



AGENDA REPORT

Meeting Date: April 17, 2012
Item Number: F-7
To: Honorable Mayor & City Council
From: David L. Snowden, Chief of Police
Subject: **AN AGREEMENT FOR POLICE AND CITY TOWING SERVICES BY AND BETWEEN THE CITY OF BEVERLY HILLS AND QUICKSILVER TOWING, INC.; AND AN APPROPRIATION OF \$4,000 FOR ADDITIONAL CONTRACT SERVICES FOR THE VEHICLE IMPOUND STORAGE PROGRAM**

Attachments: 1. Towing Agreement

RECOMMENDATION

Staff recommends that the City Council approve an Agreement for Police and City Towing Services by and between the City of Beverly Hills and Quicksilver Towing, Inc. (Quicksilver). Furthermore, staff recommends that the City Council move to appropriate \$4,000 to fund additional purchases related to the Vehicle Impound Storage Program as follows:

FROM:	TO:
\$4,000.00 0102608-46041 Vehicle Impound Storage Program, General Fund Police Miscellaneous Services Revenue Account	\$4,000.00 One-Time Contractual Services 0102608-73120
TOTAL: \$4,000.00	TOTAL: \$4,000.00

INTRODUCTION

In December 2009, the City implemented the Vehicle Impound Storage Program. This program is aimed at eliminating the inconvenience and logistical problems that members of public experience from having their impounded vehicles stored in West Los Angeles by changing long-standing practices and storing impounded vehicles on City property.

Since this program's inception, when police officers determined that a vehicle's driver is unlicensed or is driving with a suspended or revoked driver's license, the vehicle is impounded for 30 Days—pursuant to California law—and stored in the secured City-owned garage at 336 Foothill Road. Additionally, vehicles impounded for expired registration and unpaid parking citations are also stored this facility. These vehicles remain in storage, where they are assessed daily storage fees by the City, until they are released to their owners or sold at lien sale.

Vehicles that are impounded for no stopping zone violations between the hours of 3:00 p.m. and 5:30 p.m. are temporarily stored on the surface lot adjacent to the garage at 336 Foothill Road. These vehicles remain stored at the City's facility throughout the afternoon and available locally for release upon payment of towing and vehicle release fees. The vast majority of vehicles temporarily stored at this facility (89%) are retrieved by their owners by 6:00 p.m. Any vehicles not retrieved by that time are re-towed to the towing vendor's facility, at no extra charge to the City or the vehicle owner, where they are available for release or eventually sold at lien sale.

DISCUSSION

Towing Agreement

On January 13, 2005, the City entered into an agreement with the current towing vendor, Quicksilver, for towing services. Over the past seven years, the agreement was amended six times, most significantly to provide services for the Vehicle Impound Storage Program. The last amendment extended the term of the agreement through April 30, 2012 to allow the City to solicit proposals from other vendors to provide the towing related services necessary for the Vehicle Impound Storage Program. Staff's intention for requesting new proposals was to determine if competitive bidding could decrease the market price for the towing and storage rates associated with the program.

On November 23, 2011, the City released Bid No. 12-14 (Proposal for Police Towing and Other Related Services). The City received only two proposals. One vendor did not agree to the entire scope of services. The other vendor did not complete the bid form properly. Due to the small number of bidders and the above identified irregularities in the bids received, staff determined that the City's needs would be better served by circulating a revised Request for Proposals (RFP).

On February 8, 2012, the City released Bid No. 12-26 (Proposal for Police Towing and Other Related Services). Quicksilver was the only vendor that submitted a proposal. Because the City's current agreement with Quicksilver expires on April 30, 2012, and the City currently does not have any other vendors willing to perform these services, staff recommends that the City Council approve a new agreement with Quicksilver to continue the operation of the Vehicle Impound Storage Program.

Most municipalities that contract for towing services require their vendors to transport impounded vehicles to their private facilities, which allows the vendors to collect fees on the storage of the vehicles. Because the nature of the City's Vehicle Impound Storage Program is quite progressive and only provides an opportunity for the vendor to collect storage fees on approximately 33% of impounded vehicles, staff believes that the program may be incompatible with the business model preferred by many of the region's towing vendors. Additionally, Beverly Hills Municipal Code (BHMC) Section 4-2-1405

requires vendors that provide towing services for the City to maintain their storage facilities within five (5) miles of the City's boundaries. During both RFP processes, staff received inquiries from at least one potential bidder with a storage facility located slightly more than five (5) miles outside the City's boundaries who requested that this distance requirement be waived. Because staff did not have authority to waive this requirement, this vendor did not submit a proposal.

Based on direction previously received from the City Council, staff understands that the City's primary intention for re-bidding the towing and storage rates was to determine if competitive bidding would result in a decrease in these rates. Because the City only received one bid for this program, staff believes the five (5) mile distance requirement of the BHMC may be too constraining for this program. Since the City's approach to impounding vehicles has changed significantly over the past few years, increasing this distance by a few miles may be advantageous to both the City and the members of the public whose vehicles are impounded. Staff will research the possibility of amending the BHMC to allow for an increase in this distance and present its recommendation to the City Council in the near future.

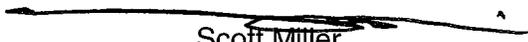
Appropriation for Additional Contractual Services

The Vehicle Impound Storage Program is operated by the Police Department's Traffic Bureau. When the City Council authorized the program's Phase II expansion in July 2011, it appropriated \$25,000 to allow the Traffic Bureau to procure contractual services to assist staff with the administrative aspects of running this program. These contractual services have proved to be beneficial to the program's operation. However, the volume of administrative work associated with the expanded program is more than originally anticipated and has resulted in field personnel spending an inordinate amount of time assisting with the program's administrative aspects.

Staff respectfully requests the City Council to appropriate an additional \$4,000 for FY11/12 to allow the Traffic Bureau to procure more contract services to assist with the operation of this program. This \$4,000 is a pro-rated amount and would essentially double the amount of contractual services available for this project and allow field personnel to spend more of their time in the field. If approved by the City Council, this appropriation would equate to \$25,000 in additional annual contractual services. When considering the \$25,000 already appropriated for these services, the total ongoing annual cost for the contractual services would be \$50,000.

FISCAL IMPACT

The staff recommendations will allow the City to continue recovering costs associated with the Vehicle Impound Storage Program, collect fees that are owed by the vendor, and allow field personnel to spend more time the field. Over a five year period, this program is projected to recover over \$1,000,000.



Scott Miller
Finance Approval



David L. Snowden
Approved By

Attachment 1

AGREEMENT
FOR
POLICE AND CITY TOWING SERVICES
BY AND BETWEEN
THE CITY OF BEVERLY HILLS
AND
QUICKSILVER TOWING, INC.

AGREEMENT

This Agreement for Official Police Tow Services (the "Agreement") is made and entered into this _____ day of _____, 20____, by and between the City of Beverly Hills, a municipal corporation (hereinafter referred to as "City"), and Quicksilver Towing, Inc., California corporation (hereinafter referred to as "Vendor").

RECITALS

A. City has a regular need for official police towing services, including the towing of privately-owned vehicles at the request of City employees and towing and road services for City-owned equipment and vehicles within the boundaries of City. City desires to have these towing services provided by Vendor upon request as more particularly described in this Agreement.

B. City, for the purpose of insuring the continued protection and preservation of the health, welfare and safety of its residents, desires to retain Vendor to provide Towing Services in City as such services are hereinafter described, and Vendor desires to provide such Towing Services upon the terms and conditions hereinafter set forth.

C. Vendor represents that it is qualified and able to perform the Towing Services as hereinafter described upon the terms and conditions set forth herein.

D. Under the prior agreement between the parties, Quicksilver failed to reimburse City for vehicle impound fees ("Vehicle Fees"). The parties have entered into a separate Settlement and Mutual Release Agreement dated _____, which sets forth a payment plan ("Settlement Plan").

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter contained, City and Vendor do hereby agree as follows:

ARTICLE 1 Agreement and Term.

1.1 Incorporation of Recitals.

The recitals set forth in full above constitute a material part hereof, and are hereby incorporated by reference as though fully set forth herein.

1.2 Award of Agreement.

City hereby awards Vendor the non-exclusive right to provide Towing Services, Lien Sale Processing Services and Vehicle Auction Services as the same are more particularly described in Section 1.3, pursuant to the terms set forth in this Agreement and any and all applicable provisions of the Beverly Hills Municipal Code (or the "BHMC") and State law. Vendor shall have, throughout the term of this Agreement, the non-exclusive right to engage in the business of Towing Services to City within the corporate boundaries of City as the same now

exist, and within any territory City hereafter annexes during such term, except to the extent that towing services within such territory annexed would be unlawful or violate the legal rights of another person.

1.3 Scope of Services.

Upon request by the City and/or its employees, Vendor shall provide City with Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services, as those terms are defined herein. In addition, Vendor shall provide the services described in Exhibit A, attached hereto and incorporated herein by this reference. Vendor shall tow and store the vehicles at either the Vendor's Primary Storage Facility located at 5875 Rodeo Road, Los Angeles, California 90016 ("Vendor's Primary Facility") or the City Facility in the manner set forth in Exhibit A, unless otherwise directed by City in writing. In performing the services set forth in this Agreement, Vendor shall comply with all applicable provisions of state law including but not limited to, the California Vehicle Code, the California Civil Code and the Beverly Hills Municipal Code.

1.4 Commencement Date.

This Agreement shall be effective on May 1, 2012.

1.5 Term.

1.5.1 Initial Term. The term of this Agreement shall commence on May 1, 2012, and shall continue thereafter for two (2) consecutive years. This Agreement shall expire and terminate at 11:59 p.m. on October 31, 2012, unless this Agreement has been renewed for a subsequent term as provided for in Section 1.5.2 of this Agreement or earlier terminated as provided in Sections 1.6 and 7.2 of herein.

1.5.2 Renewal Term. Commencing with the date of execution of this Agreement, City delegates to the Chief of Police an option to renew this Agreement for two (2) additional six-month terms. The extension of the term, if exercised by the Chief of Police, is subject to the following:

- (a) Vendor must file with City, at least one-hundred twenty (120) days prior to the expiration of the then current term, a written request for extension citing this provision; and
- (b) The Chief of Police, in the reasonable exercise of his discretion, may approve or deny Vendor's request upon consideration of Vendor's past conduct under this Agreement and the applicable provisions of the BHMC. Notwithstanding the foregoing, this Agreement shall remain subject to suspension and/or termination during any renewal term pursuant to the provisions set forth in Sections 1.6 and 7.2 of this Agreement.

1.6 Suspension and Termination of Agreement.

This Agreement may be suspended and/or terminated by the parties before the expiration of the then-current term only as follows:

1.6.1 Suspension and/or Termination by City. City may suspend and/or terminate this Agreement under any of the following circumstances:

- (a) **By Right.** City shall have the right to terminate this Agreement for any reason on thirty (30) calendar days' written notice to Vendor. Upon receipt of such notice from City, Vendor agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Vendor, Vendor shall be paid for Towing Services satisfactorily rendered to the last working day the Agreement is in effect, and Vendor shall have no other claim against City by reason of such termination.
- (b) **For Fraud.** City may, in its sole discretion, terminate this Agreement in the event any of the representations and warranties made by Vendor under this Agreement are, or at any time during the term of this Agreement, become materially false or inaccurate.
- (c) **For Default.** If at any time during the term of this Agreement Vendor commits an event of default, as that term is defined in Article 6 of this Agreement, or otherwise materially breaches any provision of this Agreement, City may, in its sole discretion, suspend and/or terminate this Agreement in accordance with the procedures set forth in Section 7.2 of Article 7 of this Agreement.

1.6.2 Termination by Vendor. Vendor may terminate this Agreement by providing City with ninety (90) days written notice of Vendor's intention to terminate. Said written notice of termination shall clearly set forth the reasons for such termination and the effective date of the termination and shall be delivered to City as set forth in Section 4.4 of this Agreement. Upon the effective date of Vendor's termination of this Agreement, Vendor shall relinquish any and all rights it may have under this Agreement, and shall relinquish and lose its status as a provider of Towing Services to City. Notwithstanding the foregoing, termination of this Agreement under this provision shall not release Vendor from any obligations under this Agreement which, by their express terms, survive termination.

1.7 Conflicts with Beverly Hills Municipal Code.

1.7.1 Conflicts. All provisions of the BHMC applicable to the performance of this Agreement are hereby incorporated by reference as though set forth in full, and form part of the terms and conditions of this Agreement. In the event any conflict arises between the terms and conditions of this Agreement and the provisions of the BHMC, this Agreement shall prevail.

1.7.2 Application of Amendments. Should the BHMC be amended, revised, superseded, or otherwise changed after the effective date of this Agreement, in a manner that would materially affect the terms and conditions of this Agreement, said amendment, revision or change shall not apply to this Agreement without Vendor's written consent.

ARTICLE 2 Definitions.

2.1 Definitions.

As used in this Agreement, including all attachments hereto, the following words and phrases shall have the following meanings:

2.1.1 "City Manager" shall mean the City Manager of the City of Beverly Hills or his designee.

2.1.2 "Chief of Police" shall mean the Chief of Police of the City of Beverly Hills or his designee.

2.1.3 "City Representative" shall mean the Chief of Police of the City of Beverly Hills or his designee.

2.1.4 "Emergency towing" shall mean and include the towing of a vehicle when authorized by the California Vehicle Code or other law and requested by an officer of the City's Police Department ("Police Department"), or any officer or employee of the City Manager's Office, Fire Department or Transportation Department who is authorized to do so pursuant to Section 1-3-201 of the BHMC.

2.1.5 "Heavy-duty tow" shall mean and include the towing of a vehicle as described in California Vehicle Code Section 34500.

2.1.6 "Non-emergency towing" shall include but not be limited to the towing of a vehicle when: (i) the vehicle has been involved in a collision and is inoperative; (ii) the vehicle has experienced mechanical failure but has been removed from traffic lanes and no longer constitutes a hazard; (iii) the vehicle is mechanically inoperative and is towed for convenience; or (iv) such towing is authorized by the California Vehicle Code and is requested by an officer of the Police Department, or any officer or employee of the City Manager's Office, Fire Department or Transportation Department who is authorized to do so pursuant to Section 1-3-201 of the BHMC.

2.1.7 "Police Department" shall mean the City of Beverly Hills Police Department.

2.1.8 "Tow Truck" shall mean and include all motor vehicles and tow trailers as defined in Section 615(a) of the California Vehicle Code.

2.1.9 "Traffic Bureau Commander" shall mean the Traffic Bureau Commander of the City of Beverly Hills Police Department.

2.1.10 “Vehicle Towing Service” shall mean the activity of towing vehicles for compensation within City which shall include the towing of privately-owned vehicles, the towing of City owned vehicles and equipment, Emergency Towing, Non-Emergency Towing and the following services:

- (a)** Road Service Call: Including, but not limited to, tire changes, jump-starts, refilling, and similar services needed to service vehicles.
- (b)** Standard Towing: Towing of automobiles, light trucks, motorcycles, specialty equipment or other vehicles as necessary.

Vehicle Towing Service also includes the storage of vehicles at either the Vendor’s Primary Facility or the City’s Facility, as set forth in A, and all other services performed incident to towing, such as but not limited to the release of vehicles to the registered owner or representative from either the Vendor’s Primary Facility or City’s Facility. Vehicle Towing Service shall exclude heavy-duty tow.

2.1.11 “Vendor Responsible Principal” shall mean Mark Henninger, a principal of Vendor, unless Vendor provides City with written notice as to a change of Vendor Responsible Principal in accordance with Section 4.4 of Article 4.

2.1.12 “City Facility” shall mean the vehicle storage facility or facilities owned and operated by the City (whether by the City or a company contracted with the City) located within the City’s boundaries.

2.1.13 “Lien Sale Processing Services” shall mean the activity of securing legal authorization pursuant to the Civil Code and any applicable statute law to conduct a lien sale (on behalf of the City) of an impounded vehicle that is stored at the City’s Facility.

2.1.14 “Vehicle Auction Services” shall mean the activity of towing impounded vehicles that are stored at the City’s Facility to the Vendor’s Primary Facility for the purpose of the following acts: (i) to pick up a vehicle from the City’s Facility prior to the lien sale and transport such vehicle to Vendor’s Primary Facility; (ii) to conduct a lien sale (on behalf of the City) of such vehicles in compliance with the applicable provisions of the California Civil Code and the California Vehicle Code including the processing and filing of all documents as required by State law before and after the lien sale; (ii) to accept on behalf of the City payments for vehicles sold at lien sale; and (iii) to store such vehicles pursuant to California Civil Code Section 3071(k) or its successor statute.

ARTICLE 3 Compensation and Administration.

3.1 Compensation.

3.1.1 Compensation.

- (a) For Vehicle Towing Services and Lien Sale Processing provided by Vendor under this Agreement, Vendor may charge the rates set forth in Exhibit B, attached hereto and incorporated herein by this reference. These rates include the towing rates charged to members of the public, the towing rates charged for the towing of City vehicles, storage rates charged to the public for vehicles stored at the Vendor's Primary Facility, the City's impound release fee, lien sale processing fees, as well as additional permitted charges for mileage, towing of exotic vehicles, the use of additional personnel and other specified charges as set forth therein. Except for the City Impound Release Fee, these rates shall constitute Vendor reimbursement for Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services as well as the actual cost of any equipment, materials and supplies necessary to provide such services, including all labor, materials, delivery, tax, assembly and installation, as applicable.

- (b) No additional compensation shall be provided to Vendor for Lien Sale Processing and Vehicle Auction Services. Vendor's pick-up and storage of vehicles that will be sold at auction shall be at no cost to the City.

3.1.2 Maximum Annual Limit for Towing of City-Owned Vehicles. The maximum annual compensation Vendor shall be entitled to receive pursuant to this Agreement from the City for the Vehicle Towing Services provided to City on its vehicles and/or equipment shall not equal or exceed \$5,000 per fiscal year pursuant to the rates set forth in Exhibit B. No claims for compensation in excess of \$5,000 will be allowed unless such additional work is authorized by City in writing prior to the performance of such services.

3.1.3 Rate Adjustments. The rates set forth in Exhibit B may only be adjusted in accordance with the procedures described in Section 5.8 of Article 5 of this Agreement.

3.2 Collection and Schedule of Payment.

3.2.1 Payments to Quicksilver. City shall not be obligated to make payment under this Agreement until Vendor makes full payment to City under the Settlement Agreement.

3.2.2 Monthly Invoice.

- (a) Vendor shall submit an itemized statement to City for its performance of Vehicle Towing Service, Lien Sale Processing Services and Vehicle Auction Services performed during the prior

month (“Monthly Invoice”). The Monthly Invoice shall separate the charges for Vehicle Towing Services by City department and shall describe in detail the services rendered during the period covered by the invoice. The Monthly Invoice shall also include a detailed breakdown of City’s Daily Storage Fees that were recovered by the Vendor on behalf of the City during its performance of Vehicle Auction Services and shall include the Vehicle Impound Release Fee as set forth in Exhibit B. City shall review the Monthly Invoices and notify Vendor in writing within ten (10) business days of any disputed amounts.

3.2.3 Payment. Payment shall be as follows:

- (a) For Privately-Owned Vehicles Stored at the Vendor’s Primary Facility.** For Privately-owned vehicles stored at the Vendor’s Primary Facility, including those vehicles sold at lien sale, Vendor’s collection of the fees set forth in Exhibit B (i.e. towing, lien sale processing, daily storage fees, etc.) shall compensate Vendor for its services. Vendor shall pay to the City the Vehicle Impound Release Fee and such payment shall be provided to City along with the Monthly Invoice.
- (b) For Privately-Owned Vehicles Stored at the City’s Facility and Sold at a Lien Sale.** For privately-owned vehicles stored at the City’s Facility, the Vendor shall collect Vendor’s fees (Towing and Lien Sale Processing fees, etc.) and the City’s fees (daily storage fees, Vehicle Impound Release Fees) at the rates set forth in Exhibit B. Such fees shall be listed on the Monthly Invoice provided to City and shall be collected from the proceeds generated, if any, when the vehicle is sold at auction. If the amount generated from the lien sale is insufficient to recover 100% of the towing, daily storage, and lien sale processing fees owed against a vehicle, the proceeds from the lien sale shall be distributed in the following order:

 - Towing Fees (to Vendor)
 - Lien Sale Processing Fees (to Vendor)
 - Daily Storage Fees (to City)

If the amount collected from the lien sale exceeds the amount owed for the towing, daily storage, lien sale processing fees, etc., that remaining amount shall be remitted to the Department of Motor Vehicles in accordance with the California Vehicle Code and the California Civil Code. Vendor shall pay to the City the Daily Storage Fees within 14 days of the vehicle’s sale date. These payments shall be documented on the Monthly invoice.

- (c) **For Privately-Owned Vehicles Stored at the City's Facility and Released by the City to the Owner.** For privately-owned vehicles stored at the City's Facility and released by the City to the Owner, the City shall collect Vendor's fees (Towing and Lien Sale Processing fees, etc.) and the City's fees (daily storage fees, Vehicle Impound Release Fees) from the owner at the rates set forth in Exhibit B. Such fees shall be listed on the Monthly Invoice provided to City. City shall pay Vendor its fees within 30 days of the City's collection of such fees from the vehicle owner/representative.
- (d) **For Privately-Owned Vehicles Stored at the City's Facility and Released by Vendor to the Owner.** For Privately-Owned Vehicles stored at the City's Facility and Released by Vendor to the Owner, the Vendor shall collect Vendor's Towing fees and the City's Vehicle Impound Release fees from the Owner at the rates set forth in Exhibit B. Vendor's collection of Vendor's Towing fees shall compensate Vendor for its services. Vendor shall pay to the City the Vehicle Impound Release Fee and such payment shall be provided to City along with the Monthly Invoice.
- (e) **For Vehicle Towing Services Provided to City.** For Vehicle Towing Services provided to the City for its vehicles and/or equipment, City shall pay all undisputed portions of the Monthly Invoice within thirty (30) calendar days after receipt of the Monthly Invoice up to the maximum annual limit set forth in Section 3.1.2.
- (i) All payments shall be remitted to Vendor at the following address:

Quicksilver Towing, Inc.
5875 Rodeo Road
Los Angeles, CA 90016
- (ii) All payments shall be remitted to City at the following address:

City of Beverly Hills
Police Department
Attention: Traffic Bureau Commander
464 N. Rexford Drive
Beverly Hills, California 90210

3.3 Administration.

3.3.1 Designation of Representatives. Each party shall designate a representative to serve as that party's primary contact for the administration of this Agreement at all times during

the term hereof. City hereby designates City Representative, as defined in Section 2.1.3 herein, as its representative. Vendor hereby designates Vendor Responsible Principal, as defined in Section 2.1.11 herein, as its representative.

3.3.2 Vendor Responsible Principal. Vendor Responsible Principal shall be principally responsible for Vendor's obligations under this Agreement and shall serve as the principal liaison between Vendor and City. Vendor Responsible Principal shall be authorized to act in Vendor's behalf with respect to the services specified herein. Vendor Responsible Principal shall remain responsible during the term of this Agreement for directing all activities of Vendor and devoting sufficient time to personally supervise the services hereunder. Designation of another Responsible Principal by Vendor shall not be made without the prior written consent of City. Unless otherwise specified herein, any approval of Vendor required hereunder shall mean the approval of Vendor Responsible Principal.

3.3.3 City Representative. City Representative shall be the primary contract administrator for City. It shall be the responsibility of Vendor Responsible Principal to assure that the City Representative is kept informed of the progress of the performance of Towing Services, and Vendor shall refer any decisions which must be made by City to City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

ARTICLE 4 General Provisions.

4.1 Insurance.

Vendor shall, at its sole cost and expense, procure and maintain in full force and effect, throughout the term of this Agreement, inclusive of any renewal term granted by City, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Vendor, its agents, representatives, employees or subcontractors. Vendor shall procure and maintain insurance policies of the types and meeting the requirements set forth below, and shall provide to City a Certificate of Insurance, or other such evidence reasonably acceptable to City, verifying the existence of such policies:

4.1.1 Minimum Scope of Insurance Coverage. Vendor shall procure and maintain policies of insurance with minimum scopes of coverage AT LEAST as broad as the following:

- (a) Comprehensive General Liability Insurance.
- (b) Comprehensive Vehicle Liability Insurance.
- (c) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

4.1.2 Minimum Limits. Vendor shall maintain insurance with minimum limits NO LESS THAN the following:

- (a) General Liability of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate, combined single limit, against any bodily injury, death, personal injury, or property damage. In Comprehensive General Liability Insurance or other form in which a general aggregate limit is used, the general limit shall apply separately to this Agreement or the general limit shall be TWICE the required occurrence limit.
- (b) Automobile Liability of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (c) Garage Keepers Legal Liability coverage with minimum limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence.
- (d) Employer's Liability of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
- (e) Worker's Compensation and Employer's Liability Insurance in an amount required by law.

4.1.3 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Vendor shall either:

- (a) Reduce or eliminate such deductibles or self-insured retentions as respects City, its elected and appointed officials, officers, employees, agents, representatives, attorneys, and volunteers; OR
- (b) Procure a bond, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.1.4 Required Endorsements. All of the policies required by this Agreement shall contain, or be endorsed to contain, the following provisions:

- (a) City, its elected and appointed officials, officers, employees, agents, representatives, attorneys and volunteers shall be named as additional insureds, and the policies shall specifically state that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
- (b) The insurance coverage provided by Vendor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be in excess of Vendor's own insurance and shall not contribute with it.
- (c) The insurance policies shall contain no special limitations on the scope of protection afforded to City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or

volunteers. Further, the policies shall expressly waive the right of subrogation against City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or volunteers.

- (d) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its elected and appointed officials, officers, employees, agents, representatives, attorneys or volunteers.
- (e) The insurance coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (f) Each insurance policy required by this section shall be endorsed to state that coverage SHALL NOT be suspended, voided, and/or canceled by either party, and that there shall be no reduction in the amount of coverage or in the limits applicable thereto EXCEPT after thirty (30) days prior written notice has been given to City, said written notice to be delivered by U.S. Certified Mail, Return Receipt Requested addressed to City as set forth in Section 4.4 herein.
- (g) In its sole discretion, City may waive all or some portion of the above referenced insurance if such waiver is in writing and executed by City's Risk Manager.

4.1.5 Required Insurance Rating. Any insurance policy required by this Agreement shall be placed with an insurer admitted in the State of California with a current A.M. Best's rating of NO LESS THAN B+:VII in the latest edition of Best's Insurance Guide.

4.1.6 Original Certificates Required. At all times during the term of this Agreement, Vendor shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in A, attached hereto and incorporated herein by this reference. Said certificate or certificates of insurance shall show that the aforesaid policies are in effect in the required amounts and shall contain each of the endorsements set forth in Section 4.1.4. Vendor shall, prior to commencement of work under this Agreement, file with the City Clerk the original certificates effecting coverage required by this section of this Agreement. The endorsements are to be signed by the person authorized by that insurer to bind coverage on its behalf. The endorsements are to be received and approved by City BEFORE Vendor commences operation under the terms of this Agreement. As an alternative to City's forms, Vendor's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

4.1.7 Failure to Maintain Required Insurance. Vendor agrees that if it fails to keep the aforesaid insurance policies in full force and effect City may, at its sole option, either (i) immediately terminate this Agreement or, (ii) if insurance is available at a reasonable cost, City

may take out the necessary insurance and pay, at Vendor's cost and expense, the premium thereon.

4.2 Indemnification.

Vendor agrees to indemnify, hold harmless and defend City, its elected and appointed officials, officers, employees, agents, servants, representatives, attorneys and volunteers, from and against any claim, liability, loss, damage, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization, arising out of or in any way connected with the performance of any towing service operations, Vehicle Towing Services, Lien Sale Processing Services, Vehicle Auction Services or related activities by Vendor, its officers, agents, employees, subconsultants, or subcontractors, whether or not there is concurrent passive or active negligence on the part of City, its elected and appointed officials, officers, employees, agents, servants, representatives, attorneys and volunteers. Vendor agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Vendor or any person employed by Vendor in the performance of this Agreement. If Vendor is required to indemnify City in accordance with the provisions of this section, Vendor shall:

- (a) Defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities with counsel of City's choice and shall pay all costs and expenses, including reasonable attorney's fees, incurred in connection therewith; and
- (b) Shall promptly pay any judgment rendered against Vendor and/or City covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such towing service operations, Vehicle Towing Services, Lien Sale Processing Services, Vehicle Auction Services or related activities by Vendor, or activities of Vendor hereunder and expressly agrees to save and hold City harmless therefrom; and
- (c) In the event City is made a party to any action or proceeding filed or prosecuted against Vendor for such damages or other claims arising out of or in connection with the conduct of towing services, Vehicle Towing Services, Lien Sale Processing Services, Vehicle Auction Services or activities of Vendor hereunder, Vendor agrees to pay City any and all costs and expenses incurred by City in such actions or proceedings, together with reasonable attorney's fees."

4.3 Assignment or Transfer Prohibited.

Vendor shall not assign, sell, or otherwise transfer any of its obligations, rights, benefits, or other interests it may have under this Agreement to any other person or entity without the

prior written consent of City to such transfer or assignment. City may, in its sole discretion, withhold consent to any sale, assignment, or other transfer of this Agreement with or without cause. City's consent to a transfer or assignment shall neither relieve Vendor of its obligations under nor alter the terms of this Agreement. For the purposes of this section, the sale, assignment, or other transfer from any person or group of persons collectively having an interest of fifty percent (50%) or more in Vendor (whether by means of ownership of stock, partnership interests, tenancy, or otherwise) to any other person or entity shall be deemed an assignment subject to the provisions of this section. Any attempted or purported assignment, sale or other transfer by Vendor without the prior written consent of City shall be null, void and of no effect.

4.4 Notices.

Any notice authorized or required to be given by this Agreement shall, unless otherwise specified in this Agreement, be served by personal delivery or by depositing such notice in the United States mail with first-class postage prepaid, addressed to the person and addresses listed below for each party, unless written notice is provided by either party as to a change of address for that party:

City: Chief of Police
City of Beverly Hills
Police Department
464 North Rexford Drive
Beverly Hills, California 90210

with a copy to:

City Attorney
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

Vendor: Quicksilver Towing, Inc.
Attention: Mark Henninger
5875 Rodeo Road
Los Angeles, CA 90016

For the purposes of this Agreement, notices shall be deemed communicated as follows: (i) Notices delivered personally shall be deemed communicated as of the date of actual receipt; (ii) Notices sent via regular mail (whether by first class mail, registered mail or certified mail) shall be deemed communicated as of three (3) days after deposit thereof in the United States mail, addressed as shown on the addressee's registry or certificate of receipt; and (iii) Notices sent via Federal Express or similar courier service shall be deemed communicated two (2) days after deposit of such notices with Federal Express or similar courier or one of its agents.

4.5 Authority to Enter Agreement.

City and Vendor warrant that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each respective party to perform the obligations and conditions imposed upon each party herein.

4.6 Severability.

Whenever possible, each and every provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision, or portion thereof, of this Agreement, or the application of the same to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such provision, or portion thereof, shall be severed from this Agreement and shall not affect the validity of the remaining portions of this Agreement. City and Vendor expressly declare that each would have entered into this Agreement, and each and every section and provision herein, irrespective of the fact that any one or more provisions may be declared invalid or unconstitutional.

4.7 Independent Contractor.

Vendor is, and shall at all times remain as to City, a wholly independent contractor. Vendor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Vendor shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Vendor or any of Vendor's employees, except as set forth in this Agreement. Vendor agrees to pay all required taxes on amounts paid to Vendor under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Vendor shall fully comply with the workers' compensation law regarding Vendor and its employees. Vendor further agrees to indemnify and hold City harmless from any failure of Vendor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any compensation due to Vendor under this Agreement any amount due to City from Vendor as a result of Vendor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 4.7.

4.8 No Third Party Beneficiaries.

This Agreement, its provisions, and its covenants, are for the sole and exclusive benefit of City and Vendor. No other parties or entities are intended to be, nor shall be considered, beneficiaries of the performance by either party of any of the obligations under this Agreement.

4.9 Integration.

This Agreement represents the entire and integrated agreement between City and Vendor and supersedes any prior negotiations, representations, or agreements, whether written or oral, with respect to the subject matter hereof.

4.10 Modification and Amendment.

This Agreement may not be modified, supplemented, or amended, except by written agreement signed by each of the parties hereto.

4.11 Binding on Successors and Assigns.

This Agreement, and each and every covenant, obligation, and condition herein, shall be binding on and shall inure to the benefit of the successors and assigns of City and Vendor.

4.12 Use of Captions.

The use of captions to identify the various articles and paragraphs of this Agreement are solely for reference and as a matter of convenience, and in no way bind, emit, or describe the scope or intent of any provision.

4.13 Interpretation.

City and Vendor acknowledge that this Agreement is the product of mutual, arms-length negotiation and drafting, and each party expressly represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that all ambiguities in the document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of the provisions of this Agreement.

4.14 Cooperation and Further Acts.

City and Vendor hereby agree to execute such other instruments and to do such further acts as may be reasonably required by or necessary to carry out the provisions of this Agreement.

4.15 Reservation of Rights.

City and Vendor expressly reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither City nor Vendor waives any rights which it now or may later enjoy under applicable law, and City and Vendor specifically reserve their rights to take full advantage of any changes in the law during the term of the Franchise.

4.16 Force Majeure.

If either City or Vendor is unable to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, inability to obtain labor, governmental restrictions, regulations or controls, civil commotion, fire or other casualty, emergency, or any other cause beyond the reasonable control of either City or Vendor, such non-performing party shall be excused from the performance of its obligation by the other Party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage.

4.17 Incorporation by Reference.

All exhibits attached to this Agreement or documents expressly incorporated by reference shall be deemed incorporated into this Agreement by the individual reference to each such exhibit or document, and all exhibits and documents shall be deemed part of this Agreement as though set forth in full. In the event of any conflict between the express provisions of this Agreement and the provisions of any exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

ARTICLE 5 Vendor's Representations and Obligations.

5.1 Personnel.

Vendor represents that it has, or shall secure at its own expense, all personnel required to perform the Towing Services, Lien Sale Processing Services and Vehicle Auction Services contemplated by this Agreement. Vendor may associate with or employ associates or subcontractors in the performance of the Towing Services, Lien Sale Processing Services and Vehicle Auction Services upon obtaining the prior written approval of City to such association or subcontract, but shall remain, at all times, primarily responsible for the performance of the Towing Services, Lien Sale Processing Services and Vehicle Auction Services.

5.2 Interests of Vendor.

Vendor affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Towing Services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Vendor.

5.3 Governing Requirements.

Vendor shall operate its tow service and shall perform all Towing Services required of it under the terms of this Agreement in full compliance with the regulations set forth in this Article 5.

5.4 Standards for Business Office and Primary Storage Facility.

Vendor shall maintain a primary vehicle storage facility and adjacent business office (collectively the "Primary Facility") within five (5) miles of the City boundaries. The Primary Facility shall comply with each of the following requirements:

5.4.1 Ensure a safe, secure, and convenient physical location and environment for vehicle storage;

5.4.2 Provide a yard with storage capacity for a minimum of forty (40) vehicles;

5.4.3 Whenever the storage yard is unattended, it shall be patrolled by at least one dog trained as a guard dog or shall have a security system or systems approved by the Chief of Police;

5.4.4 Provide and maintain a lighting system which provides a minimum average lighting intensity in such storage yard of three-fourths (3/4) footcandle at all times;

5.4.5 Provide an investigative hold area for vehicles held for criminal and/or evidentiary examinations. This investigative hold area shall be isolated from other storage areas and shall be covered and capable of providing protection from the natural elements. The investigative hold area shall have a capacity for a minimum of four (4) vehicles. The investigative hold area shall be posted and cordoned off by means of a fence, gate, or other permanent barrier as approved by the Chief of Police so as to prohibit entry by unauthorized persons.

5.4.6 The Primary Facility shall comply with all applicable regulations of the BHMC, including zoning requirements.

5.4.7 If the Primary Facility is located in the City of Los Angeles, Vendor shall, at all times during the Term of this Agreement, maintain the Primary Facility as required by the Los Angeles Police Commission (the "LAPC"). If the LAPC notifies Vendor of any violation or of any claim made against Vendor, Vendor shall immediately provide notice of such violation or claim to the Traffic Bureau Commander.

5.5 Standards for Secondary Storage Facilities.

5.6 Vendor may maintain additional vehicle storage yards in providing Towing Services under this Agreement provided any such additional yards comply with the rules and regulations prescribed by the Police Chief for operation of additional storage yards. Additional storage facilities and the Primary Facility are collectively referred to herein as "Facilities."

5.7 Standards for Equipment.

Vendor shall, at its sole cost and expense, provide all Facilities and equipment which may be required for performance of Towing Services, Lien Sale Processing Services and Vehicle Auction Services required by this Agreement. Vendor shall maintain a sufficient number of tow units to meet the needs of the Police Department and City's other departments.

5.8 Uniform Requirements.

Vendor shall require all its towing unit operators to wear a uniform approved by the Chief of Police when providing Towing Services pursuant to this Agreement.

5.8.1 Rates and Charges.

5.8.2 Rates and charges Vendor may charge for the removal and storage of vehicles towed by Vendor in the performance of the towing services contemplated by this Agreement shall not exceed the rates and charges set forth in Exhibit B. No charge other than the rates and charges specified in Exhibit B shall be made, except as otherwise provided herein.

5.8.3 A schedule of rates and charges listing the rates and charges of all services offered shall be posted and maintained on all Facilities used in connection with the provision of Towing

Services under this Agreement. Such signs shall be conspicuously posted in the business office or such other place where customer financial transactions occur. The letters on such signs shall be a minimum of one inch (1") high with one-fourth inch (1/4") stroke. The letters shall be a contrasting color from the background.

5.8.4 For all vehicles towed and/or stored at either the Vendor's Primary Facility or the City's Facility pursuant to this Agreement, Vendor shall furnish without charge a statement of charges to the following persons or their agents: any City staff person authorizing Vehicle Towing Services, the registered or legal owner of the vehicle, or the insurance carrier of either the registered or legal owner.

5.8.5 The Chief of Police or his designee shall determine whether a vehicle qualifies for a discretionary waiver of towing services and storage costs. If City makes such a determination, Vendor shall waive towing and storage fees and up to two (2) days of storage costs per vehicle. No more than five vehicles per month may qualify for a discretionary waiver.

5.8.6 Vendor shall collect on behalf of City, a City Vehicle Impound Release Fee for each vehicle impounded by Vendor and in such amount established by City in its Fees and Charges Resolution. Each month Vendor shall reimburse to City the amount of such City Vehicle Impound Release Fees collected.

5.8.7. Vendor shall collect on behalf of the City, the City's Daily Storage Fee for vehicles stored at the City's Facility and sold at lien sale by Vendor pursuant to this Agreement. The amount of the City's Daily Storage Fee is set forth in Exhibit B. Each month Vendor shall reimburse to City the amount of such Daily Storage Fees collected.

5.9 Hours of Operation and Release of Vehicles.

5.9.1 Vendor shall be available to promptly respond to any call for Towing Services by City twenty-four (24) hours per day, seven (7) days per week, 365 days per year, including holidays.

5.9.2 At a minimum, Vendor Facilities shall be open and available for release of vehicles between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday and between the hours of 9:00 a.m. and 5:00 p.m. Saturday and Sunday, including holidays. Any vehicle impounded in connection with a special event, as designated by the Police Department, shall be available for release for a minimum of four (4) hours following the conclusion of the special event.

5.9.3 Vendor shall not release any vehicle towed or stored pursuant to this Agreement without the proper authorization from the Police Department.

5.10 Response Times to Calls for Service.

5.10.1 Response Times. Vendor shall, at all times during the term of this Agreement, ensure that a sufficient number of tow units and tow unit operators are available and in close proximity to the City limits in order to meet the needs of City's Police and other departments that rely upon Vendor to provide Towing Services. Upon receipt of a request for Towing Services

from City's Police or other departments, Vendor shall immediately dispatch an available, unassigned tow unit and operator to proceed to the location of the requested service. Generally, response times for routine tow requests should not exceed fifteen (15) minutes.

5.10.2 Notice. Vendor shall promptly notify City of its estimated time of arrival in all of the following circumstances:

- (a) **Delays.** In the event of a delay in excess of fifteen (15) minutes, Vendor shall promptly notify the concerned City department of the delay. Such notice shall include the reason for the delay and an estimated time until a tow unit and tow unit operator will respond to the request for Towing Services.
- (b) **Extraterritorial Requests.** In the event of a request for Towing Services outside of the City limits, Vendor shall advise the concerned City department of the estimated time of arrival within ten (10) minutes of the initial call for service.

5.11 Inspections.

Facilities used to provide Towing Services pursuant to this Agreement are subject to periodic inspection by authorized personnel of the Police Department to determine whether all relevant records, equipment and storage facilities are in compliance with the requirements of this Agreement.

5.12 Police Department Correspondence

5.12.1 Monthly Reports. Vendor shall submit a Vehicle Towing Service Monthly Report (the "Report") to City by the fifteenth (15th) day of month following the month covered in the Report. The Report shall be submitted to the Traffic Bureau Commander at the address set forth in Section 4.4 of this Agreement. The report shall contain all of the following information:

- (a) Number of calls for service during the month;
- (b) Number of vehicles towed;
- (c) A detailed breakdown of the number of vehicles towed showing:
 - (i) Total number of impounds;
 - (ii) Number of 30-day impounds;
 - (iii) Other Police Department initiated tows at owner's request;
 - (iv) Number of vehicles towed at direction of Police Department still in storage;
 - (v) Number of non-police initiated City tows;
 - (vi) The facility to which the vehicles are towed (City Facility or Vendor Primary Facility); and

- (vii) Total number of vehicles stored at City's Facility and subsequently sold at lien sale by Vendor.
- (d) The tow unit operators that were employed by Vendor during any period of the reporting month. The list shall contain the two unit operator's name, police permit number, operator's license number and expiration date.
- (e) An explanation of each tow where a delay in excess of thirty (30) minutes occurred.
- (f) A detailed breakdown of each City Vehicle Impound Release Fee collected by Vendor.
- (g) A detailed breakdown of the Towing, Daily Storage and Lien Sale Processing Fees collected by Vendor in connection with Vendor's performance of Vehicle Auction Services and the amounts retained by Vendor and the amounts remitted to City.

5.12.2 Police Invoices. Statements of all tow service charges to be paid by the Police Department (the "Police Invoices") shall be submitted to the Traffic Bureau Commander.

5.12.3 Documents. Copies of the following documents shall be submitted to the Traffic Bureau Commander within fifteen (15) days after this Agreement is executed:

- (a) All permits and licenses required in connection with operation of Vendor's business;
- (b) A valid City Business License; and
- (c) Copies of all required Certificates of Insurance required by Section 4.1 of this Agreement.

Copies of these documents will be maintained in the Traffic Bureau of the Police Department at all times during the term of this Agreement.

5.13 Identification Cards.

5.13.1 Identification Cards Required. Vendor and all persons employed by Vendor in the performance of this Agreement shall obtain an Identification Card issued under the provisions of Article 2, Chapter 1 of Title 4 of the BHMC. Each applicant for an Identification Card shall be at least (18) years of age and shall possess a valid driver's license (including the proper driver's license classification for the assigned tow unit) issued by the State of California. In addition to the criteria set forth in Section 4-1-203 of the BHMC, the Chief of Police shall deny any application for an Identification Card if he/she finds any of the following:

- (a) The applicant has been convicted of reckless driving or driving under the influence of alcohol or narcotics within seven (7) years preceding filing of the application for an Identification Card; or

- (b) The applicant has been convicted of a moving traffic violation within one (1) year preceding the filing of the application for an Identification Card; or
- (c) The applicant has physical impairments which create an unreasonable risk to persons or property in the performance of vehicle towing operations; or

When one or more of the findings is made with respect to an applicant for an Identification Card, the Chief of Police may still issue a conditional Identification Card if he/she finds that unique circumstances exist as to the applicant and the conditions imposed are adequate to protect the public health, welfare and safety.

5.13.2 Revocation. Any Identification Card issued pursuant to this Agreement and the provisions of Article 2, Chapter 1 of Title 4 of the BHMC shall be automatically revoked upon the suspension or revocation of the cardholder's California driver's license.

5.14 Records.

Vendor shall, throughout the term of this Agreement and for a minimum of three (3) years following the expiration or termination of the same, maintain full business records. Said business records shall be maintained at the Vendor Primary Facility or such other location reasonably accessible to City and shall be available for review and audit by City at all times during normal business hours. Said business records shall contain the following information in a reasonably understandable format including, without limitation, all official tow services furnished at the initiation of City, all Lien Sale Processing and Vehicle Auction Services furnished to the City, a description of the vehicles towed and stored, with regards to each vehicle towed or stored, the nature of the act, the date of act, the time of notification by the City, the time of the tow truck dispatched, the time of the arrival of the tow truck at the scene, the location of the calls, the total itemized charges of towing, storage and lien sale processing, the disposition of all vehicles towed and/or stored at the initiation of City including those vehicles sold at lien sale, records pertaining to the compliance with state law for lien sales, copies of all invoices, receipts, evidence of payment, and any other record reasonably necessary to document, substantiate, and verify Vendor's compliance with the terms of this Agreement

5.15 Compliance with Applicable Laws.

Vendor shall, at all times during the Term of this Agreement, comply with all applicable provisions of Federal, State, and local law, including without limitation all traffic laws and all provisions of the California Vehicle Code, and shall comply with all applicable City ordinances, rules, and regulations.

5.16 Permits and Licenses.

Vendor shall obtain, and shall maintain at all times during the term of this Agreement, at its sole cost and expense, all appropriate permits, licenses, and certificates as may be required in connection with the performance of services hereunder, including but not limited to obtaining a valid business license from City as required by the BHMC.

5.17 Exemptions.

The provisions of this Article shall not be applicable to the following:

5.17.1 Towing service which is exclusively to members of an association, automobile club, or similar organization and receives remuneration only from the sponsoring association, automobile club, or similar organization;

5.17.2 Towing service furnished without charges or fee for other vehicles owned or operated by the individual or organization furnishing the towing service; or

5.17.3 Towing service for other vehicles owned or operated by the individual or organization furnishing the tow service, but which are being operated under the terms of a rent or lease agreement or contract, and such towing is performed on a nonprofit basis or such fee is part of the rent or lease agreement or contract.

5.18 Prohibited Acts.

Vendor shall not:

5.18.1 Respond to, undertake, or interfere with any police request for emergency towing, unless such vehicle towing service has received authorization from the City by means of a resolution, ordinance, or contract with the City to perform such services for the City.

5.18.2 Attach a vehicle to a tow unit on a non-emergency towing assignment without first receiving written authorization to do so by the registered owner, legal owner, driver, or other person in control of such vehicle. Such authorization shall list the services offered and the rates and charges required therefore, and a copy of such authorization shall be furnished to the person authorizing the tow. Such copy shall list the name, address, and telephone number of the vehicle towing operation, and the days and hours the business is open for the release of vehicles. Such copy shall be signed by the tow unit operator performing the authorized service.

5.18.3 Make any repairs or alterations to a vehicle without first being authorized by the legal owner, the registered owner, or insurance carrier of the legal or registered owner, or the authorized agent of the legal owner, registered owner or insurance carrier. Parts or accessories shall not be removed from any vehicle without authorization except as necessary for security purposes, and the parts or accessories removed shall be listed on the itemized statement which shall be kept in the business office of the vehicle towing service. The provisions of this Section shall not be construed to prohibit permittees from making emergency alterations or repairs necessary to permit towing of such vehicle.

ARTICLE 6 Events of Default.

6.1 Events of Default.

City reserves the right to suspend or revoke this Agreement pursuant to the provisions of Article 7 herein and to rescind all rights and privileges associated therewith at any time if any of the following events occur:

6.1.1 Vendor defaults in the performance of its material obligations under this Agreement and fails to cure such default within ten (10) calendar days after receipt of written notice of the default from City and a reasonable opportunity to cure the default; or

6.1.2 Vendor fails to provide or maintain in full force and effect the insurance coverage described in Section 4.1 of this Agreement; or

6.1.3 Vendor violates any order or ruling of any regulatory body having jurisdiction over Vendor relative to Vendor's tow truck business, unless such order or ruling is being contested by Vendor by appropriate proceedings conducted in good faith; or

6.1.4 Vendor practices any fraud or deceit upon City or upon persons to whom it provides Towing Services pursuant to this Agreement as determined by a court of law; or

6.1.5 Vendor becomes insolvent, unable, or unwilling to pay its debts and obligations to City, or is adjudged to be bankrupt. City's revocation of Vendor's franchise shall in no way affect any right of City to pursue any remedy under the franchise or any other provision of law; or

6.1.6 Vendor has its rights under this Agreement suspended three (3) or more times pursuant to the provisions set forth in Article 7 of this Agreement; or

6.1.7 Vendor fails to comply with any provision set forth in this Agreement; or

6.1.8 Vendor commits a material false statement in its application for this Agreement; or

6.1.9 Vendor fails to comply with any applicable Federal, State or local laws and regulations; or

6.1.10 Vendor performs Vehicle Towing Services, Lien Sale Processing Services and Vehicle Auction Services contemplated by this Agreement in a fraudulent or disorderly manner, or in a manner which endangers the public health, welfare or safety; or

6.1.11 Vendor maintains or operates vehicles used for towing operations in an unsafe manner; or

6.1.12 Vendor, or its agents, directors, representatives or employees obtain a tow contract by use of fraud, trickery, dishonesty, or forgery; or

6.1.13 Vendor, or its agents, directors, representatives or employees stopped on any street, highway, or other public thoroughfare to render vehicle towing service to a person or disabled vehicle without first being requested to do so in violation of Section 5.18.2 of this Agreement; or

6.1.14 Vendor, or its agents, directors, representatives or employees tow a vehicle to a location other than designated as the business address of Vendor for the purposes of this Agreement without the prior written consent of the City department authorizing the tow; or

6.1.15 Vendor, or its agents, directors, representatives, or employees, after towing a vehicle to the business location of Vendor tow such vehicle to another location for storage without the prior written authorization of City or the registered or legal owner of the vehicle; or

6.1.16 Vendor, or its agents, directors, representatives or employees conspire with any person to defraud City or any owner of any vehicle, towed pursuant to this Agreement, or any insurance company, or any other person financially interested in the cost of the towing or storage of any vehicle towed pursuant to this Agreement by making false or deceptive statements relating to the towing or storage of any vehicle; or

6.1.17 Vendor, or its agents, directors, representatives or employees remove a vehicle involved in a collision prior to the arrival of the Police Department, and a person, as a result of such collision, suffers death or injury, or the driver of an involved vehicle, or a party to such collision, was under the influence of an intoxicant of any nature, or there is evidence that such vehicle was involved in a hit and run collision; or

6.1.18 Vendor, or its agents, directors, representatives or employees charge for services not performed, equipment not employed or used, services or equipment not needed, or otherwise materially misstate the nature of any service performed or equipment used.

ARTICLE 7 Remedies.

7.1 Liquidated Damages.

Vendor agrees that Vendor's failure to meet the response times for tow service as described in Section 5.10 of this Agreement will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Vendor agrees to pay to City, subject to City's compliance to the notice and hearing provisions described in Section 7.2 herein, Five Hundred Dollars (\$500) each and every time in any thirty (30) calendar-day period Vendor exceeds the response times set forth in Section 5.10 without notifying City for three (3) or more requests for Towing Services. Vendor further agrees to pay to City, subject to City's compliance to the notice and hearing provisions of BHMC Section 4-1-108, One Hundred Dollars (\$100) each and every time Vendor exceeds the response time established by Section 5.10 for any single request for Towing Service by more than fifteen (15) minutes. Vendor agrees that said sums are the minimum value of the costs and actual damages to City caused by Vendor's failure to complete service within the allotted time period. Such sum is a liquidated damage and shall not be construed as a penalty.

7.2 Cancellation, Suspension and/or Revocation Hearings.

Whenever City determines that Vendor has committed an event of default as that term is defined in Article 6 of this Agreement, City shall give Vendor written notice of the violation, an opportunity to cure the violation, and, if Vendor fails to cure the violation, an opportunity to be heard on the matter in accordance with the following procedures:

7.2.1 Written Notice. City shall notify Vendor in writing of any and all violations that constitute a default under the terms of this Agreement. Said notice shall be delivered to Vendor by personal delivery or by registered or certified mail, return receipt requested at the address set

forth in Section 4.4 herein, shall clearly set forth the specific violation, shall demand that Vendor cure the violation, and shall set forth the time period for curing the violation. The time period for curing a violation shall be determined by the Chief of Police, based on the nature of the violation, but under no circumstances shall the time period to cure be less than ten (10) calendar days. If Vendor fails to correct the violation within the time prescribed by the notice, or if Vendor fails to commence good faith efforts to correct the violation within the time period prescribed in the notice, City shall either (i) temporarily suspend Vendor's franchise with City pursuant to the provisions Section 7.2.2 of this Agreement or (ii) give Vendor fourteen (14) calendar days' written notice of a hearing before the Chief of Police. The written notice of the hearing shall set forth the alleged violations and the recommended action to be taken.

7.2.2 Temporary Suspension. For equipment violations or business omissions, where City desires to provide Vendor an additional opportunity beyond the initial notice to correct violations or omissions, the Chief of Police may suspend Vendor from providing service for a period of time, not to exceed seven (7) calendar days. Such suspension shall not be considered punitive and shall be for the specific purpose of providing Vendor time to correct specified violations or omissions. If Vendor still fails to take corrective action during the temporary suspension period, City shall give Vendor fourteen (14) calendar days' written notice of a hearing before the Chief of Police. The written notice of the hearing shall set forth the alleged violations and the recommended action to be taken.

7.2.3 Suspension Pending Hearing. For all substantive violations of law or the provisions of this Agreement, or for refusal to correct violations after proper notice is served upon Vendor pursuant to Sections 7.2.1 and 7.2.2 of this Agreement, where City intends to take punitive action against Vendor or revoke the franchise agreement in its entirety, the Chief of Police may suspend Vendor from providing service for a period of time, not to exceed fourteen (14) calendar days, in preparation for a hearing.

7.2.4 Informal Hearing. For any noticed hearing before the Chief of Police, the Chief of Police shall conduct the hearing and may receive information from any source deemed relevant to the inquiry. The purpose of the hearing shall be to determine the factual basis of the allegation(s) against Vendor and all of the following procedures shall apply:

- (a) The hearing shall be informal in nature.
- (b) Formal rules of evidence (California Evidence Code and/or the Federal Rules of Evidence) shall not apply.
- (c) Vendor shall have the opportunity to respond to the allegations and present information relevant to Vendor's defense.
- (d) Within ten (10) working days after conducting the hearing, the Chief of Police shall make findings as to whether the allegation(s) are "founded" or "unfounded."
- (e) Upon finding the allegation(s) are "founded," the Chief of Police shall determine the appropriate sanction to be imposed upon Vendor in accordance with the following guidelines:

- (i) The Chief of Police may extend the suspension of Vendor's rights under this Agreement for a period of time, not to exceed thirty (30) additional calendar days; or
 - (ii) The Chief of Police may permanently terminate this Agreement; or
 - (iii) The Chief of Police may impose such other sanction(s) as he or she determines is appropriate in light of the nature of the violation and the relevant circumstances.
- (f) The Chief of Police shall notify Vendor of his or her decision in a written notice of decision. Said notice of decision shall clearly set forth the Chief of Police's findings and the sanction to be imposed and shall be served on Vendor in person or by registered mail, return receipt requested, at the address provided for Vendor in Section 4.4 of this Agreement.

7.2.5 Appeal. Vendor may appeal the findings of the Chief of Police and/or the sanction imposed by the Chief of Police to the City Manager. Any such appeal must be filed with the City Clerk in writing within five (5) business days of Vendor's receipt of the Chief of Police's written notice of decision. Upon receipt of a written appeal, the City Clerk shall immediately take the following actions:

- (a) The City Clerk shall schedule an informal hearing before the City Manager within sixty (60) days of receiving an appeal from Vendor. Notice of the hearing shall be served upon Vendor in writing at least five (5) calendar days prior to the hearing date. The same procedures set forth above for the hearing conducted before the Chief of Police shall apply to the hearing before the City Manager.
- (b) At the hearing, the City Manager shall take testimony and evidence from both the Chief of Police and Vendor and any witnesses for the respective parties. After receiving the evidence, the City Manager shall issue a written decision within ten (10) days of the hearing. The decision shall clearly set forth the City Manager's determination and the findings of fact upon which the decision is based. The decision of City Manager is final.
- (c) Any person aggrieved by the City Manager's decision may file a writ of administrative mandamus pursuant to Section 1094.5 of the California Code of Civil Procedure within ninety (90) days of the date City Manager issues his or her decision.

7.3 Legal Actions.

Either party may institute a legal action to require the cure of any default and to recover damages for any default or breach, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

7.3.1 Jurisdiction and Venue. Any legal action brought to enforce either party's rights under this Agreement must be instituted and maintained in the Superior Court in and for the County of Los Angeles, State of California or in the United States District Court for the Central District of California. Vendor specifically waives any rights it may have under California Code of Civil Procedure Section 394 or any federal or state statutes or judicial decisions of like effect.

7.3.2 Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.3.3 Attorney's Fees. In the event either party brings an action at law or in equity, including any action for declaratory relief, to enforce the provisions of this Agreement against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled under law.

7.4 Waiver.

The waiver by either party of any breach of any condition or covenant of this Agreement by the other party shall not be deemed as a waiver of any subsequent breach of the same or any other condition or covenant.

ARTICLE 8 Signatures.

8.1 Counterpart Originals.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Vendor have caused the within Agreement to be duly executed by their respective officers.

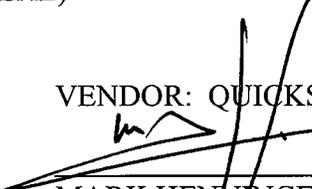
CITY OF BEVERLY HILLS, a municipal corporation

WILLIAM W. BRIEN, M.D.
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

VENDOR: QUICKSILVER TOWING, INC.

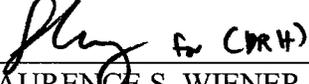


MARK HENNINGER
President



LYNELLE JAN HENNINGER
Secretary

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY KOLIN
City Manager



DAVID L. SNOWDEN
Chief of Police



DAVID D. GUSTAVSON
Director of Public Works/Transportation



TIMOTHY J. SCRANTON
Fire Chief



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

Vendor shall provide the following services in conjunction with Vehicle Towing Services. In addition, Vendor shall provide Lien Sale Processing Services and Vehicle Auction Services for those vehicles towed to the City Facility.

1. Vehicle Towing Services to City Facility.

City Facility maintained by the City of Beverly Hills includes (i) the "Subgarage Facility" located at 336 Foothill Road; and (ii) the "Surface Lot" Facility located at the corner of Third Street and Foothill Road. Vendor shall transport impounded vehicles to these City Facility as follows:

A. City's Sub-Garage Facility

Vehicles impounded pursuant to the following storage authorities will be stored at the City's Sub-Garage Facility:

- 14602.6 VC – 30 Day Impounds
- 22651(i) VC – 5 or More Parking Citations
- 22651(o) VC – Expired Registration

At the discretion of the Traffic Bureau Commander, vehicles impounded for other storage authorities may be towed to and stored at the City's Sub-Garage Facility. The maximum number of vehicles that will be stored in the City's Sub-Garage Facility will be mutually agreed upon by the City and Vendor. All vehicles in excess of that number will be stored at Vendor's Primary Facility or Facilities.

Vendor will provide all equipment necessary to efficiently and effectively store vehicles in the City's Sub-Garage Facility. Vendor will be permitted to store this equipment in the City's Sub-Garage Facility.

B. City's Surface Facility

Vehicles impounded for no stopping zone and other parking violations on weekdays between the hours of 3:00 p.m. and 6:30 p.m. will be towed to, and temporarily stored at, the City's Surface Lot Facility at the corner of Third Street and Foothill Road.

All other tows shall be taken to the Vendor's Primary Facility.

2. Staffing of Surface Facility

Vendor shall staff the Surface Lot Facility between the hours of 3:00 p.m. and 7:00 p.m. and shall conduct all services required for the impounding and subsequent release of such vehicles at

the Surface Lot Facility. City will provide Vendor with access to an office on this lot to transact business related to the release of vehicles stored at this Surface Lot Facility.

Vendor shall ensure that vehicles released at the Surface Lot Facility are released only to their registered owners or authorized representatives of their registered owners. Vendor shall deliver the vehicle release documentation to the City every weekday by 8:00 p.m. Vehicles not retrieved from impound by 7:00 p.m. from the Surface Lot Facility will be re-towed by Vendor to Vendor's Primary Facility. These vehicles will not be assessed a second towing fee.

EXHIBIT B

RATES

1. General Tow Rates
 - a. Standard Vehicles Towed to Vendor's Primary Facility or Facilities \$ 150.00
 - b. Standard Vehicles Towed to City's Facility with Towing Fees Paid by Owner to City \$ 150.00
 - i. Towing from subgarage to curbside of City's Facility \$ 150.00
 - c. Standard Vehicles Towed to City's Facility and Sold at Lien Sale \$ 225.00
2. Tow Rates for City Vehicles
 - a. First 10 miles NO CHARGE
 - b. After first 10 miles (per mile) \$ 75.00
3. Additional Rates
 - a. Lien sale processing: Standard Liens (Vehicles valued at \$4,000 or less) \$ 70.00
 - b. Lien sale processing: Long Liens (Vehicles valued at more than \$4,000 or less) \$ 100.00
4. Storage Rates at Vendor's Primary Facility or Facilities (per day)
 - a. Standard Vehicles \$ 38.91
 - b. Motorcycles \$ 38.91

EXCEPTIONS: When a vehicle is released during the first hour,
Vendor shall waive the storage fee

5. Vehicle Auction Services
 - Lien Sale Auction Fee (Per Vehicle) NO CHARGE
6. City Vehicle Impound Release Fee (reimbursed to City each month). Fee amounts determined by City Fees and Charges Resolution.
7. City Daily Storage Fee (collected by Vendor during its performance of Vehicle Auction Services and reimbursed to City each month). Fee amounts determined by City Fees and Charges Resolution.