

11.20. City Business License, Payment of Taxes, Tax I.D. Number

Contractor has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Contractor is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. **Contractor certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number _____
B.M.C. § N/A
Taxpayer ID Number _____

12. TERMINATION

a. Either party may terminate this Contract for default upon five (5) days' written notice to the other if the other party has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract at its convenience and without cause upon ninety (90) days written notice to Contractor. Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Contractor after the effective date of a notice of termination.

b. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

For purposes of this Agreement, all notices to Contractor shall be addressed as follows:

IPT LLC ("PayLock")
205 West Main Street
Somerville, NJ 08876
ATTN: Josiah Johnson

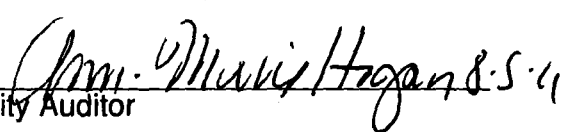
IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the date written on the first paragraph of this Agreement.

FOR City

Signed by:


City Manager

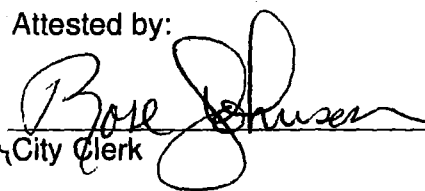
Countersigned by:


City Auditor

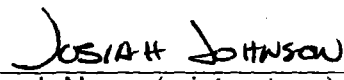
Approved as to form

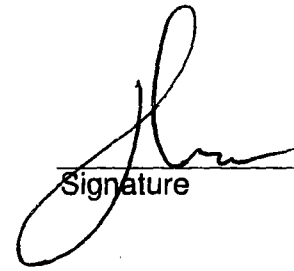
by: 
City Attorney for City of Berkeley

Attested by:


for City Clerk

PAYLOCK


PayLock Name (print or type)


Signature

Print Name

Tax Identification #: _____

Berkeley Business License # _____

Incorporated: Yes No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes No

EXHIBIT A
SCOPE OF WORK

1. PAYLOCK SYSTEM SUMMARY OF SERVICES

During the term of this Agreement, Contractor shall provide to City the following services:

- A. Contractor will provide self-release SmartBoots to be used by City to immobilize vehicles identified in City's enforcement policy.
- B. Contractor's help-center ("Help-Center") will be available 24 hours/day and 365 days/year to answer questions from immobilized motorists, and process electronic payments for immobilization fees and parking fines and/or penalties owed.
- C. Contractor will provide City access to Contractor's Web-based BootView Software system for tracking all City boot-related transactions.
- D. Contractor will integrate its BootView Software system with City's ticket processing system to communicate data to receive lists of vehicles eligible for immobilization daily and update payment data.
- E. Contractor will repair and replace all damaged or defective PayLock SmartBoots within 5 business days of notification from the City.
- F. Contractor will provide installation for all hardware and software used by City for the PayLock system, and will train City staff to use the hardware and software and to remove the Smart Boots.
- G. Contractor will design and supply vehicle seizure notices that will be affixed by City to booted vehicles at the time of immobilization.
- H. Contractor will facilitate and create an SOP in relation to the project and services contemplated by this Agreement, including but not limited to, the procedural responsibilities of the Parties, which the Parties shall adhere to, and which shall be collaboratively crafted by the Parties before the initiation of service. Upon completion of the SOP, the parties shall amend this Agreement to incorporate the terms of the SOP into this Agreement.

- I. Contractor will provide two (2) MLPR Systems to facilitate efficient identification of scofflaw vehicles. Supporting services include but are not limited to, installation, maintenance, support, customer troubleshooting and training.
- J. Contractor shall provide one (1) new automobile, sports utility vehicle or van, to be used by City to patrol for scofflaw vehicles.
- K. Contractor will deposit all fines and fees collected on behalf of City in an account designated by City as provided in Exhibit C.
- L. As the parties may agree, Contractor will provide City with additional equipment required to support the PayLock System.

2. PAYLOCK SMARTBOOT DEVICES

During the term of this Agreement, City shall utilize SmartBoots equipped with hardware that allows the unit to unlock by either entering a code into a keypad or using a key. Contractor will provide an initial supply of forty (40) SmartBoots, and will increase or decrease that amount to maintain a sufficient number of SmartBoots to ensure continuous and maximum potential program productivity. Contractor will repair and/or replace broken or missing SmartBoots within 5 business days of notice by the City to ensure continuous operation by City. Notwithstanding the City's physical possession of the SmartBoots, Contractor shall maintain title ownership of all SmartBoots throughout the term of this Agreement.

During the term of this Agreement, Contractor will repair or replace stolen or vandalized SmartBoots within 5 business days of notice and at no cost to City, except in cases where a lost or damaged fee is recovered by City from the offending motorist either before or after the device is replaced by Contractor. In those cases, Contractor will invoice City the same amount collected to recover the cost of the repair or replacement.

3. PAYLOCK HELP-CENTER

Throughout the term of this Agreement, Contractor shall operate a 24-hour toll-free Help-Center for purposes of providing information to motorists with respect to the removal and return of SmartBoots, and for processing payments by motorists whose vehicles have been booted. The Help-Center shall maintain data with respect to the processing of payments and the disposition of SmartBoots on a real-time basis through Contractor's BootView Software, which information shall be accessible to City remotely through the Internet.

4. TITLE TO SMARTBOOTS AND OTHER EQUIPMENT

Any goods or products supplied by Contractor to City shall remain the property of Contractor while in possession of City including, but not limited to: SmartBoots, BootView Software, computer hardware, and mobile license plate recognition systems.

5. KEY CONTROL

Contractor will provide six (6) sets of keys that can be used by City employees to unlock all SmartBoots when necessary. City shall secure all keys when not in use. If a key is lost, it will require a lock replacement on all SmartBoots provided. City will reimburse Contractor for replacing each lock at \$150 per lock converted, plus any reasonable travel expenses incurred by Contractor within the Bay Area to facilitate the lock conversion.

6. REMITTANCE OF FEES AND FINES

Funds will be remitted to City as provided in Exhibit C herein.

7. CITY OF BERKELEY'S OBLIGATIONS

7.1. Summary of Services

During the term of this Agreement, City will:

- A. Devote appropriate resources and staff to use the PayLock System as the City's calendar may allow, to identify and immobilize scofflaw vehicles.
- B. Process walk-in, in-person payments at City facilities, for booted motorists unwilling or unable to pay Contractor by phone.
- C. Provide assisted release support to booted motorists who choose not to self-release SmartBoots during business hours excluding holidays, work furlough days and weekends.
- D. Arrange for towing actions according to SOP guidelines.
- E. Support Contractor in its efforts to recover stolen SmartBoots in accordance with local laws.
- F. Integrate BootView Software and City of Berkeley parking citation processing and accounting software (currently provided by Duncan

Systems), so that outstanding citations, scofflaw status, and payments received are automatically updated in real time.

G. Take reasonable care of vehicles and mobile license plate recognition systems provided by Contractor pursuant to this Agreement.

H. Provide one (1) automobile, sports utility vehicle or van, to be used to patrol for scofflaw vehicles utilizing Contractor provided MLPR system.

7.2. Responsibilities for SmartBoots

City is responsible for exercising reasonable care in the handling and storage of SmartBoots returned by the public or Assisted Release staff. City is not responsible for the loss of SmartBoots that are removed from vehicles without City's authorization or SmartBoots that motorists fail to return after being self-released. With the exception of SmartBoots lost or damaged in service, City shall be responsible for reimbursing Contractor for its cost to replace each SmartBoot that: (1) City cannot account for after the SmartBoot was returned to City by a customer; (2) City cannot account for after a City officer removed the SmartBoot from a vehicle; or (3) was damaged while City was in direct possession of them. The SmartBoot replacement cost is \$500.00 per unit plus \$44.00 shipping and handling.

7.3. Stolen or Vandalized SmartBoots

City will charge motorists, and make good faith efforts to recover, a \$500.00 stolen boot fee, or a \$250 damaged boot fee from motorists who steal or vandalize Contractor boots respectively.

Contractor will replace lost, damaged or stolen SmartBoot devices within 5 business days of notice by the City that they are lost, damaged or stolen while in service, at no cost to City, and for which no fees can be recovered from the offending motorist by City or Contractor. However, once a month, Contractor will invoice City an amount equal to the sum of these fees that are actually collected from motorists by City in the prior month.

7.4. Operation of SmartBoot Return Facility

The City shall be responsible for maintaining and operating a facility(s) where motorists can return SmartBoots. At a minimum, such facility shall be open during regular business days and during regular business hours. In order to access the BootView Software, the facility must have access to the Internet. City must provide sixty (60) days advanced written notice to Contractor of any material change relating to Berkeley's designated return facility, including the location and hours of such facility. As soon as possible following the return of a SmartBoot to the return facility

by a motorist, the City shall provide confirmation of the return to Contractor through the BootView Software. In the event that such confirmation cannot be facilitated through the BootView Software, then confirmation may be transmitted by the telephone.

7.5. Towing

Pursuant to City's requirements, City may make arrangements to tow any vehicle eligible for immobilization that has been booted and otherwise meets City's designated specifications pursuant to the SOP. City may engage the assistance of Contractor's Help Center to process payments (excluding tow and storage fees) with respect to such towed vehicles. City and/or its towing contractor shall be responsible for reporting to the Parties the final disposition of any vehicle impounded for violation of CVC 22651.

7.6. Integration of Systems

Contractor shall work with City and City's citation processing contractor to facilitate the integration of the Contractor and BootView Software with City computer systems, ticket processing system, and accounting systems as necessary for the operation of the Contractor service under this Agreement. Both Contractor and City's citation processing contractor shall utilize existing software interfaces developed for other clients when available and feasible. City shall use its best efforts to ensure the cooperation of its citation processing contractor(s) in meeting applicable data integration requirements.

7.7. Assisted Releases

City shall have persons available during normal City business hours or other hours as the Parties may agree to assist vehicle owners who are unwilling or unable for any reason to unlock the SmartBoots.

7.8. Confirmation of Immobilization Eligible Vehicle Status

City shall not apply a SmartBoot to any vehicle unless it has obtained verified immobilization-eligible vehicle status pertaining to the vehicle. City must provide reasonable means whereby Contractor personnel have immediate access to updated vehicle status, either by telephone or electronically through applicable systems. City shall earnestly endeavor to ensure that procedures are implemented whereby immobilization-eligible vehicle data is updated as frequently as possible and that such data is immediately available to all authorized users of BootView software.

7.9. Supporting Collections for Credit Card Charge Backs, Damaged and Stolen Boots, and Bad Check Payments

In cases where a motorist has been assessed a damaged or stolen boot fee by Contractor which has gone unpaid, credit card charge backs, and bad checks accepted by Contractor, the City agrees to support Contractor in its efforts to collect in these cases by immediately towing these motorist's vehicles subsequently discovered in the field by the MLPR system, as well as any reasonable additional requests for support as the City may be able to provide.

8. CONTRACTOR PROVIDED VEHICLE

Contractor shall maintain ownership of the vehicle provided to City throughout the term of this Agreement despite City's possession of the same, and Contractor shall have a security interest under the Uniform Commercial Code in such vehicles. City shall execute, and Contractor is hereby authorized as attorney-in-fact to execute and deliver on behalf of City, and file any and all financing statements and other instruments which Contractor may deem necessary and desirable to perfect and protect such security interest. City hereby agrees to the following:

- A. City's insurance shall be considered Contractor's primary/non-contributory liability coverage for those vehicles provided by Contractor to City. For all insurance obtained by City hereunder, City shall provide Contractor with a Certificate of Insurance that includes:
 - i. Waiver of subrogation naming Contractor as an additional insured
 - ii. A requirement that the issuer notify Contractor in writing at least 30 days prior to any cancellation or modification of the policy
 - iii. Combined limit of liability for a minimum of: \$5,000,000

Five (5) business days prior to transferring possession of a vehicle to City, Contractor will provide its Vehicle Identification Number, Make, Model, Year, and replacement value to City's Risk Management Office.

City agrees that Contractor shall not be liable for any injuries sustained by City employees or their contractor arising from or related to their use of those vehicles provided to City by Contractor. City will obtain Commercial General Liability, workers compensation, and other related coverage for its employees. Contractor will not be liable for, and will not be required to provide any personal injury, property protection or other insurance coverage for, any claims, liabilities or damages arising from or related to those vehicles provided to City by Contractor. City shall be responsible for

all vehicle operating costs including but not limited to gas, fluids, maintenance, operators insurance, installing required communication devices, any official city markings on the outside of the vehicles, registration or inspection fees, and repairs. Such vehicles shall only be used by City for booting patrol and associated immobilization process functions under this Agreement and not other City business or personal use. Any damage to Contractor vehicles incurred during use by City employees or contractor for booting patrol and associated immobilization process functions, and any repairs required to correct such damage, is the full responsibility of City. City shall also provide Contractor, in advance of the vehicle's delivery to City, the legal names of each individual driver. If the California Department of Motor Vehicles notifies City that the license of any driver of a Contractor vehicle is suspended, City will notify Contractor within three (3) business days of receipt of such notice.

As the parties may agree, a replacement vehicle shall be provided after the initial 48 month contract period if it is determined that the original vehicle provided is no longer serviceable or does not meet the needs of the City.

EXHIBIT B

SOFTWARE LICENSE TERMS

1.1. Grant of Software License

Contractor grants to City one non-exclusive and non-transferable license to use the BootView Software. The Software and any authorized copies that City makes, are the property of Contractor and its licensors. City acquires only the right to use the Software, and does not acquire any rights of ownership, express or implied, in the Software. This Agreement does not grant City any intellectual property rights in the Software and all rights not expressly granted herein are reserved by Contractor and its licensors.

1.2. Conditions to Use of Software

Except as expressly provided for in this Agreement:

- A. City shall not copy the Software. Any permitted copy City may make of the Software must retain all copyright and information notices as appeared on the original.
- B. City shall not modify, adapt or translate the Software. City shall not reverse engineer, decompile, translate, disassemble, or attempt to discover any of the Software object code or source code, except to the extent City may be expressly permitted to decompile under applicable law. Subject to Contractor's written permission, any information supplied by Contractor relating to the Software and any information obtained by City by way of decompilation may only be used by City for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Software.
- C. City shall not sell, distribute, disclose, market, rent, or lease the Software. City shall use the Software only for the express purposes contemplated by this Agreement. City shall not transfer the Software or documentation to any third party.
- D. The Software may include various applications, utilities and components, may support multiple platforms and languages and may be provided to City on multiple media or in multiple copies. Nonetheless, City may only use those portions of the Software for which City has a license as permitted and

contemplated by this Agreement. City shall not unbundle or repackage the Software for distribution or resale.

- E. City shall not use the Software to develop, enhance, modify, market or demonstrate products that are competitive with the Software or other PayLock products.
- F. City shall not sell, license, sublicense, publish, display, distribute, or otherwise transfer to a third party the Software, any copy thereof, in whole or in part, without Contractor's prior written consent.

1.3. Termination of License

Upon termination of this Agreement, City's rights with respect to the Software hereunder shall terminate and City must cease any and all use of the Software and return any and all copies of the Software to Contractor, and Contractor will provide City any data City does not otherwise have access to and that City may require after its termination of use of the PayLock Software system.

EXHIBIT C

PAYMENT

Compensation and Invoicing

Contractor and City agree to the following fee structure:

Transaction Pricing – The motorist will pay to Contractor, and City authorizes Contractor to charge booted motorists, \$140.00 ("Transaction Fee") for every vehicle that has been immobilized and for which motorist pays outstanding parking fines and/or fees before or after the vehicle has been towed. In the event that payment is made in person at a City facility, Contractor will be paid the Transaction Fee.

Processing Fee – The motorist will pay to Contractor, and City authorizes Contractor to charge booted motorists, an additional "Processing Fee" based on the total amount due as a result of the vehicle immobilization only when the payment is processed by Contractor using the BootView software system as per the following table:

Amount Paid (range)		PayLock Processing Fee
Low	High	
\$0.01	\$250.00	\$7.00
\$250.01	\$500.00	\$13.00
\$500.01	\$750.00	\$19.00
\$750.01	\$1,000.00	\$25.00
\$1,000.01	\$1,500.00	\$36.00
\$1,500.01	\$2,000.00	\$46.00
\$2,000.01	\$2,500.00	\$60.00
\$2,500.01	\$3,000.00	\$70.00
\$3,000.01	\$5,000.00	\$116.00
\$5,000.01	\$7,500.00	\$175.00

Stolen, Damaged, and Late Boot Fees – The motorist will pay to Contractor, and City authorizes Contractor to charge the motorist a \$25 per day "Late Boot Return Fee" if the motorist fails to return a boot that the motorist removed himself or herself after paying the fines and fees owed, and only after the motorist agreed to such late fee when he or she agreed to remove the boot himself or herself.

Deposit of City Funds - Contractor will deposit all collections of city funds directly to the City of Berkeley's designated Bank Account daily. Contractor will contact the Finance Department to setup. Contractor will provide a summary of transaction processed twice monthly or semi-

monthly. BootView Software will provide City with real time data relating to the payment of parking fines to City for purpose of management, accounting, and auditing of funds deposited into City's bank account. City may conduct occasional audits of the amounts billed, adjusted, collected, and deposited under the Contractor's System. Contractor will respond within five days to any and all requests for documentation in connection with such audits.

RESOLUTION NO. 65,165-N.S.

CONTRACT: PAYLOCK INC. FOR VEHICLE IMMOBILIZER ("BOOT") PROGRAM

WHEREAS, the City's Parking Enforcement and Customer Service programs strive to improve efficiency through intelligent use of technology; and

WHEREAS, the Police Department enforces the parking regulations for the City of Berkeley through motorized patrol and handheld citation issuance devices; and

WHEREAS, the Police Department has determined that a significant number of vehicles have five or more citations issued to the vehicle thereby qualifying the vehicle to be towed under the State; and

WHEREAS, the use of City resources to identify and impound the vehicle, collect payment and arrange for vehicle release is costly; and

WHEREAS, PayLock, Inc. provides 24x7 customer service to facilitate vehicle release in a manner that is more customer friendly than the current tow release procedures followed by the City; and

WHEREAS, PayLock, Inc will provide a vehicle equipped with a camera and computer which will automatically read and rapidly compare the license plates of parked cars with license plates tracked in the City's scofflaw database allowing the City to implement a vehicle immobilization program; and

WHEREAS, the program will be operated at no cost to the City.

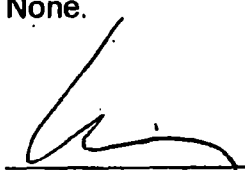
NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract with PayLock, Inc. to operate a vehicle immobilizer ("boot") program within the City of Berkeley, for the period January 1, 2011 to November 30, 2014 at no cost to the City (CMS No. L7D8I).

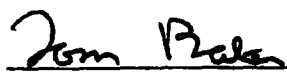
The foregoing Resolution was adopted by the Berkeley City Council on February 8, 2011 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Attest: 
Deanna Despain, CMC, City Clerk


Tom Bates, Mayor



City of Berkeley
Finance Department – General Services Division

Vendor Information Application

PLEASE TYPE OR PRINT CLEARLY IN INK

For City Use Only

Vendor
Code _____

Rec'd _____

LBE _____

Business Information (all information must be completed)

Business Name IPT LLC Year Est. 2006 No. of Employees 44

Name (as shown on your Income tax return) IPT LLC

Check Payable to Name: IPT LLC

Street Address 205 WEST MAIN STREET, STE 402 City SOMERVILLE St NJ Zip 08876

Remit-to Address 205 WEST MAIN ST, STE 402 City SOMERVILLE St NJ Zip 08876

Contact Person(s) CECILIA STERN Phone(s) 908-595-6900 Fax 908-575-8811

Email Address accounting@paylock.com CA State Sales Permit No. _____

Federal Tax I.D. No. _____ or Social Security No. _____

State Tax I.D. No. _____ City of Berkeley Business License No. _____

Prompt Payment Discount _____% Number of Days _____ Net _____ Days _____

[] Please check if business is qualified for the City's "Buy Berkeley" local bidding preference (5% below \$25K on goods and non professional services. The business has a fixed office or distribution point within the City and a City Business License.)

Important: Indicate on the following pages those products and supplies the firm wishes to supply to the City.

Company Ownership

[] Individual/Sole Proprietor [X] L.L.C [] Corporation [] S Corp. [] Partnership

[] Other (specify) _____

Certification: Under penalties of perjury, I certify that the taxpayer identification number(s) all other information provided herein are correct

JOSIAH JOHNSON, CEO

Name (print)

Signature of Company Officer

7/15/2011
Date

908-595-6900
Phone

PLEASE NOTE: IF THERE IS NO BUSINESS CONDUCTED DURING ONE YEAR YOUR ACCOUNT WILL BE INACTIVATED.

☐ **966 PRINTING, PUBLISHING, SILK SCREENING PRODUCTION**

- o 966 07 – Business cards
- o 966 12 – Forms, printed all kinds
- o 966 13 – Check printing
- o 966 18 – Copying services, repro
- o 966 16 – Continuous forms
- o 966 22 – Decal printing
- o 966 36 – Forms printing
- o 966 60 – Offset printing (four color)
- o 966 73 – Publications printed on newsprint
- o 966 84 – Silk screen printing

☐ **968 PUBLIC WORKS, CONSTRUCTION & RELATED SERVICES**

- o 968 06 – Airport roadway construction
- o 968 08 – Airport taxiway construction
- o 968 10 – Airport runway construction
- o 968 17 – Athletic facility construction
- o 968 18 – Bridge construction
- o 968 19 – Bridge reconstruction, rehabilitation
- o 968 20 – Building construction
- o 968 27 – Culvert construction, pipe
- o 968 28 – Curb & gutter construction
- o 968 32 – Demolition
- o 968 35 – Electric utility trench & excavation
- o 968 39 – Excavating & tunneling
- o 968 40 – Foundry services
- o 968 42 – General construction
- o 968 43 – Golf course construction, maintenance & repair
- o 968 47 – Inspection services, construction type
- o 968 51 – Lighting, street, construction & repair
- o 968 52 – Major streets, intersection improvement
- o 968 53 – Major streets, intermittent resurfacing
- o 968 54 – Major streets, new construction
- o 968 59 – New street construction & repair (not major)
- o 968 61 – Painting (bridges, etc.) & pavement marking
- o 968 62 – Parking lot construction
- o 968 65 – Pipe line construction & repair (removal & relocate)
- o 968 66 – Residential street resurfacing (paving)
- o 968 68 – Sewer & storm drain construction
- o 968 70 – Sidewalk & driveway construction
- o 968 77 – Surveying (not aerial or research)
- o 968 78 – Tank removal, disposal & related services
- o 968 80 – Traffic sign installation
- o 968 82 – Traffic signal installation
- o 968 88 – Tree & shrub removal
- o 968 90 – Vehicle towing & storage
- o 968 96 – Water system, mains & service line construction

☐ **971 REAL PROPERTY, RENTAL OR LEASE**

- o 971 05 – Booth, convention, exhibit rental
- o 971 08 – Building, fabricated, rental or lease

- o 971 35 – Land, rental or lease
- o 971 45 – Office space
- o 971 65 – Room rental for conferences, seminars, etc.
- o 971 70 – Storage space rental

☐ **975 RENTAL OR LEASE SERVICES OF EQUIPMENT**

- o 975 08 – Agricultural implements & accessories
- o 975 13 – Asphalt equipment & accessories
- o 975 14 – Automobiles, trailers, trucks, vans
- o 975 24 – Construction equipment (not otherwise classified)
- o 975 26 – Cranes
- o 975 29 – Concrete equipment & accessories
- o 975 34 – Earthmoving equipment (grazers, dozers, loaders)
- o 975 39 – Hydraulic tools & equipment
- o 975 54 – Pneumatic tools & equipment
- o 975 66 – Road & highway equipment, not otherwise classified
- o 975 86 – Trucks & vans

☐ **977 RENTAL OR LEASE SERVICE OF EQUIPMENT – APPLIANCES**

- o 977 73 – Toilets, portable

☐ **979 RENTAL OR LEASE SERVICES OF EQUIPMENT – ENGINEERING**

- o 979 35 – Engineering equipment & supplies
- o 979 81 – Testing & training apparatus, instruments

☐ **981 RENTAL OR LEASE OF EQUIPMENT – GENERAL EQUIPMENT**

- o 981 36 – Fencing

☐ **983 RENTAL OR LEASE SERVICES OF EQUIPMENT – JANITORIAL**

☐ **985 RENTAL OR LEASE SERVICES OF EQUIPMENT – OFFICE**

- o 985 26 – Copy machines
- o 985 47 – Intercom & other sound equipment
- o 985 55 – Microfiche/microfilm equipment & accessories
- o 985 59 – Office machines, equipment & accessories

☐ **988 ROADSIDE, GROUNDS & PARK AREA SERVICES**

- o 988 15 – Fence installation & repair
- o 988 20 – Fire break services
- o 988 52 – Landscaping
- o 988 63 – Park area construction, renovation
- o 988 72 – Pest control (other than buildings)
- o 988 83 – Swimming pool construction, repair & renovation
- o 988 88 – Tree trimming & pruning
- o 988 89 – Weed & vegetation control

☐ **990 SECURITY, FIRE, SAFETY & EMERGENCY SERVICE**

- o 990 05 – Alarm services
- o 990 10 – Armored car services
- o 990 46 – Guard & security services
- o 990 67 – Patrol services
- o 990 70 – Polygraph services
- o 990 77 – Safety training & awareness (highway safety)

☐ **998 SALE OF SURPLUS & OBSOLETE ITEMS**

- o 998 06 – Ammunition, explosives & weapons
- o 998 30 – Confiscated & personal merchandise
- o 998 37 – Electrical supplies
- o 998 42 – Fire & police equipment (not otherwise classified)
- o 998 49 – Garbage & refuse containers
- o 998 68 – Metals, scrap
- o 998 69 – Metals, precious
- o 998 74 – Oils, waste
- o 998 80 – Public utility equipment
- o 998 85 – Recyclable materials
- o 998 93 – Tires & tubes
- o 998 94 – Vehicles, including autos, trucks & trailers

☒ **Other services not specifically listed:**

vehicle immobilization

parking ticket

collections

**Request for Taxpayer
Identification Number and Certification**

**Give form to the
requester. Do not
send to the IRS.**

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) IPT LLC	
Business name, if different from above	
Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☒ Other ▶ LLC	☐ Exempt from backup withholding
Address (number, street, and apt. or suite no.) 205 WEST MAIN STREET, SUITE 402	Requester's name and address (optional)
City, state, and ZIP code SOMERVILLE, NJ 08876	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

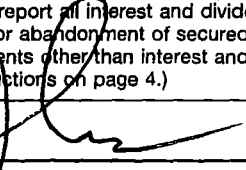
Social security number								
or								
Employer identification number								

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person 	Date ▶ 7/15/2011
------------------	--	-------------------------

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



City of Berkeley
Finance Department – General Services Division

Vendor Information Application

PLEASE TYPE OR PRINT CLEARLY IN INK

For City Use Only	
Vendor	_____
City	_____
Phone	_____
Fax	_____

Business Information (all information must be completed)

Business Name IPT LLC Year Est. 2006 No. of Employees 44
Name (as shown on your Income tax return) IPT LLC
Check Payable to Name: IPT LLC
Street Address 205 WEST MAIN STREET, STE 402 City SOMERVILLE St NJ Zip 08876
Remit-to Address 205 WEST MAIN ST, STE 402 City SOMERVILLE St NJ Zip 08876
Contact Person(s) CECILIA STERN Phone(s) 908-595-6900 Fax 908-575-8811
Email Address accounting@paylock.com CA State Sales Permit No. _____
Federal Tax I.D. No. _____ or Social Security No. _____
State Tax I.D. No. _____ City of Berkeley Business License No. _____
Prompt Payment Discount _____% Number of Days _____ Net _____ Days _____

[] Please check if business is qualified for the City's "Buy Berkeley" local bidding preference (5% below \$25K on goods and non professional services. The business has a fixed office or distribution point within the City and a City Business License.)

Important: Indicate on the following pages those products and supplies the firm wishes to supply to the City.

Company Ownership

[] Individual/Sole Proprietor [X] L.L.C [] Corporation [] S Corp. [] Partnership
[] Other (specify) _____

Certification: Under penalties of perjury, I certify that the taxpayer identification number(s) all other information provided herein are correct

JOSIAH JOHNSON, CEO

Name (print)

Signature of Company Officer

Date

Phone

PLEASE NOTE: IF THERE IS NO BUSINESS CONDUCTED DURING ONE YEAR YOUR ACCOUNT WILL BE INACTIVATED.

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

IPIT LLC

Business name, if different from above

Check appropriate box: ☐ Individual/
Sole proprietor

☐ Corporation

☐ Partnership

☒ Other ▶ **LLC**

☐ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)

205 WEST MAIN STREET, SUITE 402

City, state, and ZIP code

SOMERVILLE, NJ 08876

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

OR

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

**Sign
Here**

Signature of
U.S. person ▶

Date ▶ **7/15/2011**

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
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- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

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The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

☐ **966 PRINTING, PUBLISHING, SILK SCREENING PRODUCTION**

- o 966 07 - Business cards
- o 966 12 - Forms, printed all kinds
- o 966 13 - Check printing
- o 966 18 - Copying services, repro
- o 966 16 - Continuous forms
- o 966 22 - Decal printing
- o 966 36 - Forms printing
- o 966 60 - Offset printing (four color)
- o 966 73 - Publications printed on newsprint
- o 966 84 - Silk screen printing

☐ **968 PUBLIC WORKS, CONSTRUCTION & RELATED SERVICES**

- o 968 06 - Airport roadway construction
- o 968 08 - Airport taxiway construction
- o 968 10 - Airport runway construction
- o 968 17 - Athletic facility construction
- o 968 18 - Bridge construction
- o 968 19 - Bridge reconstruction, rehabilitation
- o 968 20 - Building construction
- o 968 27 - Culvert construction, pipe
- o 968 28 - Curb & gutter construction
- o 968 32 - Demolition
- o 968 35 - Electric utility trench & excavation
- o 968 39 - Excavating & tunneling
- o 968 40 - Foundry services
- o 968 42 - General construction
- o 968 43 - Golf course construction, maintenance & repair
- o 968 47 - Inspection services, construction type
- o 968 51 - Lighting, street, construction & repair
- o 968 52 - Major streets, intersection improvement
- o 968 53 - Major streets, intermittent resurfacing
- o 968 54 - Major streets, new construction
- o 968 59 - New street construction & repair (not major)
- o 968 61 - Painting (bridges, etc.) & pavement marking
- o 968 62 - Parking lot construction
- o 968 65 - Pipe line construction & repair (removal & relocate)
- o 968 66 - Residential street resurfacing (paving)
- o 968 68 - Sewer & storm drain construction
- o 968 70 - Sidewalk & driveway construction
- o 968 77 - Surveying (not aerial or research)
- o 968 78 - Tank removal, disposal & related services
- o 968 80 - Traffic sign installation
- o 968 82 - Traffic signal installation
- o 968 88 - Tree & shrub removal
- o 968 90 - Vehicle towing & storage
- o 968 96 - Water system, mains & service line construction

☐ **971 REAL PROPERTY, RENTAL OR LEASE**

- o 971 05 - Booth, convention, exhibit rental
- o 971 08 - Building, fabricated, rental or lease

- o 971 35 - Land, rental or lease
- o 971 45 - Office space
- o 971 65 - Room rental for conferences, seminars, etc.
- o 971 70 - Storage space rental

☐ **975 RENTAL OR LEASE SERVICES OF EQUIPMENT**

- o 975 08 - Agricultural implements & accessories
- o 975 13 - Asphalt equipment & accessories
- o 975 14 - Automobiles, trailers, trucks, vans
- o 975 24 - Construction equipment (not otherwise classified)
- o 975 26 - Cranes
- o 975 29 - Concrete equipment & accessories
- o 975 34 - Earthmoving equipment (grazers, dozers, loaders)
- o 975 39 - Hydraulic tools & equipment
- o 975 54 - Pneumatic tools & equipment
- o 975 66 - Road & highway equipment, not otherwise classified
- o 975 86 - Trucks & vans

☐ **977 RENTAL OR LEASE SERVICE OF EQUIPMENT - APPLIANCES**

- o 977 73 - Toilets, portable

☐ **979 RENTAL OR LEASE SERVICES OF EQUIPMENT - ENGINEERING**

- o 979 35 - Engineering equipment & supplies
- o 979 81 - Testing & training apparatus, instruments

☐ **981 RENTAL OR LEASE OF EQUIPMENT - GENERAL EQUIPMENT**

- o 981 38 - Fencing

☐ **983 RENTAL OR LEASE SERVICES OF EQUIPMENT - JANITORIAL**

☐ **985 RENTAL OR LEASE SERVICES OF EQUIPMENT - OFFICE**

- o 985 26 - Copy machines
- o 985 47 - Intercom & other sound equipment
- o 985 55 - Microfiche/microfilm equipment & accessories
- o 985 59 - Office machines, equipment & accessories

☐ **988 ROADSIDE, GROUNDS & PARK AREA SERVICES**

- o 988 15 - Fence installation & repair
- o 988 20 - Fire break services
- o 988 52 - Landscaping
- o 988 63 - Park area construction, renovation
- o 988 72 - Pest control (other than buildings)
- o 988 83 - Swimming pool construction, repair & renovation
- o 988 88 - Tree trimming & pruning
- o 988 89 - Weed & vegetation control

☐ **990 SECURITY, FIRE, SAFETY & EMERGENCY SERVICE**

- o 990 05 - Alarm services
- o 990 10 - Armored car services
- o 990 46 - Guard & security services
- o 990 67 - Patrol services
- o 990 70 - Polygraph services
- o 990 77 - Safety training & awareness (highway safety)

☐ **998 SALE OF SURPLUS & OBSOLETE ITEMS**

- o 998 06 - Ammunition, explosives & weapons
- o 998 30 - Confiscated & personal merchandise
- o 998 37 - Electrical supplies
- o 998 42 - Fire & police equipment (not otherwise classified)
- o 998 49 - Garbage & refuse containers
- o 998 68 - Metals, scrap
- o 998 69 - Metals, precious
- o 998 74 - Oils, waste
- o 998 80 - Public utility equipment
- o 998 85 - Recyclable materials
- o 998 93 - Tires & tubes
- o 998 94 - Vehicles, including autos, trucks & trailers

☒ **Other services not specifically listed:**

vehicle immobilization

parking ticket

collections

ACORD**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

07/15/2011

PRODUCER 732.249.1200 FAX 732.249.9646

Parker, Remsen & Sullivan
317 Cleveland Avenue
P.O. Box 4449
Highland Park, NJ 08904

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED IPT, LLC

205 W Main Street
Somerville, NJ 08876

INSURERS AFFORDING COVERAGE

NAIC

INSURER A: Netherlands Ins. Co.

24171

INSURER B: Peerless Indemnity Ins. Co.

18333

INSURER C: Excelsior Ins. Co.

11045

INSURER D: Zurich

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☒ Employee Benefits GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	CBP8813648 \$1,000,000 EACH CLAIM \$3,000,000 AGGREGATE DED \$1,000 NO RETRO	01/01/2011	01/01/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	BA8824302	01/01/2011	01/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
C		EXCESS / UMBRELLA LIABILITY ☒ OCCUR ☐ CLAIMS MADE DEDUCTIBLE ☒ RETENTION \$ 10,000	CU8824802	01/01/2011	01/01/2012	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D		OTHER Crime Coverage - Employee Dishonesty	CBP992090	01/01/2011	01/01/2012	Limit \$250,000 Ded \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Professional Liability - Zurich Insurance Company # EOC9684929-04 03/10/10-11 \$1,000,000 Per claim
\$2,000,000 Aggregate - \$25,000 Ded. - Claims Made Form. Retro Date - 3/1/2007

The City of Berkeley and its directors, officers, representative, employees, consultants, subconsultant and agents are hereby named as Additional Insured as respects written contract # L7D8I with the named insured. Waiver of subrogation is included as to each named and Additional Insured

CERTIFICATE HOLDER

City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Kathleen Walsh/KW1

Kathleen A. Walsh

ACORD 25 (2009/01)

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The ACORD name and logo are registered marks of ACORD

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Why We Are Using the Latest ACORD 25 Certificate of Insurance

In September 2009, ACORD revised the ACORD 25 Certificate of Insurance form. One of the major changes was the removal of the cancellation notice provision. For the following reasons, we are unable to issue an older edition of this form, modify the current form, or complete a proprietary form you provide:

- ACORD certificate forms must be filed and approved for use in our state. When a new form is approved, prior versions can no longer be used. Therefore, it is illegal for us to issue anything other than the currently approved ACORD form.
- Notice of cancellation is a policy right, not an unregulated service. No insurer shown on this certificate is able to provide the cancellation notice you desire by endorsement. For example, the *insured* can cancel immediately, so it would be impossible for the insurer to give you the notice you request. State law also grants the insurer the right to cancel for reasons such as nonpayment with less notice than you require.
- For the reason just cited, if our agency was to issue a certificate that provides the cancellation notice you request, we would do so with the full knowledge that it would be impossible to actually give that amount of notice under certain circumstances. As such, the certificate could be alleged to constitute a misrepresentation or fraud which could subject our agency and staff to serious civil and criminal penalties.
- If a certificate purports to provide a policy right different from that provided by the policy itself, then the certificate effectively purports to be a policy form. Policy forms must be filed and approved by our state department of insurance. Use of nonfiled policy forms is illegal and could result in legal sanctions distinct from the assertion that the certificate is fraudulent.
- Under the ACORD Corporation's licensing agreement, the prior editions of superseded forms can be used for one year from the time the new forms are introduced. Beginning in September 2010, this is another reason we cannot use an older edition of the ACORD 25. Doing so would violate ACORD's licensing agreement and, as a copyrighted document, federal copyright law.
- Likewise, we are unable to modify the new certificate to add a notice of cancellation. ACORD forms are designed to be completed, not altered. ACORD's Forms Instruction Guide says that a certificate should not be used "To waive rights...To quote wording from a contract...To quote any wording which amends a policy unless the policy itself has been amended." Also, since our state requires ACORD forms to be filed, any alteration to a filed form would require its refiling. In addition, our insurance company contracts only allow us to issue unaltered ACORD forms.
- We are often asked to issue proprietary certificates provided by the certificate requestor. Again, our insurance company contracts only allow us to issue unaltered ACORD forms. In addition, our state requires the filing of all certificates of insurance and has very specific regulatory guidelines on certificate language. Many proprietary certificates include broad, vague or ambiguous language that may or may not be in compliance with state laws, regulations, and insurance department directives. Therefore, we cannot issue any proprietary certificates that have not been reviewed by our state insurance department.

We appreciate your understanding of the legal restrictions on our ability to fully comply with your request.

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION IPT LLC**ADDRESS** 205 WEST MAIN STREET, STE 402, SOMERVILLE, NJ 08876**BUSINESS LICENSE #**

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators	7	3	5		1	2		1	1			
Professionals	7	1	5	1	1		1					
Technicians												
Protective Service Workers												
Para-professionals												
Office/Clerical	2	2			1			1	1	1		
Skilled Craft Workers	8	14	1	2	7	9				3		
Service/Maintenance												
Other Occupation: Specify*												
Totals	24	20	11	3	10	11	1	2	2	4		

*Specify other occupation:

**Specify other ethnicity:

Is your business MBE/WBE/DBE certified? ☐ NO

If Yes, by what agency?

Do you have a policy of non-discrimination? ☐ YESIf Yes, please specify: ☐ or ethnic identification:

Signature

Date

Print/Type Name of Signer JOSHUA JOHNSON, CEO

Verified by

Date

City of Berkeley Contract Administrator

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES X

NO

If **no**, this contract is **NOT** subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES X

NO

If you have answered, "YES" to questions 1(a) and 1(b) this contract **IS** subject to the LWO. If you responded "NO" to 1(b) this contract **IS NOT** subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES

NO

If no, this Contract is **NOT** subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES

NO

If you have answered, "YES" to questions 2(a) and 2(b) this contract **IS** subject to the LWO. If you responded "NO" to 2(b) this contract **IS NOT** subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

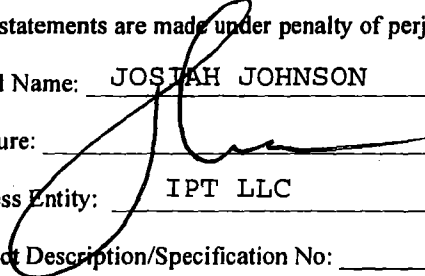
☒

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

☐

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: JUSTAH JOHNSON Title: CEO
Signature:  Date: 7/15/2011
Business Entity: IPT LLC
Contract Description/Specification No: _____

Section III

• ** FOR ADMINISTRATIVE USE ONLY – PLEASE PRINT CLEARLY ** •

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of IPT LLC (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang,**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

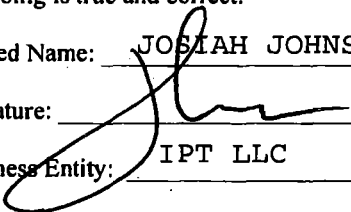
- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: JOSHUA JOHNSON Title: CEO

Signature:  Date: 7/15/2011

Business Entity: IPT LLC

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Contract Description/Specification No.: _____

Attachment D



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/15/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Risk Transfer Programs, LLC
219 East Livingston Street
Orlando, FL 32801

CONTACT

NAME:

PHONE

(A/C, No, Ext): 866-481-9383

FAX

(A/C, No):

E-MAIL

ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A :Wesco Insurance Company

25011

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

INSURED
Alphasaff Holdings, Inc. L/C/F IPT, LLC DBA: Pay Lock #441058
800 Corporate Drive
Suite 600
Fort Lauderdale, FL 33334

COVERAGES

CERTIFICATE NUMBER:9JXUEZTF

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE ☐ OCCUR ☐						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	☐ POLICY ☐ PRO-JECT ☐ LOC						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO						BODILY INJURY (Per person) \$
	ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	SCHEDULED AUTOS						\$
	NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED ☐ RETENTION \$ ☐						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WWC3024142	06/01/2011	06/01/2012	X WC STATU-TORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N ☐	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
							\$
							\$
							\$
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Coverage is extended to the leased employees of alternate employer. (New Jersey Operations Only):

Project: Self- Release SmartBoot Vehicle Immobilization Services Contract#L7D81, 205 W. Main St, Suite 402, Somerville, NJ 08876

If we cancel or non-renew this policy for any reason other than nonpayment of premium or at the request of or on behalf of the Named Insured, we agree that the individual person(s) or organization(s) listed will be notified prior to the effective date of the cancellation when such notice is required in a written contract. A transfer of this policy from one insurance affiliate to another within the same insurance holding group shall not be deemed a cancellation, unless prohibited by law.

CERTIFICATE HOLDER

CANCELLATION

City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Page 1 of 1

© 1988-2010 ACORD CORPORATION. All rights reserved.

State of California
Secretary of State

CERTIFICATE OF REGISTRATION

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That on the **22nd day of September, 2009**, **PAYLOCK IPT LLC**, complied with the requirements of California law in effect on that date for the purpose of registering to transact intrastate business in the State of California; and further purports to be a limited liability company organized and existing under the laws of **Delaware as IPT LLC** and that as of said date said limited liability company became and now is duly registered and authorized to transact intrastate business in the State of California, subject, however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great Seal
of the State of California this day of
September 23, 2009.



Debra Bowen

DEBRA BOWEN
Secretary of State

KK

**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
SHORT FORM STANDING**

IPT LLC

Doing Business As
PAYLOCK IPT LLC

0600280948

With the Previous or Alternate Name

IPT LLC

I, the Treasurer of the State of New Jersey, do hereby certify that the above-named Delaware Foreign Limited Liability Company was registered by this office on October 3, 2006.

As of the date of this certificate, said business continues as an active business in good standing in the State of New Jersey, and its Annual Reports are current.

I further certify that the registered agent and registered office are:

*Ipt Llc
205 West Main Street
4th Floor
Somerville, NJ 08876*



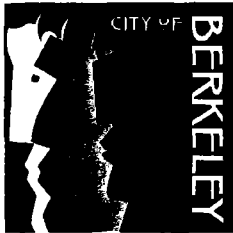
Certification# 116935661

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed my
Official Seal at Trenton, this
21st day of April, 2010*

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a final flourish.

State Treasurer

Verify this certificate at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp



Office of the City Manager

CONSENT CALENDAR
February 8, 2011

To: Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Michael K. Meehan, Chief of Police
Subject: Contract Amendment: Police Department Towing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract Nos. 7188 with Avenue Towing (CMS No. N1ADP), 7190 with Berry Brothers Towing (CMS No. P4RKS), 7191A with East Bay Tow (CMS No. HPTEJ) and 7189B with Husteads Inc. (CMS No. IBT13) in an amount not to exceed \$35,000 annually, to provide necessary towing services as required by the City of Berkeley Police Department for a period of one year. The amended contract is to start March 1, 2011 and end February 29, 2012. These contracts have the option to renew annually for up to four additional years.

FISCAL IMPACTS OF RECOMMENDATION

FY 2011 costs are not to exceed \$35,000 annually, which is allocated for all four contracts in totality. The amounts are allocated between Avenue Towing (CMS No. N1ADP) with an annual cost of \$7,500; 7190 with Berry Brothers Towing (CMS No. P4RKS) with an annual cost of \$5,000; 7191A with East Bay Tow (CMS No. HPTEJ) with an annual cost of \$7,500 and 7189B with Husteads Inc. (CMS No. IBT13) with an annual cost of \$15,000. These funds are budgeted in 010-7202-420.30-38.

CURRENT SITUATION AND ITS EFFECTS

The current tow services contracts for all companies require updates in the scope of services to include new language pertaining to staffing, designated holidays, availability versus hours business is open, fees for non-business hour releases, safety garments worn in adherence to Federal Code of Regulations, Title 23, liens, rate computation, credit card payments and prohibition of unauthorized videotaping or photographing at service provision sites.

The contract for Avenue Towing includes further language to operate as a SmartBoot Return Facility for the City of Berkeley. Terms for operation of the vehicle immobilizer ("boot") program with PayLock, Inc., requires a secure facility with ample secure storage to return the SmartBoot. Avenue Towing has agreed to have personnel available 24 hours per day/seven days a week to accept returns and notify PayLock through a web-based reporting system which will generate a receipt for the motorist, noting the date/time of boot return and details of citation payment which will clear the security

deposit imposition. A companion report requesting Council approval to authorize the City Manager to execute a contract with PayLock, Inc. is also on the agenda for February 8th.

BACKGROUND

The current contract was adopted January 2007 to replace the previous contract with the four companies which had been executed in 1997. A formal bid process was conducted and all four selected contractors met the requirements and performance criteria the City was seeking in a towing services contractor.

The four contractors have continued provide services on a rotational basis to provide timely responses to collisions or tows due to maintenance failure. The equal rotational basis ensures each service provider is afforded equal access to supply services under this contract. All have provided joint service response for large collisions or public events. They have also towed and stored vehicles for investigative purposes as well as tow of Police fleet vehicles.

RATIONALE FOR RECOMMENDATION

The Police Department orders or facilitates the tow of approximately 5000 vehicles annually as required by State Law to remove immobile vehicles from the roadway. The City has no internal process for the towing and storage of vehicles which all four vendors provide.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Dennis Ahearn, Captain, Police, 981-5976

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT AMENDMENTS: POLICE TOWING SERVICES (AVENUE TOWING,
BERRY BROTHERS TOWING, EAST BAY TOW AND RECOVERY AND HUSTEADS
INC.)

WHEREAS, the Police Department tows or facilitates the tow of approximately 5,000 vehicles annually; and

WHEREAS, Avenue Towing (Contract 7188/CMS No. N1ADP), Berry Brothers Towing (Contract 7190/CMS No. KV4K2), East Bay Tow (Contract 7191A/CMS No. HPTEJ) and Husteads Inc. (Contract 7189B/CMS No. IBT13) have proven to provide reliable and consistent towing services to the City of Berkeley; and

WHEREAS, the language of the current contracts does not reflect changes to current technological advances and government regulatory requirements; and

WHEREAS, Avenue Towing has agreed to provide towing, vehicle storage and SmartBoot receipt, notification and storage for an annual amount not to exceed \$7,500; and

WHEREAS, Berry Brothers Towing has agreed to provide towing and vehicle storage an annual amount not to exceed \$5,000; and

WHEREAS, East Bay Tow has agreed to provide towing and vehicle storage an annual amount not to exceed \$7,500; and

WHEREAS, Husteads Inc. has agreed to provide towing and vehicle storage an annual amount not to exceed \$15,000; and

WHEREAS, funds are budgeted in FY 2011 General Fund 010-7202-420.30-38.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to amend Contract Nos. 7188 with Avenue Towing (CMS No. N1ADP), 7190 with Berry Brothers Towing (CMS No. KV4K2), 7191A with East Bay Tow (CMS No. HPTEJ) and 7189B with Husteads Inc. (CMS No. IBT13) in an amount not to exceed \$35,000 annually, to provide necessary towing services as required by the City of Berkeley Police Department for a period of one year. The amended contract is to start March 1, 2011 and end February 29, 2012. These contracts have the option to renew annually for up to four additional years.

RESOLUTION NO. 65,165-N.S.

CONTRACT: PAYLOCK INC. FOR VEHICLE IMMOBILIZER ("BOOT") PROGRAM

WHEREAS, the City's Parking Enforcement and Customer Service programs strive to improve efficiency through intelligent use of technology; and

WHEREAS, the Police Department enforces the parking regulations for the City of Berkeley through motorized patrol and handheld citation issuance devices; and

WHEREAS, the Police Department has determined that a significant number of vehicles have five or more citations issued to the vehicle thereby qualifying the vehicle to be towed under the State; and

WHEREAS, the use of City resources to identify and impound the vehicle, collect payment and arrange for vehicle release is costly; and

WHEREAS, PayLock, Inc. provides 24x7 customer service to facilitate vehicle release in a manner that is more customer friendly than the current tow release procedures followed by the City; and

WHEREAS, PayLock, Inc will provide a vehicle equipped with a camera and computer which will automatically read and rapidly compare the license plates of parked cars with license plates tracked in the City's scofflaw database allowing the City to implement a vehicle immobilization program; and

WHEREAS, the program will be operated at no cost to the City.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract with PayLock, Inc. to operate a vehicle immobilizer ("boot") program within the City of Berkeley, for the period January 1, 2011 to November 30, 2014 at no cost to the City (CMS No. L7D8I).

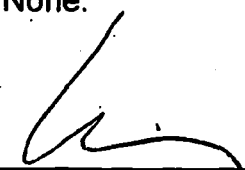
The foregoing Resolution was adopted by the Berkeley City Council on February 8, 2011 by the following vote:

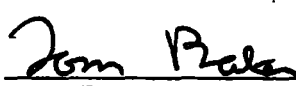
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Attest:


Deanna Despain, CMC, City Clerk


Tom Bates, Mayor

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: AMENDMENT

Original CMS # DPRAX
(To be filled in by department)

Amendment CMS # NIADP
(To be filled in by department)

Contract # 718A
(As originally issued by Auditor)

CONTRACTOR NAME: Avenue Towing

Subject of Contract: Towing Services for the Police Department

This contract package contains:

3 Original Contracts (Department, Vital Record and Vendor) in folders

*The Vital Record contract **MUST** be in a folder.

*Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.

- | | With Original Contract | Attached | Waiver Attached | Not Required |
|--|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| 1. Living Wage Certification (If not submitted with original contract) LWO use current form on web* | ☒ | ☐ | ☐ | ☐ |
| 2. Certification of Compliance with Equal Benefits Ordinance (If not submitted with original contract) EBO use current form on web* | ☒ | ☐ | ☐ | ☐ |
| 3. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies) | ☐ | ☒ | ☐ | ☐ |
| 4. Authorizing Council Resolution # <u>65,166--N.S.</u> | ☐ | ☒ | ☐ | ☐ |

Berkeley Business License # _____

Requisition # 136961 (Hard copy attached)

Purchase Order # 065527

Budget Code 010-7202-420-3038

Council Approved Amount \$ 7,500.00

Was there any advance payment? No ☐ Yes ☒ If Yes, Advanced Amount \$4,840.00

If Yes, Purchase Order # 65527

Original contract amount	\$ <u>7,500.00</u>
Amount/s added by previous amendment/s (if applicable)	\$ _____
Amount added by this amendment	\$ <u>7,500.00</u>
Total/cumulative contract amount after amendment	\$ <u>15,000.00</u>
Contingency	\$ _____
TOTAL NOT TO EXCEED AMOUNT:	\$ <u>15,000.00</u>

Routing and signatures:

All elements of the contract package, including information provided above and on Amendment Data Transmittal form (page 2), have been reviewed for completeness and accuracy and evidenced by the following signatures:

1. Project Manager	<u>Police</u>	Department	Phone No. <u>981-5810</u>	Date <u>5-6-11</u>
2. Department Administrative Officer/Accounting	<u>5/6/11</u>	Date	<u>05/12/2011</u>	Excluded <u>5/23/11</u>
3. Department Head	<u>5/19/11</u>	Date	<u>5/23/11</u>	
4. Contract Administrator	<u>5/23/11</u>	Date		
5. Budget Manager		Date		

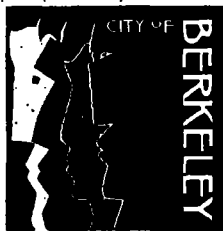
Routing continues to the following persons, who sign directly on the contract:

6. City Manager (Will not sign unless all signatures and dates appear above)

7. City Auditor (Initial ahs)

8. City Clerk: CMS Login 5/23/11

Destruct CITY AUDITOR Review 5/23/11



Office of the City Manager

January 13, 2012

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

As provided under contract No. 7188A, CMS No. N1ADP between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from March 1, 2012 to February 28, 2013. In all other respects, the contract amended shall remain in full force and effect.

Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA. 94704

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Daniel".

Christine Daniel
Interim City Manager

Accepted by:

A handwritten signature in black ink, likely representing the Avenue Towing representative.

Avenue Towing

Date:

1/23/2012

Cc: City Clerk
City Auditor
Finance

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: AMENDMENT**City of Berkeley Contract Amendment Data Transmittal***(To be completed by Project Manager)*Avenue Towing
Contractor1429 San Pablo Avenue
AddressBerkeley, CA 94702
City/State/Zip**Amended Contract Number:**
_____**Contract Amendment Authority**

- ☒ Resolution # 65,166—N.S. Original Resolution # 63,564
☐ Ordinance # _____ (If appropriate)
☐ City Manager Authorization _____

Description of Amendment/s

- ☒ Change of Services/Scope: Scope of Services Updated
☒ Change of Dollars: Original Amount: \$7,500.00 Amended Not to Exceed Amount: \$15,000.00

☒ **Change of Contract Term**

Change as of This Amendment or Extension:

From: March 1, 2011 To: February 29, 2012

Change as of Prior Amendment (if any):

From: _____ To: _____

Original Term: From: February 1, 2007 To: May 31, 2011 (via Extension)**Evidence of Insurance for Contract Amendment**

Insurance	Waiver	Amount	Expiration Date	TICKLER DATE (City Clerk)
Professional Liability	☐	\$ <u>N/A</u>	_____	_____
General Liability	☐	\$ <u>2,000,000</u>	<u>11/1/11</u>	_____
Automobile	☐	\$ <u>1,000,000</u>	<u>11/1/11</u>	_____
Workers Comp.	☐	\$ <u>1,000,000</u>	<u>7/1/11</u>	_____
Bond	☐	\$ <u>N/A</u>	_____	_____

AMENDMENT TO CONTRACT

THIS CONTRACT AMENDMENT is entered into March 1, 2011, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and **Avenue Towing** ("Contractor") a towing service provider, doing business at 1425 San Pablo Avenue, Berkeley, California 94702.

WHEREAS, City and Contractor previously entered into Contract Number 7188, dated, February 1, 2007, which Contract was authorized by the Berkeley City Council by Resolution No.63,564--N.S.; and

WHEREAS, on February 8, 2011, by Resolution No. 65,166--N.S., the Berkeley City Council authorized amendment of said contract as set forth below; and

THEREFORE, City and Contractor mutually agree to amend said contract as follows:

1. Section 1. is amended to read as follows:

SCOPE OF SERVICES

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract. This Exhibit A replaces the Exhibit A in the original Contract.

2. Section 2. is amended to read as follows;

PAYMENT

For services referred to in Section 1, City will pay Contractor an additional amount of \$7,500.00, for a total amount not to exceed \$15,000.00. City shall make payments to the Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. Section 3.a. is amended to read as follows;

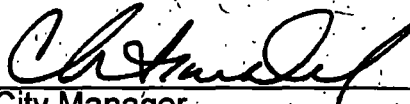
TERM

a. This Contract shall begin on March 1, 2011 and end on February 29, 2012. The City Manager of the City may extend the term of this contract by giving written notice.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written on the first paragraph of this Contract.

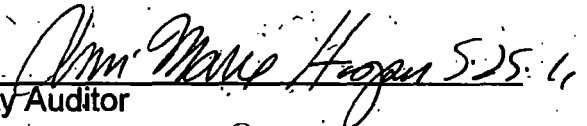
CITY OF BERKELEY

By


City Manager

THIS CONTRACT HAS BEEN
APPROVED AS TO FORM BY
THE CITY ATTORNEY FOR
THE CITY OF BERKELEY
5/09

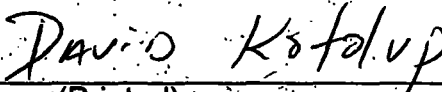
Registered by:


City Auditor

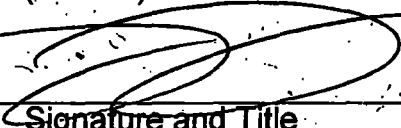
Attest:


for Deputy City Clerk

CONTRACTOR


Name (Printed)

By


Signature and Title

Owner

EXHIBIT A

SCOPE OF SERVICES

The following definitions apply for all the tow groups:

- **"Abandoned Vehicle"** means any vehicle which has been left stationary for more than 72 hours on property that is neither open to the public for parking nor part of the public right of way, without the consent of the person or entity that lawfully owns, controls or occupies that property.
- **"City"** means the City of Berkeley and/or duly authorized agent.
- **"Dismantled Vehicle"** means a vehicle that has had, intentionally/unintentionally one or more critical parts removed for 60 days or more. A critical part is any part that is needed to safely operate the vehicle including but not limited to a wheel or tire, windshield, door, side quarter panel, trunk, hood, roof, steering wheel or transmission. A vehicle can be "dismantled" whether or not it is an operative condition.
- **"Initial Tow"** means the first time the contractor tows a vehicle at the request of the City of Berkeley.
- **"Inoperative Vehicle"** means any vehicle in such condition, as result of mechanical and/or structural defects, however caused, that it cannot be driven under its own power.
- **"Operator(s)"** means a person(s) providing tow truck operations.
- **"Personal Property"** is considered to be the items which are not affixed to the vehicle. Personal property includes: papers, cell phones, pullout radios, clothes, luggage, tools, etc.
- **"Police Department"** means the City of Berkeley Police Department or duly authorized employee thereof.
- **"Property Owner"** means the owner of the nonpublic land on which the vehicle is located as shown on the last equalized assessment roll.
- **"Stall Space"** means a space with minimum dimensions of 8 ft. by 20 ft. where a vehicle may be parked or stored.
- **"Subsequent Tow"** means any tow after the initial tow.
- **"Tow"** means the removal of a vehicle from a stopped or parked position.
- **"Vehicle"** means a device by which any person or property may be propelled, moved or drawn upon a roadway, except a device moved by human power or used exclusively upon stationary rails or tracks. Vehicle includes "part(s) thereof".
- **"Vehicle Owner"** means the last registered and legal owner of record as shown by the Department of Motor Vehicles records.

SCOPE OF SERVICES (Cont.)

The intent of this scope of service is to provide guidelines for prompt and safe towing service for the Berkeley Police Department Rotation Tow Program. The towing operator(s) shall tow and store all vehicles, which the Police Department orders removed from any street, alley, cul-de-sac, highway or other public area of the City, pursuant to the applicable provisions of the City of Berkeley Traffic Ordinance and/or State law, and all vehicles which are moved from a street or other public place at the owner's request transmitted by the Police Department as per the following scope of services.

Please note: the storage facility shall be within 2 miles of the City of Berkeley limits.

1. Rotation

- a. The Police Department shall use all towing operator(s) selected under this RFP on a rotating basis.
- b. The Police Department shall maintain a current rotation tow list to ensure equitable distribution of calls.
- c. A call to an operator(s) shall constitute one turn on the list and that operator(s) shall be moved to the bottom of the list. This includes when the operator fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is cancelled due to excessive response time.
- d. If it is determined the operator(s) is not needed and is cancelled by the Police Department, up to and including arrival at the scene, there shall be no charge and the operator will be placed back at the top of the list.
- e. If the vehicle owner or agent cancels the tow operator(s) prior to the operator(s) taking possession of the vehicle, there shall be no charges for towing. The operator(s) shall immediately contact the Police Department and advise them of the cancellation. The operator will be placed back at the top of the list.
- f. The City shall establish a policy, which allows an operator(s) to dispatch more than one tow truck to a multi-vehicle scene in response to a rotation tow call.
- g. If two or more operator(s) are called to the same incident, distribution of the vehicles shall be at the discretion of the Police Department.
- h. The right of any vehicle owner or driver involved in a traffic incident to call for towing by service of their own choosing shall not be infringed upon so long as the removal of the vehicles can be made without undue delay as determined by the investigating Police Officer.
- i. The investigating Police Officer may direct a Police Department rotation tow operator to move vehicles to help clear a roadway or for lifesaving operations. Operator(s) shall provide the assistance as directed at no charge. This shall not change the operator(s) place in the rotation.

2. Service Requirements

- a. Operator(s) shall respond to Police Department calls (24) hours a day, (7) days a week, including holidays within (15) minutes after the Police Department has notified the operator(s) dispatcher to respond to a call.
- b. Operator's place of business shall be sufficiently staffed to allow customers to speak directly with the tow company's owner, manager, or employee during normal business hours.
 - o "Normal business hours" shall not be less than 8-a.m. to 5 p.m., Monday through Friday, except for the following state recognized holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.
 - o If an operator's place of business is staffed with only one employee, the business office may be closed for one hour at lunch. A sign shall be posted which reflects a lunch closure and a phone number where a request by a vehicle's owner/agent shall result in an immediate response to release property or a vehicle. Response to the office shall be within the timeframe required for a normal Berkeley Police Department Class A tow.
- c. Operator(s) shall respond with a tow truck of the class required to tow the vehicle specified by the Police Department. The operator(s) shall advise the Police Department dispatch at the time of notification, if they are either unable to respond or unable to meet the maximum response time.
- d. If after accepting the call, the operator(s) is unable to respond or will be delayed in responding, the operator(s) shall immediately notify the Police Department's dispatch center. The Police Department's dispatcher will assign the tow to the next operator(s) in rotation. The operator(s) shall not assign initial calls to other tow operator(s).
- e. The operator(s), or his/her employee(s) responding to a call shall perform the towing or service required for which he/she was called. The scene Police Officer may waive this requirement if the requested equipment is inadequate for the service to be performed.
- f. Only the tow truck personnel and equipment requested shall respond to a Police Department call. Additional tow truck personnel and equipment shall be at the approval of the on scene Police Officer.
- g. An operator shall not respond to a City call assigned to another operator(s) unless requested to do so by the Police Department.
- h. When a tow truck has been dispatched to the scene of an accident or an impound by the Police Department, operator(s) shall cooperate with the Police Department in removing any hazards and illegally parked vehicles. It shall be the responsibility of the Police Department to request the necessary action with which operator(s) shall comply.

- i. Operator(s) shall provide the necessary assistance to enable the Police Department to obtain the motor numbers, serial numbers or other vehicle identification numbers.
- j. Operator(s) shall tow abandoned vehicles within (24) hours from the time of the notification from the Police Department.
- k. Operator(s) shall tow vehicles from the Police Garage (1326 Allston Way) to the operator(s) storage facility within (8) hours of notification by the Police Department.
- l. No storage charge shall accrue while vehicles are stored in the Police Garage and this tow shall be at no charge if it is a subsequent tow.
- m. Operator(s) shall tow vehicles from the Police Garage to the operator(s) storage facility when so directed by the Police Department, within (8) hours of notification. No storage charge shall accrue while the vehicles are stored in the Police Garage and this tow shall be at no charge if it is a subsequent tow.
- n. When an operator(s) will be temporarily unavailable to provide services due to a preplanned/scheduled activity, (e.g., vacation, maintenance, medical leave, etc.) he/she shall notify the City at least (24) hours prior to the date services will be unavailable, noting the time and dates of the unavailability.

3. Football and Other Events

- a. Prior to the commencement of each football season, operator(s) shall meet with the Police Department to determine how the towing needs of the City will be handled on football game days.
- b. Operator(s) shall be available to meet with the Police Department to arrange for the towing of vehicles during other special events as the need arises.
- c. On the days of football games and other special events, the City will establish, in the vicinity of the University of California campus and in the vicinity of these special events, one or more impounding areas designated by the Police Department for the purpose of impounding vehicles towed by operator(s).
- d. Operator(s) shall upon request by the Police Department, tow all vehicles designated by the Police to the impounding area(s).
- e. During the removal period, operator(s) shall maintain the required tow trucks in the immediate vicinity of the impounding area(s) for the purpose of towing vehicles.
- f. Operator(s) shall provide the necessary personnel to release the vehicles and collect the towing charges. Said personnel is to remain at the impounding area until a time designated by the Police Department and until the impounding area is closed for the night to tow all remaining vehicles in the impounding area(s) to a garage or other area designated by the Police Department.
- g. Fees per vehicle collected by operator(s) from the owners or drivers of towed vehicles at the impounding area shall be the full compensation to be paid operator(s) for all services rendered for football and other special event towing and the City shall not be liable for any additional payment to operator(s).

4. Storage Facility Requirements

- a. Operator(s) must provide vehicle storage space of no less than 10,000 square feet, the location and suitability of which has been approved by the Police Department.
- b. Operator(s) must provide covered stall space to store a minimum of (10) vehicles and;
- c. In addition, stall space to store (2) vehicles for Police Department evidentiary purposes.
 - o Such space is to be secure and free from contact by persons outside the Police Department.
 - o The remaining required storage area may be an open storage area.
 - o The open storage area shall be screened from public view with an 8 ft. solid wall, fence or cyclone fence with wood or metal slats inserted in all spaces along all perimeters of the storage area, unless such storage area directly abuts an associated building or an existing blank wall or fence at least 8 ft. in height.
 - o Gates shall be at least 8 ft. in height and may be of solid material or cyclone fence with wood or metal slats
- d. Operator(s) must provide sufficient storage for all vehicles stored pursuant to this RFP.

5. Storage Facilities and Service

- a. Operator(s) shall have a business officer, dispatch, and storage facility located within (2) miles from the boundaries of the City of Berkeley, California.
- b. Operator(s) storage facility shall be available (24) hours a day to release vehicles.
- c. Operator(s) shall store all towed vehicles in such a manner as to prevent damage to the vehicles and their contents. The storage facility shall be maintained in a clean, neat and visually presentable manner to the degree existing at the time of this RFP.
- d. Operator(s) shall install and maintain sufficient telephone lines to handle public inquiries relating to towed and stored vehicles.
- e. Operators' place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters clearly visible to the public from the street and be visible at night.
- f. For the purpose of this RFP, "normal business hours" shall not be less than 8:00 AM to 5:00 PM, Monday through Friday. Business hours shall be posted in plain view to the public. Employee(s) shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.
- g. Operator(s) shall obtain approval from the Police Department prior to the removal of any property from a stored or impounded vehicle.

- h. Personal property is considered to be items, which are not affixed to the vehicle, which includes but not limited to: papers, cellular phones, pull out radios and /or portable stereo equipment, luggage, clothing, tools, etc.
- i. Operator(s) shall not open any closed opaque containers found in stored or impounded vehicles.
- j. Operator(s) shall make an inventory of all personal property located in plain sight in any towed or stored vehicle.
- k. All inventoried items shall be stored in a secure place and a copy of the inventoried items shall remain in vehicle(s) at all times.
- l. A copy of the inventoried items, signed and dated by the operator(s), shall be given to the claimant.
- m. No fee shall be charged for the release of a vehicle or personal property during normal business hours pursuant to Section 22851(b).
 - o The maximum charge for a non-business hours release shall be one-half the hourly tow rate charged, or less, for initially towing the vehicle pursuant to **Section 22851(b) CVC**.
 - o No lien shall attach to any personal property in or on the vehicle pursuant to **22851(b) CVC**.
- n. Cargo shall be released upon demand of the carrier or pursuant to a court order.
- o. Operator(s) shall be allowed to store abandoned vehicles at a suitable location outside the Berkeley city limits. Operator(s) shall notify the City of the location of such lot.
- p. Operator(s) shall not store towed vehicles on public streets.
- q. When the Police Department requests verification of identification numbers or vehicle description, operator(s) shall promptly provide such information.
- r. In the event storage charges accrue on a vehicle because operator(s) fail to notify or incorrectly notify the Police Department, such charges shall be void and the owner of said vehicle shall not be responsible for their payment.
- s. Operator(s) agrees to indemnify and hold harmless the City and its officers, agents, volunteers and employees from damages for the loss of or damage to any personal property in a towed vehicle when such vehicle is in operators' possession.

6. Storage of Vehicles Related to Significant Cases

- a. A "significant case" means a major case in which the towed vehicle(s) plays an instrumental part in an investigation and resolution of the case. The assigned police staff shall make this determination.

- b. Operator(s) shall store vehicles related to significant cases in a secured and covered location.
- c. Operator(s) shall ensure the storage location is a clean, well-lit, indoor area providing sufficient space to inspect the vehicle(s).
- d. Operator(s) shall provide a lift or lifting device to allow vehicle's undercarriage to be inspected by assigned police staff.
- e. Operator(s) shall allow police staff to examine and process vehicle(s) at their convenience and on short notice to operator(s).
- f. Assigned police staff will chose a specific tow company for such investigations, based on the specific needs and requirements of the investigation. In the event the tow company selected isn't the next tow company in the tow rotation, it will be passed on its next occurrence on the tow list.

7. Notification of Stored Vehicles

- a. Operator(s) shall provide a written list or status report of stored vehicles. The report shall list the vehicle model, Vehicle Identification Number (VIN#), license plate number, number of days each vehicle has been in storage and total number of vehicles currently in storage.
- b. Operator(s) shall complete the report at the end of the month and mail it directly to the attention of the assigned police staff monitoring the tow program.
- c. Operator(s) shall provide a written list or verbal account, of total vehicles currently stored if required or needed by authorized police staff within 24 hours of the request.

8. Release of Towed Vehicles

- a. General: Operators' personnel answering telephones shall be courteous and provide complete information regarding the location of the vehicle and method of securing its release, including directions to the storage location, required documentation, charge to be paid and terms of payment.
- b. Operator(s) shall maintain sufficient telephone lines, equipment, and personnel required to provide good customer service.
- c. Release procedure when the claimant arrives shall be as follows: The operators' tow representative shall identify the requested vehicle from the operators' records by license number, if provided, or from other information provided by the claimant.
- d. The claimant shall be required to provide satisfactory evidence to the tow representative to prove the claimant is entitled to receive the requested vehicle. Responsibility for release of the vehicle to a person without such evidence devolves fully on the operator(s). When necessary, the Police Department shall provide the operator(s) with reasonable assistance in verifying vehicle registration for all vehicles.

- e. When the tow representative is satisfied the claimant is entitled to the vehicle, the appropriate fees shall be collected and the claimant promptly given possession of the vehicle. The operator(s) shall release vehicle to the claimant within one (1) hour from the time the claimant arrives at the location of the storage facility.
- f. If a rightfully claimed vehicle is stored at a location other than the Berkeley location, the operator(s) shall provide transportation in a reasonable amount of time and without charge to the claimant.
- g. If transported in a tow truck, operator(s) shall take reasonable precautions to avoid any inconvenience to claimant or soiling claimant's garments.
- h. Operator(s) shall not assess any fee upon the claimant for removing the towed vehicle from the storage area, be it by use of a tow truck or any other means.

9. Compliance with Agreement (Suspension, Disciplinary Action & Termination)

- a. Operator(s) agrees, as a condition of inclusion on the rotation tow list, to comply with the scope of services of the Tow Rotation Program. Furthermore, the operator(s) agrees the failure by the operator(s) or his/her agents to comply with this scope of services shall be the cause of suspension, disciplinary action or termination from the Police Department's Tow Rotation Program. Alleged violations of the Tow Rotation Program will be investigated by the Police Department covered by this RFP. Operator(s) will be notified of the findings within 30 calendar days of the conclusion of the investigation.
- b. The City shall take disciplinary action against operator(s) for violations investigated and confirmed or sustained. The City shall retain discretion regarding the length of any suspension imposed pursuant to this RFP.
- c. Public Works and Health and Human Services, other City departments enlisting the services of the operator(s) in question, will also honor disciplinary action the Police Department takes against said operator(s).
- d. **The Police Department shall take immediate disciplinary action against the operator(s) for failing to meet its obligation to respond within (15) minutes. In addition, failure to respond and /or repeated failure to meet maximum response times shall constitute failure to comply with the scope of services of this RFP.**
- e. Any refusal to respond or to perform the required towing or service will subject the operator(s) to suspension if deemed appropriate by the City.
- f. A violation of equipment requirements related to safety, GVWR and safe loading requirements of a tow truck and overcharging shall be cause of immediate suspension. The suspension will remain in effect until the period of suspension is completed and the operator(s) presents proof of correcting all violations.
- g. If an operator(s) has 3 or more suspensions within a 12-month period for the Rotation Tow Program in the City's judgment, termination may be invoked or in lieu of termination, the City may impose additional suspensions for longer periods, if deemed appropriate.

- h. Failure of the operator(s) or employee(s) to comply with Demeanor and Conduct and /or Compliance with Law, shall be cause of immediate suspension and /or termination.
- i. Nothing herein shall be deemed to prohibit the City from immediately suspending any operator(s) whose conduct, or that of his/her employee(s), in the discretion of the City, is deemed to be a danger to the motoring public or who has engaged in conduct constituting a flagrant violation of the scope of service of the Towing Service RFP.
- j. The City may terminate towing services upon 10 day written notice if operator(s) have substantially failed to fulfill any of its obligations in the performance of this RFP, including but not limited to the obligation to respond to tow request in a timely manner as specified.
- k. Towing services may be terminated by either party at any time by giving the other party (90) days written notice of such termination, or by written mutual consent of both parties at any time.

10. Compliance with Law

- a. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over the scope of services or any hereof, including all applicable provisions of the vehicle and civil code sections and all provisions of the Occupation Safety and Health Act and all amendments thereto, and all applicable federal, state, municipal and local safety regulations. All services performed by operator(s) must be in accordance with these laws, ordinances, codes and regulations. Operator(s) shall indemnify and hold the City harmless from any all liability, fines, penalties and consequences from any noncompliance or violations of such laws ordinances, code and regulations.
- b. Safety Garments: BPD rotation tow truck drivers shall wear appropriate warning garments (e.g. vests, jackets, shirts, retro-reflective clothing) for daylight and hours of darkness in accordance with the California Code of Regulations, Title 8, Section 1598. If the tow truck driver is working on a Federal-aid highway, the operator shall comply with the guidelines contained in the Federal Code of Regulations, Title 23, Highways, Chapter 1, Federal Highway Administration, Department of Transportation, Part 634, Worker Visibility, which requires high visibility personal protective safety clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 (compliance date of November 24, 2008).
- c. The operator and all tow truck drivers shall be enrolled in the Employer Pull Notice (EPN) program.
 - o The operator shall provide a current list of drivers and a copy of the current EPN report, or in the case of a newly hired tow truck driver, proof of enrollment in the EPN program, for all drivers to the Area office during enrollment.
 - o Upon the addition of new drivers, an operator shall be granted a maximum of 30 days to enroll drivers in the EPN.

- o The EPN shall be kept on file, signed, and dated by the operator.
- d. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this RFP, operator(s) shall notify the City's Risk Management Division in Human Resources by telephone at (510) 981-6800. Operator(s) shall promptly submit to the City a written report, in such form as may be required by the City, of all accident, which occur in connection with this RFP.
- e. Please refer to the additional informational sections regarding pertinent applicable California Vehicle Code and Civil Code Laws.

11.

Lien Sales

- a. If service, other than towing, recovery, and local salvage, is canceled by the vehicle's registered owner or agent, no lien shall arise for the service unless the operator has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to section 3068(a) CC.
- b. If the operator responds to a BPD call and the call is cancelled by the vehicle's registered owner or agent, prior to the operator taking possession of the vehicle, there shall be no charge and the operator shall be placed back at the top of the list.
 - o Possession is deemed to arise when the vehicle is removed and is in transit, or when the vehicle recovery operations or local salvage operations have begun (Section 3068.1[a] of the Civil Code [CC] and 22851[a][1] of the California Vehicle Code [CVC]).
 - o Whenever a vehicle owner returns to a vehicle that is in the possession of a towing company prior to the removal of the vehicle, the owner may regain possession of the vehicle from the towing company if the owner pays the towing company the towing charges (Section 22851[a][2] CVC).
- c. Operator(s) shall not make any charges for lien sales, which do not cover acts done by operator(s) toward completion of the lien sale procedure.
- d. Operator(s) shall notify the public of its lien sale procedure.
- e. Lien sales may begin in accordance with all applicable state codes and laws. No sale may be completed before fifteen (15) days of storage have elapsed. The owner shall have the ability to recover their vehicle within those first fifteen (15) days.
- f. Operator(s) shall comply with all applicable state and local laws and regulations pertaining to the lien sale of vehicles.
- g. Operator(s) shall not attempt to take possession of a vehicle in order to establish a lien for any non-towing services performed, or started and subsequently cancelled, when not entitled to such lien by law. Refer to Civil Code section 3068.1 for when a lien begins.

Rates (Towing and Storage Charges)

- a. Towing charges for response to calls originating from the Police Department shall be reasonable and not in excess of those rates charged for similar services provided in response to calls initiated by any other public agency and/or private person. The City shall determine the validity and reasonableness of the submitted rates.
- b. The rate for towing should be computed from portal to portal when a vehicle is towed to the operator's storage yard.
 - o Portal to portal is defined as follows: Time shall start from either the point of dispatch or upon departure from the place of business, whichever is closer to the location of the call, and shall end at the estimated time of return to the place of business or completion of the call; if another call is pending, whichever is shorter.
- c. The time expended for towing a vehicle back to the operator's storage yard, should be charged at a rate not to exceed the hourly rate.
 - o The time expended in excess of the hourly rate shall be calculated in no more than one-minute increments.
 - o There shall be no additional charges for mileage, etc.
- d. The operator(s) shall submit his/her proposed storage fees. The City shall determine the validity and reasonableness of the fees based upon the average of the proposed fees submitted by those applying for rotation.
- e. A vehicle stored 24 hours or less shall be charged no more than one day's storage pursuant to Section 3069.1(a) (CC).
 - o If the vehicle is released from storage after 24 hours has lapsed, charges may be allowed on a full, calendar-day basis for each day of storage, or part thereof pursuant to Section 3068.1(a) CC.
- f. The operator(s) shall display in plain view at all cashier stations a sign as described in section 3070 of the Civil Code, disclosing all storage fees and charges enforced, including the maximum storage rate.
- g. Vehicles stored (24) hours or less shall be charged no more than one day's storage rate. Each day thereafter shall be calculated by calendar day.
- h. The approved schedule of rates charged by the operator(s) shall be available in the tow trucks(s), and shall be presented upon demand to the person(s) for whom the tow services were provided or his/her agent or any Police Officer at the scene.
- i. Rate requirements represent the maximum an operator(s) may charge on a Police Department call. An operator(s) is not precluded from charging less when deemed appropriate by the operator(s).

Other Information

- a. **Repair or Alteration of Vehicles:** Operator(s) shall not make any repairs or alterations to a towed vehicle without the express written authorization of the owner of the vehicle, the owner's insurance company or a designee, except for such emergency alterations as are necessary in order to tow the vehicle. However, no charge may be made to the vehicle owner for emergency alterations.
- b. **Payment of Charges:** Payment of towing and storage charges prior to the release of the vehicle may be made with cash, money order, credit card or other means of payment acceptable to operator(s). Operator(s) shall adhere to check cashing, credit card, and other payment policies. This shall include football game days and other special events.
 - o A valid bank credit card or cash payment shall be accepted for payment of towing and/or storage.
 - o A surcharge shall not be imposed upon a cardholder who elects to use a credit card for payment pursuant to Section 1748.1 CC.
- c. **Posting Requirements:** Operator(s) shall post and supply in a conspicuous place, at each of its facilities, notices approved by the City, which include the following information: 1) schedule of fees authorized by this RFP; 2) notice that copies of the RFP are available for public inspection; 3) the acceptance of checks, cash, credit cards, and any other payment policies of operator(s); 4) notice of (24) hour operation available to the public and procedures for registering complaints regarding the operations of operator(s) under this RFP.
- d. **Police Errors and Omissions:** When any vehicle has been ordered towed by the Police Department and it is later determined the vehicle was towed in error due to mistake of fact; operator(s) shall release the vehicle to the owner at no cost for towing or storage.
 - o When a vehicle is stored for a longer period than necessary due to a clerical error or oversight by the Police Department, operator(s) shall release the vehicle to the owner without assessing storage costs to the owner for the excess time. Operator(s) may charge the Police Department for the error or oversight upon mutual agreement.
- e. **Service Calls:** Operator(s) shall provide service calls to the Police Department only for the following situations: tire changes, running out of gas, lockouts, replacing broken headlights and any other minor services. These services shall be provided after hours, weekends and holidays. The City shall provide a small inventory of such services.
- f. This Scope of Services shall not be altered or otherwise modified except by a written amendment to this RFP executed by the City of Berkeley.

For all the groups participating in the Tow Programs the following applies:

- **Demeanor and conduct:** While involved in City tow operations or related business, the operator(s) and/or his/her employee(s) shall refrain from any act(s) of misconduct, to include but not limited to any of the following: rude or discourteous behavior, lack of service, selective service, or refusal to provide service which the operator(s) is /should be capable of performing, any act of sexual harassment or impropriety, unsafe driving practices, appearing at the tow scene exhibiting any objective symptoms of alcohol and/or drug use, including having such use emitting from his/her breath.
- **Tow Operators:** Operators responding to the towing RFP shall have minimum of three years verifiable for-hire-towing experience, as an owner or principal, with other public agencies.
- **Tow operators:** Operators shall not record (i.e., videotape, photograph) a scene unless it is for official use by the tow company for business-related reasons and when approval was first granted by the on-scene investigating officer, supervisor, or commander.
- **Complaints:** All City-related tow service complaints the City receives against the operator(s) or his/her employee(s) shall be accepted and investigated in a fair and impartial manner. As a result of the investigation, the City may initiate disciplinary actions as deemed appropriate. In any event, the operator(s) will be notified of the results of any investigation.
- **Annual Meetings:** The City shall conduct at a minimum one annual meeting to discuss issues concerning the towing service(s). All meetings shall be mandatory for the owners of his/her designee to attend.
- **Tow Truck Classifications:** Operators shall equip and maintain tow truck(s) covered under this RFP in accordance with the provisions set forth in the California Code of Regulations, and consistent with industry standards and practices.

Class A	Light Duty
Class B	Medium Duty
Class C	Heavy Duty
Class D	Super Heavy Duty

- **Insurance:** The selected operator(s) shall be required to maintain general liability insurance containing the following:

Insurance Type	Amount
Commercial General Liability	\$2 million per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit, shall be twice the required occurrence limit.
Automobile Liability	\$1 million per accident for bodily injury or property damage.
Garage Keeper's Legal Liability Insurance	\$1 million
Employee Dishonesty and Faithful Performance Bond	\$50,000
Worker's Compensation and Employer's Liability Insurance	In the amount of at least \$1 million

Certificates of Insurance evidencing the required coverage must be submitted by the operator(s) upon or before execution of the contract.

EXHIBIT B

PAYMENT

For services referred to in Section 1, City will pay Contractor a total amount **not to exceed \$15,000.00**. The City shall make payments to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

A. Towing Rates

	Towing Item	Rate
1	Passenger car, motorcycles, motor scooters and trucks less than 1 ½ ton, on any day including game or event days	\$160.00
3	All vehicles released on scene after hookup and prior to Towing	\$80.00
4	Recoveries: Class A truck	\$160.00/hr.
	B truck	\$175.00/hr.
	C truck	\$225.00/hr.
	D truck	\$350.00/hr.

B. Storage Rates

	Storage Item	Rate
1	Passenger car and trucks (less than one stall)	\$65.00 per day
3	Motorcycles and motor scooters	\$35.00 per day
4	Trucks more than one stall	\$95.00 per day

C. Police Held Evidence Tows

All vehicles being held by the tow operator(s) for the Police Department for evidentiary reasons **must** be billed to the Police Department on a monthly basis.

INVOICES

Please mail invoices for this contract to address below. The City will make payment to the contracted vendor within thirty (30) days of receipt of a correct and approved invoice.

Mail to:

**City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704
Attn. Accounting Division**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Wells Fargo Insurance Services USA, Inc. CA DOI Lic. #0D08408 (916) 231-1741 11017 Cobblerock Drive, Suite 100 Rancho Cordova, CA 95670-6049	CONTACT NAME: PHONE (A/C No. Ext.): FAX (A/C No.): E-MAIL ADDRESS: PRODUCER CUSTOMER ID#: MICKTOW-01																					
INSURED David Kotolop DBA: Avenue Towing 1235 16th Avenue Oakland, CA 94606	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> <tr> <td>INSURER A:</td><td>State National Ins. Co., Inc</td><td>12831</td></tr> <tr> <td>INSURER B:</td><td>Everest National Insurance Company</td><td>10120</td></tr> <tr> <td>INSURER C:</td><td></td><td></td></tr> <tr> <td>INSURER D:</td><td></td><td></td></tr> <tr> <td>INSURER E:</td><td></td><td></td></tr> <tr> <td>INSURER F:</td><td></td><td></td></tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	State National Ins. Co., Inc	12831	INSURER B:	Everest National Insurance Company	10120	INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES

CERTIFICATE NUMBER: 1945017

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			TIP002579A	11/01/2010	11/01/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	☒ COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☒ OCCUR						
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☐ POLICY ☐ PRO-JECT ☐ LOC						
A	AUTOMOBILE LIABILITY			TIP002579A	11/01/2010	11/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	☐ ANY AUTO						
	☐ ALL OWNED AUTOS						
	☒ SCHEDULED AUTOS						
	☒ HIRED AUTOS						
	☒ NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DEDUCTIBLE						\$
	RETENTION \$						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			5900002022101	07/01/2010	07/01/2011	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				
A	Garagekeepers Legal Liability			TIP002579A	11/01/2010	11/01/2011	\$120,000 Limit - \$500/2,500 Deductible
A	On-Hook Liability			TIP002579A	11/01/2010	11/01/2011	\$100,000 Limit - \$1,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Towing & Storage Operations.

City of Berkeley, its successors and assigns of City and the officers, employees, and volunteers - Berkeley Police Department are additional insureds with respect to liability.

CERTIFICATE HOLDER

CANCELLATION

City of Berkeley
Berkeley Police Department
2100 Martin Luther King Blvd
Berkeley, CA 94702

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

James Bruden

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name of Person(s) or Organization(s):

City of Berkeley
Berkeley Police Department
2100 Martin Luther King Blvd
Berkeley, CA 94702

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization: City of Berkeley
Berkeley Police Department
2100 Martin Luther King Blvd
Berkeley, CA 94702

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

RESOLUTION NO. 65,166-N.S.

CONTRACT AMENDMENTS: POLICE TOWING SERVICES (AVENUE TOWING, BERRY BROTHERS TOWING, EAST BAY TOW AND RECOVERY, AND HUSTEADS INC.)

WHEREAS, the Police Department tows or facilitates the tow of approximately 5,000 vehicles annually; and

WHEREAS, Avenue Towing (Contract 7188/CMS No. N1ADP), Berry Brothers Towing (Contract 7190/CMS No. KV4K2), East Bay Tow (Contract 7191A/CMS No. HPTEJ) and Husteads Inc. (Contract 7189B/CMS No. IBT13) have proven to provide reliable and consistent towing services to the City of Berkeley; and

WHEREAS, the language of the current contracts does not reflect changes to current technological advances and government regulatory requirements; and

WHEREAS, Avenue Towing has agreed to provide towing, vehicle storage and SmartBoot receipt, notification and storage for an annual amount not to exceed \$7,500; and

WHEREAS, Berry Brothers Towing has agreed to provide towing and vehicle storage an annual amount not to exceed \$5,000; and

WHEREAS, East Bay Tow has agreed to provide towing and vehicle storage an annual amount not to exceed \$7,500; and

WHEREAS, Husteads Inc. has agreed to provide towing and vehicle storage an annual amount not to exceed \$15,000; and

WHEREAS, funds are budgeted in FY 2011 General Fund 010-7202-420.30-38.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to amend Contract Nos. 7188 with Avenue Towing (CMS No. N1ADP), 7190 with Berry Brothers Towing (CMS No. KV4K2), 7191A with East Bay Tow (CMS No. HPTEJ) and 7189B with Husteads Inc. (CMS No. IBT13) in an amount not to exceed \$35,000 annually, to provide necessary towing services as required by the City of Berkeley Police Department for a period of one year. The amended contract is to start March 1, 2011 and end February 29, 2012. These contracts have the option to renew annually for up to four additional years.

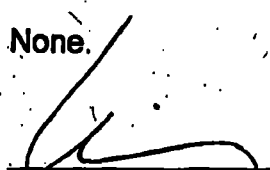
The foregoing Resolution was adopted by the Berkeley City Council on February 8, 2011 by the following vote:

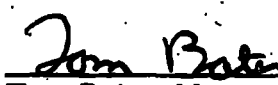
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Attest:


Deanna Despain, CMC, City Clerk


Tom Bates, Mayor

RESOLUTION NO. 63,564-N.S.

CONTRACT FOR POLICE DEPARTMENT TOWING SERVICES (AVENUE TOWING, BERRY BROTHERS TOWING, EAST BAY TOW AND RECOVERY, AND HUSTEADS INC.)

WHEREAS, the Police Department tows or facilitates the tow of approximately 5,000 vehicles per year; and

WHEREAS, the City of Berkeley has no internal process for the towing and storage of vehicles; and

WHEREAS, a successful bid process was held; and

WHEREAS, the towing services providers above are a result of that process; and

WHEREAS, funds are available in FY 2007 General Fund 010-7202-420-3038.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with; Avenue Towing, Berry Brothers Towing, East Bay Tow and Recovery, and Husteads Inc., to provide towing services to the Police Department to commence February 1, 2007, for a period of one year with amendments annually for up to four additional years in an amount not to exceed \$7,500 per contract per year for a total amount not to exceed \$30,000 for all four contracts.

BE IT FURTHER RESOLVED that a record of signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on January 30, 2007 by the following vote:

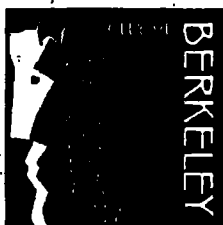
Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest: Pamyla Means
Pamyla Means, MMC, City Clerk

Tom Bates
Tom Bates, Mayor



Office of the City Manager

CONSENT CALENDAR

February 8, 2011

To: Honorable Mayor and Members of the City Council
From: *PK* Phil Kamlarz, City Manager
Submitted by: Michael K. Meehan, Chief of Police
Subject: Contract Amendment: Police Department Towing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract Nos. 7188 with Avenue Towing (CMS No. N1ADP), 7190 with Berry Brothers Towing (CMS No. P4RKS), 7191A with East Bay Tow (CMS No. HPTEJ) and 7189B with Husteads Inc. (CMS No. IBT13) in an amount not to exceed \$35,000 annually, to provide necessary towing services as required by the City of Berkeley Police Department for a period of one year. The amended contract is to start March 1, 2011 and end February 29, 2012. These contracts have the option to renew annually for up to four additional years.

FISCAL IMPACTS OF RECOMMENDATION

FY 2011 costs are not to exceed \$35,000 annually, which is allocated for all four contracts in totality. The amounts are allocated between Avenue Towing (CMS No. N1ADP) with an annual cost of \$7,500; 7190 with Berry Brothers Towing (CMS No. P4RKS) with an annual cost of \$5,000; 7191A with East Bay Tow (CMS No. HPTEJ) with an annual cost of \$7,500 and 7189B with Husteads Inc. (CMS No. IBT13) with an annual cost of \$15,000. These funds are budgeted in 010-7202-420.30-38.

CURRENT SITUATION AND ITS EFFECTS

The current tow services contracts for all companies require updates in the scope of services to include new language pertaining to staffing, designated holidays, availability versus hours business is open, fees for non-business hour releases, safety garments worn in adherence to Federal Code of Regulations, Title 23, liens, rate computation, credit card payments and prohibition of unauthorized videotaping or photographing at service provision sites.

The contract for Avenue Towing includes further language to operate as a SmartBoot Return Facility for the City of Berkeley. Terms for operation of the vehicle immobilizer ("boot") program with PayLock, Inc., requires a secure facility with ample secure storage to return the SmartBoot. Avenue Towing has agreed to have personnel available 24 hours per day/seven days a week to accept returns and notify PayLock through a web-based reporting system which will generate a receipt for the motorist, noting the date/time of boot return and details of citation, payment which will clear the security

deposit imposition. A companion report requesting Council approval to authorize the City Manager to execute a contract with PayLock, Inc. is also on the agenda for February 8th.

BACKGROUND

The current contract was adopted January 2007 to replace the previous contract with the four companies which had been executed in 1997. A formal bid process was conducted and all four selected contractors met the requirements and performance criteria the City was seeking in a towing services contractor.

The four contractors have continued provide services on a rotational basis to provide timely responses to collisions or tows due to maintenance failure. The equal rotational basis ensures each service provider is afforded equal access to supply services under this contract. All have provided joint service response for large collisions or public events. They have also towed and stored vehicles for investigative purposes as well as tow of Police fleet vehicles.

RATIONALE FOR RECOMMENDATION

The Police Department orders or facilitates the tow of approximately 5000 vehicles annually as required by State Law to remove immobile vehicles from the roadway. The City has no internal process for the towing and storage of vehicles which all four vendors provide.

ALTERNATIVE ACTIONS CONSIDERED

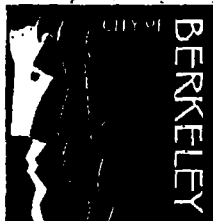
No alternative actions were considered.

CONTACT PERSON

Dennis Ahearn, Captain, Police, 981-5976

Attachments:

1. Resolution



Office of the City Manager

 **COPY**

March 28, 2011

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

As provided under contract No. 7188, CMS No. CVP6R between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from March 31, 2011 to May 31, 2011. In all other respects, the contract amended shall remain in full force and effect.

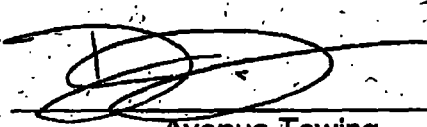
Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA. 94704

Sincerely,



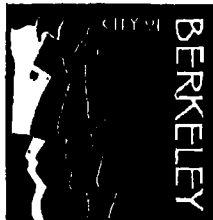
Phil Kamlarz
City Manager

Accepted by: 

Avenue Towing

Date: 3/30/2011

Cc: City Clerk
City Auditor
Finance



Office of the City Manager

February 24, 2011

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

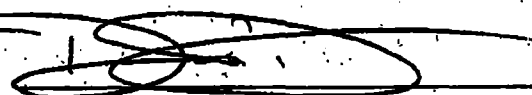
As provided under contract No. 7188, CMS No. CVP6R between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from February 28, 2011 to March 31, 2011. In all other respects, the contract amended shall remain in full force and effect.

Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA. 94704

Sincerely,


Phil Kamlarz
City Manager

Accepted by: 

Avenue Towing

Date: 2/25/11

Cc: City Clerk
City Auditor
Finance



Office of the City Manager

COPY COPY

January 13, 2011

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

As provided under contract No. 7188, CMS No. CVP6R between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from February 1, 2011 to February 28, 2011. In all other respects, the contract amended shall remain in full force and effect.

Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA. 94704

Sincerely,

Phil Kamlarz
City Manager

Accepted by:

Avenue Towing

Date: 1/21/2011

Cc: City Clerk
City Auditor
Finance



Office of the City Manager

January 8, 2010

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

As provided under contract No. 7188, CMS No. CVP6R between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from February 1, 2010 to February 1, 2011. In all other respects, the contract amended shall remain in full force and effect.

Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Sincerely,

Phil Kamlarz
City Manager

Accepted by: _____

Avenue Towing

Date: _____

1/23/10

Cc: City Clerk
City Auditor
Finance

30240107



Office of the City Manager

January 31, 2009

Mr. David Kotolup
Avenue Towing
1429 San Pablo Avenue
Berkeley, CA 94702

Subject: CONTRACT TIME EXTENSION

Dear Mr. Kotolup:

As provided under contract No. 7188, CMS No. DPRAX between the City of Berkeley and Avenue Towing, I hereby extend the term of the contract from February 1, 2009 to February 1, 2010. In all other respects, the contract amended shall remain in full force and effect.

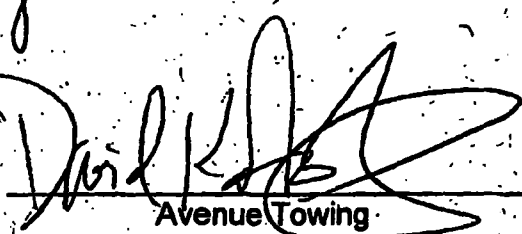
Please sign below indicating your acceptance of this extension and return this letter to:

City of Berkeley
Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA. 94704

Sincerely,


Phil Kamlarz
City Manager

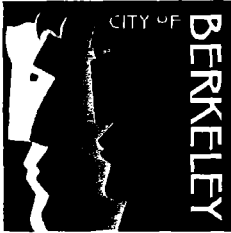
Accepted by:


Avenue Towing

Date:

2/13/09

Co: ~~City Clerk~~
City Auditor
Finance



Office of the City Manager

CONSENT CALENDAR
July 13, 2010

To: Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Michael K. Meehan, Chief of Police
Subject: Agreement between the City of Berkeley and Alta Bates Medical Center regarding Parking Enforcement by use of Mobile License Plate Reader

RECOMMENDATION

Adopt Resolution authorizing the City Manager to accept the donation of one ELSAG Parking Enforcement License Plate Reader system from Alta Bates Medical Center to enhance the enforcement of residential parking rules in the 14-block residential area ("Core Area" as defined in the use permit) surrounding the Alta Bates Medical Center (ABMC).

FISCAL IMPACTS OF RECOMMENDATION

The cost of the ELSAG License Plate Reading (LPR) system is \$49,279 and the annual maintenance cost is \$1,600. Alta Bates Medical Center will pay the initial costs. After the first year (effective FY 2012), the City will pay for the annual maintenance cost from Parking Meter Funds budgeted in the Police Department budget (840-7303-420-3034).

CURRENT SITUATION AND ITS EFFECTS

There continue to be problems associated with vehicles parking in violation of the Residential Parking Permit rules in the Core Area surround Alta Bates Medical Center. These problems create challenges for neighborhood residents in the Core Area in regards to parking and congestion.

BACKGROUND

The area around Alta Bates Medical Center (ABMC) has been an area of concern for parking enforcement for many years. Over the years there has been a great deal of neighborhood concern over vehicles parking in the residential neighborhood surrounding the hospital. As a result of a stipulated settlement between the City and ABMC over this issue in 1997, there are certain parking mitigation efforts that ABMC is

required to take as a part of their use permit. These mitigation efforts are designed to reduce the number of vehicles parking in the residential areas around ABMC to a level below the Aggregate Impact Level (AIL) determined by a study contracted by ABMC through an outside consultant. These efforts have included bussing employees into the area, instituting valet parking to maximize parking space in the ABMC parking lots, and discouraging employees from moving their vehicles in the RPP area. ABMC has been a willing partner in these mitigation efforts. The final report from the consultant found that the AIL in the area surrounding ABMC had been exceeded for three years in a row and suggested several possible remedies, including increased Parking Enforcement Staffing. This was attempted and found to be ineffective and an inefficient use of staff, as it did not effectively address the RPP violations. Another study recommendation was the use of License Plate Reading (LPR) technology to increase efficiency.

LPR equipment is a system of camera and computer equipment mounted on a vehicle which scans and reads license plates as the vehicle is moving. It identifies vehicles parked in excess of time limits and can be compared to existing lists of stolen vehicles, parking scofflaws or other suspicious vehicle data in real time, thereby, reducing the time needed to patrol a specific area. The reduction in time allows the parking enforcement officer to conduct more frequent trips through the area surrounding the ABMC which, we know from past experience, the increased presence of the enforcement vehicles will discourage re-parking in the patrolled RPP area.

RATIONALE FOR RECOMMENDATION

The City of Berkeley and the Medical Center have agreed that if monitoring were conducted in 2010 it would likely result in findings of nonconformance with the use permit. Both parties have an interest in successfully resolving the issues surrounding this nonconformance. An LPR system would be an effective tool for RPP enforcement. Additionally, the City is interested in utilizing LPR technology on a trial basis to determine its potential for citywide application in crime reduction strategies such as those addressing auto thefts.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Erik Upson, Lieutenant, 981-5983

Lynne Ohlson, Public Safety Business Manager, 981-5976

RESOLUTION NO. -N.S.

AUTHORIZING THE CITY MANAGER TO ACCEPT THE DONATION OF ONE ELSAG PARKING ENFORCEMENT LICENSE PLATE READER SYSTEM FOR PARKING ENFORCEMENT IN THE VICINITY OF ALTA BATES MEDICAL CENTER

WHEREAS, the neighborhoods surrounding Alta Bates Medical Center continue to contend with parking congestion associated with the medical center; and

WHEREAS, the City and Alta Bates Medical Center are dedicated to addressing these parking issues and conformance with the use permit; and

WHEREAS, attempts to address this through other mitigation efforts, including increased parking enforcement staffing have not satisfactorily resolved these parking issues; and

WHEREAS, License Plate Reader technology for parking enforcement could increase efficiency and effectiveness of parking enforcement in the neighborhoods surrounding Alta Bates Medical Center, especially in terms of residential parking violations; and

WHEREAS, funding for purchasing the License Plate Reader system will be provided by Alta Bates Medical Center.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to accept the donation of one ELSAG Parking Enforcement Plate Scanning system by Alta Bates Medical Center valued at about \$49,000.

RESOLUTION NO. 64,984-N.S.

AUTHORIZING THE CITY MANAGER TO ACCEPT THE DONATION OF ONE ELSAG PARKING ENFORCEMENT LICENSE PLATE READER SYSTEM FOR PARKING ENFORCEMENT IN THE VICINITY OF ALTA BATES MEDICAL CENTER

WHEREAS, the neighborhoods surrounding Alta Bates Medical Center continue to contend with parking congestion associated with the medical center; and

WHEREAS, the City and Alta Bates Medical Center are dedicated to addressing these parking issues and conformance with the use permit; and

WHEREAS, attempts to address this through other mitigation efforts, including increased parking enforcement staffing have not satisfactorily resolved these parking issues; and

WHEREAS, License Plate Reader technology for parking enforcement could increase efficiency and effectiveness of parking enforcement in the neighborhoods surrounding Alta Bates Medical Center, especially in terms of residential parking violations; and

WHEREAS, funding for purchasing the License Plate Reader system will be provided by Alta Bates Medical Center.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to accept the donation of one ELSAG Parking Enforcement Plate Scanning system by Alta Bates Medical Center valued at about \$49,000.

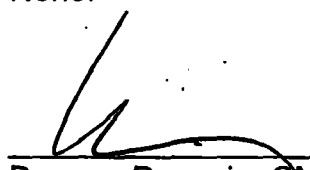
The foregoing Resolution was adopted by the Berkeley City Council on July 13, 2010, 2010 by the following vote:

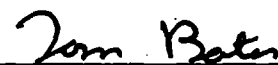
Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

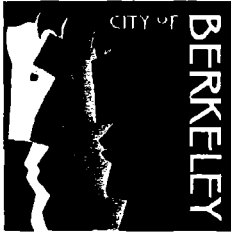
Noes: None.

Absent: None.

Attest:


Deanna Despain, CMC, City Clerk


Tom Bates, Mayor



Office of the City Manager

INFORMATION CALENDAR
March 8, 2011

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Andrew Clough, Acting Director, Public Works

Subject: Pilot Residential Preferential Parking Policy Modification for North Willard Neighborhood

INTRODUCTION

Council requested development of a pilot modification of the Residential Preferential Parking (RPP) Program for the northern end of the Willard area between Dwight Way, Parker Street, College Avenue, and Telegraph Avenue. The referral suggested that one side of certain streets be restricted to residential permit parking only, while retaining 2-hour parking limits for visitors without permits on the other side. Since Council's 2006 recommendation of this concept, and before an analysis and neighborhood input process could be initiated, staff was directed to implement a similar parking modification as a mitigation measure for the area near the new Trader Joe's store, located at the northwest corner of University Avenue and Martin Luther King, Jr. Way.

Meanwhile, the City is embarking on two major grant-funded parking and transportation demand management (TDM) projects: the Value Pricing Pilot (VPP), and the Climate Initiative (CI) projects, which will help guide development of future parking policies, including modified RPP policies. These grant projects have the capacity to provide the City with significant information and tools.

The recent "Trader Joe's" mitigation program was implemented as directed by Council, and with limited input requested from the Transportation Commission. From this experience, the Commission recommends that alternative measures be considered before any other such RPP modifications are pursued or implemented. The grant-funded projects and review of the modified RPP program around Trader Joe's will provide data to evaluate potential strategies for a modified RPP program to meet the needs of the North Willard neighborhood.

CURRENT SITUATION AND ITS EFFECTS

Residents of the North Willard neighborhood feel they experience major parking problems because of proximity to both the University and many other institutions and businesses that attract drivers to the area. This influx of cars competes with residents for limited on-street parking space, and all residential neighborhoods close to

commercial areas, including Shattuck, College, and Telegraph Avenues experience similar issues to varying degrees.

However, as with most engineering solutions to traffic and parking problems, the alleviation of a parking issue on one block produces a domino effect and often worsens the traffic or parking situation on adjacent blocks. This is why after residents on one block petition to opt into the RPP Program, most nearby blocks tend to follow suit.

When proposing a modification to existing parking restrictions, staff typically collects data from the area surrounding the proposed modification, the "buffer zone", to analyze how the change might affect these neighborhoods. The Trader Joe's modification was required as a mitigation measure for the store, so no further analysis was required. Although such analysis would have been useful, staff lacked resources and the development project provided no funding to extend parking surveys into the buffer zone, so valuable data is not available.

Another consequence of parking reduction in areas close to commercial establishments is a corresponding reduction in access for their tenants and clients. This issue has been raised by some business owners in the RPP modified area near Trader Joe's, and their needs should be considered when implementing future RPP modifications.

With funding from the parking grants, the Police Department will obtain a new Parking Enforcement License Plate Reader system that provides data on drivers' behavior while parking in an RPP Area. Parking Enforcement Officers will be able to record all vehicle license plates so that moving one's vehicle every two hours, erasing tire marks, and other ways to evade enforcement will be very difficult to do, and enhanced data on parking behavior will be available to evaluate RPP modifications. This data, along with the clear goal to reduce parking spillover into adjacent residential areas, as in the North Willard neighborhood, will be useful for staff and in meeting with residents to identify the best measures to meet their needs consider for implementation.

BACKGROUND

On July 25, 2006, Councilmembers Kriss Worthington and Gordon Wozniak submitted a Consent Calendar item requesting development of a special Residential Preferential Parking (RPP) Pilot Program for residents of the northern end of the Willard neighborhood (see attachment). Their recommendation was that one side of certain streets would be designated for residential parking only, while the other side of the block would remain under the current 2-hour parking limit for non-residential permit holders. This Pilot Program has not yet been implemented. .

Last summer a modified RPP Program was implemented to help reduce the anticipated on-street parking impact from Trader Joe's. The 2006 proposal for the Willard Pilot Project served as a model for the Trader Joe's parking mitigations when that project was approved by Council in July 2007. To evaluate the RPP modifications in the area

around Trader Joe's, staff conducted parking surveys before modifying the affected blocks in May 2010, and after this was implemented in January 2011. Unfortunately, at this time our resources for parking surveys are limited and the data acquired does not provide information on the parking patterns of vehicles, which would have helped to clarify specific parking issues. However, that project has provided staff with instructive feedback in the months since this modified RPP was installed.

The following are some of the issues that have been identified, related to the Trader Joe's area project: although advance notices of the public information meeting were sent to all affected residential addresses, the public meetings were not well-attended; the modified RPP sign failed to bring enough attention to the parkers as indicated by a large number of contested violations (new red and white RPP signs will be posted pending funding); the issue of disabled parking permits allowing unlimited use of a parking space on the modified side of the block has not yet been resolved; and some business owners in the vicinity have been complaining that the reduced parking options are affecting their clients and tenants. These and other issues have contributed to a significant challenge for enforcement and contestation processes.

POSSIBLE FUTURE ACTION

Transportation Division staff will complete an evaluation of the Trader Joe's Modified RPP Project before engaging in other RPP alternative modifications. We plan to use the Parking Enforcement License Plate Reader System and other tools to inform development of a strategically sound and viable RPP modification program.

Also related to the North Willard Project, the University's Underhill garage, which opened in 2009, charges lower parking rates than on-street meters and appears to have reduced demand near the North Willard area. This will be further evaluated through the Value Pricing Pilot (VPP) and the Climate Initiative (CI) projects.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Costs will be developed as specific proposals are identified and evaluated.

CONTACT PERSON

Farid Javandel, Transportation Division Manager, Public Works, 981-7061
Hamid Mostowfi, Supervising Traffic Engineer, Public Works, 981-6403
Diana Cardona, Assistant Traffic Engineer, Public Works, 981-6339

Attachments:

- 1: 7/25/2006 Consent Calendar Report, Councilpersons Worthington and Wozniak on Pilot Residential Parking Policy

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT

CMS # R4V7P

(To be filled in by department)

Contract # R 8892

(To be filled in by Auditor)

CONTRACTOR NAME: Genetec, Inc.

Subject of Contract: Installation, Configuration, and Commissioning of one License Plate Recognition System

This contract package contains:

3 Original Contracts (Department, Vital Record and Vendor) in folders

*The Vital Record contract MUST be in a folder.

*Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.

	Attached	Waiver Attached	Not Required
1. CONTRACT BOILERPLATE	X		
2. Scope of Services (Exhibit A @ boilerplate)	X		
3. Payment Provisions (Exhibit B @ boilerplate)	X		
4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution <u>64,984</u>	☐	X	☐
5. CERTIFICATIONS			
a. Workforce Composition (businesses with 5 or more employees)	X	☐	☐
b. Nuclear Free Berkeley Disclosure	X		☐
c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)	X	☐	☐
d. Certification of Compliance with Living Wage Ordinance (LWO): <u>use current form on web*</u>	X	☐	☐
e. Certification of Compliance with Equal Benefits Ordinance: <u>use current form on web*</u>	X	☐	☐
f. Community Agency: Certification of Anti-Lobbying	☐	☐	X
g. Community Agency: Certification of Drug-Free Workplace	☐	☐	X
h. Federally Funded Project Requirement ONLY : Debarment status printout (\$25,000 and above)	☐		X
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies)	X	☐	☐
7. Authorizing Council Resolution # <u>64,984 7/13/10</u>	X		☐
8. Consultant Contracts: Form 700, Statement of Economic Interests	☐		X

Berkeley Business License # 12-51453

Contract Amount \$ 0.00

Requisition # no cost / donation (Hard copy attached)

Council Approved Amount \$ 0.00

Budget Code n/a

Was there any advance payment? No X Yes ☐ If Yes, Advanced Amount \$ _____

If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures:

1. <u>Butch Lavin</u> Project Manager	Information Technology & Department	(510) 981-6557 Phone No.	1/9/12 Date
2. <u>Katherine Holmes</u> Department Administrative Officer/Accounting			1/10/12 Date
3. <u>[Signature]</u> Department Head			1/12/12 Date
4. <u>[Signature]</u> Contract Administrator			1/13/12 Date
5. <u>[Signature]</u> Budget Manager			

Routing continues to the following persons, who sign directly on the contract:

6. City Manager (Will not sign unless all signatures and dates appear above)

7. City Auditor (Initial ar)

8. City Clerk: CMS Login 2/2/12

Destruct

Review

JAN 19 2012
CITY AUDITOR

PROCUREMENT, LICENSE, AND MAINTENANCE AGREEMENT

This Procurement, License, and Maintenance Agreement ("Agreement") is made this 1st day of January, 2012 ("Effective Date"), by and between Genetec, Inc. ("Vendor") and the City of Berkeley ("City").

RECITALS

WHEREAS, City accepted donation of the installation, configuration, and commissioning of one license plate recognition system from Alta Bates Medical Center;

WHEREAS, the City Council, by its Resolution No. 64,984-N.S., authorized the City Manager to execute an agreement with Vendor;

WHEREAS, Vendor is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and

WHEREAS, Vendor desires to perform these services in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, Vendor and City agree as follows:

1. DEFINITIONS.

1.1 Acceptance. As defined in Exhibit A.

1.2 Agreement. This document and all of the accompanying appendices, schedules and exhibits, together with any future written and executed amendments

1.3 Documentation. Technical publications or user manuals relating to use of the System, provided by Vendor to City.

1.4 Goods. All tangible personal property required to be furnished under this Agreement, including Software and hardware.

1.5 Installation. As defined in Exhibit A.

1.6 License Plate Recognition System. A hard-mount mobile AutoVu Overtime Enforcement system consisting of two (2) Sharp cameras, one (1) trunk unit, two (2) wheel imaging cameras, one (1) navigator box, one (1) Panasonic Toughbook CF-19 laptop and in-vehicle mounting bracket, AutoVu Patroller 5.0 SR1 in-vehicle software, and Security Center 5.0 SR1 back-office software.

1.7 Services. Services to be furnished by Vendor in order to fulfill the requirements of this Agreement, including but not limited to, analysis, scheduling, coordination, installation, testing, repair, and maintenance.

1.8 Software. The term "Software" shall mean the computer program in object code only and the user manuals described in the specifications set forth in Exhibit A. The term "Software" includes any

corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to such computer program and user manuals.

1.9 Specifications. Written technical descriptions of materials, equipment, standards and workmanship as applied to the Goods and Services, and certain administrative details applicable thereto.

1.10 Testing. As defined in Exhibit A.

2 CONTRACT DOCUMENTS.

2.1 The Contract Documents are as follows:

- Exhibit A – Scope of Work
- Exhibit B – Payment Terms
- Exhibit C – Software License Terms
- Exhibit D – Software Maintenance Agreement
- Exhibit E – Remote Access Agreement
- Exhibit F – Server and Client Requirements

3 SERVICES. Subject to the terms and conditions set forth in this Agreement, Vendor shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

3.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2012, unless the term of the Agreement is otherwise terminated or modified, as provided for in Section 11. The time provided to Vendor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 11.

3.2 Standard of Performance. Vendor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Vendor is engaged in the geographical area in which Vendor practices its profession. Vendor shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Vendor's profession.

3.3 Assignment of Personnel. Vendor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any person assigned to perform services under this Agreement, Vendor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

3.4 Time. Vendor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 3.2 above and to satisfy Vendor's obligations hereunder.

3.5 Primary Provider of Services. Vendor designates Donald Carducci, Deployment Project Manager, who shall serve as Vendor's principal contact for the services provided under this Agreement.

4 COMPENSATION. City has agreed to accept the installation, configuration, and commissioning of one license plate recognition system purchased by Alta Bates Medical Center, and donated to the City. Pursuant to this donation, Vendor agrees to provide City all hardware, software and services set forth in Exhibit A at no charge to City.

4.1 Invoices. If the City amends this contract for future yearly maintenance, Vendor shall submit invoices based on the payment schedule set forth in Exhibit B.

4.2 Total Payment. City shall not pay for the services to be rendered by Vendor pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement unless Vendor obtains the written consent of the City prior to incurring such additional expense or cost.

4.3 Payment of Taxes. Vendor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

4.4 Authorization to Perform Services. The Vendor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

5 DISPUTES.

5.1 Project Manager shall notify Vendor in the event that the Software furnished by Vendor does not meet the true intent of the Specifications. Vendor's project manager shall meet with Project Manager within ten (10) days of the notification (by telephone, if applicable) and shall attempt to determine the nature of the Project Manager's concern.

5.2 In the event that Vendor's project manager and Project Manager cannot resolve the matter, the Project Manager shall render his written decision within fifteen (15) days.

5.3 Within ten (10) days of receiving the Project Manager's written decision, Vendor may submit a written request to the City Manager for resolution of the dispute, including a meeting to further discuss the nature of the dispute and the Vendor's non-compliance with the requirements of Exhibit A. The City Manager shall render a written decision within ten (10) days.

6.3.1 Nothing herein shall be interpreted to preclude the City Manager from issuing a notice of termination pursuant to Section 11 concurrently with his or her decision. In such event, the next step of the dispute resolution process shall be mediation as described below. Time limits for the effective date of the termination shall not be extended by virtue of the process described herein, unless otherwise agreed by the City in writing.

5.4 Vendor shall continue performance of this Agreement throughout the course of any and all disputes. Vendor agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this contract. Vendor also agrees that should Vendor

discontinue performance of this Agreement due to dispute or disputes, the City may terminate this Agreement for cause.

5.5 Neither Vendor, nor City, shall initiate any court action without first submitting the matter to mediation. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, then shall utilize the services of a mediator selected by the American Arbitration Association from its panel of approved mediators. All statutes of limitation shall be tolled from the date of the demand for mediation until a date four weeks following the mediation's conclusion. All pending claims or disputes between the parties shall be submitted to the same mediator. Vendor and City shall each pay half of the mediator's fee.

6 WARRANTIES. Vendor warrants the following with respect to Services performed:

6.1 Compliance with Specifications. Vendor's Software, Goods, files, documentation and all other work product will strictly comply with the descriptions and representations as to the Services, including performance capabilities, completeness, specifications, configurations, and function that appear in the Specifications outlined in Exhibit A.

6.2 Compliance with Specifications After Acceptance. For a period of one-hundred eighty (180) days after Acceptance pursuant to Exhibit A, any computer programs developed under this Agreement will operate in conformance with the specifications for such computer programs.

6.3 It may lawfully grant the license set forth in Exhibit C, Software License Terms;

6.4 To the best of its knowledge, neither the licensed software, including all subsequent versions, updates, enhancements and/or releases, nor licensed materials, or the use thereof within the scope of the License, infringes a patent or copyright or is claimed to be a trade secret of any person who has not consented to the granting of the License;

6.4.1 At the time of installation, and so long thereafter as City pays renewal license fees hereunder, the software including all subsequent versions, updates, enhancements and/or releases, will conform to applicable documentation (i.e. all reference manuals) delivered by Vendor to the City in electronic format; and

6.4.2 To the best of its knowledge, neither the software, including all subsequent versions, updates, enhancements and/or releases, nor the licensed materials contain any virus, time bomb mechanism, or other software or code that can disable or adversely affect any and all of the software of the licensed materials or destroy any data or other software.

6.5 Installation. The installation work (i.e. labor) executed by Vendor's Field Engineers onsite will be under warranty for a period of 90 days from the installation completion date.

6.6 Hardware. The hardware to be installed will come with a 1 year warranty and will take effect upon completion of the installation. Additional years of warranty may be purchased at the rates outlined in Exhibit B.

6.7 Disclaimer of Any Other Warranty. THE LIMITED WARRANTY SET FORTH IN SUBSECTION 6.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.8 VENDOR SHALL IN NO EVENT BE LIABLE UNDER ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, FROM ANY CAUSE ARISING OUT OF THE SALE, INSTALLATION, USE OR INABILITY TO USE ANY GOOD OR SERVICE, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS REVENUE, LOST GOODWILL, BUSINESS INTERRUPTION, OTHER ECONOMIC LOSS OR ANY LOSS OF RECORDED DATA.

7 CONFIDENTIALITY.

7.1 Confidential Information and Disclosure. During the term of this Agreement, either party (the "Disclosing Party") may find it necessary to disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of the Disclosing Party at the time of disclosure to the Receiving Party. The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by the Disclosing Party. The Receiving Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

7.2 The Receiving Party's confidentiality obligations hereunder shall not apply to any portion of the Disclosing Party's Information which:

7.2.1 Has become a matter of public knowledge other than through an act or omission of the Receiving Party;

7.2.2 Has been made known to the Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;

7.2.3 Was in the possession of the Receiving Party prior to the disclosure of such Information by the Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;

7.2.4 The Receiving Party is required by law to disclose; or

7.2.5 Has been independently developed by the Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

7.3 The Receiving Party shall return or destroy the Disclosing Party's Information (including all copies thereof) to the Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. Vendor understands that City is a public agency and is subject to the laws that may compel it to disclose information about Vendor's business.

8 SUBCONTRACTING AND ASSIGNMENT

8.1 Provider is prohibited from subcontracting or assigning this Agreement, or any part of it, unless such subcontracting or assignment is approved by City in writing.

9 **INSURANCE.** Not less than ten (10) days prior to commencing any work, Vendor shall furnish to the City satisfactory proof that Vendor has taken out for the entire period covered by this contract, as further defined below, the following insurance in a form satisfactory to the City and with an insurance carrier satisfactory to the City, authorized to do business in California and rated by A. M. Best & Company A or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the services of Vendor, for which Vendor may be legally liable, whether performed by Vendor, its subcontractors or subconsultants of any tier or by those employed directly or indirectly by them or any of them, or by anyone for whose acts any of them may be liable:

9.1 **Commercial general liability insurance:** Comprehensive or Commercial General Liability Insurance with limits not less than one million (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

9.2 **Full workers' compensation insurance** for all persons whom Vendor may employ in furnishing the Goods and providing the Services required hereunder, in accordance with Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act", approved May 26, 1913, and All Acts amendatory or supplemental thereto. Workers' compensation policy shall include Employer Liability Insurance with limits not less than one million dollars (\$1,000,000) each accident. There shall be a waiver of subrogation as to the City and each named and additional insured under such policy.

9.3 Insurance policies shall contain an endorsement containing the following terms:

9.3.1 The City, and its directors, officers, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds and there shall be a waiver of subrogation as to each named and additional insured.

9.3.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability, except as otherwise stated herein.

9.3.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to the City 30 days in advance of the effective date thereof, and ten (10) days written notice to the same in advance of payment of any insurance claims under such policies to any person, firm or entity.

9.3.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than the Vendor shall be called upon to contribute to a loss covered by insurance for the named insured.

9.4 Certificates of Insurance and Endorsements shall have clearly typed thereon the City contract number and title of contract, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subparagraph 9.3.3. Endorsements naming the City as additional insured shall be attached to the Certificate of Insurance.

9.5 Nothing herein contained shall be construed as limiting in any way the extent to which Vendor or any of its subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.

9.6 Insurance shall be maintained by Vendor in full force and effect during the entire period of performance of the Agreement, except that general commercial liability insurance completed operations coverage shall be kept in force for a period of one (1) year after final termination of this Agreement.

9.7 If Vendor fails to maintain insurance, the City may take out insurance to cover any damages of the above mentioned classes for which the City and others to be insured referenced above might be held liable on account of Vendor's failure to pay such damages, or compensation which the City might be liable to under provisions of Workers' Compensation Insurance and Safety Act, by reason of employee of Vendor being injured or killed; and deduct and, in addition to any other remedy, retain amount of premium from any sums due Vendor under Contract.

10 INDEMNIFICATION

10.1 Vendor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, commissioners, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Vendor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work.

10.2 The foregoing obligation of Vendor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Vendor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Vendor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Vendor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages

whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Vendor agrees to the provisions of this Section and acknowledges that it is a material element of consideration.

- 10.3** Vendor shall indemnify and hold harmless City from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by the Software. City agrees to notify Vendor of any such claim promptly in writing and to allow Vendor to control the proceedings. City agrees to cooperate fully with Vendor during such proceedings. Vendor shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Vendor may replace, in whole or in part, and at its own expense, the Software with a substantially compatible and functionally equivalent computer program or modify the Software to avoid the infringement.

11 CANCELLATION AND TERMINATION

- 11.1** **Termination.** The City may terminate this Agreement for any reason or no reason by giving thirty (30) days written notice to Vendor. As soon as practical after receipt of a notice of termination without cause, Vendor must submit a statement to the City showing in detail the products provided and services performed under this Agreement up to the date of termination. The City will pay Vendor for all undisputed invoices related to Products provided and Services performed as of the date of termination (including any accrued retainage), provided that Vendor delivers to the City all work completed as of the termination date and provided further that the City will not be required to pay for defective work. In no event will Vendor be entitled to profit on unperformed services due to an early termination or adjustment of the scope of work.

11.2 Termination for Cause.

- 11.2.1** **By Either Party.** Either party may terminate this Agreement by giving written notice to the other party upon the occurrence of one or more of the following events, each of which is a cause for termination:
- 11.2.1.1** The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement. However, unless otherwise provided in this Agreement, the default will not be cause for termination if both of the following are satisfied: (1) the default is reasonably susceptible to cure; and (2) the other party cures the default within thirty (30) days of receipt of written notice of default or presents a plan to cure acceptable to the other party;
 - 11.2.1.2** The other party attempts to assign, terminate, or cancel this Agreement contrary to the terms of this Agreement; or
 - 11.2.1.3** The other party takes or fails to take any action which constitutes grounds for termination under the terms of this Agreement, including but not limited to failure to comply with the requirements contained in Section 9, Insurance; or

11.2.1.4 The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy, or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of the party is continued and performance of all of its obligations under this Agreement will continue), or if a receiver, trustee, or liquidator is appointed for it or any substantial part of the party's assets or properties.

11.2.2 **By City.** In addition to the above grounds, the City may terminate this Agreement upon the occurrence of the following events, each of which is also a cause for termination:

11.2.2.1 The System is unable to meet the Specifications, and this inability is not cured or Vendor has not presented a plan to cure acceptable to the City within thirty (30) days after the City gives Vendor written notice;

11.2.2.2 Vendor fails to complete any material task, subsystem, component or interface by the completion date specified in the Project Schedule outlined in Exhibit A, and does not remedy that failure within ten (10) days after demand by City that Vendor do so, provided that if any such failure cannot reasonably be remedied within that ten (10) day period, the City will not terminate this Agreement if Vendor commences the remedying of that failure within that ten (10) day period and thereafter continues diligently and in good faith to take such steps as may be necessary to remedy that failure, and that failure is in fact remedied within a period of not more than thirty (30) days, after which, if not remedied, the City will be entitled to exercise its right of termination under this subsection;

11.2.2.3 City becomes aware or receives notice that Vendor is insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any domestic bankruptcy or insolvency law or publicly announces liquidation proceeding

11.2.3 **By Vendor.** Vendor may terminate this Agreement by giving written notice to the City if: (a) the City fails to pay any undisputed invoice due under this Agreement; and (b) the failure to pay is not cured within sixty (60) days after Vendor gives the City written notice of the failure and of Vendor's intention to terminate this Agreement if the failure is not cured.

11.2.4 **Suspension of Services.** Notwithstanding any other provision of this Agreement, if City disputes an allegation of default by Vendor, Vendor shall not terminate this Agreement, suspend or limit Services or warranties, or repossess, disable or render unusable any Software supplied by Vendor, unless: (a) the parties agree in writing; or (b) a court of competent jurisdiction determines otherwise.

11.2.5 Obligations Upon Expiration or Termination. Unless otherwise owned or licensed under the terms of this Agreement, upon expiration or termination of this Agreement, each party will promptly return to the other all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the other. In addition, Vendor will deliver to the City all Work Product currently in existence and for which payment has been made.

12 FORCE MAJEURE. Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or any act or failure to act by the other party or such other party's employees, agents or contractors; provided, however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could be the cause of a delay in the performance of this Agreement.

13 AUDIT. Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Vendor's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such an audit, Vendor agrees to provide the City Auditor with reasonable access to Vendor's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Vendor an opportunity to discuss and respond to any findings before a final audit report is filed.

14 DRUG FREE WORKPLACE. Vendor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Vendor agrees that any violation of this prohibition by Vendor, its employees, agents or assigns will be deemed a material breach of this Agreement.

15 DISALLOWANCE. In the event Vendor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Vendor shall promptly refund the disallowed amount to City upon City's request.

16 WAIVERS. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any right to which that party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

17 PROHIBITED DISCRIMINATION.

17.1 During prosecution of the Work to be done under the Agreement, Vendor agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C.") Chapter 13.26, including, but not limited to, the following:

17.2 Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

17.3 Vendor shall permit the City access to records of employment, employment advertisements, application forms, EEO-I forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Vendor shall submit forms supplied by the City to monitor this non-discrimination provision.

17.4 Vendor shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act and any and all other applicable federal, state and local disability rights legislation. Vendor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Vendor, its Subcontractors, subconsultants, employees, representatives, agents or assigns shall constitute a material breach of this Agreement.

18 CONFLICTS OF INTERESTS PROHIBITED.

18.1 In accordance with Government Code § 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Vendor nor any employee, officer, director, partner or member of Vendor, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Agreement.

18.2 In accordance with Government Code § 1090 and the Political Reform Act, Government Code §§ 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Vendor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Vendors.

18.3 Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code § 87100 et seq., its implementing regulations, manuals and codes, Government Code § 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

19 NUCLEAR FREE BERKELEY ORDINANCE. Vendor agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

20 OPPRESSIVE STATES CONTRACTING PROHIBITION.

20.1 In accordance with Resolution No. 59,853-N.S., Vendor certifies that it has no contractual relations with, and agrees during the term of this Agreement to forego contractual relations to provide personal services to, the following entities:

20.1.1 The governing regime in any Oppressive State.

20.1.2 Any business or corporation organized under the authority of the governing regime of any Oppressive State.

20.1.3 Any individual, firm, partnership, corporation, association, or any other commercial organization; and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

20.2 **Oppressive States.** Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Agreement:

20.2.1 Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang.

20.3 Vendor's failure to comply with this Section shall constitute a default of this Agreement and City may terminate this Agreement pursuant to Section 11. In the event that the City terminates Vendor due to a default under this provision, City may deem Vendor a non-responsible bidder for five (5) years from the date this Agreement is terminated.

21 CITY LIVING WAGE ORDINANCE.

21.1 Vendor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, BMC Chapter 13.27. If Vendor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Vendor will be required to provide all eligible employees with City mandated minimum compensation during the term of this Agreement, as defined in BMC Chapter 13.27, as well as comply with the terms enumerated herein. Vendor expressly acknowledges that, even if Vendor is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Vendor to the requirements under BMC Chapter 13.27 in subsequent contracts.

21.2 If Vendor is currently subject to the Berkeley Living Wage Ordinance, Vendor shall be required to maintain monthly records of those employees providing service under the Agreement. These records shall include the total number of hours worked, the number of hours spent providing service under this Agreement, the hourly rate paid, and the amount paid by Vendor for health benefits, if any, for each of its employees providing services under the Agreement.

21.3 If Vendor is currently subject to the Berkeley Living Wage Ordinance, Vendor shall include the requirements thereof, as defined in BMC Chapter 13.27, in any and all subcontracts in which Vendor engages to execute its responsibilities under this Agreement. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Agreement shall be entitled to a living wage, as described in BMC Chapter 13.27 and herein.

21.4 If Vendor fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law.

Vendor's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this Agreement pursuant to Section 11. In the event that City terminates Vendor due to a default under this provision, City may deem Vendor a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, Vendor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Vendor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Vendor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Vendor.

22. CITY EQUAL BENEFITS ORDINANCE.

22.1 Vendor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, BMC Chapter 13.29. If Vendor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Vendor will be required to provide all eligible employees with City mandated equal benefits, as defined in BMC Chapter 13.29, during the term of this Agreement, as well as comply with the terms enumerated herein.

22.2 If Vendor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Vendor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 13 of this Agreement.

22.3 If Vendor fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law.

Vendor's failure to comply with this Section shall constitute a material breach of the Agreement, upon which City may terminate this Agreement pursuant to Section 11. In the event the City terminates this Agreement due to a default by Vendor under this provision, the City may deem Vendor a non-responsible bidder for not more than five (5) years from the date this Agreement is terminated.

In addition, at City's sole discretion, Vendor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Vendor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Vendor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Vendor.

23 RECYCLED PAPER FOR REPORTS. If Vendor is required by this Agreement to prepare a written report or study, Vendor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Agreement, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Vendor shall use white paper. Written reports or studies prepared under this Agreement shall be printed on both sides of the page whenever practical.

24 STATUS OF VENDOR.

24.1 Independent Contractor. At all times during the term of this Agreement, Vendor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Vendor only insofar as the results of Vendor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 3.3; however, otherwise City shall not have the right to control the means by which Vendor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Vendor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

24.2 Vendor No Agent. Except as City may specify in writing, Vendor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Vendor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

25 MISCELLANEOUS PROVISIONS.

25.1 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

25.2 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

25.3 Compliance with Applicable Laws. Vendor and any subcontractors shall comply with all laws, including the Berkeley City Charter, the Berkeley Municipal Code, and all city policies, rules and regulations that are applicable to the performance of the work hereunder.

25.4 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Vendor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 25.5 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 25.6 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 25.7 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 25.8 Solicitation.** Vendor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 25.9 Contract Administration.** This Agreement shall be administered by Donna LaSala, Director of Information Technology, or her designee, who shall act as the City's representative. All correspondence shall be directed to or through Butch Lavin, Project Manager (blavin@cityofberkeley.info).
- 25.10 Notices.** Any written notice to Vendor shall be sent to:
- Genetec, Inc.
2280, Alfred-Nobel Blvd, suite 400
Montreal, QC, H4S 2A4, Canada
- Any written notice to City shall be sent to:
- City Manager
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
- 25.11 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Vendor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 25.12 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement as of the date written on the first paragraph of this Agreement.

CITY OF BERKELEY

Signed by:

Chad Dyer
City Manager

Countersigned by:

Ann Marie Hogan 1.26.1
City Auditor

Approved as to Form:

Eynne Bourque
City Attorney for City of Berkeley

Attested by:

Rose Johnson
City Clerk

VENDOR

Genetec Inc.
Vendor Name (print or type)

[Signature]
Signature

PRINT Name and Title of Signatory, if different from Vendor Name:

Alain Côté
Name of Signatory

Executive Vice President
Title of Signatory

Tax Identification # [REDACTED]

Berkeley Business License # *12 00051453*

Incorporated: ☒ Yes ☐ No

Certified Woman Business Enterprise: Yes ☒ No

Certified Minority Business Enterprise: Yes ☒ No

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes ☒ No

Exhibit A Scope of Work

I. Description of Services and Deliverables

The scope of Genetec's Professional Services is to engineer, supply, configure, install and commission a single AutoVu Mobile License Plate Recognition system to meet the defined and agreed specification with City of Berkeley.

Specifications

Genetec's Professional Services will provide installation support and project management for a single dual Sharp Overtime AutoVu Mobile License Plate Recognition and Security Center back-office system. All aspects of the installation will be controlled and carefully planned to meet the security requirements and standards of the end-customer as defined by City of Berkeley. This includes:

- The installation, configuration and commissioning of one (1) hard-mount mobile AutoVu Overtime Enforcement system on one (1) 2007 GO-4 Interceptor III vehicle. The system will consist of:
 - Two (2) Sharp 2.0 12mm/780nm cameras
 - One (1) Trunk unit
 - Two (2) Wheel imaging cameras
 - One (1) Navigator box
 - One (1) Panasonic Toughbook CF-19 laptop and in-vehicle mounting bracket
 - Each system will be hardwired to the vehicle's electrical system
- Support the installation, configuration and commissioning of the AutoVu Patroller 5.0 SR1 in-vehicle software on the Panasonic CF-19 in-vehicle laptop.
- Support the installation, configuration and commissioning of the Security Center 5.0 SR1 back-office software in the production environment.
- Provide onsite technical support during installation, configuration and commissioning.
- Provide basic operator training for three (3) participants on the AutoVu in-vehicle Patroller and Security Center back-office applications.

II. Scheduling

- Any rescheduling of installation or 2nd site visit required due to installation requirements not met by City of Berkeley will have to be charged.
- Any rescheduling request of start date will have to be approved by Genetec's Deployment Project Management (flight cancelation fees may be charged).

Upon acceptance by the City of Berkeley and Genetec Inc., any changes or modifications to the Statement of Work must follow Genetec Inc.'s Change Management process. All approved changes will become attachments to the original approved Statement of Work, which will then form the new baseline upon which future changes will be measured.

III. Reimbursable Fees for Change of Scheduling

If the City reschedules the installation date or agrees, in writing, that the City did not meet the installation requirements for a scheduled installation date, Vendor will provide an invoice and supporting documentation (for example, verifiable receipts for cancelled and non-refundable airline tickets) to be reimbursed for incurred expenses directly attributable to rescheduling the installation date. The City will reimburse such travel expenses, not to exceed \$2,000.00.

IV. Assumptions

- The Security Center installation and configuration by Genetec Inc. will take part simultaneously or in multiple installation phases as planned and coordinated with City of Berkeley.
- IT representative(s) (i.e. SQL and/or Network Administrator(s) if applicable) from City of Berkeley shall be made available during the complete installation period.
- All equipment, lifts or tools necessary for the deployment, realignments of cameras or access to hardware will be provided by City of Berkeley.
- Equipment Delivery:
 - Any received parts assessed as Defective by the Genetec Field Engineer will be handled through the Advanced RMA process for 90 days from the installation start date.
 - All received parts shall be made available at the installation site by the City of Berkeley.
- Operator Training:
 - Operator Training will be limited to 3 participants maximum.
 - All participants will be available during the planned operator training session as outlined in the schedule.

V. Constraints

- Individual installation phases are to follow the Project Schedule defined in this document and are dependent upon equipment lead times and site readiness.
- All servers and workstations meet the minimum Security Center hardware and software specifications, respectively, as outlined in Exhibit F.
- All servers and workstations are installed and configured as per the Security Center specification respectively.
- City of Berkeley resources must be present during the deployment and validation of Genetec's solution deployment phase.
- The Network between all relevant third party devices (surveillance cameras, access controllers, card readers, etc) and Security Center servers and workstations is stable and fully functional.
- Storage drives specified as Archivers should be formatted and visible under Windows prior to onsite visit.

VI. Professional Services Exclusions

Genetec Inc. Professional Services will not undertake the following deliverables and responsibilities related to the installation:

- The network cabling and server installations will not be conducted by Genetec Inc.
- The procurement and physical installation of Servers, Workstations, Networking devices or any type of required hardware other than what is specified in the Current Bill of Material or this project will not be conducted by Genetec Inc.
- Microsoft SQL Server, Operating Systems, Provisional features like Pocket PC Software, Video Intelligence and VCA (Video Content Analysis) Plug-ins.
- The configuration of the Video Analytics solution if part of the project scope.

VII. Project Schedule

Date	Activities
Tuesday January 17, 2012	Scope session – Vendor and City review installation schedule and make adjustments where necessary. Vendor begins the hardware installation on the GO-4 Interceptor III vehicle.
Wednesday January 18, 2012	Vendor completes the hardware installation on the GO-4 Interceptor III vehicle. Vendor begins installation, configuration and commissioning of Security Center server and Patroller in-vehicle application.
Thursday January 19, 2012	Vendor completes configuration and commissioning of Security Center. Accela and City field test the system to ensure that the system is functioning according to specifications. Vendor begins basic operator training for three (3) City staff on Patroller in-vehicle application in the afternoon.
Friday January 20, 2012	Vendor begins basic operator training for three (3) City staff on Security Center back office application in the morning. Wrap-up session – Vendor and City review the installation plan, Vendor addresses any questions from City, City completes final acceptance of system.

VIII. LPR Installations Details

AutoVu System Information:

- 1 dual Sharp 2.0 system w/ 12mm lens, 780 nm (IR) illumination
- 1 Panasonic CF-19 Toughbook
- 1 RAM Mount for GO-4 Interceptor
- 1 Go-4 Interceptor vehicle
- Application Type: Hotlist / overtime / permit
- AutoVu Patroller 5.0 SR1
- Security Center 5.0 SR1

Server & Network Configuration:

- Vendor remote access is available through VPN, with a signed MOU from the vendor stating they will adhere to our network security and access policies.
- Images for all reads will be stored on the Server for a period of 12 months.
- Images for all hits (violations) will be stored on the Server for a period of 12 months.
- Software will be installed on five (5) client workstations

Patroller Computer (in vehicle):

- Panasonic CF-19 Toughbook will be provided by the vendor
- Data will be transferred between the vehicle laptop and Security Center via thumb drive
- Vendor will install the AutoVu Mobile Data Computer (Panasonic Toughbook) in the vehicle and will supply any necessary mounts to complete installation

Environment:

- Installation location allows afterhours access (if necessary, to be scheduled ahead of time)
- Security clearance and training is not needed prior to visit.
- Security equipment (protective equipment such as special boots or hard hats) is not mandatory.

Training:

- Vendor will train up to three operators on the vehicle software application
- Vendor will train up to three staff on the Back-Office application

Vehicle information:

- 2007 Go-4 Interceptor III, Gas powered
- Third party hardware: Duncan AutoCITE X3 handheld

Basic functionality:

- Installation will include a map of the City of Berkeley and Alameda County, to be made available in the vehicle

Hotlist enforcement:

- Stolen vehicles, permit and overtime parking
- City has access to electronic files containing lists of plate numbers and state for each wanted vehicle
- Hotlist will contain the license plate #, State, and description (if any)
 - The Hotlist needs to be a comma delimited text file
 - No spaces

- Only alpha-numeric characters
- The file name and list format cannot change
- Example: File name = "Hotlist.txt"
- Minimum data required of permit file = "State, Plate #"
- Hotlist Example:
ABC123,CA,Stolen
123ABC,NY,BOOTABLE
A1B2C3,TX,WANTED FELON
XYZ987,FL,AMBER ALERT

Time limit enforcement:

- 2 hour time limit in residential parking permit areas
- Block-face enforcement is also used. Block-face is defined as both sides of the street between intersecting cross streets.

List of overtime zones that will be configured (zone/area, time limit, enforcement days/times):

- Area A, 2 hours, Mon-Sat, 8am-7pm
- Area B, 2 hours, Mon-Sat, 8am-7pm
- Area C, 2 hours, Mon-Fri, 8am-7pm
- Area D, 2 hours, Mon-Sat, 8am-7pm
- Area E, 2 hours, Mon-Fri/Sat*, 8am-7pm
- Area F, 2 hours, Mon-Fri, 8am-7pm
- Area G, 2 hours, Mon-Fri, 8am-7pm
- Area H, 2 hours, Mon-Fri, 8am-7pm
- Area I, 2 hours, Mon-Fri, 8am-7pm
- Area J, 2 hours, Mon-Fri, 8am-7pm
- Area K, 2 hours, Mon-Sat, 8am-7pm
- Area L, 2 hours, Mon-Fri, 8am-7pm
- Area M, 2 hours, Mon-Fri, 8am-7pm
- Area N, 2 hours, Mon-Fri, 8am-7pm

*Some areas within RPP Area E are enforced Monday through Friday; others are enforced Monday through Saturday.

City Permit Enforcement:

- Permit functionality will be used in conjunction with Over Time parking
- City has access to electronic files containing lists of plate numbers and state for each valid permit
- The Permit list will contain the license plate # of all permit holders and the zone they are entitled to park in.

- The Permit list needs to be a comma delimited text file
- No spaces
- Only alpha-numeric characters
- The file name and list format cannot change
- Example; File name = "Permitzone.txt"
- Minimum data required of permit file = "State, Plate #, permit zone"
- Permit list Example:
ABC123,CA,A
123ABC,NY,B
A1B2C3,TX,C
XYZ987,FL,D

List of all Permit zones that will be configured (Permit Zone Names):

- Area A
- Area B
- Area C
- Area D
- Area E
- Area F
- Area G
- Area H
- Area I
- Area J
- Area K
- Area L
- Area M
- Area N

Testing & User Acceptance

City and Vendor agree that acceptance of this work will be achieved when the following acceptance criteria have been met:

- Completion of hardware and software installation and configuration
- Testing of system to ensure that the system is functioning according to specifications
- Completion of basic operator training for three (3) participants on Patroller in-vehicle application
- Completion of basic operator training for three (3) participants on Security Center back office application
- Final acceptance of system by the City

IX. Bill of Material

Below is the Bill of Material proposed for the solution to be deployed at the City of Berkeley LPR Project as per quote GEN-11564:

Product Code	Product Description	Quantity	Shipped From
AutoVu Overtime Kit			
AU-K-O2H-0012780	Hard-Mount AutoVu Overtime kit (dual unit) w/Sharp 12mm lens, 780 nm (IR) illumination	1	
AU-H-BATCBL	Battery to Break Out Unit Power Cable	1	Genetec
AU-H-SHPHMTOP	Hardmount Top Plate for Sharp	2	Genetec
AU-H-SHPHMBOT	Hardmount bottom Kit for Sharp	2	Genetec
AU-H-BOBUNIT	Power break out unit	1	Genetec
AU-O-MIBASE	AutoVu Overtime Installation package	1	Genetec
AU-S-XGA-W12780-TB	Sharp 2.0 XGA-Pan&Tilt (12mm LPR 8 mm context) 780 nm	2	Genetec
AU-H-ILFUSE15A	Power cable in-line fuse (15A)	1	Genetec
AU-H-ETHCBL14	Ethernet Cable 14 ft.	1	Genetec
AU-M-MSBINGNA	Microsoft Virtual Earth/Bing Map License for North America	1	Genetec
AU-M-MPIF68ST	Mapinfo 6.8 Seats	1	Genetec
AU-H-SWCBL08	Sharp Breakout Box Power Harness	2	Genetec
AU-M-USCNTY	Mapinfo StreetPro Map (US/ per county) - (up to 5 vehicles/backoffice stations)	1	Genetec
AU-K-NAVBOX	AutoVu Navigator kit	1	
AU-H-NAVBOX	Navigator Box	1	Genetec
AU-H-USBCBL15	Cable, USB 2.0, Type A To Type B, 15 Ft	1	Genetec
AU-H-USBGPS	USB GPS Unit	1	Genetec
AU-K-STIRECAM	AutoVu Tire Imaging External Camera Kit	2	
AU-H-VID4T9L6	Tire Camera -Videology 4" Tilted MTL IR 1/3 COL 480 TV	2	Genetec
AU-H-VIDTICBL	Sharp Videology Tire Imaging Camera Cable	2	Genetec
AU-K-PANACF19DUAL	Panasonic Toughbook CF-19 Dual Mode Notebook Complete Kit, Laptop, mounting hardware, docking station and vehicle power adapter.	1	
AU-H-PANACF19DUAL2	Panasonic Toughbook CF19 Notebook: Intel® Core2 Duo SU93	1	Genetec
AU-H-PANADKST18	Panasonic Toughbook 18/19 Docking Station	1	Genetec
AU-H-PANAPWS12V	Panasonic 12V Power Supply	1	Genetec
AU-H-GO4RAM	Ram Mount for G0-4 vehicle (complete)	1	GPS City, USA
Security Center (back-office)			
GSC-Base	Genetec Security Center (GSC) Base	1	Genetec
GSC-Av-S-Base	GSC AutoVu Standard Base Package. Works with Genetec Security Center (sold separately) Includes: one (1) AutoVu LPR manager and two (2) fixed Sharp camera connections. SQL 2008 Express Edition included. Full Microsoft SQL Server 2008 package not included.	1	Genetec
Services			
SVC-AMINST-NT	AutoVu Mobile onsite installation with inertial navigation & tire imaging –All inclusive for installation within North America provided a minimum of two weeks lead time. –per vehicle	1	n/a
Software Maintenance			
SMA-BASIC-1Y	Basic SMA with a 1 year term.	1	n/a

**Exhibit B
Payment Terms**

City accepted donation of the installation, configuration, and commissioning of one license plate recognition system from Alta Bates Medical Center. There will be no cost to the City for the following: initial installation, configuration, training, and 1 year warranty and maintenance for both hardware and software.

Should City wish to purchase additional years of Warranty and Maintenance, the price for Year 2, Year 3, and Year 4 will be \$5,029.67 each year for a total cost for three years not to exceed \$15,089.00.

Additional Genetec Field engineering services can be purchased, if the City desires, at a rate of \$1,500/day or \$187.50/hour during normal working hours (8am-6pm). Outside of normal working hours field engineering services can be purchased if the City desires at a rate of \$2,250 for 8 hours or \$281.25/hour.

If the City amends this contract for future yearly maintenance, invoices submitted in accordance with this agreement will be paid within 30 days.

Exhibit C
Software License Terms

Grant of License. Vendor hereby grants to City a royalty free, perpetual, irrevocable, nontransferable and nonexclusive license to use the Software or any portion thereof on any equipment at any location within the City limits of Berkeley, California. This license shall apply to all commercially available updates throughout the term of this Agreement and any subsequent Standard Software Maintenance Agreement (SSMA) period. City shall have the right and license to use or enhance the Software only for City's own use as necessary to (a) operate the System, (b) conduct internal training and testing, and (c) perform disaster recovery, backup, archive and restoration testing and implementation as may be required in the City's judgment. Vendor will successfully install all Licensed Software and all upgrades as may become commercially available during the term of this Agreement (in machine readable form compatible with the specified operating environment) and provide to City one copy of all related Documentation in electronic format.

Authorized Equipment and Site. City shall use the Software only on any equipment it possesses or procures, provided said equipment possess the minimum capacities to permit the software to perform according the Specifications.

Copies. City, solely to enable it to use the Software, may make one archival copy of the Software's computer program, provided that the copy shall include Vendor's copyright and any other proprietary notices. The Software delivered by Vendor to City and the archival copy shall be stored at City's Site. City shall have no other right to copy, in whole or in part, the Software. Any copy of the Software made by City is the exclusive property of Vendor. City may copy Vendor's documentation for internal use by City staff.

Modifications, Reverse Engineering. City agrees that only Vendor shall have the right to alter, maintain, enhance or otherwise modify the Software. City shall not disassemble, decompile or reverse engineer the Software's computer program.

Title. City and Vendor agree that Vendor owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications to the Software, whether made by Vendor or any third party.

Transfers. Under no circumstances shall City sell, license, publish, display, distribute, or otherwise transfer to a third party the Software or any copy thereof, in whole or in part, without Vendor's prior written consent.

Exhibit D
Software Maintenance Agreement

I. Scope of Agreement. During the term of this Agreement, as set forth in Section II, Vendor agrees to provide City standard maintenance, custom enhancement, on-site support, and training services, as set forth herein.

II. Term.

A. Effective Date. This Agreement shall take effect on the Effective Date and will end on December 31, 2012. The City Manager may extend the term of this contract by giving written notice. The City may elect to continue its maintenance coverage for additional annual terms by paying to Vendor the fees associated with such terms when these fees are due.

B. Termination Date. This Agreement shall terminate upon the occurrence of whichever is later (i) December 31, 2012, (ii) the effective date of a subsequent agreement concerning maintenance services entered into between City and Vendor, or (iii) as otherwise agreed to in writing by City and Vendor.

III. Standard Maintenance Services.

A. Scope of Services: During the term of this Agreement, Vendor will provide City the following Standard Maintenance Services for the Software:

1. Periodic updates of the Software that may incorporate (A) corrections of any substantial defects, (B) fixes of any minor bugs, and (C) at the sole discretion of Vendor, enhancements to the Software.
2. Telephone support with the Genetec Technical Assistance Center (GTAC) between the hours of 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding Vendor's observed holidays, to assist City in using the Software. (514) 856-7100, or Toll Free at (866) 338-2988.
3. Email support with the Genetec Technical Assistance Center (GTAC) between the hours of 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding Vendor's observed holidays, to assist City in using the Software. support@genetec.com
4. Online support with the Genetec Technical Assistance Portal (GTAP). The GTAP is a secured area where customers can peruse an extensive knowledge base and product documentations, obtain software downloads, contribute to a customer forum or open a support ticket for further assistance. <https://gtap.genetec.com>
5. Vendor shall respond to all requests for Software Maintenance Services by assigning a software maintenance engineer within one (1) working day of such requests. If the Software fails to perform pursuant to Exhibit A, Vendor agrees to use its best efforts to correct the Software within three (30) working days of notification by City. Vendor agrees to provide City an on-site software maintenance engineer within two (2) working days of City's reasonable request for such engineer, based on the determination that such problem can only be resolved at City's site and not in Vendor's facilities or remotely.

B. *Services Not Included.* Standard Maintenance Services do not include:

1. Charged-for-Enhancements that are offered, at Vendor's sole discretion, to customers upon payment of a license fee;
2. Custom Programming Services.
3. On-site support.
4. Training.
5. Hardware and related supplies.

VIII. *Maintenance Fee.*

A. *Warranty Period.* Vendor will not charge City any Maintenance Fee for the Warranty Period, as defined in City's Software License Terms.

B. *Amount of Fee.* The City agrees to pay Vendor a Maintenance Fee starting one year after the License Plate Recognition System is put into full operation, pursuant to the pricing set forth in Exhibit B

C. *Discontinuance.* City understands that if City discontinues and then resumes purchase of Standard Maintenance Services, City will not be required to pay Vendor the entire Maintenance Fees for the period of discontinuance.

IX. *Payment Terms.*

A. *Due Date.* One year after the License Plate Recognition System is put into full operation, and upon receipt of an invoice from Vendor, City agrees to pay the Maintenance Fee to Vendor, upon receipt of an invoice from Vendor, pursuant to the pricing set forth in Exhibit B.

B. *Taxes.* "Taxes" means all federal, state, local and other taxes, including sales, use and property taxes, related to this Agreement, City's use of the Software, or any services provided by Vendor to City related to the Software, excluding taxes based on Vendor's net income. Vendor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

X. *Obligations of City.*

A. *City Contact.* City shall notify Vendor of City's designated City Contact. To the maximum extent practicable, City's communications with Vendor will be through the City Contact.

B. *Installation.* City agrees to install all corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the Software in accordance with the instructions and in order of receipt from Vendor.

C. *Facility and Personnel Access.* City agrees to grant Vendor access to City's facilities and personnel concerned with the operation of the Software to enable Vendor to provide services.

D. **No Modification of Software.** City agrees not to modify, enhance or otherwise alter the Software, unless and only to the extent specifically authorized in the user manuals or the prior written consent of Vendor is obtained.

E. **Error Documentation.** Upon detection of any error in the Software, City, as requested by Vendor, agrees to provide Vendor a listing of output and any other data, including databases and backup systems, that Vendor reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

Exhibit E
Remote Access Agreement

This is an Exhibit attached to and incorporated by reference with the Agreement made on [CONTRACT DATE] CITY OF BERKELEY ("City") and Genetec, Inc. ("Vendor").

Provider agrees to abide by the following requirements when accessing the City of Berkeley network / computer systems:

- Vendor will notify the Department Director via Email to the IT Helpdesk (helpdesk@cityofberkeley.info) of the date, time and duration of each remote session so s/he has a record of such activity for future audits.
- Vendor acknowledges that all activities conducted remotely will be in line with the project's scope of services and that those activities are in accordance with published City of Berkeley network access policies.
- Vendor agrees it will provide remote account IDs and passwords only with specific named individuals who have been authorized by the City of Berkeley to remotely access its network and will not share the account IDs or passwords with anyone else.
- Vendor acknowledges that failure on its part to comply with the provisions listed herein may result in the revocation of access privileges to the City of Berkeley network.

Exhibit F
Server and Client Requirements

The Server and Client Requirements document follows this page.

Security Center 5.0 Service Release 1 (SR1) Server and Client Requirements

In order to determine which configuration is best suited for your application, please contact the Genetec Sales Engineering team at salesengineering@genetec.com.

Security Center Client Station Requirements

Low¹

- Intel Core 2 X6800 @ 2.93 Ghz
- 2 GB of RAM
- 80 GB hard drive for OS and Security Center applications
- 256 MB PCI-Express x16 dual-head video adapter
- 1280 x 1024 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- 16x DVD+/- RW Drive

Medium

- Intel Dual Core i3-2120 @ 3.30 GHZ
- 4 GB of RAM DDR3
- 80 GB hard drive for OS and Security Center applications
- 512 MB PCI-Express x16 dual-head video adapter
- 1600 x 1200 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- 16x DVD+/- RW Drive

High²

- Intel Core i7 870 @ 2.93 GHZ
- 8 GB of RAM DDR3
- 80 GB SATA II hard drive for OS and Security Center applications
- NVidia GTX 570 or DirectX VA 2.0 compatible card with 1 GB of RAM
- 1600 x 1200 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- 16x DVD+/- RW Drive

¹ This low-performance configuration will allow users to view up to 4 H.264 HD cameras/30fps, 9 H.264 cameras at 640x480/30 fps or 32 H.264 cameras at 320x240.

² This high performance configuration will allow users to view up to 8 H.264 HD cameras/30 fps, 48 H.264 cameras at 640x480/30 fps or 64 H.264 cameras at 320x240.

Security Center Server³ Requirements

Low

- Intel Core 2 Duo 3.0 GHz or better
- 2 GB of RAM or better
- 80 GB hard drive for OS and Security Center applications
- Standard SVGA video card
- 1024 x 768 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- DVD ROM drive

Medium

- Dual Core Intel Xeon 2.66 GHz or better
- 4 GB of RAM or better
- 80 GB hard drive for OS and Security Center applications
- Standard SVGA video card
- 1024 x 768 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- DVD ROM Drive

High⁴

- Intel Core i7 950 or better
- 8 GB of RAM or better
- 80 GB SATA II hard drive or better for OS and Security Center applications
- Standard SVGA video card
- 1024 x 768 or higher screen resolution
- 100/1000 Ethernet Network Interface Card
- DVD ROM Drive

Software Requirements

Operating Systems⁵

- Microsoft® Windows 7 Professional SP1 32-bit/64-bit
- Microsoft® Windows XP Pro SP3 32-bit/64-bit
- Microsoft® Windows Vista SP1 Business or Ultimate 32-bit/64-bit
- Microsoft® Windows Server® 2003 Standard Edition SP1/SP2/R2 32-bit/64-bit
- Microsoft® Windows Server® 2003 Enterprise Edition SP1/SP2/R2 32-bit/64-bit
- Microsoft® Windows Server® 2008 Standard Edition SP2/R2 32-bit/64-bit
- Microsoft® Windows Server® 2008 Enterprise Edition SP2/R2 32-bit/64-bit

Database Engines

- SQL Server 2005 Express/Standard/Enterprise SP2/SP3 (not supported for AutoVu)
- SQL Server 2008 Express/Standard/Enterprise (R2) (required for AutoVu)

Browsers

- Internet Explorer 7 / 8 / 9 (for Synergis Web Client)

Virtualization

- VMware vSphere 4.1 (client), ESX 4.0 ESX 4.1 (server)

³ Archivers may record up to 300 cameras depending on the server's specifications and the recording quality settings. To determine which configuration is best suited for you, contact Sales Engineering at salesengineering@genetec.com

⁴ Requires Windows server 2008 64 bit

⁵ Installation of the Security Center is not supported on a Windows 2003/2008 Server running a Domain Controller

⁶ Virtual machine must run on Windows Server 2008 R2 and VMware Ready hardware

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION Genetec Inc.ADDRESS 2280 Alfred-Nobel Blvd, suite 400, St-Laurent (Quebec) Canada H4S 2A4

BUSINESS LICENSE # _____

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**		
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
Officials/Administrators	15	0											
Professionals	187	30	We do not keep ethnic data										
Technicians	20	4	on our employees										
Protective Service Workers	—	—											
Para-professionals	—	—											
Office/Clerical	3	8											
Skilled Craft Workers	—	—											
Service/Maintenance	—	—											
Other Occupation: Specify*	41	9											
Totals	266	51											

*Specify other occupation: SALES

**Specify other ethnicity: _____

Is your business MBE/WBE/DBE certified? ☒ NOIf Yes, by what agency? N/AIf Yes, please specify: ☐

or ethnic identification: _____

Do you have a policy of non-discrimination? ☒ YES

Signature _____

Date 2011/12/12Print/Type Name of Signer DANIEL GAGNON

Verified by _____

Date _____

City of Berkeley Contract Administrator

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Alain Côté Title: Executive Vice President

Signature:  Date: December 9th, 2011

Business Entity: Genetec Inc.

Contract Description/Specification No. Overtime parking enforcement system
Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of Genetec Inc. (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang.

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Alain Côté Title: Executive Vice President

Signature: [Signature] Date: December 9th, 2011

Business Entity: Genetec Inc.

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Contract Description/Specification No.: Overtime Parking Enforcement system

Attachment D

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES _____

NO X

If no, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES _____

NO _____

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES _____

NO _____

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES _____

NO _____

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

☐

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

☒

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: Alain Côté Title: EVP

Signature: [Signature] Date: 2011-12-09

Business Entity: Genetec, Inc.

Contract Description/Specification No: Overtime parking enforcement system

Section III

• ** FOR ADMINISTRATIVE USE ONLY - PLEASE PRINT CLEARLY ** •

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS ☒ IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

I.T.
Department Name

Kathleen Holmes
Department Representative

Form EBO-1
CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a contractor, return this form to the originating department/project manager. If you are a vendor (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: <u>Genetec Inc.</u>	Vendor No.:
Address: <u>2280 Alfred-Nobel Blvd., #400</u>	City: <u>St-Laurent</u> State: <u>Quebec</u> ZIP: <u>H4S 2A4</u> <u>Can</u>
Contact Person: <u>Joe Gardner</u>	Telephone: <u>(514) 944-4633</u>
E-mail Address: <u>jgardner@genetec.com</u>	Fax No.: <u>(514) 332-1692</u>

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
☐ Yes ☒ No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
☒ Yes ☐ No
If "Yes," continue to Question C.
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? ☒ Yes ☐ No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? ☒ Yes ☐ No
If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.)
If you answered "Yes" to both Questions C and D, please continue to Question E.
If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? ☒ Yes ☐ No
If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
- ☐ By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
- ☐ At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
- ☐ Upon expiration of the contractor's current collective bargaining agreement(s).
- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? ☐ Yes ☐ No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 9th day of December, in the year 2011, at Montreal, QC
(City) (State)

Alain Côté
Name (please print)

EVP
Title

[Signature]
Signature

[Redacted]
Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- ☐ Non-Compliant (The City may not do business with this contractor/vendor)
☐ One-Person Contractor/Vendor ☒ Full Compliance ☐ Reasonable Measures
☐ Provisional Compliance Category, Full Compliance by Date:

Staff Name (Sign and Print): Kathryn Holmes Kathryn Holmes Date: 1/10/12