

AN ORDINANCE

2006-02-09-0180

AUTHORIZING EXECUTION OF A CONTRACT WITH PICK-N-PULL, INC. TO PROVIDE THE CODE COMPLIANCE DEPARTMENT WITH THE REMOVAL AND DISPOSITION OF JUNKED VEHICLES FOR THE ABATEMENT PROGRAM, FOR \$35.00 PER VEHICLE REMOVED TO BE PAID TO THE CITY, FOR A TERM BEGINNING UPON AWARD AND ENDING SEPTEMBER 30, 2006, WITH UP TO FOUR ADDITIONAL ONE YEAR RENEWALS.

* * * * *

WHEREAS, Chapter 19, Article X of the City Code was amended on December 16, 2004, through ordinance number 100203, to establish policies and procedures for the initiation of proceedings to declare a vehicle a public nuisance, and for the removal of such vehicles, which are known as “junked vehicles”; and

WHEREAS, the Code Compliance Department issued a Request for Proposals (“RFP”) to provide the services of removing and finally disposing of junked vehicles, in accordance with the requirements of the City Code and State law; and

WHEREAS, one proposal was received from Pick-N-Pull, Inc., which was evaluated by a committee comprised of staff from the Purchasing & General Services and Code Compliance departments; and

WHEREAS, the evaluation committee recommends award of this contract to Pick-N-Pull, Inc. for a term beginning upon award and ending September 30, 2006, with up to four additional one year renewals; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designated representative, is hereby authorized to execute a contract with Pick-N-Pull, Inc. to remove and dispose of junked vehicles for the City of San Antonio for a term beginning upon award and ending September 30, 2006. This contract may be renewed by the City, in writing, for up to four additional one year terms, on the same terms and conditions, without further action by the San Antonio City Council. A copy of said contract is attached hereto as Exhibit A. The terms thereof are hereby approved.

SECTION 2. Revenues generated by this ordinance are to be deposited into Fund 11001000, General Fund, Internal Order 230000000001, GENERAL CODE ENFORCEMENT, General Ledger 4403007, Svc Charge - Towing Fees.

SECTION 3. The financial allocations in this ordinance are subject to approval by the Assistant Director of Finance, City of San Antonio. The Assistant Director may, subject to concurrence by the City Manager, or the City Manager’s designee, correct allocation to specific Index Codes and Fund Numbers as necessary to carry out the purposes of this ordinance.

ATTACHMENT 1

DISCRETIONARY CONTRACTS DISCLOSURE FROM

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity that is a party to the discretionary contract:

PICK -N- PULL INC.

(2) Identify any individual or business entity which is a *partner, parent* or *subsidiary* business entity of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a *subcontractor* on the discretionary contract:

No subcontractor(s); or

List subcontractors:

(4) Identify any *lobbyist* or *public relations firm* employed by any party to the discretionary contract for purposes related to seeking the discretionary contract:

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

³ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3).

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Dave Ahokas Dave Ahokas	Julian Castro Julian Castro	\$1000.00 \$1000.00	Feb 2005 May 2005

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: Company or D/B/A: General Manager	Date: October 11, 2005
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⁴ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**SERVICE CONTRACT
FOR
REMOVAL AND DISPOSAL OF JUNKED VEHICLES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas home-rule municipal corporation (“City”) pursuant to Ordinance No. _____ passed and approved on _____, 2006 and Pick ‘N’ Pull, Inc. (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”.

Whereas, the City passed ordinance number 100203 on December 16, 2004, authorizing the abatement of junked vehicles that are found to be a public nuisance; and

Whereas, the City desires to use the services of a licensed salvage dealer to remove and finally dispose of junked vehicles; and

Whereas, Contractor desires to perform the services contemplated herein in consideration of the right to sell the junked vehicles’ parts, and/or scrap metal from the vehicles;

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Contract and includes its successors and assigns.
- 1.2. “Contractor” is defined in the preamble of this Contract and includes its successors and permitted assigns.
- 1.3. “Director” means the acting director of City’s Code Compliance Department.
- 1.4. “Inoperable” means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.
- 1.5. “Junked Vehicle” means a vehicle that is self-propelled or was manufactured to be self-propelled, or any part thereof, in ordinary public view, which remains inoperable for a

continuous period of (10) ten days, and, for purposes of this Contract, is so designated as a Junked Vehicle by the C.C. Director. The term shall also include disassembled parts.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the tenth day after passage of its authorizing ordinance and terminate on September 30, 2006.

2.2 The City may renew this Contract, on the same terms and conditions, for up to four additional successive one year terms. The City Manager and the Director are each authorized to effect the renewals without further action on the part of the San Antonio City Council. All renewals shall be in writing and signed by either the City Manager or the Director.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide and shall provide all labor, equipment, materials, and other resources required to remove and dispose of junked vehicles. Should a junked vehicle or vehicles be inaccessible through the use of the standard equipment and towing vehicles in Contractor's inventory, the City and Contractor shall determine the best means for the removal of said vehicle(s), and the vehicle shall be removed only with the advance written approval by the City. Contractor may, upon City approval, be reimbursed for the costs associated with the additional requirements. No costs incurred by Contractor shall be paid by City except upon express written pre-approval of said costs.

3.2 Contractor shall remove junked vehicles identified by the Director, or his designee, within 24 hours' notice. City shall coordinate the time of the removal with Contractor. A City Code Compliance Officer or San Antonio Police Officer must be present at the time of the removal. In no event shall Contractor remove a Junked Vehicle without the presence of either a City Code Compliance Officer or San Antonio Police Officer. City may engage the services of another provider in the event that Prime Contractor is unable to promptly remove a Junked Vehicle.

3.3 Contractor shall be responsible for providing any special equipment that is required to remove an unusual Junked Vehicle or to remove a Junked Vehicle from an unusual location, in accordance with the limitations set forth in 3.1 above.

3.4 Contractor shall remove Junked Vehicles, including parts of Junked Vehicles, immediately and directly to a licensed salvage or scrap yard, or a licensed motor vehicle demolisher. Such facility need not be located within the corporate limits of the City of San Antonio. Junked Vehicles shall not be taken to, nor stored, even temporarily, at any location other than a licensed salvage or scrap yard, or a licensed motor vehicle demolisher's yard.

3.5 Contractor may not reconstruct removed Junked Vehicles or make removed Junked Vehicles operational. Contractor shall finally dispose of Junked Vehicles by demolishing or dismantling them in a manner that complies with all applicable laws.

3.6 Contractor shall comply with all laws regarding disposal of batteries, fuel, and fuel tanks, and other hazardous materials.

3.7 Contractor shall maintain a means of communication with City by land line or cellular telephone and shall provide the numbers at which Contractor may be reached during City's business hours to Director. Contractor shall be available to perform services hereunder Monday through Sunday, from 8:30 a.m. to 5:00 p.m., other than official City holidays.

3.8 Contractor shall assist City in gaining entry to the Junked Vehicle, if deemed necessary by City, at the scene prior to removal, by unlocking the vehicle and opening the trunk, or opening by any means necessary. Contractor shall remove all debris caused by Contractor in gaining entry to the vehicle.

3.9 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate.

3.10 City shall issue Notice to the Texas Department of Transportation ("TxDot") of the abatement of each Junked Vehicle removed pursuant to this Contract and shall provide TxDot Form VTR 71-5 Transfer of Junked Vehicle To A Demolisher (or such other form as may be promulgated and required by TxDot), to Contractor.

3.11 Nothing herein shall preclude City from using the services of another contractor for towing purposes in the event a junked vehicle is inaccessible through the use of the standard equipment and towing vehicles in Contractor's inventory, as described in 3.1, or in the event that Contractor cannot meet its obligations hereunder within the time allotted. In such event, City may bring the vehicle to Contractor's facility for disposition in accordance with this Contract, and the payment terms contained in Article IV shall apply.

IV. PAYMENT TO CITY

4.1 In consideration of Contractor's right to remove and dispose of Junked Vehicles and the profits Contractor may realize in the sale of parts of Junked Vehicles for scrap or salvage, Contractor agrees to pay City a fee of \$35.00 per Junked Vehicle removed.

4.2 Contractor's payment shall be accompanied by a statement showing the following information for each Junked Vehicle for which payment is being made:

- Vehicle Identification Number, if available;

- State and License Plate Number, if available;
- Date of removal;
- Location from which the vehicle was removed; and
- Description of vehicle, including make, model and color.

4.3 Should the removed vehicle be disassembled parts, Contractor's statement should indicate "Parts Only," and include the:

- Date of removal;
- Location from which the parts were removed; and
- List of parts removed.

4.4 No fees or expenses of Contractor shall be charged by Contractor nor be payable by City, except those described in Section 3.1, upon advance written approval of Director.

4.5 Prime Contractor shall remit the payment described in Section 4.1 above on the first of each month for the Junked Vehicles removed the previous month.

V. RESERVED

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period.

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by either party for convenience. City shall be required to provide Contractor with 90 calendar days' written notice to effect termination for convenience. Contractor shall be required to provide City with 90 calendar days' written notice to effect termination for convenience. Notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either party may terminate this Contract as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:

- a) any material breach of the terms of this Contract;
- b) the sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

7.5 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract. Termination shall not relieve Contractor of its obligation to pay City the fee stated in Article IV for any vehicles removed prior to the date of termination.

7.6 Termination not sole remedy. In no event shall a party's action of terminating this Contract, whether for cause or otherwise, be deemed an election of that party's remedies, nor shall such termination limit, in any way, at law or at equity, that party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

7.7 Termination by the City may be effected by the Director, without further action required by the San Antonio City Council.

VIII. NOTICE

Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:
 City of San Antonio
 Director, Code Compliance Department
 P.O. Box 839966
 San Antonio, TX 78283-3966

If intended for Contractor, to:
 William Randall Cunningham
 General Manager
 11795 Applewhite Road
 San Antonio, TX 78224

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the City's Code Compliance Department (attention: Arthur Arispe), P.O. Box 839966, San Antonio, TX 78283-3966, and City Clerk's Office, and which shall be clearly labeled "Junked Vehicle Removal & Disposal" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to City's Code Compliance Department (attention: Arthur Arispe) P.O. Box 839966, San Antonio, TX 78283-3966, and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Commercial General (Public) Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence

	a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.** Explosion, collapse, underground	
2.	Business Automobile Liability** a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

* Alternate Plans are subject to approval by the Risk Manager

** If Applicable as determined by City's Risk Manager

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

10.5 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
Code Compliance Dept.
Attn: Arthur Arispe
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.7 If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

10.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.

10.9 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

XI. INDEMNIFICATION

11.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR's** activities under this **CONTRACT**, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, contractor or subcontractor of **CONTRACTOR**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND**

REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONTRACTOR** shall advise the **CITY** in writing within 72 hours of any claim or demand against the **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR's** activities under this **CONTRACT** and shall see to the investigation and defense of such claim or demand at **CONTRACTOR's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONTRACTOR** of any of its obligations under this paragraph.

11.2 It is the **EXPRESS INTENT** of the parties to this **CONTRACT**, that the **INDEMNITY** provided for in this section, is an **INDEMNITY** extended by **CONTRACTOR** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the City is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. **CONTRACTOR** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel, up to a maximum billable rate of \$210.00 per hour, to be retained by **CONTRACTOR** in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. **CONTRACTOR** shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If **CONTRACTOR** fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and **CONTRACTOR** shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by either the City Manager, his designee, or the Director in writing, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved in accordance with this Article. All fees stated in Article IV shall be due and payable by Contractor to City without offset and without regard to use of subcontractors.

12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of City in writing. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Contract in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. RESERVED.

XV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. The City Manager, his designee, or the Director shall have the authority to execute amendments on behalf of City without further action by the San Antonio City Council.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services,

and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein. Without limiting the foregoing, Contractor warrants that it is a licensed salvage vehicle dealer, pursuant to Chapter 2302 of the Texas Occupations Code, and shall maintain said license throughout the term of this Contract.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

XXV. RESERVED.

XXVI. ENTIRE AGREEMENT

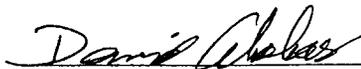
This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** by each party in duplicate copies, each of which shall constitute an original, as of the dates set forth below.

CITY:
CITY OF SAN ANTONIO

CONTRACTOR:
PICK 'N' PULL, INC.

Sheryl L. Sculley
City Manager
Date: _____



David Ahokas
President
Date: 12-21-05

Approved as to Form:

City Attorney

✓

DO NOT TYPE IN THIS SPACE		CITY OF SAN ANTONIO	Request For Ordinance/Resolution	Consent <input checked="" type="checkbox"/> Individual <input type="checkbox"/>	
Approval				Item No. 19	
Finance	Budget			Ord. No.	
Legal LOC Ext. 72834	Coordinator				

Date: January 19, 2006	Department: Code Compliance	Contact Person/Phone #: Liz C. Garcia 207-8200
Date Council Consideration Requested February 9, 2006	Deadline for Action: None	Dept. Head Signature <i>Liz C. Garcia</i>

SUMMARY OF ORDINANCE

This ordinance authorizes the City Manager or her designee to execute a contract for junked vehicle abatement services with Pick-N-Pull, Inc. to provide for the removal and disposal of junked vehicles. This contract provides the terms and conditions under which the City's Code Compliance Department shall receive \$35.00 for each junked vehicle removed.
[Presented by Liz C. Garcia, Acting Director of Code Compliance; Jelynne LeBlanc Burley, Assistant City Manager.]

Council Memorandum Must be Attached To Original

Other Depts., Boards, Committees Involved (please specify):
City Attorney's Office, Municipal Court, Police Department and Contract Services Department.

Contract signed by other party
Yes No

FISCAL DATA (If Applicable)			
SAP GL Account	4403007	Amt. Expended	N/A
Cost Center/Order No.	3001010001/230000000001		
Comments: This is a revenue account. GL account title: Service Charge – Towing Fees. FY 2005 Budget amount was \$5,500.00. Actual amount collected for FY2005 is \$875. FY 2006 Budget amount is \$7,875 (\$35 fee x 225 junked vehicles). Total amount collected year-to-date is \$735 (\$35 fee x 21 junked vehicles).		Funds/Staffing Budgeted	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
		Positions Currently Authorized	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
		Impact on future O & M	
		If positions added, specify Class and Job No.	
		Please submit 3 copies with your original	

**SERVICE CONTRACT
FOR
REMOVAL AND DISPOSAL OF JUNKED VEHICLES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas home-rule municipal corporation (“City”) pursuant to Ordinance No. _____ passed and approved on _____, 2006 and Pick ‘N’ Pull, Inc. (hereinafter referred to as “Contractor”), both of which may be referred to herein collectively as the “Parties”.

Whereas, the City passed ordinance number 100203 on December 16, 2004, authorizing the abatement of junked vehicles that are found to be a public nuisance; and

Whereas, the City desires to use the services of a licensed salvage dealer to remove and finally dispose of junked vehicles; and

Whereas, Contractor desires to perform the services contemplated herein in consideration of the right to sell the junked vehicles’ parts, and/or scrap metal from the vehicles;

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Contract and includes its successors and assigns.
- 1.2. “Contractor” is defined in the preamble of this Contract and includes its successors and permitted assigns.
- 1.3. “Director” means the acting director of City’s Code Compliance Department.
- 1.4. “Inoperable” means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.
- 1.5. “Junked Vehicle” means a vehicle that is self-propelled or was manufactured to be self-propelled, or any part thereof, in ordinary public view, which remains inoperable for a

continuous period of (10) ten days, and, for purposes of this Contract, is so designated as a Junked Vehicle by the C.C. Director. The term shall also include disassembled parts.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the tenth day after passage of its authorizing ordinance and terminate on September 30, 2006.

2.2 The City may renew this Contract, on the same terms and conditions, for up to four additional successive one year terms. The City Manager and the Director are each authorized to effect the renewals without further action on the part of the San Antonio City Council. All renewals shall be in writing and signed by either the City Manager or the Director.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide and shall provide all labor, equipment, materials, and other resources required to remove and dispose of junked vehicles. Should a junked vehicle or vehicles be inaccessible through the use of the standard equipment and towing vehicles in Contractor's inventory, the City and Contractor shall determine the best means for the removal of said vehicle(s), and the vehicle shall be removed only with the advance written approval by the City. Contractor may, upon City approval, be reimbursed for the costs associated with the additional requirements. No costs incurred by Contractor shall be paid by City except upon express written pre-approval of said costs.

3.2 Contractor shall remove junked vehicles identified by the Director, or his designee, within 24 hours' notice. City shall coordinate the time of the removal with Contractor. A City Code Compliance Officer or San Antonio Police Officer must be present at the time of the removal. In no event shall Contractor remove a Junked Vehicle without the presence of either a City Code Compliance Officer or San Antonio Police Officer. City may engage the services of another provider in the event that Prime Contractor is unable to promptly remove a Junked Vehicle.

3.3 Contractor shall be responsible for providing any special equipment that is required to remove an unusual Junked Vehicle or to remove a Junked Vehicle from an unusual location, in accordance with the limitations set forth in 3.1 above.

3.4 Contractor shall remove Junked Vehicles, including parts of Junked Vehicles, immediately and directly to a licensed salvage or scrap yard, or a licensed motor vehicle demolisher. Such facility need not be located within the corporate limits of the City of San Antonio. Junked Vehicles shall not be taken to, nor stored, even temporarily, at any location other than a licensed salvage or scrap yard, or a licensed motor vehicle demolisher's yard.

3.5 Contractor may not reconstruct removed Junked Vehicles or make removed Junked Vehicles operational. Contractor shall finally dispose of Junked Vehicles by demolishing or dismantling them in a manner that complies with all applicable laws.

3.6 Contractor shall comply with all laws regarding disposal of batteries, fuel, and fuel tanks, and other hazardous materials.

3.7 Contractor shall maintain a means of communication with City by land line or cellular telephone and shall provide the numbers at which Contractor may be reached during City's business hours to Director. Contractor shall be available to perform services hereunder Monday through Sunday, from 8:30 a.m. to 5:00 p.m., other than official City holidays.

3.8 Contractor shall assist City in gaining entry to the Junked Vehicle, if deemed necessary by City, at the scene prior to removal, by unlocking the vehicle and opening the trunk, or opening by any means necessary. Contractor shall remove all debris caused by Contractor in gaining entry to the vehicle.

3.9 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate.

3.10 City shall issue Notice to the Texas Department of Transportation ("TxDot") of the abatement of each Junked Vehicle removed pursuant to this Contract and shall provide TxDot Form VTR 71-5 Transfer of Junked Vehicle To A Demolisher (or such other form as may be promulgated and required by TxDot), to Contractor.

3.11 Nothing herein shall preclude City from using the services of another contractor for towing purposes in the event a junked vehicle is inaccessible through the use of the standard equipment and towing vehicles in Contractor's inventory, as described in 3.1, or in the event that Contractor cannot meet its obligations hereunder within the time allotted. In such event, City may bring the vehicle to Contractor's facility for disposition in accordance with this Contract, and the payment terms contained in Article IV shall apply.

IV. PAYMENT TO CITY

4.1 In consideration of Contractor's right to remove and dispose of Junked Vehicles and the profits Contractor may realize in the sale of parts of Junked Vehicles for scrap or salvage, Contractor agrees to pay City a fee of \$35.00 per Junked Vehicle removed.

4.2 Contractor's payment shall be accompanied by a statement showing the following information for each Junked Vehicle for which payment is being made:

- Vehicle Identification Number, if available;

- State and License Plate Number, if available;
- Date of removal;
- Location from which the vehicle was removed; and
- Description of vehicle, including make, model and color.

4.3 Should the removed vehicle be disassembled parts, Contractor's statement should indicate "Parts Only," and include the:

- Date of removal;
- Location from which the parts were removed; and
- List of parts removed.

4.4 No fees or expenses of Contractor shall be charged by Contractor nor be payable by City, except those described in Section 3.1, upon advance written approval of Director.

4.5 Prime Contractor shall remit the payment described in Section 4.1 above on the first of each month for the Junked Vehicles removed the previous month.

V. RESERVED

VI. RECORDS RETENTION

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period.

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by either party for convenience. City shall be required to provide Contractor with 90 calendar days' written notice to effect termination for convenience. Contractor shall be required to provide City with 90 calendar days' written notice to effect termination for convenience. Notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either party may terminate this Contract as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:

- a) any material breach of the terms of this Contract;
- b) the sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting;

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

7.5 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract. Termination shall not relieve Contractor of its obligation to pay City the fee stated in Article IV for any vehicles removed prior to the date of termination.

7.6 Termination not sole remedy. In no event shall a party's action of terminating this Contract, whether for cause or otherwise, be deemed an election of that party's remedies, nor shall such termination limit, in any way, at law or at equity, that party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

7.7 Termination by the City may be effected by the Director, without further action required by the San Antonio City Council.

VIII. NOTICE

Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:
 City of San Antonio
 Director, Code Compliance Department
 P.O. Box 839966
 San Antonio, TX 78283-3966

If intended for Contractor, to:
 William Randall Cunningham
 General Manager
 11795 Applewhite Road
 San Antonio, TX 78224

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the City's Code Compliance Department (attention: Arthur Arispe), P.O. Box 839966, San Antonio, TX 78283-3966, and City Clerk's Office, and which shall be clearly labeled "Junked Vehicle Removal & Disposal" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to City's Code Compliance Department (attention: Arthur Arispe) P.O. Box 839966, San Antonio, TX 78283-3966, and the Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Commercial General (Public) Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence

	a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.** Explosion, collapse, underground	
2.	Business Automobile Liability** a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

* Alternate Plans are subject to approval by the Risk Manager

** If Applicable as determined by City's Risk Manager

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

10.5 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
Code Compliance Dept.
Attn: Arthur Arispe
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.7 If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

10.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.

10.9 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

XI. INDEMNIFICATION

11.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR's** activities under this **CONTRACT**, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, contractor or subcontractor of **CONTRACTOR**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND**

REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 72 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel, up to a maximum billable rate of \$210.00 per hour, to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by either the City Manager, his designee, or the Director in writing, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Contract to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved in accordance with this Article. All fees stated in Article IV shall be due and payable by Contractor to City without offset and without regard to use of subcontractors.

12.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of City in writing. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Contract in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. RESERVED.

XV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. The City Manager, his designee, or the Director shall have the authority to execute amendments on behalf of City without further action by the San Antonio City Council.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services,

and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein. Without limiting the foregoing, Contractor warrants that it is a licensed salvage vehicle dealer, pursuant to Chapter 2302 of the Texas Occupations Code, and shall maintain said license throughout the term of this Contract.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

XXV. RESERVED.

XXVI. ENTIRE AGREEMENT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** by each party in duplicate copies, each of which shall constitute an original, as of the dates set forth below.

CITY:
CITY OF SAN ANTONIO

CONTRACTOR:
PICK 'N' PULL, INC.

Sheryl L. Sculley

Sheryl L. Sculley
City Manager
Date: 2/9/06

David Ahokas

David Ahokas
President
Date: 12-21-05

Approved as to Form:

[Signature]

City Attorney