

BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	08.27.2020	Meeting Date:	09.21.2020
Contact Information:			
Requested by:	Lynnette Gray		
On Behalf of Organization or Individual: City of Franklin			
Telephone:	317-738-3365		
Email address:	lynng@igmlawfirm.com		
Mailing Address:	63 E. Court St., P.O. Box 160, Franklin, IN 46131		
Describe Request:			
Approval of Towing Service Memorandum.			
List Supporting Documentation Provided:			
Towing Service Memorandum			
Exhibit A Application			
Exhibit B Insurance Requirements			
Who will present the request?			
Name:	Lynnette Gray, City Attorney	Telephone:	317-738-3365

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

TOWING SERVICE MEMORANDUM

This Towing Service Memorandum of Understanding ("Agreement") is made as of the date of the last signature affixed below, by and between the City of Franklin, Indiana, a municipal corporation existing under the laws of the State of Indiana ("City") and _____, an Indiana corporation ("Contractor");

WITNESSETH:

WHEREAS, the City desires to acquire the services of Contractor to provide towing services on a non-exclusive, rotating and "as needed" basis and Contractor desires to provide towing services on an "as needed" basis;

NOW THEREFORE, in consideration of the covenants herein contained, the said parties hereto mutually covenant and agree as follows:

1. SCOPE OF SERVICE.

1.1 Contractor shall furnish all services, labor, equipment, facilities, and materials for towing or towing-related services at the specific request of the City (as opposed to towing requested by an owner or occupant of a vehicle in need of towing), including but not limited to the following:

- a. Vehicles involved in traffic collisions:
- b. Vehicles abandoned on the roadway:
- c. Disabled vehicles (unoccupied):
- d. Abandoned or unclaimed vehicles on private property:
- e. Vehicles seized or impounded as evidence:
- f. Recovered stolen vehicles:
- g. Vehicles involved in crimes:
- h. Vehicles requested to be relocated during an emergency or special event:
- i. Other towing or towing-related services as may be requested by the City.

1.2 Contractor shall remove any glass or other debris not considered to be a hazardous substance as defined by Indiana and Federal statutes following any traffic accident for which Contractor has been requested to respond. Contractor shall take necessary action to ensure that any hazardous substance at the scene of any traffic accident for which Contractor has been requested to respond is removed in accordance with state and federal law. The towing company will operate in a professional manner while on scene and in performing the services as well as leave wreck scenes in pre-accident condition, including sweeping and removing all debris, parts, fluids, etc., other than haz-mat cleanup as contemplated herein.

1.3 Contractor shall be required to store all vehicles towed under this Agreement in an enclosed, secured facility and offer regular hours of access and release with said towing company facility to be based inside the City limits of Franklin.

1.4 Contractor must complete and submit an application in the form substantially similar to the attached Exhibit "A" in order to be eligible to provide towing services. The representations set forth on the application are specifically incorporated herein and form a basis for consideration to be placed upon the towing rotation.

1.5 Contractor shall be responsible for any charges incurred by Contractor in the course of providing services under this Agreement. The City assumes no responsibility for any charges that Contractor may incur.

1.6 Contractor shall remit to the City, on or before the fifth (5th) day of each month the following amounts for each vehicle towed the prior month, plus any fees incurred by the City for any aquatic dive team or similar service required to retrieve a vehicle from a body of water. The foregoing fee is subject to change upon 30-days written notice or as provided by written notice by the City. In the event Contractor does not agree with the change in the fee, Contractor may terminate this Agreement in writing during such 30-day notice period.

1.7 Contractor shall comply with all applicable laws including without limitation the laws of the United States, the State of Indiana, and the ordinances of Johnson County and the City of Franklin in regards to the operating of its towing business, operation of motor vehicles, and employment of personnel.

1.8 Contractor shall have in its employ, or under its control, sufficient licensed, qualified, and competent personnel to perform towing services under this Agreement and agrees to utilize a third-party screening company such as "Hire Rite" or similar service for drivers and provide that information to the City upon request. Under no circumstances shall the towing company sublet, substitute and/or subcontract any tow work to either outside sources or within partner companies.

1.9 Contractor's vehicles shall be clearly marked with Contractor's name, address, and telephone number.

1.10 Contractor acknowledges that it is not entitled to be the exclusive provider of towing services to the City and that this is a non-exclusive agreement for services and nothing in this Agreement requires the City of Franklin to utilize the services of any specific contractor.

2. RESPONSE TIME.

Contractor will have equipment and labor force available for dispatch on a 24-hour per day basis, 365 days a year. The Contractor shall provide a twenty (20) minute estimated the time of arrival during normal hours of operation. Alternate ETA's are to be given to dispatch at time of call to be relayed to the officer on the scene and if contracting company can not provide a twenty (20) minute response time, the City may elect to cancel a tow request and utilize another service. Contractor shall arrive at the scene of the requested tow with the proper equipment within the twenty (20) minutes after receiving a request by the City. The City, at its sole discretion may cancel a tow request if Contractor is unable to respond within the requested time.

3. CLASS OF TOW SERVICE.

a. Heavy duty. If Contractor is requested to provide heavy duty tow service, the Contractor shall be required to utilize a three (3) axel (or larger) tow truck to service the routine towing needs for abandoned, impounded and disabled vehicles (typically trucks, tractors and/or trailers) that are not badly damaged, overturned or do not require a special recovery towing techniques or equipment. Three axel tow truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle. The operator of heavy-duty tow truck service shall be required to own and maintain at least a three axel or larger tow truck with manufactures gross vehicle weight rating (GVWR) at or greater than 26,000 pounds.

b. Light/Medium duty. This class of towing service will require the routine towing needs for abandoned, impounded and disabled vehicles that do not require heavy duty towing and operators will be required to maintain a tow truck to properly and safely tow and service a wide variety of vehicles being operated on the highway which require all applicants to operate a tow truck with a manufactures gross vehicle weight rating (GVWR) less than 26,000 pounds with wheel lift capability and a slide bed truck.

c. Recovery. This class of service provides special towing needs for abandoned, impounded and disabled trucks/tractors/trailers that are badly damaged, overturned and require recovery towing techniques and/or equipment. In addition to meeting the requirements for heavy duty operations, recovery operator shall own and maintain at least one 40-ton (or larger) tow truck with a rotating boom and out-riggers for stabilizing the wrecker. This class will service the specialized towing needs of abandoned, impounded and wrecked trucks/tractors/trailers that are overturned or that may require special recovery/towing techniques or equipment. The emphasis for this class is to enhance the interest of public safety (by opening driver lanes of the interstate or roadway faster, requiring the restriction of lanes less frequently and restricting them for shorter duration of time). A higher level of performance expectation will be placed on this class of operator requiring higher level of skills, knowledge, equipment and professionalism.

In all instances, the Contractor shall provide proper and safe tow and service the wide variety of vehicles being operated within City jurisdiction and must offer a towing procedure that may require the use of auxiliary equipment specifically designed for that purpose.

4. INDEPENDENT CONTRACTOR.

Contractor agrees and acknowledges that the relationship created by this Agreement is that of an independent contractor as that terms is legally used and considered and that Contractor and its employees are not and shall not be considered an agent or employee of the City for any purposes including but not limited to health benefits, workmen's compensation, unemployment insurance and pension plans benefits provided by the City to its employees.

5. CONTRACTOR RESPONSIBILITY FOR PROPERTY.

Contractor expressly assumes full responsibility and liability for all property entrusted into its care, including all vehicles and contents thereof towed under this Agreement and shall

indemnify and hold harmless the City and its officials, agents and employees, against all claims for damage or loss to vehicles, equipment, and other property.

5. CONTRACTOR LIABILITY INSURANCE.

At all times during the terms of this Agreement, Contractor shall maintain policies of liability insurance in the minimum amounts set forth on Exhibit "B" attached hereto and made a part hereof, naming the City as an additional insured. Contractor shall provide to the City a current certificate of liability insurance prior to execution of this Agreement and shall provide the City with an updated certificate of liability insurance in January of each year after this Agreement takes effect. Further, Contractor shall provide the City with notice of any change regarding such insurance coverage at least ten (10) days prior to such change occurring.

6. INDEMNIFICATION.

The work performed by the Contractor shall be at the risk of that Contractor exclusively. To the fullest extent permitted by law, Contractor shall indemnify, defend (at its sole expense) and hold harmless the City of Franklin and its employees ("indemnified parties"), from and against any and all claims for bodily injury, deaths or damage to property, demands, damages, actions, causes of actions, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorney's fees and costs, and consultant's fees and costs) ("claims") which arise or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by the Contractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct from the Contractor, its employees or agents, whether active or passive. The Contractor's indemnification and defense obligations hereunder shall extend to claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

7. SUBCONTRACTING.

Contractor shall not subcontract any service under this Agreement.

8. THEFT/VANDALISM OF TOWED VEHICLES.

Contractor shall immediately report to the City any act of theft, vandalism, or attempt of same regarding any vehicle towed at the request of the City. Such report shall be in writing and shall contain the date and time of the offense, a complete description of items stolen or damaged, a complete description of the vehicle including make, model, year, license plate number, VIN, owner's information, the City's original report and incident number if any, under which the tow was authorized and the name of the law enforcement agency with which the report is being filed.

9. E-VERIFY PROGRAM.

Contractor shall provide documentation to the City evidencing that Contractor has enrolled in and is participating in the E-Verify program regarding eligibility status of all newly hired

employees of the Contractor pursuant to Indiana Code 22-5-1.7. Contractor is not required to verify the work eligibility status of all newly hired employees of Contractor through the E-Verify program if the E-Verify program no longer exists. Further, Contractor shall sign an affidavit affirming that it has enrolled in and is participating in the E-Verify program and that Contractor does not knowingly employ an unauthorized alien.

10. NON-COLLUSION.

Contractor hereby certifies that no officer, agent, or employee of the City, including but not limited to any public official, has any personal or financial interests (directly or indirectly) in Contractor's business or this Agreement.

Contractor further agrees not to hire any member of the City or any other person with an interest that could in any way conflict with performance of Contractor's responsibilities under this Agreement.

11. INVESTMENT IN IRAN.

Contractor, affirms under penalties of perjury that it is not in the past and is not presently engaged in investing activities in Iran. Contractor has not been placed on the list of persons or entities that are engaged in investing in Iran developed under IC 5-22-16.5-9. Contractor further certifies it is not engaged in investment activities in Iran as defined by IC 5-22-16.5-1, at sec. Contractor further agrees to maintain this certification throughout the duration of the terms of this Agreement. The City of Franklin will provide ninety (90) days' notice to Contractor pursuant to IC 5-22-16.5-14 if the City has information indicating Contractor has engaged in investing in Iran and may terminate this Agreement and further seek all other available penalties and remedies under IC 5-22-16.5-14.

12. TERM OF AGREEMENT.

12.1 This Agreement shall be in effect upon the date it has been executed by both parties and shall remain in effect for two (2) years following such date.

12.2 During such time, the Agreement can be canceled by either party for any reason upon thirty (30) days advance written notice to the other party.

12.3 This Agreement may be terminated at any time upon a finding of breach at the sole discretion of the City. Such termination shall be effective immediately upon tendering written notice to Contractor.

13. NOTICE.

Any notice provided in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to each party hereto at the addresses set forth below:

13.1 To the City: City of Franklin
Attn: Mayor Steve Barnett
70 E. Monroe Street
Franklin, IN 46131

With a copy to: Lynnette Gray
City Attorney
63 E. Court Street
Franklin, IN 46131

13.2 To the Contractor: _____

or such addresses or to the attention of such other person as the recipient party shall have specific by prior written notice to the sending party. Any notice under this Agreement will be deemed to have been given when so delivered or sent or, if mailed, three (3) days after deposit in the U.S. mail.

14. MISCELLANEOUS PROVISIONS.

14.1 Additional Documentation. The parties hereto shall execute and deliver any and all consents, releases, authorizations, transfers and other documents as may be reasonably required to carry out the provisions of this Agreement and to fully accomplish its purposes and intents.

14.2 Counterparts. This agreement may be executed in multiple counterparts and by facsimile or email, each of which shall be deemed to be an original and all such counterparts shall constitute but one instrument. An electronic version of this Agreement may be executed by one or more parties of this Agreement, and an executed copy of this Agreement may be delivered by one or more parties to this Agreement by electronic transmission pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party to this Agreement, all parties to this Agreement agree to execute an original of this Agreement as well as an electronic version of this Agreement.

14.3 Governing Law: Consent and Submission to Jurisdiction with Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The parties hereto irrevocably consent to the exclusive jurisdiction and venue of the courts of the State of Indiana, Johnson County, and the United States District Court for the Southern District of State of Indiana, and (b) irrevocably waive any and all objections to such consents.

14.4 No Third-Party Benefit. Nothing herein expressed or implied is intended to confer or any person other than the parties hereto or their respective successors, assigns, and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14.5 Successors and Assigns. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors, assigns, heirs, executors and administrators.

14.6 Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the balance of this Agreement shall remain in full force and effect, and if any provision herein is held to be inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances, unless the result thereof would result in an unjust modification of the balance of rights and obligations hereunder.

14.7 Headings. The paragraph headings herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

14.8 Incorporation of Recitals, Exhibits and Schedules. All recital herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

14.9 Entire Agreement. This Agreement and its exhibits comprise the entire agreement between the parties. No statements, other agreements or promises, verbal, written or otherwise, except as set forth herein, shall be used to construe this agreement.

14.10 Modification and Amendment. No modification or amendment hereof shall be effective unless in writing and signed by each of the parties hereto.

14.11 Representation of Counsel. The parties acknowledge that each have been represented by counsel in this matter, or has had an opportunity to consult with counsel. Lynnette Gray has represented the City of Franklin and for purposes of the rule of contract interpretation that construes a document against its drafter, the parties agree that neither party nor its counsel shall be considered the drafter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates below written.

CITY OF FRANKLIN:
By its duly authorized representative

CONTRACTOR:

By: _____
Mayor Steve Barnett

By: _____

Date: _____

Date: _____

Prepared by: Lynnette Gray
Attorney No.: 11567-41

City of Franklin Police Department

City Tow Rotation Application

*A SEPARATE APPLICATION SHALL BE SUBMITTED FOR EACH COMPANY/BUSINESS (D.B.A.)

OWNER (S) NAME	DRIVER'S LICENSE #		HOME PHONE #	
			CELL PHONE #	
BUSINESS STREET ADDRESS	CITY	STATE	ZIP	COUNTY
BUSINESS EMAIL ADDRESS			CITY OF FRANKLIN LOCATION	
NAME OF COMPANY/BUSINESS (D.B.A.)	BUSINESS PHONE #		BUSINESS LICENSE (S) # (IF APPLICABLE)	
MAILING ADDRESS (if different from physical address) STREET /P.O. BOX CITY COUNTY ZIP				
STORAGE LOCATION(S)				

1. Does the wrecker service have 24 hour availability? ☐ YES ☐ NO
2. Do you have a twenty-four (24) hour manned telephone service? ☐ YES ☐ NO
(Note: If you have an automated answering service that provides service after business hours please check "No.")
3. Does your service have a secured storage lot? ☐ YES ☐ NO
4. Does your service release towed/stored vehicles seven (7) days a week? ☐ YES ☐ NO
5. Does your service provide tow services for semi-trucks? ☐ YES ☐ NO
6. Are your recovery vehicles marked on both sides with your company's name and city of domicile or incorporation? ☐ YES ☐ NO
7. Have you or any of your employees ever been convicted of a Misdemeanor theft or any Felony that has not been expunged? ☐ YES ☐ NO
(Note: Do not include traffic Infractions)
If Yes, explain (name/dates/offenses): ***(use supplemental page for listings).***

Exhibit "A"

8. Have you ever been denied application to serve on a Tow Rotation? ☐ YES ☐ NO
If yes, explain (dates/reasons): *(use supplemental page for listings)*.

9. Have you ever been removed from a Tow Rotation? ☐ YES ☐ NO
If yes, explain (dates/reasons): *(use supplemental pages for listings)*.

10. Do you own, in whole or part, any other towing or storage company? ☐ YES ☐ NO
If yes, list name, address and ownership: *(use supplemental page for listings)*.

11. Will you and your employees abide by all applicable state and federal laws, ☐ YES ☐ NO
Including (if your company is added to the City Tow Rotation) any lawful directive
or order issued by an authorized City of Franklin Officer.

12. Do you understand that any violations of law, a lawful directive, or any ☐ YES ☐ NO
order may result in the City, at its discretion, removing a wrecker company from the
City of Franklin Rotation?

13. Do you understand that applying does not guarantee that you will be put on ☐ YES ☐ NO
the City of Franklin Tow Rotation?

14. Do you understand that the City of Franklin has discretion to remove your ☐ YES ☐ NO
service from the Tow Rotation?

15. Do you understand and agree to the following?

- A. No agency relationship is created between the City of Franklin and your company and/or employees if your company is added to the City of Franklin Tow Rotation.
- B. No privileges or immunities are conferred to your company or its employees under Indiana State law if your company is added to the City of Franklin Tow Rotation.
- C. Your company agrees to indemnify, defend and hold harmless the City of Franklin Police Department, its agents, its officials, its officers, its employees, and the City of Franklin from all claims and suits, including court cost, attorney fees, and other expenses caused by any act or omission of your company, its agents, its officials, its officers, or its employees occurring for any matter related to the City of Franklin Tow Rotation or services that are provided by your company.

☐ YES ☐ NO

16. I understand and acknowledge that this application will need to be resubmitted annually and failure to honor the conditions of this application may result in the application being rescinded and denial of any subsequent approval. _____ Initials

17. I understand and acknowledge that removable personal items shall not be held in lieu of payment for services rendered. These items and any other personal effects will be released to the owner upon request notwithstanding a police hold on the item. _____ Initials

18. I understand and acknowledge that any evidence of over-charging, inconsistent practices, unethical business practices, failing to pay assessed taxes, fines or fees owed to the state, City of Franklin or any other practice which unfavorably reflects on the City of Franklin in any way shall result in removal of the towing company from the rotation. _____ Initials

Total number of Recovery Vehicles to be used by applicant (40 tons or larger with rotating boom and out-riggers) _____

Total number of Heavy Duty Vehicles to be used by applicant (Recovery Vehicles have a GVWR equal to or less than **26,000 lbs.**) _____

Total number of Light/Medium Vehicles to be used by applicant (Recovery Vehicles have a GVWR equal to or less than **26,000 lbs.**) _____

Total number of **storage locations** used by applicant. _____

Amount of Liability Insurance. _____

Applicant owns a "box" type (48 foot minimum) semi-trailer.

☐ YES

☐ NO

Applicant owns a "equipment roll off" type (48 foot minimum) trailer with winch that can be used to facilitate the removal of cargo which requires off loading at a recovery site.

☐ YES

☐ NO

Applicant owns or has immediate access to other specialized equipment
Such as refrigerated and tanker trailers, mechanical broom street sweeper,
livestock trailers, and experienced livestock handlers, front-end loaders, fork
trucks, etc. used to recover spilled, lost, or damaged loads.

☐ YES

☐ NO

I request to be added to the following City of Franklin Tow Rotations(s):

Heavy Duty Towing ☐

Light/Medium Duty Towing ☐

Recovery ☐

I hereby certify and attest that _____ (company name) meets the minimum requirements (as set forth above) to operate in the class of tow service for which applied and the statements made herein are true and correct.

SIGNATURE OF APPLICANT

DATE OF APPLICATION

INSURANCE REQUIREMENTS

Upon execution of this Agreement, and prior to the Contractor commencing any work or services, the Contractor shall provide the **City of Franklin** with a Certificate of Insurance as evidence of Commercial General Liability insurance, Workers' Compensation and Automobile Liability for any employees, agents, or Subcontractors of the Contractor. The **City of Franklin** shall be listed as an Additional Insured on Commercial General Liability, Automobile Liability, and Umbrella as noted below.

The Contractor's liability coverage shall use ISO form CG 00 01 10 01 (or equivalent coverage) and include the **City of Franklin** as an Additional Insured using ISO Form CG 20 10 11 85 (or equivalent coverage) or on the combination of ISO Forms CG 20 10 10 01 and CG 20 37 10 01 (or equivalent coverage). Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from explosion, collapse, underground property damage or work performed by subcontractors.

The coverage limits shall not be less than the following:

Commercial General Liability Insurance:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury

Workers' Compensation and Employers' Liability Insurance: (or Exemption)

\$ 100,000 Bodily Injury by Accident
\$ 500,000 Bodily Injury by Disease - Policy Limit
\$ 100,000 Bodily Injury by Disease - Each Employee

Automobile Liability:

\$1,000,000 Each Accident

All coverage shall be placed with an insurance company duly admitted in the State of Indiana and have an AM Best rating of "A-" or better. Each Certificate of Insurance shall provide that the insurer must give the **City of Franklin** at least 30 days' prior written notice of cancellation and termination of the Contractor's coverage.

(As approved by the Franklin Board of Public Works & Safety: Mayor Joe McGuinness, Stephan Barnett & Bob Swinehamer at their meeting held March 18, 2013)