

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 15 PM 6:53

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: May 27, 2008

Re: A Report and Proposed Resolution Awarding a Five-Year Contract, Plus Two One-Year Extension Options, With an Estimated Gross Revenue Value of \$8,000,000 to B&B Vehicle Processing, LLC for Towing and Storage of Vehicles, Collection and Administration of City's Administrative Towing Fees, Lien Sale by Public Auction of Abandoned Vehicles and Various Administrative Services Connected With the Towing Operation, and Authorizing the City Administrator to Accept and Appropriate an Estimated Annual Payment in the Amount of \$1,300,000 From B&B Vehicle Processing, LLC for Payment of Administrative and Other Costs in Connection With the Requirements of the Contract

SUMMARY

A report and proposed resolution has been prepared authorizing the City Administrator to enter into a five-year service contract with B&B, Vehicle Processing, LLC, plus two one-year extension options, for the towing, storage, and disposal of abandoned, illegally parked, and impounded vehicles and the towing and storage of non-operational City owned vehicles, for the period of July 1, 2008 through June 30, 2013.

FISCAL IMPACT

The 11th Amendment of the tow contract, documented in City Council Resolution No. 75048 C.M.S. which passed on June 8, 1999, resolves to increase the annual contract administration fees paid to the City for towed vehicles from \$264,000 to \$441,000. This was based on a fee of \$18 per car for the first 24,500 vehicles. Receipts are currently posted to the General Purpose Fund (1010), Treasury Operations Organization (08721), Miscellaneous Service Charges Account (45729), Financial Management's Program (IP59).

Approval of this resolution will authorize the City Administrator to enter into a five-year contract with B&B Vehicle Processing, LLC for the towing, storage, and disposal of abandoned, illegally parked, and impounded vehicles and the towing and storage of non-operational City owned vehicles, for the period of July 1, 2008 through June 30, 2013. The City Administrator would have the power to exercise two one-year extension options, on the same terms and conditions, without returning to Council. This contract creates a new reimbursement plan requiring the vendor to pay \$40 per towed vehicle with no limit on the number of vehicles towed. The annual average number of vehicles towed by the Police Department for the periods of 1997 through 2006 was 27,455. The new contract will require the vendor to pay the City 0.5% of its gross annual receipts. Finally, it will also require the vendor to reimburse the City \$160,000 annually

Item: _____
Public Safety Comte.
May 27, 2008

for contract management services. The base value of the contract to the City is estimated at \$1.3 million.¹

BACKGROUND

The current tow contract was first executed with the Oakland Tow Car Association on October 15, 1981 in accordance with Specification 399-001 and was supposed to exist for five years. That original contract was subsequently amended 12 times by City Council Resolution; the last amendment was introduced on May 1, 2001 and expired October 15, 2005.

In September 2004, the City Auditor published an audit and informational report which was critical of the existing tow contract and the City's management of the contract. Shortly thereafter, the City Administrator directed staff to explore the concept of the City assuming responsibility for the towing and storage (in two separate contracts if feasible) of vehicles and/or the development a Request for Proposals (RFP) and solicitation process for a new contract.

In October 2004, the Police Department formed a Multi-Disciplinary Committee and began meeting in October 2004. Committee membership included representatives from the following City Agencies/Departments:

- Police Department Traffic Section
- Police Department Fiscal Services Division
- City Auditor's Office
- City Administrator's Office
- City Purchasing
- City Contract Compliance
- The City Attorney's Office

The Committee first explored the concept of a "city-run" tow and storage program by researching the program in the City of Long Beach, CA. It was determined that the City did not have and could not obtain the capacity to store and dispose of vehicles not recovered by an owner. While, the City could continue to explore its options to perform this service, it would take at least three years to implement such a program. The committee then considered the division of the contract into separate agreements for towing and storage. However, this approach was not deemed a viable solution as the Committee believed that overall customer service and vendor accountability would deteriorate.

Efforts were ultimately focused toward developing a single RFP process for a comprehensive towing and storage contract. In the development of this process, tow contracts from comparable cities in California including Fresno and San Francisco were considered. The City of San

¹ In 2007, the 0.5% of the vendor's gross receipts would have been \$40,000. This is based on the vendor's representation of \$8,000,000 in gross receipts.

Francisco had the most recent and comprehensive RFP and contract process, which was ultimately selected as the general template for what eventually became the Oakland RFP process.

In November 2005, the RFP (Specifications No. 03-968-90-01) was sent to 20 prospective bidders: 16 small local business enterprises, and 4 non-local business enterprises. The City Clerk opened bids on December 5, 2005. The City received only one proposal - from B&B Vehicle Processing LLC, a local business enterprise. B&B Vehicle Processing LLC indicated they would not agree to approximately 90% of the City's contract terms and requirements set forth in the request for proposals.² Without further negotiations, this was determined to be unacceptable by the evaluation committee.

On April 11, 2006, the Finance and Management Agency presented a resolution to the City Council seeking direction and authorization to either negotiate a contract with B&B Vehicle Processing LLC or to reject the proposal and proceed with the development of a new RFP. The Council did not take action on the resolution.

In September 2007, the City Administrator convened a meeting with members of her staff, Contract Compliance, Purchasing, the City Attorney's Office, and the Police Department, which resulted in direction for staff to form a negotiation team to work toward affecting a contract with B&B Vehicle Processing LLC.

Contract negotiations began in October 2007 and a contract was agreed upon.. The starting point for negotiations was the original RFP. At the conclusion of the negotiations, all parties agreed to the attached contract.

KEY ISSUES AND IMPACTS

With direction from the City Auditor, City Administrator, and City Council the process from RFP to reaching a tentative contract was positively influenced. Consideration of the inefficiencies of the existing contract, as well as the needs of the community and the Police Department were heavily weighed in the development of the RFP process; Best practices and experiences of other California cities were also considered. The process was guided by the need to have a tow contract that was transparent, contained effective due process to resolve disputes, and met the City's Audit requirements.

PROGRAM DESCRIPTION

The new contract provides the City with the opportunity to improve the tow and storage service provided (Attachment 1). The contract also improves revenue for the City and provides for improved efficiencies in the business operations between the vendor and the Police Department. Finally, the contract provides the City with audit rights that the City Auditor recommended, and which the City Attorney previously attempted to gain through unsuccessful litigation.

² B&B Vehicle Processing LLC is the same vendor that held substantial interest in the existing tow contract known as A&B Auto. The new venture was formed after modifications to the structure of the company's partnership.

The contract mitigates the impact of vehicle theft on Oakland residents by providing them up to 72 hours of free storage after their vehicle is recovered. While these fees are frequently covered by insurance, this provision will ensure that the Police Department has time to notify vehicle owners that their stolen car was recovered, and they have time to make arrangements for its recovery.

The existing contract has convoluted provisions regarding the Police Department's financial obligations for charges associated with the tow and storage of vehicles held as evidence. The new contract eliminates those provisions, allowing the Police Department to tow and store a set number of vehicles as evidence without charge. The new contract also mandates improvements in the contractor's evidence area to facilitate the forensic processing of vehicles involved in crimes. The contract codifies the process by which the Police Department can release cars without fees when vehicles are towed in error, or such a release is in the best interest of the City. Finally, the contract mandates improvements in the contractor's record keeping, data transfer, and customer service.

The ability to audit the contractor's business and financial records has been an issue for the City Attorney and City Auditor. The new contract increases the accountability requirements for the vendor and provides substantially increased access and audit rights to the City. Short of contract termination, the prior contract provided little remedy to the City for vendor failures. The new contract establishes fees for minor and moderate failures, and a \$1 million letter of credit to draw against for a variety of contract breaches.

The new contract establishes a fee structure for the tow and storage of vehicles that is based on the average of other local jurisdictions. The prior contract tied increases in fees to the negotiations of an obscure labor contract (AFL-CIO, Teamsters Local 78). The new contract is tied directly to the Consumer Price Index.

SUSTAINABLE OPPORTUNITIES

Economic: The tow contract increases the revenue paid to the Police Department by the vendor allowing the Department to decrease reliance on the General Purpose Fund.

Environmental: The contract continues the effective and efficient removal of abandoned vehicles from the City's streets. Abandoned vehicles are frequently significant polluters responsible for the contamination of rain water runoff and soil.

Social Equity: The new contract improves the condition of people who suffer the loss of a vehicle to theft by not charging them storage fees for up to 72 hours after the vehicle is recovered.

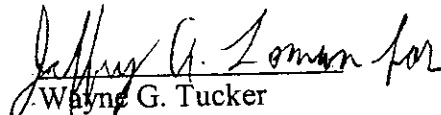
DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or senior citizen issues associated with this report.

RECOMMENDATION / ACTION REQUESTED OF THE COUNCIL

Staff recommends acceptance of this report and approval of the proposed resolution authorizing the City Administrator to enter into a five-year service agreement with B&B Auto, LLC for vehicle towing services as required by the Police Department, for the period of July 1, 2008 through June 30, 2013, plus two one-year extensions, on the same terms and conditions, to be exercised by the City Administrator without return to Council.

Respectfully submitted,


Wayne G. Tucker
Chief of Police

Prepared by:
David Kozicki
Deputy Chief of Police

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

Attachment 1

**AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND B & B VEHICLE PROCESSING, INC.
FOR VEHICLE TOWING, STORAGE, AUCTION, LIENS SALES AND DISPOSAL**

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of May 1, 2008 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and B & B Vehicle Processing, Inc. ("Contractor").

2. Contract Term; Contract Extension

The term of the contract is five (5) years, commencing on February 1, 2008 and ending on January 31, 2013.

The City Administrator may elect to extend all or parts of this contract for two (2) additional years until January 31, 2015, one (1) year at a time, with terms and conditions remaining the same.

3. Scope of Services

Contractor agrees to perform the services specified in **Schedule A, *Statement of Work***, attached and fully incorporated herein by reference as though fully set forth herein.

Contractor shall designate an individual who will be responsible for communications with the City for the duration of this Agreement.

The Contract Administrator for the City is Deputy Chief David Kozicki, Oakland Police Department.

4. Contractor Compensation

Contractor will be paid for performance of the Statement of Work (**Schedule A**) in an amount that will be based upon actual costs, based upon the Towing and Storage Charges Fee Schedule set forth in **Appendix A**. The Referral Fee and Towing and Storage Charges shall be adjusted annually at the end of each 12-month period of this Agreement according to increases or decreases in the San Francisco Bay Region Consumer Price Index (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor "CPI". Invoices shall state a description of the **deliverable** completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

5. Referral Fee and Gross Percentage Fee

The Contractor shall pay a Referral Fee and Gross Percentage Fee to the City as described in **Schedule A**, paragraphs 2.1.1 through 2.1.5.

6. Fidelity and Faithful Performance Bond

Prior to or upon execution of this Agreement, Contractor shall, at its own expense, furnish a blanket fidelity bond and faithful performance bond covering all of Contractor's faithful

City of Oakland Agreement with B&B Vehicle Processing, Inc.

performance bond(s) in the sum of one million dollars (\$1,000,000.00), issued by a corporate surety admitted in the state of California, from Lloyds of London or a United States non-admitted corporate surety that appears on the Treasury List, in a form approved by the City Attorney. Such bond(s) shall be renewable annually and shall be kept at the Contractor's expense, in full force and effect during the complete term of this Agreement, or any extension, to insure faithful performance by Contractor and of Contractor's employees of all covenants, terms and conditions of this Agreement, inclusive of but not restricted to the payment of all sums due the City.

In lieu of a faithful performance bond, Contractor at its expense agrees to deliver to City upon execution of this Agreement, cash or cashier check(s) upon some solvent bank in the same amount required above, guaranteeing payment of sum due the City and faithful performance of the conditions of this Agreement by Contractor. Said cash or securities shall be subject to approval by, and shall be deposited with and held by the City of Oakland Finance and Management Agency Treasury Division, subject to the terms hereof. City shall be entitled to retain such deposit in the event of breach by Contractor of any or all of the terms, covenants or conditions of this Agreement, provided, however, that such deposit shall be returned to the Contractor if the Contractor has fully and faithfully performed all terms, covenants and conditions of this Agreement. In the event City, pursuant to the terms of this Agreement, is required to draw upon Contractor's security, Contractor shall replace any security used by the City within five (5) days of being notified by the City of the draw.

Alternatively, Contractor may satisfy the requirements of this Section 6 by obtaining an irrevocable letter of credit as described in Section 46 of this Agreement. Contractor agrees that City may draw on such funds for any money claim arising out of the activities and obligations covered by this Agreement, including losses allegedly due to crime, and to Hazardous Materials Activity and Losses as defined in Section 8.1 of this Agreement.

7. Insurance

Contractor shall provide the types and amounts of insurance and comply with all other insurance requirements set forth in **Schedule Q**, attached and incorporated herein by reference. Contractor shall provide a certificate of insurance showing that the required insurance is in effect prior to execution of the contract and shall maintain all required insurance during the term of the contract.

8. Indemnification

8.1 **Definitions:** For the purpose of this Section 8, the following definitions apply:

- 8.1.1 "Environmental Laws" means all present and future federal, state and local laws (whether under common law, statutes, ordinances, regulations, rules, administrative rules and policies, judicial and administrative orders and decrees, or otherwise), and all other requirements of governmental authorities relating to the protection of human health or the environment.
- 8.1.2 "Hazardous Materials" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous

City of Oakland Agreement with B&B Vehicle Processing, Inc.

waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous substances” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

8.1.3 “Indemnitees” refers individually and collectively to the City, its councilmembers, employees, and agents.

8.1.4 “Vehicle Storage Facility” means the real property and improvements selected by the Contractor where it will conduct activities pursuant to the terms and conditions of this Agreement.

8.2 General Indemnity. Contractor will indemnify, protect, defend at City’s request and with counsel acceptable to the City in its sole discretion, and hold Indemnitees harmless from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions, expenses and causes of action, including attorneys’ fees and costs, claims for personal injury or death of any person including without limitation such claims by Contractor’s employees or subcontractors, claims for property damage to real or personal property, claims for the unauthorized use or disclosure of Confidential Information pursuant to Section 17, below, claims for violation or infringement of any United States patent right, copyright, trade secret, trade mark, service mark, or other proprietary or intellectual property rights; and Environmental Claims pursuant to section 8.3 (collectively “Claims”), caused or arising out of Contractor’s, and its officers, directors, employees, representatives, agents, servants, consultants and subcontractors a) breach of the obligations, representations or warranties contained in this Agreement; b) actions, whether negligent or willful, or failure to act; or c) directly, indirectly or in any way related to Contractor’s performance of the services that are the subject of this Agreement.

8.3 Environmental Indemnity. Contractor agrees to indemnify, protect, defend (with counsel satisfactory to City), and hold Indemnitees harmless from any claims (including without limitation third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, regulatory oversight costs, costs (including without limitation any and all costs of action required to be performed in connection with the investigation or clean up of the Vehicle Storage Facility as required by any regulatory agency with jurisdiction over the Vehicle Storage Facility), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys’ and paralegals’ fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other reasonable costs and expenses of any kind or nature (collectively, the “Costs”) that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release by Contractor or any of its

City of Oakland Agreement with B&B Vehicle Processing, Inc.

predecessors in interest, of any Hazardous Materials in, on or under the Vehicle Storage Facility or in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within the Vehicle Storage Facility, or any portion thereof or in connection with transporting vehicles to the Vehicle Storage Facility or in any way related, directly or indirectly, to the Contractor's performance of the services that are the subject of this Agreement. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Contractor or any of its predecessors in interest and Contractor hereby expressly waives any immunity to which Contractor may otherwise be entitled under any industrial or worker's compensation laws. In the event the Indemnitees suffer or incur any Costs, Contractor shall pay to City the total of all such Costs suffered or incurred by the City upon demand therefore by City. The indemnification provided by this paragraph shall include, without limitation, all loss or damage sustained by the City due to any Hazardous Materials: (a) that are present or suspected by a governmental agency having jurisdiction to be present in the Vehicle Storage Facility or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Vehicle Storage Facility (or any portion thereof) or to have emanated from the Vehicle Storage Facility as a result of Contractor's or any of its predecessors in interest's activities on the Vehicle Storage Facility, or (b) that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Vehicle Storage Facility (or any portion thereof).

The foregoing indemnity is intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability.

- 8.4 Notice. City will give Contractor timely notice of any Claims and will cooperate with Contractor in the defense and settlement to the extent that cooperation does not conflict with the City's interests in the City's sole discretion and provided such cooperation is at no cost to the City.
- 8.5 City's Right to Engage Legal Counsel. In the event that Contractor fails to honor its obligations in paragraph 8.2 and 8.3 above, or if Contractor provides a defense with a reservation of rights, City will have the right, but not the obligation, to engage its own legal counsel for the purposes of providing and participating in the defense of the Claims. City will have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under paragraph 8.2 and 8.3. If Contractor is honoring its indemnity obligations with counsel acceptable to City, City may still engage legal counsel but at City's sole cost and expense.
- 8.6 Timing of Contractor's Obligations. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within paragraphs 8.2 and 8.3, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitees. Notwithstanding anything to the contrary contained herein, Contractor's liability under this

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Agreement shall not apply to any action or claim arising from the solely from the active or gross negligence or willful misconduct of an Indemnitee.

8.7 Indemnities Survive Termination of Agreement. All of Contractor's obligations under this Section 8 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

8.8 Insurance is not a limitation on Indemnity Obligation. The indemnity set forth in this Section 8 shall not be limited by the City's insurance requirements contained in **Schedule Q** hereof, or by any other provision of this Agreement.

8.9 Representations and Warranties of Contractor.

8.9.1 **Absence of Hazardous Materials.** Neither the Contractor nor any other person or entity has ever caused or permitted any Hazardous Materials to be generated, released or disposed of on, in, under or about the Vehicle Storage Facility. To the best of Contractor's knowledge after reasonable and diligent inquiry, no underground or above ground storage tanks are present on or under the Vehicle Storage Facility, nor has the Vehicle Storage Facility contained any underground or above ground storage tanks in the past. Contractor has no knowledge of any generation, spills, releases, discharges or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Vehicle Storage Facility.

8.9.2 **Compliance.** The Vehicle Storage Facility has been and is currently in compliance with all Environmental Laws, including without limitation all requirements for notification regarding releases of Hazardous Materials and all stormwater requirements. The Contractor has not received any notice from any federal, state, county or municipal entity or agency that regulates Hazardous Materials or public health risks or other environmental matters (individually, a "Governmental Entity" and collectively, the "Governmental Entities") or any other private party or person claiming any violation of, or requiring compliance with, any Environmental Laws or demanding payment or contribution for any environmental damage in, on, under, upon or affecting the Vehicle Storage Facility, including air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Vehicle Storage Facility or any adjacent properties. No investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Materials located in, on, under or affecting the Vehicle Storage Facility is pending, or to the knowledge of any of the Contractor, proposed, threatened or anticipated. No event has occurred with respect to the Vehicle Storage Facility that constitutes, or with the passing of time or the giving of notice would constitute, non-compliance with the terms of any permit issued by a Governmental Entity.

8.9.3. By entering into this Agreement, the City is not thereby becoming a "generator" or an "arranger" as those terms are used in 42 USC section 9607(a) (3), and that it is Contractor, not the City, which is "arranging for" the transport of vehicles which

City of Oakland Agreement with B&B Vehicle Processing, Inc.

may contain hazardous substances. Furthermore, the City is not a "contributor" to any Hazardous Materials release under RCRA, 42 USC section 6901 *et seq.* The City and Contractor agree that it is Contractor, and not the City, which will select the storage site, that the City has not, and, by this Agreement does not, instruct Contractor on its towing and storage methods, nor does the City supervise the towing and storage of vehicles, and nothing in this Agreement, or other action of the City shall be construed to place title to such vehicles in Contractor, the parties recognizing that whatever, if any, title Contractor may gain to such vehicles is by operation of law, and is not the result of this Agreement.

- 8.9.4. **Organization; Authorization.** The Contractor, which is not a natural person, is duly organized, validly existing and in good standing under the laws of the State of California. Contractor has executed and delivered this Indemnity pursuant to proper authority duly granted.
- 8.9.5. **Execution Not A Violation.** The execution, delivery and performance by the Contractor of this Indemnity will not violate any presently existing law, regulation, order, writ, injunction, permit or decree of any court or other Governmental Entity, or result in any default by any of the Contractor under any other document or agreement that is binding upon it.
- 8.9.6. **No Existing Defaults and No Litigation.** Contractor is not in default under any agreement, the effect of which could materially adversely affect performance of its obligations under this Indemnity. There are no actions, suits or proceedings pending or, to the best of its knowledge, threatened against such Contractor before any court or any other governmental authority of any kind which could materially adversely affect performance of its obligations under this Indemnity.
- 8.9.7. Contractor will comply with all federal, state, and local laws, regulations, ordinances in performing the services under this Agreement including without limitation all Environmental Laws.
- 8.9.8. The representations and warranties under this subsection 8.9 shall be continuing representations and warranties that shall be deemed to be made by Contractor throughout the term of this Agreement.

9. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under law.

10. Liability of City

City's payment obligations shall be limited to the payment of the compensation provided for in Section 4 above. Notwithstanding any other provisions of this agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages including, but not limited to, lost profits, arising out of or in connection with this agreement or the services performed in connection with this agreement.

11. Credits for Delay

Contractor agrees that in the event the Services, as provided under Section 3, above, are delayed beyond the scheduled milestones and timelines set forth in Schedule A, City will suffer actual

City of Oakland Agreement with B&B Vehicle Processing, Inc.

damages that will be impractical or extremely difficult to determine. Further, Contractor agrees that the amounts set forth in **Schedule A**, Statement of Work, for delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that the City will incur based on delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the credits from any money due to Contractor for damages. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the City.

12. Default; Remedies

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
- (1) Contractor fails or refuses to perform or observe any term, covenant or condition set forth in the following Sections of this Agreement: 6 (Fidelity and Faithful Performance Bond), 7 (Insurance), 17 (Proprietary or Confidential Information), 24 (Assignment).
 - (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from City to Contractor.
 - (3) Contractor: (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property, or (v) takes action for the purpose of any of the foregoing.
 - (4) A court or government authority enters an order: (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Contractor.
- b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but not obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to this Agreement or any other agreement.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

- c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available herein or under applicable laws, rules or regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

13. Termination

- a. City shall have the option to terminate this Agreement, at any time during the term hereof, with cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- b. Upon receipt of this notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
 - (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
 - (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
 - (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment.
 - (2) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
 - (3) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.
- d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and

City of Oakland Agreement with B&B Vehicle Processing, Inc.

described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

- e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing.
- f. City's payment obligation under this Section shall survive termination of this Agreement.

14. Rights and Duties Upon Termination or Expiration

- a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 (Indemnification), 9 (Incidental and Consequential Damages), 10 (Liability of the City), 13 (Termination for Convenience), 14 (Rights and Duties Upon Termination or Expiration), 16 (Independent Contractor), 17 (Proprietary or Confidential Information), 18 (Audit), 19 (Records Keeping), 20 (Financial Responsibility), 21 (Ownership of Results), 22 (Copyright), 24 (Assignment), 41 (Governing Law), 42 (Notice), 44 (Entire Agreement) and 45 (Severability/Partial Invalidity).
- b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at all times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

15. Time of the Essence

Time is of the essence in this contract. Failure to start and complete any work or perform any service within the specified times allowed in **Schedule A**, Statement of Work, shall constitute a material breach of contract.

16. Independent Contractor

Rights and Responsibilities. It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control

City of Oakland Agreement with B&B Vehicle Processing, Inc.

and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in **Schedule A**.

Contractor's Qualifications. Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M** ("Independent Contractor Questionnaire"), attached hereto.

Payment of Income Taxes. Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

Non-Exclusive Relationship. Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

Tools, Materials and Equipment. Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

Cooperation of the City. The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

Extra Work. Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

17. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

18. Audit

For services performed by contractor pursuant to this contract, contractor shall maintain accounts and records as will adequately substantiate charges hereunder and shall produce such records for the City's audit upon the City's request, for a period of four (4) years following the furnishing of the respective services.

In accord with the auditing, records keeping and access to records provisions set forth in **Schedule A**, Statement of Work, paragraph 2.3.9, the City shall have the right to examine accounts, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect compliance with all applicable federal, state and local laws, and to substantiate all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such accounts and records shall be available at all reasonable times for examination by the City or at the City's option, shall be subject to verification by contractor's independent auditors. The City shall give timely notice of its intent to perform such audit.

19. Records Keeping

Contractor shall maintain and make available its records as follows:

Access To Contractor Records. Upon request, the Contractor shall make available to the City all of the company's financial, administrative and any other records related to Contractor's performance under this Agreement, including, but not limited to: the general ledger, general journal, and all other journals related to the tow operation; cash receipts and cash disbursements records, bank statements, cancelled checks and deposit slips; all records related to vehicle lien sales and auctions; payroll tax reports, sales tax reports, income tax reports, hazardous materials reports and other reports filed with federal, state and local agencies or governments; all audit reports, inspections or studies of the Contractor prepared by government agencies; records related to pending audits, assessments, appeals and settlements involving payroll taxes, sales taxes, income taxes and tax exemptions; records related to tax delinquencies and collection status of such; records related to civil suits in which the Contractor is a defendant; records related to pending audits, assessments, appeals and settlements involving worker's compensation claims; records related to insurance recovery matters; records related to pending audits, assessments, appeals and settlements regarding Department of Motor Vehicle compliance issues; records related to the classification of service providers as independent contractors or employees; and, all agreements with third parties.

Access To Third Party Records. Upon request, the Contractor shall authorize third parties (financial institutions, insurers, attorneys, accountants, etc.) to make available to the Oakland Police department and City Auditor all records including, but not limited to, bank accounts, loans, investments, insurance claims paid or received on behalf of the Contractor.

Record Retention. The Contractor shall retain all accounting records for a period of four (4) years after the termination of the contract, or two (2) years after the closure of any disputed matter, whichever occurs later. Throughout the retention period, the records are to be retained at the Contractor's place of business or at a storage site that is available to City representatives within a twenty five (25) mile radius of Oakland's administrative offices located at One Frank Ogawa Plaza, 3rd Floor, Oakland, Ca., 94612.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

20. Financial Responsibility

The Contractor shall comply with the following City Council-approved terms and conditions:

Accounting The Contractor shall prepare and maintain an up-to-date double entry general ledger prepared on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles.

Interim Financial Reports No later than forty-five (45) days after the end of each quarter the Contractor shall provide to the Oakland Police Department and the City Auditor a compilation financial statement prepared in accordance with Generally Accepted Accounting Principles.

Tax Reports The Contractor shall provide to the Oakland Police Department and the City Auditor payroll tax reports, sales tax reports, income tax reports, hazardous materials reports and other reports filed with federal, state and local governments.

Fiscal Year End Within seventy-five (75) days after the end of the fiscal year, the Contractor shall provide to the Oakland Police Department and the City Auditor audited financial statements prepared by a Certified Public Accounting firm acceptable to the City Auditor. The statements shall be prepared in accordance with Generally Accepted Accounting Principles.

Auditing Standards All audits shall be conducted in accordance with "Generally Accepted Auditing Standards" prescribed by the Comptroller General of the United States.

Management Letter A management letter shall be requested from the Certified Public Accounting firm and be presented to the City Auditor and the oversight committee.

21. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

22. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

23. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

24. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

25. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

26. Title of Property

Title to all property, real and personal, acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

27. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

28. Conflict of Interest

Contractor Conflict. The following protections against conflict of interest will be upheld:

- a. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising there from.
- b. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- c. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- d. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.

- e. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year.
- f. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- g. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- h. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

No Waiver. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

Remedies and Sanctions. In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

29. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1** ("Declaration of Compliance with the Americans with Disabilities Act,") attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

30. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant (s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.
- b. *Good Faith Effort*-In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. *Incentives* – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for

City of Oakland Agreement with B&B Vehicle Processing, Inc.

every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.

- d. *Banking* – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. *The Exit Report and Affidavit (ERA)* – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator’s Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. *Joint Venture and Mentor Protégé Agreements*. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D** (“Professional Services Questionnaire”), **Schedule E** (“Project Consultant Team”), and **Schedule F** (“Employment Questionnaire”), attached and incorporated herein and made a part of this Agreement.
- h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender,

City of Oakland Agreement with B&B Vehicle Processing, Inc.

sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

31. Living Wage Ordinance

Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$10.39 with health benefits or \$11.95 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e. Contractor shall provide to all employees and to the Office of Contract Compliance,

City of Oakland Agreement with B&B Vehicle Processing, Inc.

written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

32. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors(consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being

City of Oakland Agreement with B&B Vehicle Processing, Inc.

performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1 – Equal Benefits-Declaration of Nondiscrimination**.

33. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

34. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P** (“Nuclear Free Zone Disclosure Form”) that Contractor is in compliance with the City of Oakland’s restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete **Schedule P**, attached hereto.

35. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

36. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

37. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Should the project or any portion thereof be abandoned, the City shall pay the Contractor for all services performed thereto in accordance with the terms of this Agreement.

38. Commencement, Completion and Close out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, the Contractor shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Contractor to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Contractor.

39. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under

City of Oakland Agreement with B&B Vehicle Processing, Inc.

penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

40. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

41. Governing Law

This Agreement shall be governed by the laws of the State of California.

42. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland
Deputy Chief David Kozicki
Oakland Police Department
455 7th Street
Oakland, CA 94607
510-238-7237

(Contractor)
Robert Connor
B & B VEHICLE PROCESSING, INC.
8717 G Street
Oakland, CA 94621
(510) 635-3211

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

43. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

44. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

45. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

46. Irrevocable Letter of Credit.

IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the City (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance, fidelity, and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/ confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Purchasing Supervisor provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to _____

[Issuing Financial Institution's Letterhead
or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

To: [City of Oakland]

[City agency's address]

either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the City (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____

[state of confirming financial institution, if any, otherwise state of issuing financial institution].

City of Oakland Agreement with B&B Vehicle Processing, Inc.

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.
Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____ /U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Purchasing Supervisor, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

City of Oakland Agreement with B&B Vehicle Processing, Inc.

(g) The following format shall be used by the Purchasing Supervisor for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$ _____. This draft is drawn under Irrevocable Letter of Credit No. _____

[Beneficiary Agency]

[By]

47. Compliance with Laws. Contractor shall comply, at its sole expense, fully and faithfully with all local, state and federal laws, ordinances, regulations and permit requirements, including City Legislation, as they may be amended from time to time, applicable to its performance under this Agreement, or in any way related to Contractor's performance of the services required under this Agreement; including, but not limited to, local, state and federal laws, ordinances and regulations relating to protection of the public's health, safety and welfare or contamination of the environment specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*, and all other applicable laws of the State of California, the County of Alameda, ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction. Without limiting the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion of, any environmental impact report or other environmental review required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services described in this Agreement.

48. Approval

If the terms of this Agreement are acceptable to Contractor and the City, sign and date below.

City of Oakland,
a municipal corporation

B&B Vehicle Processing, Inc.
Contractor

City Administrator's Office (Date)

(Signature) (Date)

(Department Head) (Date)

Business Tax Certificate No.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Approved as to form and legality:

Resolution Number

City Attorney's Office

(Date)

Accounting Number

SCHEDULE A

STATEMENT OF WORK

2.1 FEES, DEPOSITS, AND HANDLING OF FUNDS

2.1.1 Referral Fee

The contractor will pay the City a referral fee of \$ 40.00 per towed vehicle. The referral fees shall not be owed and due to the City for: (a) vehicles owned by the City, or (b) OPD has issued a written waiver of fees. Referral fees shall be the same for every type of vehicle. Referral fees and the Fee Schedule (**Appendix A**) shall be adjusted annually at the end of each 12-month period of this contract according to increases or decreases in the CPI.

Daily storage rate shall be \$60.00 per day, per 20ft. stall.

2.1.2 Gross Revenue Percentage Fee

The contractor will pay (0.5%) of gross revenue received. from all fees and costs collected under this contract. Gross Revenue Percentage Fee will be calculated from the Fee Schedule (Attachment 1).

2.1.3 Collection of Administrative Fees

The storage contractor shall be required to work with the City to develop a plan to collect from vehicle owners all Administrative Fees the City determines are due upon release of vehicles to registered owners. A mutually agreeable plan shall be implemented by the conclusion of the contract's third year. Until this plan is implemented, the City will collect all Administrative Fees due the City from the registered owners of towed vehicles before an official Numbered Vehicle Release is issued.

For unclaimed vehicles, the Contractor will collect the City's Administrative Fees through the State lien sale process, provided: 1) such vehicle produce sufficient revenue to first pay the contractor's fees and City parking citations, and 2) the State allows deduction of such fees from lien or auction sale revenues. It is the City's responsibility to acquire State approval before this section is implemented.

2.1.4 Reimbursement for Services

The Contractor will pay the City \$160,000.00 at the commencement of this contract and annually on the anniversary date of the start date thereafter. The amount shall be adjusted in accordance with changes in the CPI. The sum shall include all contract management services including, but not limited to Audits (subject to paragraph 2.3.12 of Schedule A) and inspections, complaint tracking and investigation, tow driver certification, regulation and enforcement, and contract management.

2.1.5 Payment & Deposit of Administrative, Referral, Gross Percentage and Collected Fees

The **Administrative Fees** (paragraph 2.1.3 above) collected on behalf of the City shall be due and payable upon receipt of payments from vehicle owners. **Referral Fees** (paragraph 2.1.1 above) are due and payable upon the tow of vehicles. The Contractor shall pay all Administrative

City of Oakland Agreement with B&B Vehicle Processing, Inc.

and Referral Fees collected each month no later than the 10th day of the following month.

The **Gross Revenue Percentage Fee** (paragraph 2.1.2 above) shall be due and paid annually, calculated on the basis of gross revenues for the preceding twelve (12) month contract period. The first payment shall be due and paid within thirty (30) calendar days of the close of the first calendar year of the contract. Subsequent payments shall be due and paid within thirty (30) calendar days of each successive calendar year of the contract.

All fees shall be deposited into a bank account specified by the City without prior demand and without any deduction, offsets or counterclaim whatsoever.

2.2 SERVICE REQUIREMENTS

Storage contractor shall have available upon request the following information for each vehicle released to owner or sold during the previous quarter:

- a. VIN and license number, make, year, and model of vehicle.
- b. Reason for tow; impound, accident, stolen recovery, abandoned, etc., if available.
- c. Name of party to whom the vehicle was released or sold.
- d. For each vehicle sold at a lien sale and or forfeiture sale/auction:
 - Date of lien sale or auction.
 - Name and address of purchaser.
 - Funds received as a result of the sale.
 - Total contractor fees.
 - Amount of excess funds received.
 - Amount of excess funds forwarded to the State.
 - Amount of deficiency owed to the Contractor by registered owner of vehicle.
 - Amount of deficiency collected from the registered owner of vehicle.

2.2.1 Hours of Service

Tow contractor must respond to all tow service calls with sufficient operational equipment to handle all towing and services required at all times, 24-hours per day, seven days per week, including all holidays.

2.2.2 Dispatch: Hours of Service and Method

Tow contractor will have a sufficient number of dispatching personnel on duty at all times to receive calls from the OPD. When OPD calls the contractor's dispatch office, tow contractor must dispatch equipment used in the performance of towing services through one central dispatching facility that is acceptable to the City. Contractor's central dispatching facility may operate by providing telephone or radio notification to towing subcontractors. The Tow Contractor must also provide a dedicated telephone line to be used for calls between the Contractor's dispatch center and the OPD's dispatch center and three Nextel "direct-connect" lines for communication with OPD field personnel at no cost to the City. Should towing increase and subsequently require a second dedicated telephone line between OPD dispatch center and contractor dispatch, it will be supplied upon City's request at no cost to the City. The contractor shall maintain the record of all dispatch calls for a period not to exceed 120 days.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

2.2.3 Tow Response Time

The Tow Contractor shall arrive at the tow site within (35) minutes from the time of OPD's notification. Late arrivals shall be considered a violation of the contract. Drivers shall be responsible for the removal of debris associated with the towed vehicle. This provision also applies to tow requests for City vehicles located within the City limits. Failure to meet this standard shall require the Tow Contractor to pay a fee to the City as follows:

Failure of the Tow Contractor to respond within the designated time shall result in a fee in the amount of fifty dollars (\$50.00) per occurrence for each 20 minutes, not to exceed \$100.00 per incident. The determination of the violation and subsequent fee must be submitted to the Contractor within 30 days of the violation to be valid. Disputed fees shall be reviewed by the Chief of Police or his/her designee. This fee will apply to all dispatched tows unless officer makes other arrangements.

The City shall notify the Tow Contractor and the Storage Contractor of special tow programs at least (48) hours in advance and the Contractors will accommodate said programs. Special tow programs generally require that several tow trucks, staff and storage capacity be assigned to the detail. The Storage Contractor will insure that there is capacity for up to 400 cars in a single day. Special tow programs generally involve significant numbers of tows. The City will notify the Tow Contractor in advance to insure that sufficient tow trucks are available. The City shall state the number of tow operators required, the location and the start time.

2.2.4 Failure to Respond

In the event the Tow Contractor fails to respond to a call or to furnish requested equipment at the designated point of tow within the allotted time period, the City shall have the right, by whatever means appropriate, to have the vehicle removed from the designated point of tow and transported to the Storage Contractor's storage facility.

The Tow Contractor will be liable for any and all costs, fees and other expenses incurred by the City associated with Tow Contractors' failure to respond to the tow call or failure to furnish necessary equipment at the designated point of tow within the allotted time periods; The City will deduct such costs, fees or expenses from any payments owed to Contractor.

2.2.5 Drop of Vehicle

A drop of a vehicle shall be made and no charges shall be assessed provided a police officer is at the scene and the driver of a vehicle appears to claim the vehicle before a tow truck driver has completely attached the hook of the tow truck to the vehicle and/or completely loaded the vehicle on the tow truck.

2.2.6 City-Owned Vehicles

At the request of the City, the Contractor, at no cost to the City, will remove any disabled or City owned/leased vehicle or render road service, limited to starting stalled vehicles and changing flat tires. These requests for tow or roadside assistance must be provided within 35 minutes of call. Requests for vehicles disabled outside the City will be limited to 50 air miles of the City of Oakland Corporate Yard located at 7101 Edgewater Drive. The contractor may elect to use the

City of Oakland Agreement with B&B Vehicle Processing, Inc.

services of another tow service when assistance is requested outside of the city in order to expedite the return of the vehicle to the city. The contractor shall facilitate tows to the City of Oakland Corporate Yard that are beyond the 50-mile radius and bill the City's Public Works Agency for costs associated with the work. Services limited to roadside assistance and do not include moving vehicles from one City facility to another or from City facility to a repair facility.

Heavy duty trucks and equipment shall be billed to the City at the Contractor's net cost. Failure to provide the above services to City vehicles shall result in a \$100 credit to the City per occurrence plus reimbursement of any expense associated with Contractor's failure to tow or change a flat tire.

2.2.7 Police Evidence Holds

At the request of the OPD, the contractor, at no cost to the City, shall tow and store vehicles designated as a "Police Evidence Hold." The contractor shall store up to 75 Police Evidence Hold vehicles at any given time as outlined in paragraph 2.6.5 at no cost to the City. The contractor shall be reimbursed for Police Evidence Hold vehicles in excess of 50 at the regular storage rate if those vehicles are held more than 40 days. The City may hold up to 25 vehicles for an indefinite period of time. The contractor shall be reimbursed for storage charges at the regular storage rate for vehicles with indefinite holds in excess of 25. Nothing herein prevents the contractor from collecting tow and storage fees from the vehicle's owner, unless such fees are specifically waived by the OPD.

2.2.8 Location of Vehicle Owners

The Storage Contractor shall make every reasonable effort to locate the owners of unclaimed vehicles. Such efforts shall be documented and maintained for a period of three years.

2.2.9 Tow Release Procedures and Customer Service

The Storage Contractor shall have one telephone number the public may call for information on vehicles towed by order of the City. Sufficient telephone lines, equipment and personnel shall be provided to answer all calls. The Storage Contractor's personnel answering the phones shall be courteous and provide complete information and directions regarding the location of the vehicle, the method of securing the vehicles release, documentation required, charges to be assessed, and terms of payment. When a person arrives at the primary office and storage location:

- a) The Storage Contractor's personnel shall identify the requested vehicle from the records by license number, vehicle identification number, vehicle make, date and location of tow or from other information provided by claimant.
- b) Claimant will be required to provide evidence satisfactory to Contractor's personnel that she/he is the person entitled to receive the vehicle. This shall include an official Numbered Vehicle Release and valid driver license or acceptable form of identification. When necessary, the Police Department shall provide assistance in verifying vehicle registration information.
- c) When the Storage Contractor's personnel are satisfied that the claimant is entitled to the vehicle, the Storage Contractor will record the identity of the person and collect the appropriate fees from the claimant and then promptly release the vehicle. The vehicle shall be released to the claimant within a maximum of one (1) hour of the time the claimant begins the release procedure with the Storage Contractor.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

- d) In the event the towed vehicle has been identified as having a Police Hold (this means the Police have communicated in writing that the vehicle is to be placed on hold until released in writing), the Storage Contractor shall not release the vehicle without written authorization from the Police Department.
- e) The Contractor shall, upon receiving a Numbered Property Release from OPD, release to the vehicle owner all personal property.

2.2.10 Method of payment and transfer of fees to the City of Oakland

The Contractor shall accept as valid forms of payment from the public: cash, and with valid form of identification, cashiers checks, credit/debit cards (including but not limited to Master Charge, Visa, and, Discover), and ATM cards for all fees.

All fees incurred by or loss to the Contractor resulting from the use of credit/debit or ATM cards shall be considered a normal business expense and is a cost to the Tow and Storage Contractors. All fees due to the City of Oakland shall be transferred to the City of Oakland in a manner and in a method prescribed by negotiated agreement between the Contractor and the City of Oakland.

2.2.11 Customer Service

The Contractor's employees and subcontractors shall meet the highest levels of customer service when interacting with the towed vehicle owners at the point of tow, storage facility, and release areas. This will include, but not limited to the following:

1. Customer service training that will comply with City standards. The Contractor, at their expense, shall send all employees and subcontractors to the City's City-Wide Training course(s) relative to their position within the Contractor's organization. (Availability to be confirmed with Citywide Training)
2. Customer waiting area.
3. Standards for cleanliness and safety.
4. Adequate customer service staffing, including telephone operators, window staff and customer service representatives.

Office hours open to the public for pickup of vehicles and/or property:

- 0730hrs to 1800hrs Monday through Friday.
- 0900hrs to 1700hrs Saturday, Sunday, and Holidays observed by the City.

Emergency Releases are available 24-hrs per day, 7-days per week. A Deputy Chief or employee authorized by a Deputy Chief can issue an Emergency or Special Circumstance release allowing holder to pick up vehicle or personal property.

The City will check customer service response times on a periodic basis and hold Contractor to the standards set forth in Sections 2.2 and 2.4.

When OPD determines changes should be made to the customer service plan, the Contractor shall have a reasonable time to implement the changes.

2.2.12 Message Center

City of Oakland Agreement with B&B Vehicle Processing, Inc.

The Storage Contractor shall have an automated message center that has a menu selection that offers basic information to the public in English, Spanish, Cantonese, Mandarin, and Vietnamese and any future languages required by the City. The automated message center shall have the ability to queue calls after caller requests a live operator and have an alarm system to alert office staff when a call has been on hold for more than the approved time. Contractor shall demonstrate to the City that it has installed the necessary lines, instruments, hardware, software, and overflow safeguards to handle peak workloads.

The City may request that the Contractor provide customer service information at no additional cost. At minimum the Contractor's message center shall provide summary reports that measure:

1. The total number of calls per hour.
2. Response time to calls (i.e. number of rings before calls are picked up.)
3. Number of call that are put through to each menu option.
4. Languages accessed
5. The Average call wait time with minimums and maximums
6. The number of operators logged in to take calls.

2.2.13 Customer Receipts

Storage Contractors shall post the entire detailed list of charges on the customer's copy of the receipt.

When demanding payment from a former vehicle owner for Deficiency Claims as defined in the California Vehicle Code, arising from the disposal of towed vehicles, the Contractor shall provide the former owner with an itemized bill.

2.2.14 Complaint/Claim Tracking

The Contractor shall have the complaint procedure posted conspicuously in lobby/reception area of the business in the five languages identified in paragraph 2.2.12. The contractor shall also have complaint forms that explain the procedure printed in the five languages identified in paragraph 2.2.12. The forms shall be color coded as follows.

1. English (Yellow)
2. Spanish (Blue)
3. Cantonese & Mandarin (Pink)
4. Vietnamese (Green)

Complaints shall be documented. The contractor shall also maintain records detailing the investigation and adjudication of complaints. The Contractor shall respond to customer complaints and claims within 10-working days. Those records of complaints not settled within 10 days shall be available for inspection by the City Tow Officer during normal business hours.

The complaint forms shall refer the complainant to the City's Tow Contract Compliance Officer for a review of unresolved complaints.

Failure of Contractor to respond to the customer complaints/claims within 10 working days shall result in a \$100 credit per day for each working day delayed.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Sample of Complaint Form

B & B Vehicle Processing, Inc.
8717 G Street
Oakland, CA 94621

Date: _____

Taken by: _____

COMPLAINTS, COMMENTS or QUESTIONS regarding TOWED/STORED VEHICLE

Please provide the following information and a manager will contact you at the number given within 2 business days.

Name: _____

Phone: _____

Vehicle License or VIN: _____

Make: _____

Tow Date: _____

Dispatch #: _____

Complaint, comment or question:

(Please use reverse if more space is needed)

Date & Time Customer contacted:	
Manager name:	
Result / Resolution:	

City of Oakland Agreement with B&B Vehicle Processing, Inc.

2.2.15 Posting Required

The following documents, which must be printed in Times New Roman, 14-point bold type, shall be posted by the contractor at each storage facility in a conspicuous location easily visible to the public. Actual signage, multiple languages required, wording, size of letters, methods of display shall be approved by the City in advance of posting:

1. A statement that a complete copy of the tow Agreement is available for review or may be obtained from the City Clerk at a cost of \$0.10 per page.
2. Schedule of all approved towing, storage and additional charges specified in this contract or by the City.
3. A notice explaining the procedure by which all unclaimed vehicles are sold at public auction, including the location of such auctions and publications in which such auctions are advertised and stating that all in attendance at such auction shall have an equal opportunity to bid.
4. A notice explaining the conditions under which and the procedure by which a tow hearing may be requested from City.
5. Notice of vehicle impound rights and obligations of owners under California Vehicle Code Section 22852.
6. Notice of procedures for filing a claim for damages against the City and the contractor for vehicle or vehicle contents damage or loss resulting from a tow or while in storage.

Failure of Contractor, to install and maintain the signage required by the City, state or federal laws, shall result in a credit of \$250 per sign per 24-hour period.

2.2.16 Records of Service

Contractor shall maintain detailed records of service in electronic format available for the City to inspect at any time. These records should be available to download and accessible from the Contractor's tow database via online Internet connections Contractor's database shall not under any circumstances be maintained using proprietary software that will prevent such data analyses/extraction. Contractor should be prepared to respond to requests for information from the City and turn those requests around within 48 hours unless otherwise specified.

Failure of Contractor to respond to the Records of Service Requirements shall result in a \$100 credit to the City for each 24-hour delay.

Contractor will provide monthly, quarterly, and annual reports as requested by the City. The reports will cover, but will not be limited to, items such as response time, number and type of tows, number of vehicles retrieved by 24-hour increments, number of vehicles lien sold by number of days in storage and value, number of vehicles crushed, number of vehicles purchased by Contractor, number of vehicles at each storage facility, number of vehicles in storage by reason for tow by department requesting tow by date towed.

Failure to provide the report on the agreed upon due date shall result in a \$50 credit to the City for each working day thereof delayed.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

2.2.17 Victim Assistance for Oakland Residents

The Contractor shall waive the first 48 hours of storage fees for recovered stolen vehicles belonging to Oakland residents unless fees are paid by a third party (i.e. Insurance Company, Lien Holder). The City shall be responsible for determining residency.

2.2.18 Fee Waiver

The City shall be allowed to waive tow and storage fees on up to 50 vehicles annually without cost. Any fee waivers in excess of 50 vehicles shall be billed to the City at the regular tow and storage rate.

2.3 RECORD KEEPING

The Contractor shall prepare and maintain a financial accounting system in accordance with Generally Accepted Accounting Principles. Upon request of an authorized City agent, such books of account shall be maintained at the site or available within 24hrs.

2.3.1 Interim Financial Statements

No later than forty-five (45) days after the end of each quarter the Contractor shall have available to the City Auditor, a financial statement prepared in accordance with Generally Accepted Accounting Principles.

2.3.2 Computer Hardware and Software

Within the first year of the agreement, the Contractor shall provide City real time access to its database of towed vehicles at any time. Access shall be through the Internet. Information shall be available on a read-only basis by license number and VIN number.

2.3.3 Advertising Lien Sales

Lien sales of vehicles valued over \$4,000 shall be advertised in the official City of Oakland newspaper and local newspaper of highest circulation if different from the City's official newspaper.

2.3.4 Records of Lien Sale or Auction Purchasers

The Storage Contractor shall require all persons who purchase vehicles at auction to show a California driver's license or other valid form of identification. Contractor shall maintain records of each purchaser's name and address for the amount of time consistent with statute of limitations for recording keeping. The information shall be maintained and shall be linked to the vehicle purchased. These records shall be available to the City at any time providing it is not in conflict with privacy law.

2.3.5 Vehicle Lien Sale or Auction

The Storage Contractor shall, within 48 hours of the completion of an auction, by fax or email, provide a list to the Oakland Police Department (OPD) and Financial Services Agency Parking Enforcement Division of all vehicles sold at auction, with the following information: the sale price, all Contractor costs and fees collected and any funds collected over and above the Contractor's costs. The notice shall identify the vehicles by description, VIN and (if available) license plate. Within three (3) business days, the City shall assess the vehicle for outstanding parking fees and shall notify the Contractor of any such outstanding fees. The Contractor shall remit all outstanding parking violation fees prior to sending any surplus funds to the State

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Department of Motor Vehicles (DMV). The Contractor must comply with all California laws and regulations applicable to vehicle lien sales and auctions including, but not limited to, California Department of Motor Vehicle statutes and regulations and California Civil Code Sections 3071 and 3072.

The contractor shall have the ability to dispose of vehicles that do not sell at auction.

2.3.6 Storing and Retrieval of Tow Inventory Slips

Within the first two years of the contract, the Contractor shall collaborate with the City to find an effective system for sharing towed vehicle information and implement the system at the Contractor's expense.

2.3.7 Towed Vehicle Records

The Tow Contractor shall maintain consecutively numbered dispatch records of each transaction involving the removal, impoundment, and disposition of all vehicles towed pursuant to the Agreement.

Each such invoice shall contain the following information: a) date and time Contractor is notified by City to respond to a call; b) date, time and location of tow and identity of tow car operator; c) make, model, year and Vehicle Identification Number of vehicle towed; d) name and address of registered owner of vehicle towed; e) inclusive dates of and charges for impoundment; and f) date and manner of vehicle disposition and income received shall be maintained at the Contractors site.

2.3.8 Computerized and Spot Vehicle Inventory

Storage Contractor shall maintain a computerized vehicle record up to the statute of limitations and vehicle locator system throughout the term of this Agreement, and any extension(s) thereof, in a manner that is mutually satisfactory to the City and Contractor. This system must be capable of providing the City a daily record containing information including the date of order to tow, the make, model, year, and owner of record of all vehicles and the location of all vehicles. The daily record shall be available to the City at any time.

The OPD officer shall conduct a spot vehicle inventory at the time and place the vehicle is towed; The Tow Contractor shall sign the inventory sheet detailing the vehicle condition and contents. The vehicle inventory sheet shall be maintained in accordance with the document retention plan contained in Section 2.3.13 of this Agreement.

2.3.9 Annual Audit

The City may perform a contract compliance audit at anytime.

2.3.10 Access to Contractor Records

Upon request, the Contractor shall make available to the City all of the company's financial, administrative and any other records related to Contractor's performance under this Agreement, including, but not limited to: all ledgers and all other journals related to the tow operation; cash receipts and cash disbursements records, bank statements, cancelled checks and deposit slips; all records related to vehicle lien sales and auctions; payroll tax reports, sales tax reports, income tax

City of Oakland Agreement with B&B Vehicle Processing, Inc.

reports, hazardous materials reports and other reports filed with Federal, State and local agencies or governments; all audit reports, inspections or studies of the Contractor prepared by government agencies; records related to pending audits, assessments, appeals and settlements involving payroll taxes, sales taxes, income taxes and tax exemptions; records related to tax delinquencies and collection status of such; records related to civil suits in which the Contractor is a defendant; records related to pending audits, assessments, appeals and settlements involving worker's compensation claims; records related to insurance recovery matters; records related to pending audits, assessments, appeals and settlements regarding Department of Motor Vehicle compliance issues; records related to the classification of service providers as independent contractors or employees; and, all agreements with third parties.

2.3.11 Access to Third Party Records

Upon request, the Contractor shall authorize third parties (financial institutions, insurers, attorneys, accountants, etc.) to make available to the City all records (except privileged by law) including, but not limited to, bank accounts, loans, investments, insurance claims paid or received on behalf of the Contractor.

2.3.12 Inspection of Books and Records/Right to Audit/Offset

During the term of this Agreement Contractor shall maintain financial and operational records related to this Agreement. Contractor shall make all books and records open to inspection by the governing agency, City or their individually assigned designee during normal business hours at a location within a twenty-five (25) mile radius of the City of Oakland during the period of this contract subject to the statute of limitations.

During the Audit Period, Contractor hereby grants to the City or designee(s), upon one (1) days prior notice to Contractor, access to and the right to make copies of any of Contractor's books, statements, documents, papers or records ("Financial Information") which arise from or relate to the terms and conditions of this Agreement and the performance of any services pursuant to this Agreement, or any other agreement between the parties, in order to permit City to conduct audits, examinations, excerpts and transition audits (collectively hereafter referred to as "Audit or Audits"). The Contractor authorizes the City or its designee(s) to obtain such information directly from these sources. City's right to audit and to make copies shall apply whether such financial information is located at contractor's offices or at contractor's banks, financial institutions or lenders, or at the offices of contractor's financial consultants, accountants or bookkeepers.

For the purposes of such audit, the Contractor will not waive the right to the confidentiality of all financial information. The Contractor authorizes the City or its designee(s) to access, obtain and make copies of financial information directly from Contractor's banks, financial institutions or lenders, or from Contractor's financial consultants, accountants or bookkeepers. Such audits may be performed by the City utilizing employees or by designees including, without limitation, a third party auditor retained by City. City's right to audit under this Section is independent, separate and distinct from any right to audit such books and records reserved by law or contract, or as a condition of funding, by the county, State or Federal government.

If any audit of Contractor's invoices or other records reveals any variance from any invoice to

City of Oakland Agreement with B&B Vehicle Processing, Inc.

City, or of any amount of any grant or loan funds provided to Contractor by City which is in excess of the amount actually due to or granted to Contractor by City, then: Contractor shall immediately refund any excess payment or funds (variance) received from City. If the audit reveals evidence of gross mismanagement or abuse (as defined under generally acceptable accounting practices), in excess of one percent (1%) of the amount shown on such invoice or the amount of funds actually due to or granted to Contractor by City, Contractor shall immediately reimburse City for all costs and expenses incurred in conducting such audit. Contractor's liability for the cost of the audit shall not exceed the amount of the variance. Failure to pay such variance and the cost of the audit as required herein shall constitute a material breach of the agreement by City and will subject Contractor to termination of the Agreement by City and to a breach of contract claim for damages by City and the return of all grant or loan funds provided to Contractor by City for amount due plus 10% penalty on the amount due.

All claims for funds that are due to the City, shall be subject to deduction or offset by City from any funds due to the Contractor by reason of any claim or counterclaim arising out of this Agreement or any purchase order or any other transaction with Contractor. To the extent that there are amounts due to the City and to a State or Federal funding agency, and the amount of the offset is insufficient to pay such amount in full, the amount of the offset shall be prorated between the City and such State or Federal funding agency in proportion to the amounts due them.

2.3.13 Record Retention

The Contractor shall retain all accounting records for a period of the agreement. Refer to paragraph 2.3.12

2.3.14 Web Based Information

During the first year of the agreement, the Contractor shall collaborate with the City to devise a plan to integrate with the City's Web site for the public to access general information about towed vehicles.

2.4 PERSONNEL REQUIREMENTS

2.4.1 Adequate Staffing

The Contractor agrees to employ adequate staff to comply with the Agreement.

2.4.2 Telephone Operators

The Contractor shall ensure that adequate live telephone operators are available at all times to respond to calls from the public about towed vehicles. All calls shall be answered and responded to by a live or automated operator.

2.4.3 Window Staff

During peak tow hours, the Contractor will have sufficient trained staff to ensure wait time in the customer lobby will be no longer than 30 minutes. Refer to paragraph 2.2.9 (c)

All window staff shall also be available to answer calls from the public if they are not attending to a customer. Contractor's telephone system shall be set up to automatically roll to the next available operator when calls come in.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

2.4.4 Customer Service Representatives

The Contractor will have at least one customer service representative on duty during the following hours to handle customer questions and out of the ordinary matters – 8 a.m. through 5:00 p.m., Monday through Friday.

2.4.5 Tow Truck Operators

All new tow driver applicants must have a valid California driver's license and provide proof of attending a tow truck driver school certified by the California Tow Truck Association (CTTA) upon applying for permit. A list of certified courses shall be maintained by the City Tow Officer and available to the Contractor. All tow truck operators and businesses used by the Contractor shall agree to allow the City to conduct a background check of all criminal records (compliant with CHP regulations) before such tow operators and tow businesses are scheduled for hire and are eligible to receive a tow truck drivers permit from the City.

2.4.6 Subcontractors

The Contractor may subcontract with one or more tow truck operators for the provision of towing services to Contractor in accordance with the Agreement.

2.4.7 Licenses and Permits

The Contractor will have and maintain at all times valid city licenses and permits and shall require the same of any subcontractors.

Administrative officer shall be responsible for auditing subcontractors to insure all licenses and permits are up to date and valid.

2.4.8 Uniforms

All Contractor's personnel or subcontractors engaging in the performance of City impoundment services shall be neat in appearance and courteous to the public. Contractor or subcontractor will require tow drivers to wear their City approved Photo ID Badges when on duty. Contractor will require tow truck drivers to wear a standard City approved shirt or other City approved apparel while performing services for the City.

A violation of the uniform requirements will be a fee of \$50.00 per incident per day.

2.4.9 Training

The Contractor shall comply with standards set forth in this agreement as well as Federal and State Laws with respect to employee training.

The Contractor shall be responsible for employing a Licensed Vehicle Verifier.

2.4.10 Policy and Procedure Manual

The contractor shall establish and maintain a policy and procedure manual. It shall include all forms used with revision dates. City may review and suggest making changes to the manual as necessary to insure compliance with policies and procedures.

2.4.11 Staffing and Management

The Contractor must provide staffing that is able to meet all service and performance requirements. With the exception of special operations as noted in paragraph 2.2.3, the Contractor shall supply an

City of Oakland Agreement with B&B Vehicle Processing, Inc.

adequate fleet of tow vehicles and qualified drivers to tow up to approximately 200 vehicles per day and approximately 1,400 vehicles per week.

2.4.12 Manager

The Contractor will have a Manager available during ordinary business hours with the authority to make decisions relative to Agreement issues. Contractor will submit a name(s) and phone numbers (including cell phone and pager) to the City indicating the person(s) with this authority.

2.4.13 Contract Administration

For lien sale purposes, the public agency (OPD) causing the removal of the vehicle shall determine estimated value of the vehicle that has been ordered removed, towed, or stored. Pursuant to Vehicle Code 22670(a) If the public agency (OPD) fails or refuses to put a value on, or to estimate the value of, the vehicle within 3 days of the date of removal of the vehicle, the garage keeper determines, under penalty of perjury, the estimated value pursuant to Vehicle Code 22670(b).

2.4.14 Vehicle Auctioneer

The City may monitor the process by which lien vehicles are sold. An independent Auctioneer who is fair and impartial shall be hired by the Contractor to conduct the public auction.

2.4.15 Prevailing Wages

In the event that the Oakland City Council imposes prevailing wage and other requirements, Contractor shall pay workers employed in the long term and short term storage facilities identified in this RFP the prevailing rate of wage and that such workers will have job protection with the successor contractor for transition period after a contractual arrangement is terminated.

2.5 EQUIPMENT REQUIREMENTS

2.5.1 Tow Trucks

The Contractor will have adequate regular duty and heavy-duty tow trucks available to tow all vehicles ordered by the City to be removed from any public street or highway within the City in accordance with the State Vehicle Code and the Oakland Municipal Code. Tow trucks will be in good operating condition, and equipped and prepared to provide expeditious movement of all types of vehicles, including a) towing of large and oversized vehicles; b) towing from off-road areas; c) towing in an underground garage; d) recovery services; e) vehicles involved in collisions; and f) vehicles with anti-theft locking devices. All tow trucks used in the performance of City tow services shall be well maintained and clean on the interior and exterior.

The Tow Contractor shall be in compliance with all California Vehicle Code requirements pertaining to the operation and maintenance of tow trucks and operation of its business including all auxiliary equipment specified on the California Highway Patrol Form number 234 "Annual Tow Car Inspection Report". All tow truck operators shall be fully trained on how to use the equipment, how to properly tow a vehicle and how to enter all types of vehicles if such vehicles are locked and access is needed in order to tow. Damage tow vehicles must be repaired within thirty (30) days. Vehicles may be removed from service at the discretion of the City and may not be returned to service until these vehicles have passed an inspection by the City. All trucks shall be subject to City inspections and approvals to be demonstrated by permits.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

All tow vehicles used by subcontractors or by the Contractor for the provision of towing services must bear a sign stating Contractor's/Subcontractor's trade name, address and telephone number in characters at least 1 ½ inches high on both sides of the tow vehicle. All tow vehicles shall bear an identifying number in characters at least 3 inches high on both sides of the vehicle. Detachable magnetic signs may not be used for this purpose.

All tow trucks shall have a California Highway Patrol (CHP) Inspection (Scales) or annual inspection by the OPD Tow Officer. Certification documents shall be delivered to Tow Contract Compliance Officer within 5 business days of certification.

The Storage Contractor shall maintain an adequate number of forklifts equipped with wheel lift mechanisms to expedite the timely release of vehicles.

2.5.2 Two-Way Radio Communications Equipment

Each tow truck operator will be equipped with two-way communications capable of two-way communication between the Contractor's dispatching office and the tow truck. Citizens band equipment is not acceptable for use under this Agreement.

2.6 FACILITIES REQUIREMENTS

All open areas on the properties where storage facilities are located shall be maintained in a clean, secure, neat, and visually presentable manner. Contractor shall maintain a 24- hour camera-based security system of the lobby and yards that will be recorded and available for viewing by the OPD Tow Officer.

The Contractor shall have adequate facilities separate from the main storage area to conduct lien sales and auctions. Contractor shall also provide support staff necessary to conduct the sales, and uniformed security guard or uniformed OPD Officer for the auction.

2.6.1 Primary Storage

The Contractor owns the storage facility and shall provide facilities with storage space for a minimum of three thousand (3,000) vehicles, including at least fifty (50) large tractor-trailer/passenger bus size vehicles, at any given time. Additionally, Contractor shall have indoor storage space for eight hundred (800) vehicles and a secure, locked enclosed area for up to twenty (25) vehicles designated to be held as evidence for investigation or prosecution purposes by City's OPD ("Police Evidence Holds"), at any given time.

The Contractor's primary storage facilities must:

1. Be a minimum of 2 feet between the sides of vehicles is to be maintained to facilitate entrance to the vehicle by owners and City personnel without moving the vehicle.
2. Comply with all Federal, State and City codes and safety regulations applicable to its proposed use, including all laws, codes and regulations which relate to the protection of the public's health, safety and welfare or contamination of the environment.
3. Be clean and well maintained. The Contractor is responsible for the disposal of all trash and debris associated with the facility and vehicles towed under this contract. The Contractor may continue the existing relationship with the City's Public Works

City of Oakland Agreement with B&B Vehicle Processing, Inc.

- Agency, but will reimburse the City for all costs associated with the service.
4. Be screened from public view except for necessary gates. Gates shall be at least 8 feet high. Screening and gates shall be maintained in good condition at all times.
 5. Be maintained so that the parking/storage surface shall be either a paved or concrete surface.
 6. Be maintained to ensure the safe storage of vehicles and the contents of such vehicles, including without limitation lighting throughout the area for safety after dark.
 7. Have adequate drop off-space so that tow and transport trucks can quickly and efficiently load and unload on the property. No loading, unloading, parking or storage of vehicles will be permitted on the surrounding public streets or right of ways.
 8. Not be used for the sale of vehicle parts.
 9. Have 24-hour video and audio surveillance to include all gates, the main entrance and public reception areas with a capacity to retain recordings for up to 90-days.
 10. Have on-site, 24-hour uniformed security guard.
 11. Have regulations regarding access control documented in the policy and procedure manual.

Contractor shall control and restrict access to the storage area to qualified persons, including but not limited to, employees, City personnel, insurance adjusters, legal owners, inspectors, etc.

2.6.2 Storage Business Hours

The Primary Storage Facility will be open for business 24 hours per day, 7 days per week, including holidays, to accept towed vehicles.

2.6.3 Right to Inspect

Any authorized representative of the City has the right to inspect Contractor's towing and storage facilities at all times for the purpose of evaluating Contractor's performance. City officials and inspectors may conduct periodic site visits at any time to inspect for permit conformance and customer service standards or to respond to customer complaints. Contractor must provide the City with unrestricted access to all of the storage facilities.

2.6.4 Protection of Vehicle and Vehicle Contents

The Contractor must operate storage facilities and operations in such a manner so to the attempt to prevent damage to vehicles and to the contents thereof. Contractor is legally responsible for all personal property inventoried by OPD (paragraph 2.3.8) and signed for by the tow operator, contained in the towed vehicle that has been placed in storage. The tow inventory slip shall be made immediately available to the person retrieving the vehicle at no charge.

2.6.5 Police Evidence Hold Vehicles

The Oakland Police Department may authorize and request the Contractor to tow and store up to 75 vehicles in connection with law enforcement matters at any given time. The Contractor shall respond to such requests promptly and store such vehicles in a clean, well-lit area of the Storage Facility. In addition, a high security segregated area shall be capable of holding 25 vehicles. This area is to be marked as the "Police Evidence Hold" area and will be secured to the City's satisfaction. The area shall be properly illuminated; the surface shall be flat and paved; and the area shall be kept dry.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Contractor will further provide the following in the segregated "Police Evidence Hold" high security area:

1. Vehicle hoist/lift
2. Running hot and cold water
3. Electricity
4. Chemical emergency wash-down system
5. Air compressor
6. Basic tools
7. Lighting to adequately illuminate every vehicle for nighttime inspection and safety purposes
8. Automatic fire suppression system
9. Working phone jack, installed at Contractor's expense, with dial tone for local calls and toll free numbers.
10. Industrial first-aid kit

The Contractor shall allow authorized City personnel to dismantle and remove parts from any OPD hold vehicle. All vehicles with no viable VIN shall be impounded under a NO ID number and stored in the Police Evidence Hold Area and will be automatically held for the OPD Criminal Investigations Division regardless of who towed the vehicle.

The entry, exit, movement, and release of any vehicle from the segregated high security Police Evidence Hold area shall be governed by regulations communicated in writing to Contractor from the Oakland Police Department. The fee for vehicles under this section will be billed to the City under the provisions of paragraph 2.2.7.

At the end of each month, the Contractor shall submit to the City a list of all Police Evidence Hold vehicles within the high security segregated area stored by Contractor. Within fourteen (14) days of receipt of such list, the City shall inform Contractor, in writing, of which Police Hold vehicles on the list may be released from Police Hold.

Any evidence tows in the non-segregated area shall be subject to lien sale after 30-days if Contractor is not notified in writing of an extended hold.

Contractor will be required to remove or relocate vehicles within or out of the high security segregated Police Evidence Hold area promptly after receiving a request by the City.

2.6.6 Dispatch Office

The Contractor will maintain a dispatch operation that will operate 24 hours per day, 7 days per week including holidays. Dispatch operators will be available to take radio calls from the City at all times. Contractor will keep accurate records of all requests and responses for towing. Record keeping, at a minimum, should include time initial call was logged, and time truck arrived on scene. Contractor shall also provide a direct telephone line to be used for calls between the Contractor's dispatch center and OPD's dispatch center at no cost to the City. Contractor shall provide equipment that will automatically record with time and date stamp and notice parties of recording in progress. In addition, the computer system utilized by the Contractor for all operations shall include the following:

City of Oakland Agreement with B&B Vehicle Processing, Inc.

1. Name and address of person (if available) whose vehicle was towed
2. Vehicle identification number, license plate number, make, year, model, and color of each vehicle towed;
3. Date and time request for tow received
4. Location from which vehicle was towed, and name or number of driver assigned to said tow
5. Reason for tow
6. Current storage location of towed vehicle
7. Date and time of release for each vehicle
8. Name of party to whom the vehicle was released, including the ID number presented and address given
9. All fees or charges connected with said tow, showing specifically tow, storage, and lien sale date in addition to the total of such charges or fees.

Contractor will consider expanding data captured as reasonably required by the City in the tracking or performance monitoring of this Agreement. These records should be available for inspection by the City upon request. If the tow is not initiated through tow dispatch, tow data should be entered within eight hours of the vehicle being delivered to the storage facility. The contractor shall be capable of releasing a vehicle on appropriate demand at anytime.

2.6.7 Maintenance

The contractor must demonstrate the capacity to dispose of approximately 1,500 vehicles monthly to a licensed dismantler and/or licensed metal recycler.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

APPENDIX A

TOWING AND STORAGE CHARGES FEE SCHEDULE

CONTRACTOR FEES	
Referral Fee *	\$ 40.00
Gross Revenue Percentage Fee	0.5%
CITY OF OAKLAND TOWING & STORAGE RATES*	
Regular Tow (for first half hour) includes \$40.00 referral fee* collected from released vehicles.	\$ 170.00
Hourly Rate for Towing (after first half hour)	\$ 130.00
Storage per Day per Stall	\$ 60.00
Dolly or Flatbed (when used)	\$ 40.00
Big Rig Tow (for first half hour) includes \$40.00 referral fee* collected from released vehicles	\$ 355.00
Hourly Rate for Big Rig Towing (after first half hour)	\$ 310.00
Hourly Rate for Over 55,000 lbs. GVW - includes \$40.00 referral fee* collected from released vehicles.	\$ 410.00
Big Rig Storage per Day (up to 40ft) additional \$50.00 per Stall	\$120.00
Motorcycle Storage per Day	\$60.00
Evidence Tow and Storage Rates (billed to City)	Per Schedule A, paragraph 2.2.7

*Subject to annual increases or decreases based on the Annual Consumer Price Index.

Proposed Subcontractor List

COMPANY NAME	OWNER	ADDRESS	PHONE #	OWNERSHIP INTEREST by Racial Group
BCG Towing	Lisa Sarradel	2562 Frances, Oakland 94621	510 377-5226	7
Hernandez Towing	Leonard Hernandez	1201 46th Ave, Oakland 94601	510 385-9642	2
Ismay's Towing	Ismael Santoyo	8630 E Street, Oakland 94621	510 504-2750	2
Jenkin Bros.	Jack Freeman	537 24th St., Oakland 94612	510 444-2020	4
Ken Bett's Towing	Ken Betts	4825 San Leandro Blvd, Oakland	510 532-5000	6
Micki's Towing	Bruce Vuong	973 86th Ave, Oakland 94621	510 436-6300	3
Maxwell Towing	John Oppus	2222 E 20th St., Oakland 94606	510 915-1518	4
Oakland Towing	Chanthala Phong	820 Isabella St., Oakland 94609	510 444-2230	3
R & K Towing	Rees & Karen Jones	8717 G St., Oakland	510 760-5653	6 & 7
Tow Times Towing	Eric Phong Phoumy	820 Isabella St, Oakland 94607	510 444-4788	3
United Auto Towing	Jamal Saeed	668 27th St., Oakland 94612	510 393-5521	1
Wong's Towig	Huey Hoang	6161 Coliseum Way, Oakland	510 562-3883	3
W2 Towing	Ken Wong	6161 Coliseum Way, Oakland	510 569-5611	3
Omars Towing	Walter Hernandez	1622 101 st Ave, Oakland 94603	510 708-0805	2
Roberts Towing	Robert Brown	443 41 st St., Oakland, 94609	510 759-7064	1

Please note: All of these listed subcontractors have been approved by the City.

Racial Groups:

- | | |
|------------------------------|-----------------------------------|
| 1. African American | 5. American Indian/Alaskan Native |
| 2. Hispanic | 6. Caucasian |
| 3. Asian or Pacific Islander | 7. Women (All racial groups) |
| 4. Filipino | 8. Other |

SCHEDULE Q

INSURANCE REQUIREMENTS City of Oakland Towing Services Agreement

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability and if necessary, Products and Completed Operations or Owners and Contractor Protective Liability. The policy shall contain severability of interest clause or cross liability clause or the equivalent thereof.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability shall include the following:

Bodily Injury - \$2,000,000
Property Damage - \$2,000,000
Or, Combined Single Limit (C.S.L) for Bodily Injury and Property Damage - \$4,000,000
 - C. If the policy is a "claims made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.
 - 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- ii. Automobile Liability insurance, including all owned, non-owned and hired automobiles used by the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.
- iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

City of Oakland Agreement with B&B Vehicle Processing, Inc.

- iv Garage Liability - The Contractor must provide Garage Liability Insurance with limits of not less than \$1 (one) million per occurrence, combined single limit, for bodily injury and property damage. Coverage extensions must include Garage Keepers Legal Liability. The City of Oakland is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Additional Insured: Contractor shall name the City of Oakland, its Councilmembers, directors, officers, agents and employees as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form (or more recent or an equivalent with written approval of the City's Risk Manager) and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and
- ii. Cancellation Notice: 45-day prior written notice of cancellation, termination or material change in coverage; and
- iii. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- iv. Insurer shall carry a Best Rating of B+ or greater.

EXEMPTION NOTE: Until further notice, the City will accept the State Compensation Insurance Fund (SCIF) as an acceptable insurer for the purposes of Workers' Compensation coverage.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office, as of the date of this Agreement.

e. Proof of Insurance

City of Oakland Agreement with B&B Vehicle Processing, Inc.

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. If approved, any deductibles or self-insured retentions on referenced insurance coverages must be borne by the Contractor. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Additional Requirements

The Contractor agrees that insurers waive their rights of subrogation against the City of Oakland, its Councilmembers and its employees.

The coverages and limits furnished by the Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self insurance programs maintained by the City of Oakland do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice.

DRAFT

City Attorney

OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

2008 MAY 15 PM 6:00
RESOLUTION No. _____ C.M.S.

RESOLUTION AWARDDING A FIVE-YEAR CONTRACT, PLUS TWO ONE-YEAR EXTENSION OPTIONS, WITH AN ESTIMATED GROSS REVENUE VALUE OF \$8,000,000 TO B&B VEHICLE PROCESSING, LLC FOR TOWING AND STORAGE OF VEHICLES, COLLECTION AND ADMINISTRATION OF CITY'S ADMINISTRATIVE TOWING FEES, LIEN SALE BY PUBLIC AUCTION OF ABANDONED VEHICLES AND VARIOUS ADMINISTRATIVE SERVICES CONNECTED WITH THE TOWING OPERATION, AND AUTHORIZING THE CITY ADMINISTRATOR TO ACCEPT AND APPROPRIATE AN ESTIMATED ANNUAL PAYMENT IN THE AMOUNT OF \$1,300,000 FROM B&B VEHICLE PROCESSING, LLC FOR PAYMENT OF ADMINISTRATIVE AND OTHER COSTS IN CONNECTION WITH THE REQUIREMENTS OF THE CONTRACT

WHEREAS, the contract between the City of Oakland (City) and A&B Auto expired on October 15, 2005; and

WHEREAS, the City formed a multidisciplinary committee to create a Request for Proposals (RFP) for a new contract with an emphasis on the best practices of other California cities; and

WHEREAS, the RFP was sent to 20 prospective bidders with only one response - from B&B Auto Processing LLC; and

WHEREAS, City staff has determined that B&B Auto Processing LLC is the only local or non-local vendor capable of providing a centrally located storage facility large enough to meet the storage requirements of this contract, and

WHEREAS, the contract will generate approximately \$859,000 in additional revenue for the General Purpose Fund, and the Police Department has unfunded fiscal needs related to facilities, equipment, and technology; and

WHEREAS, City recommends that it is in the best interest of the City to enter into a new contract with B&B Auto Processing that improves accountability and revenue for the City; now, therefore be it

RESOLVED: That the City Council hereby authorizes the City Administrator or her designee to enter into a five-year service contract with B&B Auto Processing LLC, plus two one-year extension options, for the towing and storage of abandoned, illegally parked, and impounded vehicles, and the towing and storage of City-owned non-operational vehicles in accordance with specification 03-968-90-01 and associated amendments; and be it

FURTHER RESOLVED: That the terms of the contract will commence on July 1, 2008 and terminate five years later, plus two one-year extension options which may be exercised by the City Administrator, or her designee, without return to Council; and be it

FURTHER RESOLVED: That the additional revenue in excess of \$441,000 shall be appropriated to a Police Department project fund, to be identified by the Budget Office, to offset the cost of future needs of the Department related to facilities, technology, and equipment, and be it;

FURTHER RESOLVED: That the City Administrator is hereby authorized to implement automatic annual changes in the fee structure for towing and storage annually as mandated in the contract, and be it;

FURTHER RESOLVED: That the City Administrator or her designee is authorized to complete and execute all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this agreement for services, except for any increase in the contract amount without returning to the City Council; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve said agreement with B & B Auto Processing, LLC as to form and legality and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council,
City of Oakland, California