of Costa Mesa  
  City Hall  
  Office of the City Clerk  
  77 Fair Drive  
  Costa Mesa, CA 92628-1200  
  RE: RFP No. 17-06 TOWING SERVICES

- **Inquiries:** Questions about this RFP must be directed in writing, via e-mail to:

  RFP Facilitator: Stephanie Urueta at stephanie.urueta@costamesaca.gov

The City reserves the right to amend or supplement this RFP prior to the Proposal due date. All addendum(s), responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa-Official City Web Site-Business-Bids & RFP's](http://www.costa-mesa-ca.gov/Business-Bids-and-RFPs). Proposers should check this web page daily for new information. The City will endeavor to answer all written questions timely received no later than **February 7, 2017**. The City reserves the right not to answer all questions.
From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any Proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance:** This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all Proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any Proposal. All Proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the Proposal, it should be clearly identified.

- **Insurance & W-9 Requirements:** Upon recommendation of contract award, Contractor will be required to submit the following documents with ten (10) days of City notification, unless otherwise specified in the solicitation:

  **Insurance** - City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Bidder must furnish the City with the Certificates of Insurance proving coverage as specified in the sample contract.

  **W-9** – Current signed form W-9 (Taxpayer Identification Umber & Certification) which includes Contractor’s legal business name(s).

3. **Evaluation Criteria:** The City’s evaluation and selection process will be conducted in accordance with Chapter V, Article 2 of the City's Municipal Code (Code). In accordance with the Code, the responsive responsible proposer shall be determined based on evaluation of qualitative factors in addition to cost. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub-criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

   1. **Method of Approach ------ 30%**
   2. **Qualifications of Experience ------ 30%**
   3. **Equipment & Facilities ----- 25%**
   4. **Staffing ----10%**
   5. **Cost Proposal ---- 5%**
4. Evaluation of Proposals and Selection Process: In accordance with its Municipal Code, the City will adhere to the following procedures in evaluating Proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all Proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. Responsiveness Screening: Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any Proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their Proposals.

B. Initial Proposal Review: The Committee will initially review and score all responsive written Proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any Proposal in which a Proposer’s approach, qualifications, or price is not considered acceptable by the City. An unacceptable Proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. Interviews, Reference Checks, Revised Proposals, Discussions: Following the initial screening and review of Proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for March 13, 2017 through March 15, 2017 and will be conducted at City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, CA 92628. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the Proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer’s references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer’s services, solicit information from any available source concerning any aspect of a Proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the Proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may
recommend award without Best and Final Offers, so Proposers should include their best Proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

5. Protests: Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the Proposal procedure, which are apparent or reasonably should have been discovered prior to receipt of Proposals shall be filed in writing with the City’s Purchasing Department at least 10 calendar days prior to the deadline for receipt of Proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or that could not reasonably have been discovered prior to submission date of the Proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the City’s Purchasing Department, within 48 hours from receipt of the notice from the City advising of City’s recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The City’s Purchasing Department will respond to the protest in writing at least 3 days prior to the meeting at which City’s recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the City’s Purchasing Department, and pursue its protest at the Council meeting, it will notify the City’s Purchasing Department of its intention at least 2 days prior to the scheduled meeting.

A. Procedure – All protests shall be typed under the protester’s letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

• The name, address and telephone number of the protester;
• The signature of the protester or the protester’s representative;
• The solicitation or contract number;
• A detailed statement of the legal and/or factual grounds for the protest; and
• The form of relief requested.

6. Accuracy of Proposals: Proposers shall take all responsibility for any errors or omissions in their Proposals. Any discrepancies in numbers or calculations shall be interpreted to reflect the cost to the City.

If prior to contract award, a Proposer discovers a mistake in their Proposal which renders the Proposal unwilling to perform under any resulting contract, the Proposer must immediately notify the facilitator and request to withdraw the Proposal. It shall be solely within the City's discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation
and award of "all or none" of the items, then any withdrawal must be for the entire Proposal. If the solicitation provided for evaluation and award on a line item or combination of items basis, the City may consider permitting withdrawal of specific line item(s) or combination of items.

7. Responsibility of Proposers: The City shall not be liable for any expenses incurred by potential Contractors in the preparation or submission of their Proposals. Pre-contractual expenses are not to be included in the Contractor’s Pricing Sheet. Pre-contractual expenses are defined as, including but not limited to, expenses incurred by Proposer in:

- Preparing Proposal in response to this RFP;
- Submitting that Proposal to the City;
- Negotiating with the City any matter related to the Proposal; and,
- Any other expenses incurred by the Proposer prior to the date of the award and execution, if any, of the contract.

8. Confidentiality: The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the Proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer’s competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire Proposal as confidential nor designate its Price Proposal as confidential.

Submission of a Proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer’s request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney’s fees and costs that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

9. Ex Parte Communications: Proposers and Proposers’ representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers’ representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and
their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's Proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications Form, Appendix B with their Proposals certifying that they have not had or directed prohibited communications as described in this section.

10. Conflict of Interest: The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq., or Sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

11. Disclosure of Governmental Position: In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their Proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached Disclosure of Government Positions Form, Appendix B.

12. Conditions to Agreement: The selected Proposer will execute a Professional Service Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as Appendix A to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement. The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a Proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample agreement for maintenance services unless the Proposer includes with its Proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation Proposals and determining the lowest responsible bidder.

13. Disqualification Questionnaire: Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A Proposal may be rejected on the basis of a Proposer, any officer or
employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation, Appendix B.

14. **Standard Terms and Conditions:** The City reserves the right to amend or supplement this RFP prior to the Proposal due date. All addendum(s) and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa - Official City Web Site - Business - Bids & IFB's](http://www.costamesa.ca.us/bidsandifbs). Proposers should check this web page daily for new information.
APPENDIX A

SAMPLE PROFESSIONAL SERVICE AGREEMENT
CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
_____________________________

THIS AGREEMENT is made and entered into this ___ day of _____, 20__ ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ____________, a [state] [type of corporation] ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to __________________, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City’s Request for Proposal (“RFP”), attached hereto as Exhibit “A,” and Consultant’s Response to City’s RFP (the “Response”) attached hereto as Exhibit “B,” both incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

(a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

(b) Require Consultant to repeat the work at no additional fee until it is satisfactory;
and/or

(c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers’ compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys’ fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant’s performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant’s sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the “Fee Schedule”). Consultant’s total compensation shall not exceed _______ Dollars ($_____.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant’s Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress
basis, but no more often than two times a month. Said invoice shall be based on the total of all 
Consultant’s services which have been completed to City’s sole satisfaction. City shall pay Consultant’s 
invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe 
the services performed, the date of performance, and the associated time for completion. Any 
additional services approved and performed pursuant to this Agreement shall be designated as “Additional Services” and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant’s services relating to this Agreement shall 
be maintained in accordance with generally recognized accounting principles and shall be made 
available to City or its Project Manager for inspection and/or audit at mutually convenient times for a 
period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed 
pursuant to this Agreement shall commence within five (5) days from the Effective Date of this 
Agreement. Said services shall be performed in strict compliance with the Project Schedule approved 
by City as set forth in Exhibit “D,” attached hereto and incorporated herein by this reference. The 
Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a 
timely manner and/or diligently pursue work to completion may be grounds for termination of this 
Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance 
resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but 
not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, 
riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period 
of ______ months, ending on __________, 20__, unless previously terminated as provided herein or as 
otherwise agreed to in writing by the parties. This Agreement may be renewed by two (2) additional 
one (1) year periods upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, 
suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, 
with or without cause, at any time, by providing written notice to Consultant. The termination of this 
Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such 
termination, Consultant shall immediately stop rendering services under this Agreement unless directed 
otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable 
costs incurred and professional services satisfactorily performed up to and including the date of City’s 
written notice of termination. Compensation for work in progress shall be prorated based on the 
percentage of work completed as of the effective date of termination in accordance with the fees set 
forth herein. In ascertaining the professional services actually rendered hereunder up to the effective 
date of termination of this Agreement, consideration shall be given to both completed work and work in 
progress, to complete and incomplete drawings, and to other documents pertaining to the services 
contemplated herein whether delivered to the City or in the possession of the Consultant.
4.4. **Documents.** In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. **INSURANCE**

5.1. **Minimum Scope and Limits of Insurance.** Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated “A,” Class X, or better in the most recent Best’s Key Insurance Rating Guide, and approved by City:

(a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

(c) Workers’ compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers’ compensation insurer waiving subrogation rights under its workers’ compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers’ compensation insurance policies.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate. Architects’ and engineers’ coverage shall be endorsed to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. **Endorsements.** The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
(b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.

(c) Other insurance: "The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

(d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

(e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit “E” and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.
6.3. **Project Managers.** City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. **Notices.** Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT: IF TO CITY:

_________________ ____________________
_________________ ____________________
Tel: _______________ Tel: (714) 754-
Fax: _______________ Fax: (714) 754-
Attn: _______________ ____________________

Provide courtesy copy to:
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Department

6.5. **Drug-free Workplace Policy.** Consultant shall provide a drug-free workplace by complying with all provisions set forth in City’s Council Policy 100-5, attached hereto as Exhibit “F” and incorporated herein by reference. Consultant’s failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. **Attorneys’ Fees.** In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys’ fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. **Assignment.** Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall
constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City’s specifications or Consultant’s Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker’s compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant’s failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold City harmless from and against any and all claims, losses, damages, costs, expenses, and other liabilities (including reasonable attorneys’ fees and costs of litigation) incurred by Consultant by reason of such eligibility, and the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any
compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant’s performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting from City’s use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant’s services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and sub-consultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or sub-consultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of
City and to participate in any meeting required with regard to the correction.

6.17. **Prohibited Employment.** Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. **Costs.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. **No Third Party Beneficiary Rights.** This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. **Headings.** Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. **Amendments.** Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. **Waiver.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.
6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

__________________________________  Date:  __________________________
[Mayor or Chief Executive Officer]

CONSULTANT

__________________________________  Date:  __________________________
Signature

__________________________________
Name and Title

__________________________________
Social Security or Taxpayer ID Number

ATTEST:

________________________________
City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

__________________________________  Date:  __________________________
City Attorney

APPROVED AS TO INSURANCE:

__________________________________  Date:  __________________________
Risk Management
APPROVED AS TO CONTENT:

__________________________________ Date: ________________________

Project Manager

DEPARTMENTAL APPROVAL

__________________________________ Date: ________________________

Police Chief

APPROVED AS TO PURCHASING:

__________________________________ Date: ________________________

Interim Finance Director
APPENDIX B

FORMS

Vendor Application Form

Ex Parte Communications Certification

Disclosure of Government Positions

Disqualification Questionnaire

Company Profile & References

Staffing Plan

General Questionnaire/Requirements For Towing Services
VENDOR APPLICATION FORM
FOR
RFP NO. 17-06
TOWING SERVICES

TYPE OF APPLICANT: □ NEW □ CURRENT VENDOR

Legal Contractual Name of Corporation: ______________________________________

Contact Person for Agreement: ________________________________________________

Corporate Mailing Address: ________________________________________________

City, State and Zip Code: __________________________________________________

E-Mail Address: _________________________

Phone: ________________________     Fax: ________________________

Contact Person for Proposals: ________________________________________________

Title: ______________________________  E-Mail Address: ______________________

Business Telephone: _________________________  Business Fax: ________________

Is your business: (check one)

☐ NON PROFIT CORPORATION       ☐ FOR PROFIT CORPORATION

Is your business: (check one)

☐ CORPORATION                   ☐ LIMITED LIABILITY PARTNERSHIP

☐ INDIVIDUAL                    ☐ SOLE PROPRIETORSHIP

☐ PARTNERSHIP                   ☐ UNINCORPORATED ASSOCIATION
Names & Titles of Corporate Board Members
(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

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Federal Tax Identification Number: __________________________________________

City of Costa Mesa Business License Number: _____________________________
(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: ______________________
EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. Only sign one statement.

I certify that Proposer and Proposer’s representatives have not had any communication with a City Councilmember concerning RFP No. 17-06 TOWING SERVICES at any time after January 25, 2017.

________________________________
Date: _______________________
Signature

________________________________
Print

OR

I certify that Proposer or Proposer’s representatives have communicated after January 25, 2017 with a City Councilmember concerning RFP No. 17-06 TOWING SERVICES. A copy of all such communications is attached to this form for public distribution.

________________________________
Date: _______________________
Signature

________________________________
Print
DISQUALIFICATION QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____   No _____

If the answer is yes, explain the circumstances in the following space.
DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of Contractor currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."
COMPANY PROFILE & REFERENCES

Company Profile

Company Legal Name: _____________________________________________________________

Company Legal Status (corporation, partnership, sole proprietor etc.): ________________________

Active licenses issued by the California State Contractor’s License Board: ________________________

Business Address: __________________________________________________________________________

Website Address: __________________________________________________________________________

Telephone Number: __________________________ Facsimile Number: _____________________________

Email Address: ___________________________

Length of time the firm has been in business: __________ Length of time at current location: __________

Is your firm a sole proprietorship doing business under a different name: _____ Yes ______ No

If yes, please indicate sole proprietor’s name and the name you are doing business under:
___________________________________________________________________________________________

Is your firm incorporated: _____Yes _____ No   If yes, State of Incorporation: ____________________________

Federal Taxpayer ID Number: ______________________________________________________________________________

Regular business hours: __________________________________________________________________________

Regular holidays and hours when business is closed:
___________________________________________________________________________________________

Contact person in reference to this solicitation:
___________________________________________________________________________________________

Telephone Number: __________________________ Facsimile Number: _____________________________

Email Address: ___________________________

Contact person for accounts payable:
___________________________________________________________________________________________

Telephone Number: __________________________ Facsimile Number: _____________________________

Email Address: ___________________________

Name of Project Manager: __________________________________________________________________________

Telephone Number: __________________________ Facsimile Number: _____________________________

Email Address: ___________________________
COMPANY PROFILE & REFERENCES
(Continued)
Submit the company names, addresses, telephone numbers, email, contact names, and brief contract descriptions of at least five clients, preferably other municipalities for whom comparable projects have been completed or submit letters from your references which include the requested information.

Company Name: ____________________ Telephone Number: ______________________________
Contact Name: ____________________ Contract Amount: ________________________________
Email: ______________________________ Address: _________________________________
Brief Contract Description: ______________________________

Company Name: ____________________ Telephone Number: ______________________________
Contact Name: ____________________ Contract Amount: ________________________________
Email: ______________________________ Address: _________________________________
Brief Contract Description: ______________________________

Company Name: ____________________ Telephone Number: ______________________________
Contact Name: ____________________ Contract Amount: ________________________________
Email: ______________________________ Address: _________________________________
Brief Contract Description: ______________________________

Company Name: ____________________ Telephone Number: ______________________________
Contact Name: ____________________ Contract Amount: ________________________________
Email: ______________________________ Address: _________________________________
Brief Contract Description: ______________________________

Company Name: ____________________ Telephone Number: ______________________________
Contact Name: ____________________ Contract Amount: ________________________________
Email: ______________________________ Address: _________________________________
Brief Contract Description: ______________________________
1. **Primary Staff to perform work under this Agreement**

<table>
<thead>
<tr>
<th>Name</th>
<th>Classification/Title</th>
<th>Years of Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

2. **Alternate staff** (for use only if primary staff are not available)

<table>
<thead>
<tr>
<th>Name</th>
<th>Classification/Title</th>
<th>Years of Experience</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Substitution or addition of Proposer’s key personnel in any given category or classification shall be allowed only with prior written approval of the City Project Manager.

The Proposer may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service required. Assignment of additional key personnel shall be subject to City Project Manager approval. City reserves the right to have any of Contractor personnel removed from providing services to the City under this Agreement. City is not required to provide any reason for the request for removal of any Contractor personnel.
GENERAL QUESTIONNAIRE/REQUIREMENTS FOR
TOWING SERVICES

Please give detailed and specific answers for questions that require an explanation. Use additional sheets of paper if additional space is needed and include the corresponding question number next to your answer.

### Tow Service Requirements

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>1. Towing Services are available on a 24 hour/7 days a week basis?</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>2. Do you have a valid and current DMV Certified California Motor Carrier Permit? **If yes, give ID # __________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>3. Is business office located within a five (5) mile radius from the Costa Mesa Police Department? Please provide your business address and distance in miles from Costa Mesa Police Station. ________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>4. Towing company is able to respond to normal towing requests within 15 minutes and within 45 minutes when a heavy duty (Class C) or super heavy duty (Class D) tow is required. **If not, please explain. __________________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>5. Do you participate in the DMV Employer Pull Notice (EPN) Program? **If yes please provide explain. ______________________________</td>
</tr>
</tbody>
</table>

### Tow Yard Requirements

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>6. Does your storage area meet the requirements in the Tow Police Guidelines and Requirements (pages 5-7)? **If no, please explain. __________________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>7. Is storage facility accessible twenty-four (24) hours a day, seven (7) days a week? **If not, explain. __________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>8. Do you have a secondary storage facility? **If yes, give facility address(es) and distance in miles from business office and from Costa Mesa Police Facility. **Where will you store vehicles towed or impounded from Costa Mesa under this contract? Please provide address. ____________________________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>9. Does your evidence hold area meet the requirements in the Tow Police Guidelines and Requirements (pages 6-7)? **If no, please explain. ____________________________________</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
<td>10. Do you own one or have access to an agreement with another company for one (1) Class C and one (1) Class D tow truck? **If yes, please provide specific information ____________________________________</td>
</tr>
</tbody>
</table>
Yes  No  Business Office

[  ] [  ]  11. Do you have a full-time manager that has a minimum of two (2) years verifiable for hire towing experience in the County of Orange? Please provide proof.

[  ] [  ]  12. Are signs that identify business to the public as a tow service visible and legible from the street during daylight and evening hours?

[  ] [  ]  13. Are business hours and fees pertaining to tow service, storage charges, and miscellaneous related charges posted for public view in an unobstructed area inside the office?

[  ] [  ]  14. Does business provide a number to call for service when the office is closed? If yes, please provide an explanation of procedure.

[  ] [  ]  15. Does your business have a reliable communication system in place that enables requests for service 24 hours a day/7 days a week? **If yes, please explain what this system is. ____________________________

[  ] [  ]  16. Is the telephone number answered by a live voice that can respond to customers and attend to their requests after normal business hours including weekends and holidays? Provide details. ________________________________

[  ] [  ]  17. Does business have a procedure to train its employees on company policy, customer service, handling transactions related to towing, storage, and release of property and/or vehicles, customer service? **If yes, please provide an explanation of procedure. ____________________

Yes  No  Tow Truck Drivers

[  ] [  ]  18. If you are the owner, do you have a minimum of two (2) years verifiable for-hire towing experience in the County of Orange? **Provide additional information for consideration. ____________________

[  ] [  ]  19. Do you have a full-time driver that has a minimum of two (2) years verifiable for hire towing experience in the County of Orange? **If yes, how many drivers do you have that have the minimum two (2) years verifiable for-hire towing experience in the County of Orange? ____________________

[  ] [  ]  20. Do you have at least one (1) driver who has five (5) verifiable years for hire salvage and recovery experience? **If yes, how many drivers with five (5) verifiable years for hire salvage and recovery experience do you have? ____________________

[  ] [  ]  21. Are Tow Truck Drivers at least twenty-one years with the proper licenses and medical certificates?

22. Provide a picture of employee in uniform.
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Tow Truck Drivers Training</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>23. Does business have a procedure to train its truck drivers in the proficient use of the tow truck and related equipment and in performing towing and recovery operations in a safe and expedient manner? **If yes, explain procedure. ______________________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Tow Truck Classifications and Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>24. Class A: Light Duty – Does business have a minimum of two (2) operational tow trucks with a manufacturer’s gross vehicle weight rating (GVWR) of 10,000 to 19,500 with wheel lift capability or car carrier? If yes, how many? Provide specific details. ______________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25. Class A: 4WD – Does business have 4-wheel drive tow trucks with a manufacturer’s GVWR of less than 14,000 lbs? _________________ If yes, how many? __________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26. Class B: Medium Duty – Does business have a minimum of one (1) operational tow truck with a manufacturer’s GVWR of at least 26,001 lbs.? Provide information on truck (e.g. is it equipped with air brakes, a tractor protection valve or device, and capable of providing and maintaining continuous air to the towed vehicle?)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>27. Does business have any Class B tow truck(s) not equipped with portable tow dollies? If yes, how many? (Trucks not equipped with portable tow dollies are allowed to operate on a Class A rotation tow list if available 24 hours a day/7 days a week.)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>28. Class C: Heavy Duty – Does business have access to a minimum of one (1) operational tow truck with a manufacturer’s GVWR of at least 48,000 lbs. that can respond within 45 minutes? Own vehicle _____ Has access to_______ Provide information on truck (e.g. is it equipped with air brakes, a tractor protection valve or device, and capable of providing and maintaining continuous air to the towed vehicle?)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29. Class D: Super Heavy Duty – Does business have access to a minimum of one (1) operational tow truck with a GVWR of at least 52,000 lbs. that can respond within 45 minutes? Own vehicle _____ Has access to_______ Provide information on truck (e.g. is it equipped with air brakes, a tractor protection valve or device, and capable of providing and maintaining continuous air to the towed vehicle?)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30. Does business maintain and equip tow trucks with auxiliary equipment to be used when appropriate in order to properly and safely tow vehicles? Please provide details. ______________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>31. Is a comprehensive and current pricing sheet for services maintained in all tow trucks?</td>
</tr>
</tbody>
</table>
32. Do you own more than 50% of another tow business or are you the parent or subsidiary of another towing company? **If yes, list other business(es), include city, state, and ownership capacity, e.g., owner, subsidiary, etc._____________________________________________________

33. Are you directly involved with any other towing business? **If yes, list other business(es) and your involvement, e.g., owner, subsidiary, etc._____________________________________________________

34. Are you directly or indirectly associated with a company providing private security services? **If yes, please identify and provide details._____________________________________________________

35. Are you associated with any other towing service company that may participate in this RFP? **If yes, please provide details._____________________________________________________

36. Are all originals records of business transactions retained on-site? **If no, explain where records are kept and give location name and address._____________________________________________________

37. At a minimum, do business invoices include vehicle description, service begin and end time, type of service, location of service, itemized cost breakdown of service, driver’s name, and type of tow truck used? **Please attach a blank original invoice.
ATTACHMENT A

SCOPE OF WORK
FOR
TOWING SERVICES

The City may award multiple contracts for towing services. The current number of vehicles impounded each year is approximately two thousand three hundred eighty-four (2,384) and the number of vehicles stored is approximately one thousand three hundred fifty-one (1,351). The towing service will be required to impound, store, remove vehicles from a traffic collision, clean-up as required, attend to disabled vehicles, have an evidence hold area for the vehicles and generally provide towing and storage service on a twenty-four (24) hour, seven (7) days a week, three hundred sixty-five (365) days a year.

It shall be the responsibility of the Proposer to respond immediately and promptly provide towing services for vehicles to be taken into custody, when such service is called for by the Police Department. The towing services to be performed by the Proposer shall include, but are not limited to, towing services for vehicles involved in accidents or disabled by other causes, impeding the flow of traffic, impound for evidence, abandoned in public places or on private property, and for any other reason within the jurisdiction of the City of Costa Mesa Police Department.

The detailed scope of work is defined in Exhibit 1, Costa Mesa Police Department Tow Policy Guidelines and Requirements. It is suggested that all Proposer(s) become familiar with this to determine if they can meet the City of Costa Mesa requirements before submitting a proposal.
ATTACHMENT B
COST PROPOSAL
FOR
TOWING SERVICES

Provide hourly rates, along with estimated annual pricing in accordance with the City’s current requirements, as set forth in section Scope of Work, Attachment A. Proposer should use a separate form to state pricing for any added value.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Towing</strong></td>
<td></td>
</tr>
<tr>
<td>Basic Tow</td>
<td>$</td>
</tr>
<tr>
<td>Flatbed or Medium Duty Tow</td>
<td>$</td>
</tr>
<tr>
<td>Heavy Duty Tow</td>
<td>$</td>
</tr>
<tr>
<td>Motorcycle Tow</td>
<td>$</td>
</tr>
<tr>
<td><strong>Storage</strong></td>
<td></td>
</tr>
<tr>
<td>Outside Storage Car</td>
<td>$</td>
</tr>
<tr>
<td>Inside Storage Car</td>
<td>$</td>
</tr>
<tr>
<td>Outside Storage Truck</td>
<td>$</td>
</tr>
<tr>
<td>Inside Storage Truck</td>
<td>$</td>
</tr>
<tr>
<td>Motorcycle Storage</td>
<td>$</td>
</tr>
<tr>
<td><strong>Labor</strong></td>
<td></td>
</tr>
<tr>
<td>Tow Dolly</td>
<td>$</td>
</tr>
<tr>
<td>R&amp;R Linkage/Driveshaft</td>
<td>$</td>
</tr>
<tr>
<td>Rollover/Winching</td>
<td>$</td>
</tr>
<tr>
<td>Hourly Labor</td>
<td>$</td>
</tr>
<tr>
<td>After Hour Release (Before 8:00 a.m. and after 5:00 p.m.)</td>
<td>$</td>
</tr>
<tr>
<td>Service Call - minimum</td>
<td>$</td>
</tr>
<tr>
<td>On-Scene Release</td>
<td>$</td>
</tr>
</tbody>
</table>
Total Estimated Annual Price | 
| $ 

Pricing shall remain firm for a minimum of two (2) years. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, “annualized change comparing the original proposal month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor’s website at www.bls.gov.)
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<tr>
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</tr>
<tr>
<td>• TERMINATION</td>
<td>25</td>
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</table>
CITY OF COSTA MESA
POLICE TOW POLICY GUIDELINES AND REQUIREMENTS

PURPOSE

The purpose of the Costa Mesa Police Tow Policy Guidelines and Requirements ("Policy") is to establish guidelines and requirements to efficiently manage and provide police-initiated towing service that will be of mutual benefit to the public, the Costa Mesa Police Department ("CMPD"), and the towing companies providing that service.

GOALS

1. To provide the highest level of service to the motoring public at a fair and low cost to the person(s) who require(s) the services of a towing company.

2. To provide a workable and comprehensive policy regarding towing and/or storage of abandoned, disabled, stored or impounded vehicles from public or private property.

3. To provide grounds for addressing relevant matters pertaining to the administration of a rotational tow list and any other pertinent matters including procedures governing disciplinary action, up to removal from the rotational tow list for the tow service operators violating the contract.

TOWING SERVICES - DEFINITIONS

1. A call for towing service, which is initiated by a City employee, for the purpose of storing or impounding a vehicle.

2. A call for towing service, which is initiated by a City employee, for the purpose of removing a vehicle which has been involved in a collision and the owner or driver has not specified a tow service or garage.

3. A call for towing service, which is initiated by a City employee, at the request of the driver of a disabled vehicle and the towing service or garage is unspecified.

4. A call for clean up service, which is initiated by a City employee, for the purpose of removing fluids or solid materials from the highway, including sidewalks and parkways.

5. The Police Tow Policy Guidelines and Requirements shall apply to all tow service operators that are on contract with the City of Costa Mesa.
RESPONSE TO CALLS

Upon request by the CMPD, the tow service operator shall respond promptly and provide towing services for vehicles to be taken into custody by the Police Department. Such towing services shall include, but not be limited to, towing vehicles which are involved in accidents, disabled by other causes, impeding the flow of traffic, impounded for evidence, abandoned in public places or on private property or for any other reason within the jurisdiction of the Police Department.

The tow service operator shall maintain sufficient numbers of trucks and equipment to be able to respond to a CMPD tow request to any location within the City within fifteen (15) minutes. Heavy Duty (Class C) and Super Heavy Duty (Class D) tow trucks shall respond within forty-five (45) minutes of CMPD tow requests within the City limits.

When dispatched by CMPD, the tow service operator shall not remove any vehicle involved in a collision until authorized by CMPD.

The tow service operator agrees that its operators, employees and agents will only report to the scene of an accident or a disabled vehicle when summoned by the law enforcement officer or the person in control of the disabled vehicle.

In addition to removal of vehicles, the tow service operator shall remove, transport and dispose of all debris and fluids, including oil and gasoline, resulting from accidents in compliance with all applicable federal, state and local regulations concerning hazardous materials. In the event a call to remove a disabled vehicle is received by the tow service operator, necessitating response prior to completion of site clean-up, the tow service operator shall clear the current site sufficiently to restore normal traffic movement before proceeding to the subsequent request. Any vehicles remaining shall be towed to the storage facility at the earliest opportunity.

In the event the tow service operator receives an additional call to remove a disabled vehicle that is interrupting traffic flow while an earlier call is being processed, the tow service operator shall clear the site specified in the prior call sufficiently to restore normal traffic movement and immediately proceed to the site specified in the additional call. Any disabled vehicle deposited or parked by the tow service operator at the site specified in any call shall be towed to storage at the earliest opportunity after the tow service operator has complied with the above provisions for restoring traffic movement at all specified sites.

On any private property tows, the tow service operator shall observe and notify CMPD of any damage to any property.

ABANDONED VEHICLES

Abandoned vehicles and private property tows shall comply with all provisions of California Vehicle Code sections 22650 et seq. Failure to comply may result in disciplinary action up to or including termination of the contract.
COSTA MESA MUNICIPAL CODE ARTICLE 18

Each tow service operator shall comply with all applicable sections of Title 9, Chapter II, Article 18 of the Costa Mesa Municipal Code.

TOWING SERVICE REQUIREMENTS

Each tow service operator shall render 24-hour, 7-day a week towing service, and the service area shall include the entire city limits of Costa Mesa. Towing companies shall respond to the scene within fifteen (15) minutes from the time when called by the Costa Mesa Telecommunications Dispatch Center. The response time for a Heavy Duty (Class C) & Super Heavy Duty (Class D) vehicle tow may be up to forty-five (45) minutes.

The tow service operator agrees that its service, including the releasing of vehicles, will be available on a 24-hour, 7 days-a-week basis and that it will provide the CMPD with a complete description of its towing operation for the City of Costa Mesa at the time it signs its agreement with the City. For any vehicle release during business hours, the tow service operator shall ensure that a person wait no longer than twenty (20) minutes to take possession of his/her vehicle after payment of fees. After business hours, the tow service provider shall ensure a person waiting to take possession of his/her vehicle wait no longer than thirty (30) minutes for response from the tow service operator.

Each tow service operator shall have dispatching capability to their trucks/drivers 24 hours per day.

The tow service operator on call shall maintain a minimum of one driver on-duty at all times. In addition, at least one driver will be on stand-by at all times.

The tow service operator, or its employees, operators or agents shall not have any financial interest in any repair shop(s) to which private parties are referred by that tow service operator, employee, operator or agent. The tow service operator is prohibited from requiring a tow to any particular repair shop(s) and is prohibited from requesting or receiving a fee from any repair shop(s) for towing a vehicle to that facility or for a referral to that facility.

The tow service operator or its employees, operators or agents shall not engage in practices commonly referred to in the tow services business as “soliciting”, “cruising”, or “poaching.”

CONTRACT TOW SERVICE OPERATORS

All tow service operators shall conduct their business in an orderly, ethical, business-like manner and use every means to obtain and keep the confidence of the motoring public.

All tow service operators shall be responsible for the acts of their employees while on duty and for damage to vehicles while in their possession.
All tow service operators shall be responsible for the protection of police-impounded vehicles, regardless of the location of storage, until the vehicles have either been released to their owners or disposed of through a legal process.

Each tow service operator shall keep current on, and ensure compliance with, all laws and regulations associated with being a tow operator.

No contracted tow service operator shall be directly involved in the towing related business of any other towing service contracting with Costa Mesa or with a company providing private security services which have the power or duty to patrol or enforce parking regulations on private or public property.

All tow service operators shall comply with sections 9880.1 through 9884.17 of the California Business and Professions Code with regard to unauthorized charges or repair work on the vehicle in its charge and posting of notices.

The tow service operator shall maintain a current/valid motor carrier permit and provide the CMPD with a current copy. Failure to maintain a valid permit will result in automatic suspension of all activity until a valid motor carrier permit is obtained.

The tow service operator shall maintain current registration on all vehicles. Each tow service operator must provide CMPD with a copy of valid registration for each vehicle in his/her/its fleet. Failure to maintain current registration on any vehicle will result in removing the vehicle from towing services for the City of Costa Mesa until valid registration is obtained.

The tow service operator must maintain the standard current/valid insurance as required by the City of Costa Mesa, as defined in the Request for Proposal document. Auto insurance must be maintained for each vehicle. The insurance certificates must be provided to the CMPD. The insurance certificates must be approved by the Risk Management Division. Failure to maintain current/valid insurance may result in suspension of all towing activity until current/valid insurance is obtained.

The tow service operator is responsible for complying with all applicable federal, state, and local laws and regulations pertaining to a drug and alcohol free workplace. The tow service operator is required to have a drug and alcohol policy in writing, which must be distributed and made easily accessible to all of their employees. The tow service operator is required to provide a copy of their drug and alcohol free workplace policy to CMPD, and any changes to that policy shall be submitted in writing to CMPD. Failure to comply with the requirements of this policy and the requirements set forth in the contract will be handled on a case by case basis and may result in suspension and/or termination from providing tow services for the City of Costa Mesa.

The tow service operator shall notify the CMPD of any vehicles being towed or stored within the City pursuant to private party requests, prior to leaving the City limits or within thirty (30) minutes of vehicle storage, whichever occurs first.

The tow service operator shall notify outside jurisdictions of any vehicles being towed or stored from that jurisdiction, prior to bringing the vehicle into the City of Costa Mesa.
Notwithstanding any provision or language that might indicate to the contrary, in responding to a call from the CMPD, the tow service operator shall have no claim against the City of Costa Mesa for the cost of its service rendered, but shall look solely to the owner of the vehicle transported. The City of Costa Mesa makes no representation that such person will be financially responsible.

All personal property located within towed or stored vehicles shall be surrendered to the vehicle owner upon request and upon presentation of proper identification, unless the vehicle is to be held for evidence.

Any change in operating locations of a towing service provider shall be reported, in writing, to the CMPD at least thirty (30) days prior to such change.

Each contract tow service provider shall comply with section 27907 of the California Vehicle Code regarding signs on tow trucks. Contract tow service providers shall only dispatch to the scene of the need tow trucks bearing the name of the towing service.

All vehicles stored or impounded as a result of a tow ordered by the City of Costa Mesa shall be towed directly to a towing service storage lot unless the CMPD or other person legally in charge of the vehicle requests that it be taken to some other location.

**TOW YARD REQUIREMENTS**

**General Requirements**

All stored vehicles shall be stored and released from the tow service provider’s office, which shall be located within five (5) miles from CMPD Headquarters (99 Fair Drive, Costa Mesa, CA 92626).

Towing service storage lots shall be adequately fenced with gates locked and secured and reasonably well-lighted to maintain a maximum of security for stored and impounded vehicles. All storage lots must be inspected and approved by CMPD.

Open area storage yard(s) shall comply with all requirements of the zoning and building codes of the jurisdiction of the facility. Perimeter gates and fencing shall be maintained to ensure security and discourage unauthorized access.

There shall be adequate lighting to illuminate the entire storage/impound lot as well as all structures thereon. Evidence of compliance may be provided through photo metrics on a site plan. This compliance shall be presented to the CMPD and Costa Mesa Planning Division, if requested. Lighting shall be directed so as not to interfere with neighboring uses. Sign(s) identifying the tow service business to the public shall be visible and legible from the street during daylight and evening hours. A ring down line shall be provided at the tow yard/business office for direct ring to the tow yard operator after hours.

Adequate open storage space shall be provided to accommodate stored, impounded, and disabled vehicles resulting from CMPD calls for towing services. The minimum capacity of such a lot shall be not less than 100 vehicles, and said capacity shall be expressly for the purpose of storing Costa Mesa police tows. Tow service operators may have more than one lot in order to accommodate the 100 vehicles. All storage lots shall be located within five (5) miles of the CMPD Headquarters.
The CMPD reserves the right to require any other security devices it deems reasonably necessary.

Any damage to wall structures shall be repaired within 24 hours to ensure proper protection for the stored/impounded vehicles.

Prior to the utilization of a new storage facility, the tow service operator shall obtain the approval of the Chief of Police or his/her designee and furnish the new address thirty (30) days in advance for inspection.

**STORAGE SECURITY RESPONSIBILITY**

The tow service operator shall store all vehicles, together with all accessories and equipment on said vehicles and all personal property in each vehicle, in storage facilities approved by the City of Costa Mesa for official police tow storage. Facilities utilized by the tow service operator for CMPD tow storage must be located within five (5) miles of CMPD Headquarters.

The tow service operator shall be held accountable for all personal property and vehicle accessories, together with the vehicle stored within its storage facility. The City of Costa Mesa, its officers, agents, and employees shall be relieved of all responsibility.

The tow service operator shall not remove personal property from a stored vehicle. If the registered owner removes personal property from a stored vehicle, the tow service operator shall maintain documentation of such and will require a signed receipt from the registered owner for property released. The tow service operator shall immediately notify the CMPD if any contraband, weapons or hazardous materials are found in the vehicle(s).

No vehicle impounded at the direction of the CMPD shall be released, sold or dismantled without written approval (signed release) from the CMPD.

Upon taking possession of the towed vehicle, the tow service operator assumes full responsibility for the vehicle and its contents.

**EVIDENCE HOLD OR SPECIAL HANDLING REQUIREMENTS**

- The secured “evidence hold” area must be within the confines of the tow service provider’s primary storage facility, which shall be located within five (5) miles of the CMPD Headquarters.

- The tow service provider shall be able to provide an enclosed evidence hold area. The hold area must contain four walls, a solid roof, and a door with a locking device for protection from the elements of weather and other forms of contamination.

- The evidence hold area should be closed to all employees of the tow company other than management. This area should have the capability to be locked and sealed by police personnel, if necessary, and be accessible 24-hours, 7-days per week by members of the CMPD.
• The bottom edge of the enclosed structure shall not be more than two (2) inches above the finished parking surface of the enclosed area.

• This space must be adequate to contain at least one (1) full-sized passenger vehicle. Please note that CMPD requires five (5) such evidence hold spaces.

• This space must be at least 1,000 square feet or more and within the tow company’s main storage area.

• Vehicles impounded by the CMPD for special investigation shall be stored in evidence hold until cleared by the investigating officers, at which time the owners shall be permitted a forty-eight (48)-hour grace period at no charge in which to remove the vehicles from storage. Under no circumstances shall contents of vehicles with a "Police Hold" be removed.

• The area shall provide ample room for vehicle inspection, free of restriction from other vehicles, equipment, structures, or other objects.

• Structures shall have a hard floor of either concrete or asphalt.

• Only items being held as police evidence shall be kept in the evidence hold storage area. The evidence hold storage area and floor shall be kept in a clean condition.

• There must be adequate lighting and electrical power immediately available to the area.

• The area shall be free of pedestrian and vehicle traffic during the inspection.

• Vehicles with “evidence holds” shall not be touched, moved, or tampered with in any manner without CMPD’s written consent.

• Protection shall also be provided to preclude evidence contamination by employees and other individuals during normal business hours.

• A log shall be maintained to document date, time, name and purpose of all person(s) entering the storage area for vehicles with “evidence holds.”

• The tow service operator shall not charge the City for storage of vehicles that involve evidence holds.

**BUSINESS OFFICE**

The tow service provider must have one business office location within five (5) miles of the CMPD Headquarters, at which vehicles are released. The tow service provider must be able to demonstrate experience and expertise in providing towing services to public agencies and have been in the towing business within the County of Orange for a minimum of two (2) years prior to the start of contract. If telephones are the means of communication for receipt of calls from the CMPD, tow service provider shall provide a list of telephone numbers to be called in order of priority, and immediately upon any
change in such telephone numbers, or in the priority thereof, shall notify the CMPD in writing with effective the date of the change.

- The office shall be staffed with employees that can release vehicles, file and maintain documents, and answer questions from the public, both in person and on the phone, and/or electronically by e-mail.

- The business office shall include either the tow service operator or a person who has the authority to conduct business and make decisions on behalf of the tow service operator for administrative purposes and release of vehicles.

- The office shall be staffed and open for business Monday through Friday, 8:00 a.m. to 5:00 p.m. Hours and charges shall be posted for public view in an unobstructed area inside the office.

- During business hours, the tow service office staff shall release any vehicle, upon payment of fees, within twenty (20) minutes. After business hours, tow service staff shall ensure that a person waiting to take possession of his/her vehicle shall wait no longer than 30 minutes for response from tow service operator. A ring down line shall be provided at the business office for direct ring to the tow yard operator after hours.

- The tow service office may be closed on City of Costa Mesa recognized holidays; however, those days will be posted in the tow office and visible to the public at least five (5) business days in advance, provided, however, that the operator must still comply with the requirement that no person waiting to take possession of his/her vehicle shall wait longer than 30 minutes for response from the tow service operator.

- The towing service office shall possess a valid City of Costa Mesa Business License.

**Business Office Staff**

Employees of tow service operators shall provide good customer service at all times.

Employees shall refrain from any acts of misconduct including, but, not limited to, any of the following:

1) Rude or discourteous behavior.
2) Lack of service, selective service, or refusal to provide service which the operator is or should be capable of performing.
3) Any act of sexual harassment or sexual impropriety, gender, racial, or religious discrimination.

All tow service operators shall comply with the following non-discrimination policy:

**Non-discrimination.** In performing tow services pursuant to the Police Tow Policy Guidelines and Requirements, the tow service operator shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color,
national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code section 1735.

Charges for Towing and Related Services

Initial Towing Fee and Daily Storage Charges shall be in compliance with California Vehicle Code section 22658 and in accordance with the rates established based on sections 9-284.8 and 9-284.9 the Costa Mesa Municipal Code.

Tow and storage rates shall be posted conspicuously in public view, in accordance with California Civil Code section 3070 (17 inches x 22 inches, with letters at least 1 inch in height).

The tow service operator agrees to provide the following services to the City at or below the rates established periodically by the City Council in accordance with section 9-284.9 of the Costa Mesa Municipal Code:

- Basic Tow/Flat Bed Tow
- Heavy Duty Tow (over ¾ ton)
- Super Heavy Duty (over 1 ton)
- Inside Storage
- Outside Storage
- Storage of Trucks, Trailers, Buses
- Storage of Motorcycles
- Tow Dolly
- Dropped Drive Line
- Winching/Recovery
- Labor
- After Hours Release
- Street Clean Up After Accident (No Tow) – Hourly Rate
- Lock outs/Extrication

With the exception of the basic tow rate, the preceding services are based on a 24-hour period. No charge or other fee shall be collected for a dry-run (i.e., when none of the above chargeable services is rendered by the tow service operator). It will be the tow service operator’s responsibility to collect its fees for services rendered pursuant to this Policy and its contract with the City, and the City of Costa Mesa shall not be responsible in any way for such charges.

In the event the CMPD errs in impounding a vehicle, or for any other reason in the CMPD’s sole discretion CMPD concludes a vehicle should be released without any charges, the tow service operator shall immediately release such vehicle without charge upon request by the CMPD.

The tow service provider must honor “no charge” or “reduced charge” towing fee waivers authorized by a Costa Mesa Police Watch Commander, Traffic Sergeant or higher, or Detective Sergeant or higher.
If clean up at collision locations is requested and no vehicle tow is being requested, the towing service provider may charge the City for clean up at the agreed upon rate based upon hours verified by the CMPD on site.

Annually, the fees established by the City Council shall be subject to automatic annual adjustments in proportion to the percentage change in the Consumer Price Index (“CPI”), as set forth in section 9-284.9 of the Costa Mesa Municipal Code.

**City Recovery of Administrative Fees**

The tow service provider must collect the City of Costa Mesa’s reasonably borne administrative costs, on behalf of the City of Costa Mesa, in the prescribed amount established by the City user fees each year. The tow service provider must remit the collected fees on or before the 20th day of each calendar month. Payments must be made by check, payable to the City of Costa Mesa. Payments must be accompanied by statements indicating the number of towing incidents applied to compute the total fees remitted. The City has a right to request an audit at any time. If the audit is performed and errors are found, then the City may charge the tow service provider for the audit costs.

**Payment**

Payment of cash or credit card with proper identification shall be accepted by the tow service operator on calls for any services provided. The tow service operator, when responding to other CMPD-ordered tows, shall accept payment in the manner consistent with California Vehicle Code section 22651.1, as set forth below:

*22651.1. Payment of towing and storage costs by credit card or cash.* Persons operating or in charge of any storage facility where vehicles are stored pursuant to Section 22651 shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner’s agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. “Credit card” means “credit card” as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card shall be liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing and storage charges, but not to exceed five hundred dollars ($500). In addition, persons operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change in a reasonable monetary transaction.

Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when agreeing with a towing or storage provider on rates.

**TOW TRUCK DRIVERS**

1. Drivers shall perform all towing and recovery services in the safest and most expedient manner possible.
2. The tow service operator shall ensure that drivers assigned to respond to City of Costa Mesa service calls are qualified employees, trained and proficient in the use of the tow truck and all related tow equipment, and able to apply the procedures necessary to safely tow and recover vehicles serviced under the operator’s contract with the City.

3. All Drivers assigned to respond to City of Costa Mesa service calls will be:
   - Awake and alert
   - Punctual
   - Able to speak and write English fluently and clearly
   - Subject to a criminal history background records check to the reasonable satisfaction of the Chief of Police or his designee
   - Possess a valid California Driver's License (CDL)
   - Not under the influence of alcohol, marijuana or any controlled substance
   - No DUI convictions
   - Neat, clean and well groomed in appearance

   Tattoos – In order to ensure a professional appearance for all tow service providers in Costa Mesa, all tattoos must be concealed by operators while working. Operators will be required to conceal any tattoos with gloves, collars, long sleeves, or by other means acceptable to the CMPD. Facial tattoos of any variety are not permitted. No facial piercings shall be worn while on duty. If there are any questions, clarification/authorization may be obtained by contacting the Police Chief’s designee.

4. Drivers shall possess the proper class license(s) and certificate(s) required for the class of tow vehicle driven and for the type of tow service performed. Class A licenses must be endorsed by the Department of Motor Vehicles (DMV) to allow for operation of special vehicle configurations and/or special cargo.

5. All drivers will be required to submit to a City of Costa Mesa criminal history records check, including Live Scan fingerprinting, which will be conducted at CMPD. Felony and misdemeanor convictions may be disqualifying. The City of Costa Mesa may elect to issue identification (ID) cards to those employees that successfully pass the background check.

6. The tow service operator shall maintain and provide the CMPD with a current list of drivers upon contract award, or upon request. Specific details required are noted in the Records and Reporting section of this document.

7. The tow service operator shall notify the CMPD in writing, which may be provided via e-mail correspondence, of any change in drivers or driver status and provide the CMPD with an updated list of drivers within seven (7) calendar days following date of change during the term of the contract.

**Driving Infractions of Employees**

The tow service operator and employees shall, at all times, comply with federal, state, and local laws and ordinances.

1) In the event of a traffic infraction by a rotational tow truck driver, the tow service operator will
be advised of the violation by the CMPD. The tow service operator will be granted the opportunity to take necessary steps to ensure that the driver complies with the law. Any subsequent traffic violations may be cause for disciplinary action against the operator and/or the involved employees.

2) Any misdemeanor traffic violations may be cause for immediate disciplinary action against the operator and/or the involved employees.

3) Any conviction of the operator or an employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug, or moral turpitude may be cause for suspension or removal of the employee or operator, denial of the operator’s application, or termination of the contract.

4) An operator or employee arrested/charged for a violation involving any of the crimes listed in number 3, above, may be suspended from rotational tow until the case is adjudicated.

5) CMPD may take appropriate enforcement or administrative action for any violations of law. Complaints for violations of the law not normally investigated by CMPD will be referred to the agency with investigative jurisdiction.

6) Nothing herein shall be deemed to prohibit CMPD from immediately suspending, terminating, or denying an application of any operator or employee whose conduct, in the opinion of the Chief of Police or his/her designee, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the agreement.

Operators shall not employ tow truck drivers with poor driving records or with traffic-related felonies. To do so knowingly or negligently would be grounds for suspension or termination.

Examples:

1. A driving record reflecting four (4) or more points in twelve (12) months constitutes a poor driving record. Five (5) or more points in twenty-four (24) months constitutes a poor driving record.

2. A driving record reflecting a conviction for driving while under the influence of intoxicating liquor or narcotic/drugs or both, within the preceding seven (7) years constitutes a poor driving record.

3. A driver with a commercial license reflecting three (3) or more points in twelve (12) months constitutes a poor driving record. Four (4) or more points in twenty-four (24) months constitutes a poor driving record.

4. For a driver with a commercial license reflecting a conviction for driving while under the influence of intoxicating liquor or narcotic/drugs or both, within the preceding seven (7) years constitutes a poor driving record.
**Driver Training**

The tow service operator is solely responsible for the training of its employees. The operator shall ensure tow truck drivers responding to calls initiated by CMPD have completed the training, as required by section 2436.5 of the California Vehicle Code, within the past five (5) years. The tow service operator shall provide proof of said training for every driver on staff.

The training shall include, but not be limited to, all of the following:

1. Tow truck driver and motorist safety.
2. Vehicle operation.
3. Traffic control and scene management.
4. Communication procedures.
5. Demeanor and courtesy.

**Driver Licensing**

The towing company shall ensure that only qualified and competent tow drivers respond to calls initiated by the CMPD. Tow drivers shall be at least eighteen (18) years old (in compliance with California Vehicle Code section 12515) and possess the following minimum class driver’s license:

1. Class A tow trucks - a valid Class C (3) license or a valid Class A (1) license with a valid medical certificate.
2. Class B tow trucks - a valid Class A (1) license with a valid medical certificate.
3. Class C tow trucks - a valid Class A (1) license with a valid medical certificate.
4. Class D tow trucks - a valid Class A (1) license with a valid medical certificate.

The Class A (1) licenses must be endorsed to allow operation of special vehicle configurations and/or special cargoes. Tow truck drivers shall have the proper class of license and endorsement(s) for vehicle and cargo being transported as shown below:

<table>
<thead>
<tr>
<th>VEHICLE TYPE OR CARGO</th>
<th>CLASS LICENSE</th>
<th>ENDORSE/CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pulling more than one trailer</td>
<td>A</td>
<td>T</td>
</tr>
<tr>
<td>Transporting passenger for hire</td>
<td>A or B</td>
<td>P</td>
</tr>
<tr>
<td>Tank vehicle</td>
<td>A or B</td>
<td>N</td>
</tr>
<tr>
<td>Hazardous materials</td>
<td>A, B or C</td>
<td>H</td>
</tr>
<tr>
<td>Tank vehicle with hazardous materials</td>
<td>A, B or C</td>
<td>X</td>
</tr>
</tbody>
</table>
Whenever tank vehicles, double trailers, and hazardous materials carriers are towed or driven, the driver needs to possess the appropriate class of license and endorsement.

Empty buses can be towed without the passenger transport endorsement, but the tow truck driver must have the passenger transport endorsement if the bus is driven by him/her, even without passengers.

Tow truck drivers may obtain a Class A driver’s license which is restricted to towing other vehicles.

The actual driving of damaged vehicles or vehicles being serviced requires that the Class A license not be restricted to towing vehicles.

All tow truck drivers must be proficient in unlocking locked vehicles with minimal damage, when so requested by CMPD.

**Employee Uniforms**

Each tow service operator shall be required to furnish their employees with a distinctive company uniform. Each uniform shall have the company name as well as the employee’s name in a conspicuous place. The tow company name and driver’s first name shall be easily visible at all times; protective or inclement weather outer garments must also meet this standard. Each employee shall have sufficient uniforms so as to maintain a neat, clean appearance at all times. Minimum requirements for uniforms include a shirt, pants, and appropriate safety shoes. All drivers shall be in uniform before any towing or service operation begins. No wording, designs, photos, gestures, or anything that could be considered offensive or obscene to the general public shall be displayed by the tow drivers or on any part of the uniform. These dress standards are required in order to project a professional and positive image to the motoring public, of the tow company representing the City of Costa Mesa and the CMPD.

Drivers shall wear appropriate warning garments (e.g., vests, jackets, shirts, retroreflective clothing) as required by section 1598 of the California Code of Regulations. Drivers shall further comply with all applicable requirements for warning garments set forth by the Occupational Safety and Health Administration (OSHA).

**TOW TRUCK CLASSIFICATIONS AND EQUIPMENT**

All tow trucks and their equipment shall be in good working condition. Once a tow truck has arrived at a scene, the driver shall, without undue delay, move vehicles to a location where they do not impede or obstruct traffic, and remove any debris and fluids (except clear water) on the ground originating from the vehicles. Undue delay includes, but is not limited to, delays caused by lack of knowledge or training of the tow truck driver to effectively operate the tow truck or its equipment, faulty equipment, and the lack of necessary equipment or supplies to remove a vehicle and/or clean the scene.

The tow service operator agrees to maintain all of its tow vehicles in compliance with all applicable provisions of the California Vehicle Code, including, but not limited to, sections 24605, 25253, 25300, 27700, and all Vehicle Code sections regarding smog equipment requirements, consistent with
industry standards and practices. Said equipment requirements shall be maintained throughout the term of the agreement. The tow service operator also agrees that all tow vehicles and tow trucks shall be maintained in a clean and neat manner and in sound mechanical condition at all times, and that on all accident calls the tow service operator will clean up and remove all debris from the accident scene as required by CMPD.

The tow service operator must comply with all federal, state, and local air pollution control laws and regulations applicable to tow services.

The equipment and performance of each towing service provider shall be subject to periodic review and/or inspection by the Chief of Police or his/her designee.

Each tow truck shall be equipped with:

- Two-way radio or “hands free” telephone, or other acceptable communications equipment. Citizen’s Band Class D is not acceptable.
- Two (2) covered buckets, each having a minimum capacity of three (3) gallons. One bucket shall contain at least three (3) gallons of absorbent material (such as sand or similar material in keeping with Environmental Protection Agency (EPA) guidelines) capable of soaking fluids. The second bucket shall be used for placement of debris and other materials cleaned from an incident site.
  - One (1) broom.
  - One (1) shovel.

All State and Federal EPA Guidelines shall be followed.

Control/Safety Labels - All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

All tow trucks under CMPD contract shall clearly display, in contrasting colors, the name of the tow company, address, telephone number and truck number.

Tow trucks shall not display the words “Official Police Tow” or words to that effect, without prior written approval from CMPD.

**Classes of Tow Trucks**

Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis gross vehicle weight rating (GVWR) and the classification system used by the American Trucking Association (ATA) and truck manufacturers. Tow truck and car carrier classifications shall meet all applicable state and/or federal standards.

There will be four (4) classes of tow trucks covered under this Policy.

**Class A - Light Duty:**

The tow service operator shall maintain a minimum of five (5) trucks with a manufacturer’s GVWR of 10,000 to 19,500 pounds with wheel lift capability, and may have a car carrier. Class A equipment
must include a 4-ton recovery equipment rating and 100 feet of 3/8 inch 6x19 cable or original equipment manufacturer (OEM) specifications.

A towing company that has a car carrier may be exempted from the wheel lift capability requirements; however, the car carrier must be an additional unit. A Class A one vehicle car carrier must be equipped with 10,000 to 16,000 GVWR chassis. Class A one vehicle must be equipped with a 16,001 to 19,500 GVWR chassis. Both must be equipped with a 3/8 inch 6x19 cable or OEM specifications.

Class B - Medium Duty:

The tow service operator shall maintain at least one (1) tow truck with a manufacturer’s GVWR of 19,501 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle. Class B equipment must include a 19,501 to 33,000 GVWR chassis and 150 feet of 7/16 inch 6x19 cable or OEM specifications.

The tow company may also have a car carrier; however, the car carrier must be an additional unit. A Class B car carrier must be equipped with a 19,501 + GVWR chassis and 50 feet of 3/8 inch 6x19 cable or OEM specifications.

Class C - Heavy Duty:

The tow service operator shall maintain access to at least one (1) three (3) axle tow truck with a manufacturer’s GVWR of at least 33,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle. Class C equipment must include a 33,000 to 50,000 GVWR chassis, 25-ton recovery equipment rating, and 200 feet of 5/8 inch cable or OEM specifications.

Class D - Super Heavy Duty:

The tow service operator shall maintain access to at least one (1) three (3) axle tow truck with a manufacturer’s GVWR of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle. Class D equipment must include a 50,000 GVWR chassis, 30-ton recovery equipment rating, and 250 feet of 3/4 inch 6x19 cable or OEM specifications.

Inspections

Tow trucks - An annual inspection will be conducted to determine if the operator’s tow vehicles comply with sections 24605, 25253, 27700, and 27907 of the California Vehicle Code.

1. This inspection may be done by commercial enforcement officers as directed by CMPD and shall be done on an annual basis. If so done, the inspection sheet will be forwarded to the CMPD Traffic Bureau for their files. Tow trucks found in violation of the Vehicle Code equipment sections shall be repaired, then inspected by CMPD before returning to service.
2. Failure to correct deficiencies or equipment violations shall result in the tow service being suspended from the CMPD rotation list without further notice until the deficiency or violation is corrected.

3. The annual inspection shall consist of a Level One inspection conducted by a commercial enforcement officer, or any other officer assigned to the task, and a tow truck inspection (as set forth in the State of California CHP Tow Truck Inspection Guide). Upon successful completion of the inspection, a sticker or decal shall be issued by the City of Costa Mesa to the inspected vehicle. Evidence of a valid CHP inspection and current sticker will also be acceptable.

4. Tow Facility - CMPD reserves the right to conduct an inspection at any time of the tow service facilities and/or its equipment. However, a mandatory inspection will be conducted annually.

- If any deficiencies and/or violations are discovered during the initial inspection at the time of and for the express purpose of a new contract, the tow service provider may be disqualified without the courtesy of a correction period.

- If any deficiencies and/or violations are discovered, including an inspection for a contract renewal, the tow service will be so advised in writing. The tow service will be given five (5) business days to rectify the deficiency or violation(s).

- Exception: Any damage to walls and/or fence structures in the tow yard facility shall be repaired within twenty-four (24) hours.

**CHARGES AND LIEN SALES**

The tow service operator must be familiar with all applicable DMV regulations and have the expertise to handle the paperwork for the Abandoned Vehicle Abatement (AVA) Program, including lien sales, invoices and billing for each individual abated vehicle.

The tow service operator shall comply with California Vehicle Code section 10652 in reporting vehicles that have been stored for 30 days.

Towing service providers shall, when disposing of unclaimed vehicles, abide by all California Code sections pertaining thereto. Vehicles flagged by CMPD for destruction may not be sold by lien sale, but must be destroyed and a certificate of destruction must be provided to the CMPD.

After seventy-two (72) hours, the tow operator may bill the registered owner for lien sale charges, not to exceed the amount actually expended by operator. The operator shall not bill the City of Costa Mesa for such charges.
If hook-up or service has begun and is canceled by the vehicle owner/agent, or CMPD, charges owed (drop fee) shall be no more than one-half of the regular towing charge.

The registered owner of any vehicle that spills a fluid requiring a tow company to use absorbent may be charged the current clean-up rate by the tow service provider.

**Charges for “Evidence Hold” Vehicles**

The initial towing fee shall be billed to the registered owner of the vehicle.

Storage for evidence hold shall commence only upon notification by an authorized CMPD officer.

All such vehicles shall be released from evidence as soon as practicable. CMPD will provide formal notification to the tow operator as to the effective date of release. Any storage occurring after such effective date shall be charged to the vehicle’s owner(s) in accordance with scheduled rates.

Whenever a vehicle is held for evidence, the contract tow service provider will contact the CMPD by the third calendar day of storage to confirm its status. Notification will be made to a Supervisor in the appropriate Division or Bureau as indicated on the impound form.

All lien sale proceedings for stored/impounded vehicles shall be in accordance with California Vehicle Code sections 9800 through 9808, 22851 through 22856, and Civil Code sections 3067 through 3074.

The contract tow service provider shall comply with all provisions of California Vehicle Code Section 22850.3(b) for vehicles impounded pursuant to Vehicle Code Section 22850.

**FINANCIAL INTEREST**

A. No tow service provider or applicant shall be directly involved in the towing related business of any other tow service provider or applicant within the City of Costa Mesa. Directly involved shall mean any of the following in common between tow service operators or applicants:

1. Business license
2. Insurance
3. Tow truck or equipment ownership
4. Employees

B. Storage facilities sharing property with other businesses or services must be separated by conditions or barriers meeting with the approval of the CMPD, as defined in the Police Tow Policy Guidelines.

C. No tow company may transfer or assign its agreement with the City without the express written consent of the City of Costa Mesa.
D. City personnel shall not be offered gratuities, and requests for gratuities shall not be honored by contract tow service providers, towing employees or associates of each towing company. A violation of this section shall be cause for suspension or termination of the towing contract.

ROTATION RULES

Whenever a vehicle owner is unable to specify a particular tow service, the tow service called shall be the next tow provider from the rotation list, in a rotational order. The rotational order shall be under the control of the City’s Telecommunications Division to ensure equitable distribution of calls. The current method used by the City of Costa Mesa for tow rotation is based on alternation of each tow provider after a one-week period. When more than one vehicle is to be towed from an incident, the contract tow service provider on rotation shall have preference on service to all vehicles at an incident. If that tow service provider cannot handle service for all vehicles, then the next contract tow service provider up on rotation shall be called to assist and shall not lose their position on the rotation list.

The tow service provider shall advise CMPD at the time of notification if they are either unable to respond or unable to meet the required response time. If, after accepting the call, the contract tow service provider is unable to respond or will be delayed in responding, the towing company shall immediately notify the Telecommunications Division Dispatch Center.

There may be times when a tow company that was not called to a scene comes upon a collision scene where a vehicle or vehicles are blocking a roadway or a vehicle is a hazard in the roadway and a CMPD officer requests their assistance in clearing the roadway. In such a case, the towing company may be requested to move the vehicle to a safe location, as directed by the officer, and leave it. There shall be no charge for this assistance, and the assistance provided shall not change the tow service provider’s place in the rotation.

A towing company shall not respond to a CMPD call assigned to another tow service unless requested to do so by the CMPD.

FREE SERVICES PROVIDED TO THE CITY

Towing Services for City-Owned Vehicles

The tow service operator shall tow any CMPD and/or other City vehicles (under 6,000 lbs.), disabled within the City of Costa Mesa limits, at the request of City staff, free of charge. Any City vehicle weighing more than six thousand pounds (6,000 lbs.) shall be charged the standard tow rate. Towing of any CMPD and/or other City vehicles outside the City of Costa Mesa limits shall be charged the tow mileage rate only.
In addition, the towing operator shall provide free tire changes, jump starts and assistance with lockouts for all City vehicles requiring assistance within the city limits.

**Costa Mesa Fire Department Training Vehicles**

Upon request from the Costa Mesa Fire Department, the tow service operator shall provide the Costa Mesa Fire Department with up to two unclaimed vehicles that are ready for demolition each month, for training purposes. Tow service operators shall make arrangements with the Costa Mesa Fire Department to drop-off and pick up vehicles from the Costa Mesa Fire Department training lot at 2300 Placentia Avenue, Costa Mesa, California 92627, at no charge to the City.

**RECORDS & REPORTING**

1. The tow service operator shall maintain an accurate record of all vehicles towed pursuant to its contract with the City.

2. The operator shall maintain records of all tow services furnished. The records shall be maintained at the operator's place of business. Invoices shall, at a minimum, include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.

3. The tow service operator shall file required reports and notifications with the DMV in the manner required by law.

4. The tow service operator's record keeping system must allow the tow service operator to quickly and efficiently locate records and information.

5. All records for CMPD impounds and storage shall be maintained in jacket files, segregated from the files of other law enforcement agencies.

6. Reports submitted shall contain information concerning services provided under the contract only.

7. At the operator's primary office, business records shall also be maintained relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing (if applicable), and non-police tows.

8. The records of all vehicles impounded or stored at the direction of the City of Costa Mesa shall be available for inspection only to authorized employees or officials of the City of Costa Mesa.

9. CMPD may inspect all operator records without notice during normal business hours.

10. Operators shall permit the CMPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. CMPD shall provide a receipt for any original record removed from the place of business.
11. Records shall be maintained and available for inspection for four (4) years from the date that the current contract commences.

12. Failure of the operator to comply with inspection requirements shall be cause for suspension.

13. The tow service provider shall maintain a current list of drivers and shall furnish a copy of same to CMPD on or before the 10th day of each month. This list shall contain current information on owner(s) and drivers. Specific information furnished shall include:

- Name
- Residence address
- City
- Zip code
- Telephone numbers
- Date of birth
- Driver’s license number
- Vehicle unit number
- Tow operator’s permit number
- Date of permit
- Date of hire
- Date of current list
- Any other personnel information that may be requested by the Police Department

This information shall be supplied on a towing service personnel report form. This form must be signed and dated by a tow company representative. False and/or misleading information is cause for termination.

14. Each tow service provider shall record its time in and time out on every official assignment. Such records shall be made available and open to examination by the City of Costa Mesa.

15. A representative from the Traffic Safety Bureau may contact the tow service operator via telephone daily to compare the tow service operator’s list of towed vehicles with CMPD’s list of towed vehicles.

16. Each tow service operator shall submit a report of released vehicles to the Traffic Safety Bureau upon request. The report shall contain the following information for each vehicle:

- Date vehicle was towed and beginning date of storage period
- Location of pick up
- Date and time of release
- Vehicle year
- Vehicle make
- Vehicle model
- License plate state and number
- Vehicle identification number
- Case number
- Name, address and telephone number of person to whom released
• Proof of identity provided
• Name of employee releasing vehicle

17. Towing service providers shall submit a monthly report to the Traffic Safety Bureau, which shall include the following information:

• The total number of police impounds
• Number of times dispatched by CMPD
• Number of CMPD calls resulting in impounds
• Number of calls answered in which time beyond one (1) hour was required to handle

A copy of the monthly report shall also be provided to the Finance Department with remittance of administrative fees due on or before the 20th day of each calendar month.

18. Records shall be available to the City of Costa Mesa for inspection upon request and shall contain the following information for each vehicle:

• Date and time of tow
• Location of vehicle when hooked up
• Name of tow vehicle operator
• Name and identification number of police employee requesting the tow
• Storage facility name and address
• Physical location of vehicle, if stored
• Identification of vehicle, including:
  • Year, make, model, vehicle identification number, license plate state and number, color(s)
  • Release or other disposition information, including:
    i. Date and time of release
    ii. Name, address and telephone number of person to whom released
    iii. Proof of identity provided
    iv. Name of employee releasing vehicle
    v. Police report number
    vi. Fees charged

19. Records for each vehicle shall be maintained for a period of not less than four (4) years from the date of each tow. Records shall conform to generally accepted accounting principles.

20. The tow service operator shall maintain a list of all vehicles towed under this contract during each calendar day. A calendar day begins at 12:00 AM and ends at 11:59 PM the same day. The list shall include the following information:

• Vehicle year
• Vehicle make
• Vehicle model
• License plate state and number
• Vehicle identification number
• Case number
21. Each tow service operator shall submit this daily list of towed vehicles to CMPD’s Traffic Safety Bureau every month unless other mutually agreeable arrangements are made in a format agreed upon by the Traffic Safety Bureau and the tow service operator.

**COMPLAINTS**

Complaints against tow service operators will be documented on a Costa Mesa Tow Complaint form. CMPD may send out customer surveys from time to time. Complaints will be received and investigated for allegations of, but not limited to:

- Discourteous service
- Unethical business practices
- Unsafe or improper handling of stored or impounded vehicles
- Over-charging for services
- Excessive delay in responding to calls
- Unsafe towing equipment
- Violations of State laws
- Violations of City ordinances
- Deficient facility security
- Deficient facility storage conditions
- Failure to comply with City of Costa Mesa Tow Policy
- Failure to perform according to the Towing Agreement
- Failure to keep required records

Complaints will be assigned to the Chief of Police or his/her designee for investigation. Staff will endeavor to, within ten (10) business days, send a copy of the complaint and a letter requiring a response to the affected towing company’s owner(s).

No notice shall be sent or delivered if it is determined that notification will impede or interfere with police investigations.

The tow service provider shall respond in writing to the complaint within ten (10) business days from the date of the City’s letter. Failure to respond within ten (10) business days will result in the investigating officer making a decision to the complaint based on the information available.

The investigating officer will consider all the evidence available and assign a disposition to the complaint. The disposition categories are:

- Unfounded - Incident did not occur or did occur but was lawful and within Policy.
- Inconclusive - Unable to determine if the incident did or did not occur, or unable to determine if the towing service or its employee(s) are responsible.
- Sustained - Incident occurred and was either contrary to the Tow Policy, Towing Agreement, State laws, or City ordinances.
The tow service provider and complainant will then be notified of the disposition of the complaint in writing.

**DISCIPLINARY ACTION**

A. If a complaint is determined to be sustained, and the circumstances or prior records show cause for a suspension or termination of the tow service provider’s service, the officer investigating the complaint will present the facts to the Chief of Police, or his/her designee, with a recommendation for disciplinary action.

B. The Chief of Police, or his/her designee, will review the facts and the recommendations. Upon doing so, the Chief of Police will either concur with the recommendation or determine another course of action.

C. If the Chief of Police arrives at a decision to suspend or terminate the services of a tow service provider, the decision will be forwarded, as a recommendation, to the City Manager, whose decision will be final.

D. The tow operator shall receive a copy of the Chief of Police’s recommendation at the time it is forwarded to the City Manager, and shall have ten (10) calendar days to respond in writing to the City Manager.

E. After consideration of the Chief of Police’s recommendation and any timely written submission of the tow operator, the City Manager shall issue a written determination of whether he/she concurs with the decision to suspend or terminate a contract tow service provider’s services. The towing company will be promptly notified in writing of the impending disciplinary action.

**TERMINATION**

The City of Costa Mesa may terminate any agreement during its term without cause by providing a thirty (30) day written notice to the contract tow service operator. The City of Costa Mesa may terminate this contract for cause five (5) days after written notice is given. The contract may be terminated for cause by the City of Costa Mesa upon the occurrence of any one or more of the following events:

1. Failure of the tow service provider to comply with any of the provisions of this Policy.
2. Repeated and/or flagrant violations of the Vehicle Code by the tow service provider.
3. Failure of the tow service provider to maintain clean, orderly, and secure storage facilities.
4. Failure of the tow service provider to obtain and maintain a current valid license to do business in the City.
5. Repeated failure of the tow service provider to answer service calls within the agreed upon fifteen (15) minute response time.

6. Commission, by the owner or operator of the tow service provider, of any unlawful, false, fraudulent, deceptive or dangerous act while conducting its towing operation business.

7. Removal by the tow service provider, prior to police arrival, of a vehicle involved in a collision where, as a result of such collision, a person suffered death or injury; or where the driver of one of the vehicles involved in the collision, or any of the passengers of a vehicle involved in the collision, was under the influence of an intoxicant of any nature; or where there is evidence that the vehicle to be towed was involved in a hit-and-run collision.

8. Insurance coverage as required herein has either been withdrawn or lapsed, or is not in force for any reason.

9. Dissolution of business or bankruptcy.

10. For assignment of its agreement with the City, or any right or interest stated therein, without the prior written consent of the City of Costa Mesa.

11. For any substantial or recurring deviation from the City of Costa Mesa’s approved schedule of rates.

12. Failure of the contract tow service provider to maintain satisfactory service to the public or for failure to keep any towing vehicle in a safe condition and good repair.

13. Failure to comply with any requirement of the CMPD.
EXHIBIT 2
CITY OF COSTA MESA’S CURRENT TOW RATES

Towing –
Basic Tow                                      $171.00
Flatbed or Medium Duty Tow                    $192.00
Heavy Duty Tow                                 $308.00
Motorcycle Tow                                 $192.00

Storage –
Outside Storage Car                           $42.00 per day
Inside Storage Car                             $59.00 per day
Outside Storage Truck                         $53.00 per day
Inside Storage Truck                          $59.00 per day
Motorcycle Storage                            $23.00 per day

Labor–
Tow Dolly                                      $53.00
R & R Linkage/Driveshaft                      $26.00
Rollover/Winching                             $59.00
Hourly Labor                                   $171.00 per hour
After Hour Release                             $53.00
(Before 8:00 a.m. and after 5:00 p.m.*)
Service Call - Minimum                        $74.00
On-Scene Release ½ of applicable tow rate

*After hours release fee is charged on Weekends & Holidays.

City Fee–
Vehicle Impound Fee Public                    *$200.00
Vehicle Impound Fee Private                   $20.00

*The City fee was $185.00 increase effective 06/01/08