

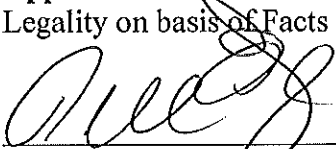
Feb 2013

RESOLUTION APPROVING THE LIST OF BILLS FOR MAY 30, 2013

Resolution No. 02-2013-09

**Approved as to form and
Legality on basis of Facts**

Factual Contents Certified


Phil G. George, Esq.
Office of General Counsel

by _____
Budget Authorization Certified

WHEREAS, the Executive Director has received and reviewed the attached List of Bills for the Month of February, 2013; and

WHEREAS, the Board of Commissioners approved the list of Bills for February, 2013; and

WHEREAS, the Executive Director is recommending that the List of Bills be approved; and

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Parking Authority of the City of Newark, that the List of Bills for February, 2013 approved for payment.

Commissioner Seconded the Motion
X - Indicates Vote AB - Absent NV - Not Voting
Board of Commissioners Vote of Final Passage

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

LaVar Young	✓				DeAndre Rudolph	✓			
Raquel Cagley	✓								
A Dean Rawls	✓				Hubert Graham	✓			

I hereby certify that the above Resolution No.02-2013-09 was accepted at a Commissioners meeting of the Parking Authority of the City of Newark on February 28, 2013.

By: _____
LaVAR YOUNG
Chairperson
Newark Parking Authority

(SEAL)
ATTEST:

WITNESS:

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING
AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXTEND THE CONTRACT FOR AUDITING SERVICES
WITH WITHUM SMITH & BROWN FOR SIX MONTHS**

Approved as to form and
Legality on basis of Facts

ERIC M. BERNSTEIN, ESQ. PO

Factual Contents Certified to by

MANAGER OF FISCAL OPERATIONS

RESOLUTION NO: 02-2013-10

WHEREAS, the Board of Commissioners has previously determined that there is an ongoing need to engage the services of an Auditor to provide annual auditing services as required by the State of New Jersey, assist in preparation and review of the Authority's annual budget, audits, debt statements, official statements and all other documents relating to the issuance of bonds, as well as all other financial matters pertaining to municipal government and perform other specific auditing services as agreed to by the Authority or its General Counsel; and,

WHEREAS, the Authority at an earlier time did enter into a Contract with Withum Smith & Brown for one (1) year, which contract expired on January 31, 2013; and,

WHEREAS, the Contract stated that the term shall be for the period of one (1) year commencing on the date hereof and shall not automatically renew, except for the fact that the Auditor shall continue to represent the Authority in any and all matters assigned until a successor is appointed and in accordance with the Local Public Contracts Law, N.J.S.A. 40:11A-15(1)(a)(i), et seq.; and

WHEREAS, the Board previously passed a Resolution authorizing the advertisement of bids for auditor, but which bidding process is not complete; and,

WHEREAS, the Board deems that the Services are still required due to the annual budgeting, reporting and auditing obligations of the Authority under state and/or federal law, including, but not limited to the Local Fiscal Affairs Law and other laws; and,

WHEREAS, as a result of recent significant changes and added requirements to the annual budgeting, reporting and auditing obligations of the Authority which were enacted by the Legislature and/or the Governor of the State of New Jersey in 2012 to assist local government to manage financial obligations, there is a need to retain the Auditor's expertise in order to meet financial and reporting obligations which are due in April 2013 as a matter of law and which are critical and essential to the needs and reporting obligations of the Authority; and,

WHEREAS, as part of the Local Fiscal Affairs Law which requires the preparation of such audits, an auditor has continuing duties beyond the filing date to insure compliance with the audit; and,

WHEREAS, the above reasons support the award of a contract to Withum Smith & Brown pursuant to .J.S.A. 40:11A-15(1)(a)(I); and,

WHEREAS, the Manager of Fiscal Operations of the Authority has attested to the availability of funds within the fiscal year budget to support the entering into of the contract:

THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Newark Parking Authority that the Executive Director for the Authority be and is hereby authorized to extend the contract with the firm of Withum Smith & Brown, for a term of six (6) months commencing March 1, 2013 and ending October 1, 2013, under the terms and conditions set forth in the Contract for Services attached hereto and made a part hereof; and, it is

FURTHER RESOLVED, that the Executive Director or his designee shall cause to be printed one (1) time in a newspaper of general circulation authorized by law and by resolution of the Parking Authority, and on its website, stating the nature, duration service and amount of the contract, and that the resolution and contract are on file and available for inspection during regular business hours in the Office of the Director of Administration of the Parking Authority of the City of Newark and on its website.

Commissioner

Seconded the Motion

X - Indicates Vote AB - Absent NV - Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND THE CONTRACT FOR AUDITING SERVICES WITH WITHUM SMITH & BROWN FOR SIX MONTHS

Commissioners	AYE	NAY	NV	AB	Commissioners	AYE	NAY	NV	AB
LeVar Young, Chairman	✓				DeAndre Rudolph	✓			
Raquel Cagley	✓								
A. Dean Rawls	✓								
Hubert Graham	✓								

CERTIFICATION

I, LEVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND THE CONTRACT FOR AUDITING SERVICES WITH WITHUM SMITH & BROWN FOR SIX MONTHS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February 2013.

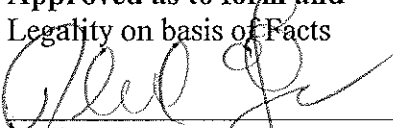
PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]

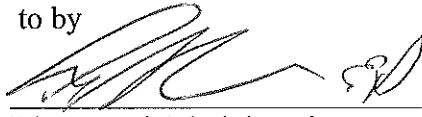
LEVAR YOUNG
Chairman

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
ADOPTING TOWING AND STORAGE RATES FOR THE PARKING AUTHORITY
OF THE CITY OF NEWARK IN ACCORDANCE WITH THE NEW JERSEY
PREDATORY TOWING PREVENTION ACT AND THE INTERLOCAL
AGREEMENT WITH THE CITY OF NEWARK

Approved as to form and
Legality on basis of Facts


Philip George, Esq.
Office of General Counsel

Factual Contents Certified
to by


Director of Administration

RESOLUTION NO.: 02-2013-11

WHEREAS, the Parking Authority of the City of Newark has as a stated public purpose the provision of off-street parking facilities in order to benefit the public and aid traffic flow in and about the City of Newark pursuant to *N.J.S.A. 40:11A-6, et seq.*; and,

WHEREAS, in 2008 the Parking Authority of the City of Newark entered into an Interlocal Agreement with the City of Newark concerning the assumption of operation of the Parking System of the City of Newark on behalf of the City of Newark; and,

WHEREAS, as part of the Interlocal Agreement, the Parking Authority of the Newark assumed responsibility to take over towing and storage operations for the nonconsensual towing of vehicles which are illegally parked or have been involved in accidents or criminal or traffic violations; and,

WHEREAS, the Superior Court of New Jersey, Law Division, Essex County in the matter of *Dente Brothers Towing, Inc., v. City of Newark, et al*, Docket No. ESX-L-5800-12, directed enforcement of the terms of the Interlocal Agreement with regard to the bidding and selection of towing operators for nonconsensual towing; and,

WHEREAS, the City of Newark has not yet enacted an amended Ordinance governing nonconsensual towing; and,

WHEREAS, the Parking Authority of the City of Newark has located space in which to conduct towing storage for which would aid the City of Newark and the Parking Authority in fulfilling their statutory mission to provide safe and adequate parking and thereby control and limit traffic in and about the City; and,

WHEREAS, the location of space for towing storage is a condition precedent and triggering event to the commencement of such nonconsensual towing; and,

WHEREAS, pursuant to statute and the Interlocal Agreement the Parking Authority of the City of Newark has the authority to set rates for nonconsensual towing and storage; and,

WHEREAS, pursuant to the Interlocal Agreement and statutory authority, nonconsensual towing will continue to require the assistance and cooperation of the City of Newark's Police Department and Dispatch facilities, which the Board of Commissioners consider as a financial component which must be considered for the benefit of the residents and taxpayers of the City of Newark; and,

WHEREAS, pursuant to the Predatory Towing Prevention Act the Executive Director has caused to be determined the average rates prevailing for towing in the County of Essex for such services and has prepared a summary of such rates set forth in Schedule A and Schedule B and which rates do not exceed the average rates prevailing in the County of Essex for such services; and,

WHEREAS, the Commissioners of the Parking Authority of the City of Newark now wish to set such rates in order to permit the Executive Director to implement the said Order of the court and the written directive of the City of Newark to commence the

bidding process for nonconsensual towing in order to benefit the public and aid traffic flow in and about the City of Newark:

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of Newark that the Chairman of the Board of Commissioners of the Parking Authority of the City of Newark that the following rates are hereby adopted as a rule and regulation of the Parking Authority of the City of Newark, provided that the charges for services rendered by an Official Tower wholly within the City of Newark shall not exceed the following rates:

1. Towing:

- a. Automobiles under 5,000 lbs. gross average weight \$75.00.
- b. Commercial Vehicles and Automobiles or Sport Utility Vehicles over 5,001 lbs. gross average weight \$150.00.
- c. Each tow shall also be assessed a fee of \$25.00 to be collected by the Parking Authority and paid to the City of Newark on a monthly basis within five (5) days of the end of each calendar month.

2. Storage:

- a. Automobiles under 5,000 lbs. Gross average weight \$30.00 per day for the first thirty (30) days; thereafter \$35.00 per day.
- b. Commercial Vehicles and Automobiles or Sport Utility Vehicles over 5,001 lbs. gross average weight \$40.00 per day for the first thirty (30) days; thereafter \$45.00 per day.

3. Mileage. No mileage fee may be imposed on any tow which is regulated by this regulation.

4. Winching.

- a. Light Wreckers \$20.00 per 15 minutes, to a maximum of 1 hour.
- b. Heavy Wreckers \$75.00 per 15 minutes, to a maximum of 1 hour.

Additional Workman Labor \$ 75.00 per hour

5. Transmission Service \$50.00

6. Any other service not enumerated above \$50.00

c. In cases where a licensee must hire laborers or rent other equipment, all reasonable charges therefor, shall be passed along to the owner of the vehicle.

d. For services to or from a point outside the City of Newark, the charges shall be governed by the fee schedule for towing as set forth above as and for an hourly dollar rate multiplied on a per hour basis until the destination has been reached.

e. The driver or operator of a wrecker shall give the customer a receipt for the amount paid and itemize each charge thereon.

f. The operator of a motor vehicle which is in the process of being towed for a parking violation of any municipal parking ordinances, shall have the option of cancelling the tow, whether or not the vehicle is engaged with the wrecker, by paying a fifty (\$50.00) dollar cancellation fee to the wrecker operator. The cancellation offer must be made by the motor vehicle operator prior to the wrecker departing the scene. The motor vehicle operator must show proof of driver's license, registration and insurance when paying the fifty (\$50.00) dollar cancellation fee which information shall be recorded and a receipt given by the wrecker operator. The wrecker operator shall provide the motor vehicle operator with a receipt detailing the amount paid, the time, date, location, license plate number, which receipt shall be signed off by a Police Officer or Parking Enforcement Officer at the scene of the tow. After the motor vehicle operator displays the proper documentation and pays the cancellation fee, the wrecker operator shall cancel the tow regardless of whether or not the motor vehicle was engaged with the wrecker. Nothing in this section shall provide for or authorize the cancellation of any traffic summonses, fines, penalties, suspensions of driving or registration privileges, contempt charges or other process which may have been issued as a result of the motor vehicle operator violating any traffic and parking ordinances.

g. Motorcycles and all other on/off-road vehicles shall be considered automobiles for purposes of determining fees which are allowed under this section.

h. The fees set forth in this section do not apply to vehicles owned and/or operated by the City of Newark or the Parking Authority of the City of Newark.

i. There shall be no additional charges other than those provided herein including, but not limited to, flatbedding, waiting time, winching, clean-up cost, and additional labor when only basic towing services are provided as defined herein. The Official Tower, however, shall be allowed to charge the sum of Twenty-Five (\$25.00) Dollars per hour for additional winching services which may be required over and above basic towing services when removing a vehicle from a position beyond the right of way or berm or from being impaled upon any other object within the right of way or berm; and,

IT IS FURTHER RESOLVED by the Parking Authority of the City of Newark that the above rates shall not go into effect until Official Towers are selected and

approval of the City of Newark is obtained, if the same is determined to be required by further action of the City of Newark.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK ADOPTING TOWING AND STORAGE RATES FOR THE PARKING AUTHORITY OF THE CITY OF NEWARK IN ACCORDANCE WITH THE NEW JERSEY PREDATORY TOWING PREVENTION ACT AND THE INTERLOCAL AGREEMENT WITH THE CITY OF NEWARK

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Commissioners	AYE	NAY	NV	AB	Commissioners	AYE	NAY	NV	AB
Lavar Young, Chairman	✓				DeAndre Rudolph	✓			
Raquel Cagley	✓								
A. Dean Rawls	✓								
Hubert Graham	✓								

CERTIFICATION

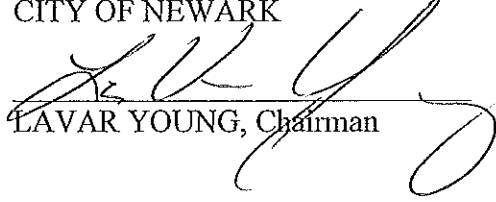
I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK ADOPTING TOWING AND STORAGE RATES FOR THE PARKING AUTHORITY OF THE CITY OF NEWARK IN ACCORDANCE WITH THE NEW JERSEY PREDATORY TOWING PREVENTION ACT AND THE INTERLOCAL AGREEMENT WITH THE CITY OF NEWARK" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February, 2013.

PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]



LAVAR YOUNG, Chairman

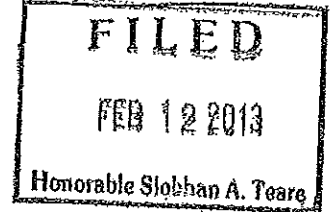
**SCHEDULE OF NONCONSENTUAL TOWING
FEES IN ESSEX COUNTY, NEW JERSEY
BY MUNICIPALITY**

Schedule A -- Rates in Essex County

Municipality	Towing Rate	Storage Rate
Bloomfield	Not available -- set by tower	Not available -- set by tower
Irvington	\$50.00 auto \$100.00 truck	\$15.00 /day \$15.00 /day
Caldwell	\$80.00 under 8,000 lb \$175.00 over 8,000 lb	\$25.00 / under 10,000 lb outside \$35.00 / under 10,000 lb inside
Cedar Grove	\$95.00 autos	\$30.00 per day
Livingston	Set by tower	Set by tower
South Orange	\$75.00 light tow \$125.00 medium tow \$250.00 heavy tow	\$35.00 / day inside \$25.00 / day outside
Maplewood	\$75.00 plus one-time \$25.00 administrative fee	\$35.00 / day inside \$25.00 / day outside
Montclair	\$85.00 daytime \$95.00 nighttime	\$35.00 / day inside \$30.00 / day outside
Verona	\$85.00 regular \$100.00 flatbed	\$25.00 / day Impound: \$125.00 first 3 days, then \$25.00 per day
Essex Fells	Not found	
Nutley	Tower sets fees	\$10.00 per day for police impounds \$20.00 per day for overtime parking towing
Millburn	\$65.00 under 6,000 lb \$97.50 over 6,000 lb	\$30.00 / day

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12



DENTE BROTHERS TOWING, INC
and B&C TOWING, INC.,

Plaintiffs:

vs.

CITY OF NEWARK and THE
PARKING AUTHORITY OF THE
CITY OF NEWARK.

Defendants:

MEMORANDUM
DECISION

SIOBHAN A. TEARE, J.S.C.

Written Decision After a Request for Briefs on the Issue of Damages
Written Decision Delivered on February 12, 2013
Decided: February 12, 2013

William J. Pollinger, P.A.
Attorneys for Plaintiff Dente Brothers Towing, Inc.

Gabriel H. Halpern, Esq.
Pinilis Halpern, LLP
Attorney for Plaintiff Intervenor B&C Towing, Inc

Alice Mireles, Assistant Corporation Counsel
Former Attorney for Defendant City of Newark

John R. Scott, Esq.
Hardin, Kundla, McKeon & Poletto, P.A.
Attorney for Defendant City of Newark

Philip G. George, Esq.
Eric M. Bernstein & Associates, LLC
Attorney for Defendant Intervenor the Parking Authority of the City of Newark

Procedural History

In a written decision, dated January 18, 2013, the Court dismissed all of the counts of both Dente Brothers' Amended Complaint and B&C Towing's Complaint in Intervention with the exception of Counts Five and Six, which were severed¹ and Count Two of the respective complaints. The Court requested briefs on the remaining count of each complaint, specifically with regards to the issue of whether plaintiffs are entitled to damages under 42 U.S.C. § 1983 or attorneys fees under 42 U.S.C. § 1988.

Plaintiff Dente Brothers filed its brief in a letter dated January 21, 2012. Plaintiff-intervenor B&C Towing did not file a brief with respect to these issues. Defendant-intervenor Parking Authority of the City of Newark filed its opposition in a letter dated January 25, 2013. Defendant City of Newark, now represented by John R. Scott, Esq. of Hardin, Kundla, McKeon & Poletto, P.A., filed its opposition in a brief and certification dated January 25, 2013.

Plaintiffs' Claims for Damages

In its brief, Dente Brothers seeks damages under 42 U.S.C. § 1983 and attorneys fees under 42 U.S.C. § 1988 because it claims that the City's failure to award it the towing contract constitutes a violation of due process. According to Dente Brothers, it had a property interest for due process purposes in the contract for towing services, and the City's actions in this case constitute a violation of both substantive and procedural due process.

While B&C Towing has not filed a brief with respect to these issues, the counts in their Complaint in Intervention are nearly identical to the Amended Complaint of Dente Brothers, and thus the issues are examined together.

¹ The Court held that the discovery necessary to litigate the issues under these two counts would go far beyond the scope of the current litigation. The Court concluded that those issues would best be handled in a separate action with a separate discovery process.

As the Appellate Division has stated, it is clear that monetary damages are not generally available to unsuccessful bidders under the Local Public Contracts Law. "An unsuccessful bidder may attack the award of the contract but may not recover money damages, even if the challenge succeeds. To permit the low bidder to recover damages would simply twice penalize the public. Submission of the lowest bid in answer to an advertisement for bids by the State for public work cannot be the basis of a claim for damages based upon the failure or refusal to accept such bid. This rule seems to be universal in application." Delta Chem. Corp. v. Ocean County Utils. Auth., 250 N.J. Super. 395, 400-01 (App. Div. 1991) (internal citations omitted).

While the Court acknowledges that Delta Chemical is more than twenty years old, plaintiffs have not provided, and independent research has not revealed, any case law suggesting that Delta Chemical is no longer good law. See id.

It is also clear that money damages cannot be recovered by unsuccessful bidders in § 1983 actions. In order to state a claim under § 1983 for deprivation of due process rights, a plaintiff must allege that he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of "life, liberty, or property." Fariello Bus Serv., LLC v. Old Bridge Bd. of Educ., 2011 U.S. Dist. LEXIS 65498, at 11.

In Feriozzi Co., Inc. v. City of Atlantic City, 268 N.J. Super. 310, 316-17 (Law Div. 1993), the trial court rejected the plaintiff's claim that it should still be entitled to compensatory damages on its constitutional claim under § 1983. The Court discussed at great length why an unsuccessful bidder under the Local Public Contracts Law in New Jersey does not have a property interest for due process purposes, and thus should not have a claim for damages under § 1983:

The reason why an unsuccessful bidder may not receive money damages, even if the challenge to the award of the contract succeeds, is to prevent the public from paying twice. It is the public interest, not the private interest of the bidder, which is paramount. The purpose of competitive bidding is "to secure competition and to guard against favoritism, improvidence, extravagance and corruption." Hillside Twp. v. Sternin, 25 N.J. 317, 322, 136 A.2d 265 (1957). "Consequently, whatever rights a bidder may have in the process are 'conferred . . . to the end that the public will obtain all that is due it in the procurement process, rather than for [the bidder's] individual aggrandizement.'" Morie Energy Management v. Badame, 241 N.J.Super. 572, 576, 575 A.2d 885 (App.Div.1990) (citing Trap Rock Industries v. Kohl, 59 N.J. 471, 480, 284 A.2d 161 (1971)). The overriding public interest involved is the promotion of competitive bidding. Id. 241 N.J.Super at 577, 575 A.2d 885.

With these propositions in mind, plaintiff's challenge to the affirmative action provisions of the City bidding documents must be viewed as a challenge for the benefit of the public, not for the private benefit of plaintiff. The relief secured by plaintiff protects the integrity of the public bidding process by prohibiting public officials from engaging in unconstitutional conduct. It affords protection to the public by the promotion of competitive bidding. Thus the injured "person" under § 1983 would not be plaintiff, but rather the public at large.

Constitutional rights do not exist in a vacuum. Memphis Community School Dist. v. Stachura, 477 U.S. 299, 307-308 (1986). Their purpose is to protect persons from injuries to particular interests. Id. The particular interest to be protected in the instant case is a public interest. The status conferred upon plaintiff to support its claim "is conferred upon [it] to the end that the public will obtain all that is due in the procurement process." Trap Rock Industries, Inc., supra, 59 N.J. at 479-480, 284 A.2d 161.

Standing to challenge the bid is granted [s]imply and solely in order that the public interest might be served by compelling the lax or erring public official to properly perform his public trust. It was not thereby intended to create or establish in the bidder entitled to the award of the contract a right which, if violated, would render the public agency liable in damages to the bidder. [M.A. Stephen Const Co., supra, 125 N.J.Super. at 74, 308 A.2d 380.]

Plaintiff's standing to challenge the bid award was for the benefit of the public. The particular interests to be protected, the interests in the bidding process and in equal protection, were the public's, not the plaintiff's. I therefore am satisfied that plaintiff is not entitled to compensatory damages.

While research has revealed no recent New Jersey case law regarding this issue, a recent federal case recognized and applied this same standard, thus, supporting that Feriozzi is still good law. “Because bidding laws exist for the benefit of the public, New Jersey courts have consistently held that unsuccessful bidders of a public contract may attack the award of a contract, but may not recover damages even if the challenge succeeds.” Fariello Bus Serv., LLC v. Old Bridge Bd. of Educ., 2011 U.S. Dist. LEXIS 65498 (D.N.J. 2011).

Whatever merit an unsuccessful bidder’s claims against a municipality may have under the Local Public Contracts Law, it is clear that these claims do not constitute a property right for due process purposes. Accordingly, plaintiffs’ claims under 42 U.S.C. § 1983, 42 U.S.C. § 1988 and any other allegation that the defendants have violated due process under the federal constitution must be dismissed. Thus, the remaining counts of plaintiffs’ complaints, (i.e., Count Two of Dente Brothers’ Amended Complaint and Count Two of B&C Towing’s Complaint in Intervention), are dismissed with prejudice.

Plaintiffs have not sought attorneys’ fees under any provision of New Jersey law. The Court notes that while the Court finds the behavior of the City of Newark especially troubling in this action, there does not appear to be any statutory basis for granting attorneys’ fees under state law.

The Court also notes that in its brief, the City of Newark has challenged some of the Court’s holdings with respect to the Interlocal Agreement between the City of Newark and the Parking Authority. Those arguments are not properly before the Court, as the Court requested that the parties brief solely the issues of damages and attorneys fees. The issues raised by the City of Newark should only have been raised in a motion for reconsideration or in an appeal to the Appellate Division.

The Continued Use of Emergency Contracts

N.J.S.A. § 40A:11-6 governs the use of emergency contracts under the Local Public Contracts Law. It is clear to the Court that the City and/or the Parking Authority, having operated under emergency contracts for five years, have not complied with the provisions of N.J.S.A. § 40A:11-6.

First, emergency contracts can only be awarded “when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services[.]” It is clear to the Court that no such emergency has existed for approximately five years.

N.J.S.A. § 40A:11-6(a) further provides that:

The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.

The Court is not aware if the City was in compliance with the requirements of this provision when it initially awarded emergency contracts approximately five years ago. However, it is clear to the Court that even if a valid emergency existed when these emergency contracts first existed, at this time, there is no need for the continued performance of an emergency contract, and the “nature of the emergency[.]” “the time of its occurrence[.]” and “the

need for invoking this section" all warrant that the City and/or the Parking Authority must comply with the bidding requirements of the Local Public Contracts Law.

N.J.A.C. § 5:34-6.1, promulgated pursuant to N.J.S.A. § 40A:11-6(c), further provides that the use of emergency contracts pursuant shall be subject to the following pertinent requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;

.....

3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;

4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and

5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

These provisions further demonstrate that the City's actions in awarding its contracts have far exceeded any reasonable use of the emergency contracts provision.

Accordingly, the Court orders that the City and the Parking Authority take the following actions:

First, in accordance with the Court's written decision of January 18, 2013, under the terms of the Interlocal Agreement, the Parking Authority currently has the responsibility to advertise bids for city wide towing services. Within sixty (60) days of the date of this Order, the Parking Authority must either advertise that it will receive sealed proposals for city wide towing services, or else transfer that power back to the City pursuant to Section 711 or any other applicable terms of the Interlocal Agreement.

FILED
FEB 12 2013
Honorable Siobhan A. Teare

This Order is prepared and entered by the Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12

DENTE BROTHERS TOWING, INC
and B&C TOWING, INC.,

Plaintiffs:

vs.

ORDER

CITY OF NEWARK and THE
PARKING AUTHORITY OF THE
CITY OF NEWARK.

Defendants:

The Court, having requested briefs from the parties on the issue of damages at a hearing held on January 4, 2013, and having thoroughly reviewed the same:

IT IS HEREBY ORDERED, on the 12th day of February, 2013, as follows:

1. Because plaintiffs do not have a property right in their unsuccessful bids for due process purposes, Count Two of Dente Brothers' Amended Complaint and Count Two of B&C Towing, Inc's Complaint in Intervention, the sole remaining counts in this action, are hereby dismissed with prejudice;
2. Dente Brothers' Amended Complaint and B&C Towing, Inc's Complaint in Intervention are thus dismissed with prejudice;



SIOBHAN A. TEARE, J.S.C.

FILED
FEB 12 2013
Honorable Stobhan A. Teare

This Order is prepared and entered by the Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12

DENTE BROTHERS TOWING, INC
and B&C TOWING, INC.,

Plaintiffs:
vs.

CITY OF NEWARK and THE
PARKING AUTHORITY OF THE
CITY OF NEWARK.

Defendants:

S U P P L E M E N T A L
O R D E R

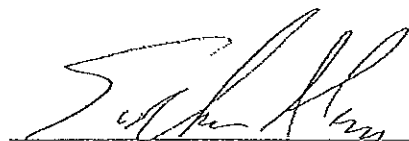
The Court, having heard arguments from the parties at a hearing held on January 4, 2013, issued a written decision on January 18, 2013. In that decision, the Court dismissed Counts One, Three, and Four of Dente Brothers' Amended Complaint and Counts One, Three, and Four of B&C Towing's Complaint in Intervention because the Court could not, as a matter of law, award a towing contract to either plaintiff under the Local Public Contracts Law. The Court held that the City of Newark's invitation to bid was an *ultra vires* act based on the Parking Authority's assumption of duties under the Interlocal Agreement with respect to the City's towing operations.

During the litigation, the Court also requested that the parties address the issue of the City of Newark's use of emergency contracts for its towing services for approximately the last five years. After a careful review of the parties' submissions and after hearing oral arguments, and

after further reviewing the provisions of the Local Public Contracts Law, the Court hereby supplements its Order dated January 18, 2013:

IT IS HEREBY ORDERED, on the 12th day of February, 2013, as follows:

1. In accordance with the Court's written decision of January 18, 2013, under the terms of the Interlocal Agreement, the Parking Authority currently has the responsibility to advertise bids for city wide towing services. Within sixty (60) days of the date of this Order, the Parking Authority must either advertise that it will receive sealed proposals for city wide towing services, or else transfer that power back to the City pursuant to Section 711 or any other applicable term of the Interlocal Agreement.
2. If the Parking Authority does transfer the power to advertise bids for city wide towing services back to the City, the City shall have sixty (60) days from the date of that transfer to advertise that it will receive sealed proposals for city wide towing services.
3. The bidding process, whether it is undertaken by the Parking Authority or the City, must be in material compliance with the applicable provisions of the Local Public Contracts Law.
4. If either the Parking Authority or the City fails to timely comply with the Court's Order, the Court will entertain an application for the imposition of sanctions, at the rate of \$100 per business day, against any of the two parties not in compliance with the Court's Order.



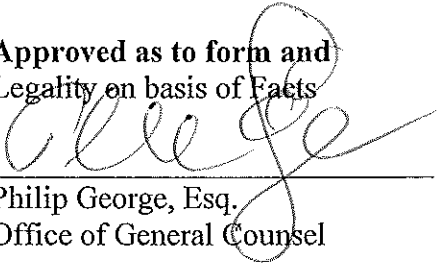
SIOBHAN A. TEARE, J.S.C.

Schedule B – Averages and Percentages at 25% and 50% in Essex County

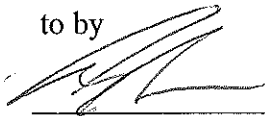
Activity	Average	Permitted +25% Predatory Towing Act for Consensual Towing (NJSA 56:13-14(b))	Permitted +50% Predatory Towing Act for Nonconsensual Towing (NJSA 56:13-14(b))
Towing Light	\$76.25	\$95.31	\$114.37
Towing Heavy	\$155.62	\$194.52	\$233.43
Inside Storage	\$30.66 per day	\$38.32	\$57.48
Outside Storage	\$26.77 per day	\$33.46	\$50.19

**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
ADOPTING RULES AND REGULATIONS FOR THE SELECTION, LICENSING
AND ADMINISTRATION OF NONCONSENSUAL TOWING BY THE
PARKING AUTHORITY OF THE CITY OF NEWARK IN ACCORDANCE
WITH THE NEW JERSEY PREDATORY TOWING PREVENTION ACT AND
THE INTERLOCAL AGREEMENT WITH THE CITY OF NEWARK**

Approved as to form and
Legality on basis of Facts


Philip George, Esq.
Office of General Counsel

Factual Contents Certified
to by


Director of Administration

RESOLUTION NO.: 02-2013-12

WHEREAS, the Parking Authority of the City of Newark has as a stated public purpose the provision of off-street parking facilities in order to benefit the public and aid traffic flow in and about the City of Newark pursuant to *N.J.S.A. 40:11A-6, et seq.*; and,

WHEREAS, in 2008 the Parking Authority of the City of Newark entered into an Interlocal Agreement with the City of Newark concerning the assumption of operation of the Parking System of the City of Newark on behalf of the City of Newark; and,

WHEREAS, as part of the Interlocal Agreement, the Parking Authority of the Newark assumed responsibility to take over towing and storage operations for the nonconsensual towing of vehicles which are illegally parked or have been involved in accidents or criminal or traffic violations; and,

WHEREAS, the Superior Court of New Jersey, Law Division, Essex County in the matter of *Dente Brothers Towing, Inc., v. City of Newark, et al*, Docket No. ESX-L-5800-12, directed enforcement of the terms of the Interlocal Agreement with regard to the bidding and selection of towing operators for nonconsensual towing; and,

WHEREAS, the City of Newark has not yet enacted an amended Ordinance governing nonconsensual towing; and,

WHEREAS, the Parking Authority of the City of Newark has located space in which to conduct towing storage which would aid the City of Newark and the Parking Authority in fulfilling their statutory mission to provide safe and adequate parking and thereby control and limit traffic in and about the City; and,

WHEREAS, the location of space for towing storage is a condition precedent and triggering event to the commencement of such nonconsensual towing; and,

WHEREAS, pursuant to the Interlocal Agreement and statutory authority, nonconsensual towing will continue to require the assistance and cooperation of the City of Newark's Police Department and Dispatch facilities, which the Board of Commissioners consider as a financial component which must be considered for the benefit of the residents and taxpayers of the City of Newark; and,

WHEREAS, the Commissioners of the Parking Authority of the City of Newark now wish adopt rules and regulations in order to permit the Executive Director to implement the said Order of the court and the written directive of the City of Newark to commence the bidding process for nonconsensual towing in order to benefit the public and aid traffic flow in and about the City of Newark:

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of Newark that the Chairman of the Board of Commissioners of the Parking Authority of the City of Newark that the following are hereby adopted as rules and regulations of the Parking Authority of the City of Newark for the operation of nonconsensual towing in the City of Newark:

Section 1. PURPOSE; LEGISLATIVE FINDINGS; DEFINITIONS

a. These rules and regulations are enacted pursuant to the statutory authority set forth in *N.J.S.A. 40:48-2.54, N.J.S.A. 40:11A-18, N.J.S.A. 40:11A-26* and *N.J.S.A. 56:8-1, et seq.*, in order to regulate the towing and storage of motor vehicles without the consent of the owners of those vehicles in the City of Newark and County of Essex, and to implement a procedure to receive complaints and resolve disputes arising from the towing and storage of motor vehicles without the consent of the owner.

b. The Parking Authority of the City of Newark adopts and endorses the policies embodied in the New Jersey Predatory Towing Prevention Act, P.L. 2007, c. 193, eff. Oct. 24, 2007, (*N.J.S.A. 56:8-1, et seq.*) and the provisions of the New Jersey Administrative Code which implement that Act, *N.J.A.C. 13:45-31.1* to *N.J.A.C. 13:45-31.10*. The Parking Authority of the City of Newark further finds that the legitimate business of tow truck operators, private property owners, operators and owners of automobiles and commercial motor vehicles, law enforcement, street maintenance and the users of the public rights of way for relief from unauthorized parking, abandoned or disabled automobiles and commercial motor vehicles and non-consensually towed automobiles and motor vehicles must be balanced with the interests of the Parking Authority in meeting its statutory purposes while still providing appropriate protection to consumers.

c. The Parking Authority of the City of Newark finds and declares that it is in the public interest to create a coordinated, comprehensive framework to establish enforce minimum standards for towing of all forms of vehicles in and about the City of Newark.

Section 2. DEFINITIONS. As used in these rules and regulations, the following definitions shall apply:

AUTOMOBILE means a motor vehicle of a private passenger, van, minivan, pick-up truck or station wagon type that is owned or leased by a private person or entity of any designation, but is not used as a public or livery conveyance for passengers or used for commercial purposes, and has a registered weight of under five thousand (5000) pounds. This can also be known as a private passenger vehicle. Automobile also includes a motorcycle of 2 or 3 wheeled configuration, delivery sedan, panel truck or van and/or a camper type vehicle, which is used for recreational purposes and which has a register weight of under five thousand (5000) pounds.

CALENDAR YEAR means the period of time between January 1 and December 31 of any given year.

COMMERCIAL MOTOR VEHICLE means every type of motor driven vehicle used for commercial purposes on the streets and highways, such as, but not limited to, the transportation of goods, wares and/or merchandise. This shall not include such vehicles as are run only upon rails. It also includes all automobiles which are used for the transportation of passengers for hire and all other motor vehicles used for the

transportation of passengers for hire, except school buses which are licensed by the State of New Jersey.

DIRECTOR means the Executive Director of the Parking Authority of the City of Newark or his or her designee.

FLATBED SERVICE means any operation in which an automobile and/or commercial motor vehicle, as defined herein, is moved by loading such onto a trailer and transporting such without the use of its own tires and/or wheels.

MOTOR VEHICLE ACCIDENT means an occurrence in which an automobile comes in contact with any other object for which the automobile must be towed or removed for placement in an outside secured storage facility. This includes all situations which are accidental as to the licensed owner or operator of the automobile even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the licensed owner or operator of the automobile.

NON-CONSENSUAL TOWING means the towing from private or public property or any street or sidewalk public right of way within the City of Newark without the consent of the owner or operator of the vehicle, of:

- (1) A vehicle which has been damaged as a result of an accident or is otherwise disabled;
- (2) A vehicle which has been abandoned or is obstructing traffic within any public right of way or public sidewalk within the public right of way;
- (3) A vehicle which has been recovered after being stolen;
- (4) a vehicle which is parked illegally or without authorization under any Ordinance of the City of Newark or statute or regulation of the State of New Jersey and for which there is authorization in these rules and regulations or any other Ordinance of the City of Newark or statute or regulation of the State of New Jersey to tow or immobilize the same;
- (5) a vehicle which has been impounded by any law enforcement agency without the consent of the owner because the driver failed to exhibit an insurance card contrary to *N.J.S.A. 39:3-29.1(a)*;
- (6) a vehicle which has been impounded by any law enforcement agency without the consent of the owner because the driver does not display and/or possess a valid permanent registration contrary to *N.J.S.A 39:3-4*;
- (7) a vehicle which has been left standing, whether attended or unattended, upon the roadway contrary to *N.J.S.A 39:4-136*;

- (8) a vehicle whose operator has been arrested by any law enforcement agency for any offense under the New Jersey Criminal Code or for any other offense which provides for a criminal penalty under New Jersey Law, for driving while intoxicated or under the influence of drugs or prescriptions contrary to *N.J.S.A. 39:3-10.13*, *N.J.S.A. 39:4-49.1*, *N.J.S.A. 39:4-50*, or *N.J.S.A. 39:4-50.14* and where there is no person who may legally take possession of the vehicle pursuant to *N.J.S.A. 39:4-50.22*;
- (9) a vehicle whose driver has been arrested for driving with a revoked operator's privilege contrary *N.J.S.A. 39:3-10*;
- (10) A vehicle which is parked illegally or without authorization under any Ordinance of the City of Newark or statute or regulation of the State of New Jersey and for which there are more than two (2) outstanding parking tickets, parking ticket warrants or failures to appear for parking tickets outstanding.
- (11) It shall not be required under these rules and regulations to obtain judicial or quasi-judicial declaration of the conditions or violations specified above in order to tow a vehicle.

OFFICIAL TOWER means those person(s) and/or company(ies) licensed by the City of Newark and contracted by the Parking Authority of the City of Newark to tow and/or store vehicles.

OUTSIDE SECURED STORAGE FACILITY means an automobile storage facility that is not indoors and is secured by a fence, wall and/or other man-made barrier that is at least six (6') feet high and is installed with a locked gate. As used herein, the facility must be lighted at night, must be secured twenty-four (24) hours a day, seven (7) days a week and manned by at least one (1) security guard at all times.

OVERTIME OR ILLEGALLY PARKED AUTOMOBILE means an automobile or other vehicle which is parked in violation of any statute, law, rule, regulation, ordinance or resolution, where the enforcement of that statute, rule, regulation, ordinance or resolution is delegated by law or other governmental action (statute, ordinance, rule and/or regulation) to a governmental agency.

OVERTIME OR ILLEGALLY PARKED COMMERCIAL VEHICLE means a commercial vehicle which is parked in violation of any statute, law, rule, regulation, ordinance or resolution, where the enforcement of that statute, rule, regulation, ordinance or resolution is delegated by law or other governmental action (statute, ordinance, rule and/or regulation) to a governmental agency.

SPECIAL RECOVERY SERVICES means any action that is not normally associated with roadside towing, e.g., winching from a berm or slope or righting overturned vehicles.

SPORT UTILITY VEHICLE means a motor vehicle of a private passenger multiple row seating and elevated ride height type which is typically advertised as an "SUV" and which is owned or leased by a private person or entity of any designation, but is not used as a public or livery conveyance for passengers or used for commercial purposes, and has a registered weight of five thousand (5000) pounds or more. For purposes of this Chapter, any automobile which exceeds five thousand (5000) pounds in weight shall be treated as a Sport Utility Vehicle for purposes of weight classes and rates for towing and storage. Sport Utility Vehicle also includes a delivery sedan, panel truck or van and/or a camper type vehicle, which is used for recreational purposes and which has a register weight which exceeds five thousand (5000) pounds.

STORAGE CHARGES FOR TWENTY-FOUR (24) HOUR PERIOD means the maximum allowable amount to be charged by a storage facility for a period of twenty-four (24) hours or a fraction thereof. A new twenty-four (24) hour period begins at 12:01 a.m.

THE PARKING AUTHORITY OF THE CITY OF NEWARK means the Parking Authority of the City of Newark created by Ordinance pursuant to the authority of *N.J.S.A. 40:11A-6, et seq.*, its Board of Commissioners, Commissioners, Executive Director and/or other officials, officers, employees, designees and/or representatives, as appropriate, which is also sometimes known as the Newark Parking Authority.

TOW VEHICLE means any Official Tower's vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by its manufacturer for the removal or transport of vehicles or moved by loading such onto a flatbed trailer and transporting such without the use of its own tires and/or wheels.

TOWING REQUEST FOR QUALIFICATIONS REVIEW COMMITTEE means the Executive Director of the Parking Authority of the City of Newark or his or her designee, the Director of Administration of the Parking Authority of the City of Newark or his or her designee and the Chairperson of the Board of Commissioners of the Parking Authority of the City of Newark or the Chairperson's designee, provided that such designee shall nonetheless be a current Commissioner of the Parking Authority of the City of Newark. The members of the Towing Request for Qualifications Review Committee may meet to review any Towing Request for Qualifications or may provide written comments thereto and to all other members in the event that no meeting can be established to review the Towing Requests for Proposal described herein in a timely fashion according to law. All such comments, if reduced to writing, shall be considered as confidential information regarding competitive contracting and deliberative materials pursuant to the Open Public Meetings Act, *N.J.S.A. 10:4-6, et seq.*, and the Open Public Records Act, *N.J.S.A. 47:1A-1.1, et seq.*, as well as the common law right to know.

TOW VEHICLE BASE OF SERVICE means the towing operator's principal place of business where the tow vehicle is stationed when not in use.

TRANSMISSION SERVICE means the combined operation of removing and then replacing a transmission locking pin, where such operation is necessary before an automobile and/or commercial motor vehicle can be moved.

VEHICLE means any device in, upon or by which a person or property is or may be transported upon any highway, and includes automobiles, sport utility vehicles and commercial motor vehicles.

WINCHING SERVICE means any operation in which an automobile and/or commercial motor vehicle is moved on to a roadway and/or from a position off the roadway and/or other operation in which substantial work is required to prepare an automobile and/or commercial motor vehicle for normal towing.

WRECKER means any light, medium or heavy duty tow vehicle that can be used to tow and/or otherwise move another automobile and/or commercial motor vehicle and which is for hire, or used in connection with another business.

Section 3. SELECTION OF OFFICIAL TOWERS.

a. The Parking Authority of the City of Newark shall select official towers pursuant to one (1) or more of the following procedures:

1. Creation of a rotational towers list selected pursuant to *N.J.S.A. 40A:11-5(u)* to provide adequate and safe towing at all times when a non-consensual tow is necessary pursuant to this Chapter; or,
2. Selection using the provisions of the Local Public Contracts Law, *N.J.S.A. 40:11-1, et seq.*, as further modified by the Fair and Open Process under *N.J.S.A. 19:44A-20.4, et seq.*, where applicable.
3. Either method shall be adopted by resolution of the Board of Commissioners before the process of selection is undertaken.
4. Either method shall follow the Local Public Contracts Law, *N.J.S.A. 40:11-1, et seq.*, and the Predatory Towing Prevention Act, *N.J.S.A. 56:8-1, et seq.*, to the extent that such shall be applicable to the method selected.

b. The Parking Authority of the City of Newark shall, from time to time, adopt a Resolution authorizing it to advertise for a Request for Qualifications for Towing Services from interested persons or entities. Such resolution shall be advertised in all official designated legal publications, including Internet publications and/or websites, of the Parking Authority of the City of Newark and, in addition, may be circulated to other publications, including Internet publications, to insure distribution and notice to interested respondents.

c. A Request for Qualifications shall require all responses to contain at least all of the following information:

1. The name, business address, telephone number and federal tax identification number, business address(es) and telephone number(s), facsimile number(s) and Internet email address(es) of the respondent. When the Official Tower is a corporation or partnership, the application shall also contain the names, residences, telephone numbers, date of birth and social security number of all persons owning any interest in the Official Tower.
2. In the event that the Official Tower is conducting business operating under a trade or business name, the applicant shall submit a certificate of such name as proof that such name has been appropriately filed with the appropriate County Clerk and/or Secretary of State.
3. Whether the applicant is applying for towing only for illegally parked vehicles to be towed to a storage facility operated by the Parking Authority of the City of Newark, or for towing vehicles involved in accidents, criminal or State Motor Vehicle Code investigations to be towed and secured at the applicant's facility, or both.
4. Complete information concerning the personnel, vehicles, equipment and storage facilities of the respondent, as hereinafter provided, showing that the respondent is able to meet the duties and requirements of the Official Tower.
5. A certificate or certificates of insurance evidencing adequate insurance coverage as hereinafter provided.
6. A complete list, including dates of service, of all other municipalities, state agencies and/or other governmental entities that the applicant is, or has been, an Official Tower of and/or holds/held a towing permit from. No person applying individually or as an entity shall be eligible for approval or appointment as an Official Tower unless that person/entity shall have been an official municipal or other governmental tower with a minimum of five (5) years' experience in towing in any municipality or for any governmental entity in the State of New Jersey.
7. A complete list of all actions, civil and/or criminal and/or regulatory, taken against the respondent by any governmental entity for the applicant's alleged violation of any law, statute, ordinance or regulation, excluding parking violations, while towing as a licensed or permitted tower for that governmental entity including directly related to towing. If the applicant's towing license or permit has been revoked, suspended and/or denied, the applicant shall list each time, what governmental entity was involved and a brief description of the event(s) that led up to the revocation, suspension and/or denial of a towing license or permit.
8. A certification that the respondent shall comply with all applicable statutes and regulations relating to Affirmative Action, Americans with Disabilities Act,

Minority Representation and Hiring Policies and Practices and all other applicable Federal and State laws, statutes, rules and/or regulations.

9. A proposed schedule of rates for towing of overtime or illegally parked vehicles, which rates however shall not exceed any rates established for such towing by the Parking Authority of the City of Newark by Resolution from time to time.
10. Shall possess all necessary licenses to carry out the services required to serve as an Official Tower; including, but not limited to, City of Newark and/or Parking Authority of the City of Newark wrecker's license, driver's wrecker's license, junkyard license and/or storage facility license.
11. The names and addresses of two (2) business references who have known the applicant for at least two (2) years prior to the filing of the application.
12. Certification that:
 - (a) The applicant will be able to provide towing services in the City of Newark with a maximum response time of twenty (20) minutes, except when extraordinary circumstances occur.
 - (b) If the applicant is applying to provide towing services for motor towing vehicles involved in accidents, criminal matters or State Motor Vehicle Code violations to be towed and secured at the applicant's facility the applicant must be available for service on business premises twenty-four (24) hours a day or those hours set forth in this Resolution, whichever is applicable, and that they will abide by the fees contained in or referred to in any Resolution enacted by the Parking Authority of the City of Newark.
12. If the applicant is applying to provide towing services for motor towing vehicles involved in accidents, criminal or State Motor Vehicle Code investigations to be towed and secured at the applicant's facility, a site plan showing the complete street address of the location of each of its storage facilities, the number of cars that can be stored, the total square footage of the storage area, whether the storage is wholly or partially indoors and whether the storage facility is secured or unsecured.
13. Any other qualification which the Parking Authority of the City of Newark, in its sole discretion, shall determine is an appropriate and necessary criterion for selection of an Official Tower.
 - d. The Official Tower applicant shall provide with its proposal to be placed on the towing list a bid bond in the amount of \$20,000, written by a firm authorized to do such in the State of New Jersey. The bond shall name the Parking Authority of the City of

Newark as the applicable party to receive the benefits of the bond. This bond shall remain in effect for sixty (60) calendar days after the submission of the proposal of the applicant.

e. If the Official Tower applicant is approved to be an Official Tower of the Parking Authority of the City of Newark it must, prior to commencement of services, provide a performance bond in the amount of \$25,000 written by a firm authorized to do so in the State of New Jersey. The bond shall name the Parking Authority of the City of Newark as the applicable party to receive the benefits of the bond. This bond shall remain in effect for the duration of the Official Tower's appointment as an Official Tower with the Parking Authority.

f. The applicants shall submit completed applications to the Director who shall forward a copy to the Towing Request for Qualifications Review Committee for their review and recommendation. The review by the Towing Request for Qualifications Review Committee may, but need not, include the following:

1. A background check to determine if either the applicant(s) or the applicant's personnel have been convicted of a criminal offense or have had their driver's licenses suspended or revoked within the past year. Conviction of a criminal offense or suspension of a driver's license within the past year shall be a cause for disqualification from inclusion on the Official Towers list.
2. An inspection of personnel, vehicles, equipment and storage area proposed to be utilized by the applicant to verify the accuracy of the information contained in the application and to determine compliance with applicable laws and regulations and the standards of performance required herein, provided that the Towing Request for Qualifications Review Committee may delegate the inspection to a qualified employee or other designee who shall then report his or her findings to the Committee.

g. Any resolution to appoint an applicant to the Official Towers list shall find that all of the following circumstances exist:

1. The applicant has not made any false, misleading or fraudulent statements of material fact in the application or in any other document required pursuant to this Resolution.
2. The applicant has met the standards in established by the Parking Authority of the City of Newark and has furnished the required Hold Harmless Agreement and certificates of insurance.
3. The application has been reviewed and recommended by the Towing Request for Qualifications Review Committee and the Director.

Section 4 RULES AND REGULATIONS.

a. The Director is hereby authorized and empowered to propose to the Board of Commissioners of the Parking Authority of the City of Newark reasonable rules and regulations governing the inspection and operation of wreckers.

b. The Director shall have the power, consistent with due process of law in such administrative matters to suspend or revoke a wrecker license for violation of safety standards or rules and regulations of operation, and such decision shall be a final administrative action.

c. The Director shall maintain proper records of licenses issued and inspections made, and shall keep proper business records, and to have them available for his inspection, and the inspection of the Police Department.

d. The Director or his designee shall use best efforts to resolve any dispute over any non-consensual towing or storage fees by any person whose vehicle is towed. In the event that the parties are unable to reach an agreement on any dispute over any non-consensual towing or storage fees, the decision of the Director shall be final and shall be in writing, and delivered to the owner and operator of the vehicle and the Official Tower by regular mail.

Section 5 INSURANCE.

No person or entity shall be included on the Official Towers list unless and until such person or entity has provided to the Director a certificate(s) of insurance evidencing that there is in effect the following insurance coverage.

1. General property damages, liability and personal injury insurance in an amount not less than \$1,000,000 combined single limit, including in the case of each light-medium duty tow truck, motor vehicle liability insurance for the death of, or injury to, persons and damage to property, and in the case of each heavy duty tow truck, motor vehicle liability insurance for the death of, or injury to, persons and damage to property, and such policies shall include collision coverage with an endorsement to provide collision coverage for vehicles in tow.
2. Garage keeper's liability insurance in an amount not less than \$1,000,000 per location shall be required. No deductible amounts are permitted. The words "no deductible" shall be included on the policy and/or certificate of insurance.
3. Workers' compensation as required by State law shall be required.
4. Policies of insurance shall be written by insurance companies authorized to do business in the State of New Jersey.

5. The City of Newark and the Parking Authority of the City of Newark shall be named as an additional insured on all policies of insurance provided pursuant to this Chapter. All certificates of insurance shall provide that the policies may not be canceled or terminated or coverage decreased during the Official Towers term. Such insurance shall be primary.
6. The policies of insurance shall be maintained in full force and effect at all times. In the event that any coverage is canceled or terminated or coverage decreased in amount, the tower shall be removed immediately from the Official Towers list until such time as the required coverage is reinstated and/or replaced.
7. On the reverse side of all liability insurance certificates shall be the following Insurer Hold Harmless language endorsed by the insurer:

“The insurer shall defend, indemnify and hold harmless the City of Newark and the Parking Authority of the City of Newark, their officials, officers, employees, representatives, designees, agents, servants and administrators from and against any and all claims or actions at law, whether for personal injury or property damage, liability including any costs of defense incurred by them and any payment recoveries and judgments against them which arise from any acts or omissions of the named insured, their agents, designees, officials, officers and/or employees in the execution of the work and/or duties to be performed under this section which are deemed not to be the sole responsibility of the City of Newark or the Parking Authority of the City of Newark.”
8. Each Official Tower shall agree, in writing, to assume the defense of and indemnify and hold harmless the City of Newark and/or the Parking Authority of the City of Newark, their officials (appointed and/or elected), officers (appointed and/or elected), boards, commissions, designees, representatives, employees and agents from all suits, actions, damages and/or claims to which they may be subjected to of any kind and nature whatsoever resulting from, caused by, arising out of or as a consequence of the provision of towing, non-consensual towing, storage and/or emergency services provided at the request of them pursuant to this Chapter.

Section 6 WRECKER DRIVER'S LICENSE.

No person shall drive or operate a wrecker as part of any services contracted with the Parking Authority of the City of Newark for nonconsensual towing in the City of Newark unless he applies for and receives a Wrecker's license or a Wrecker Driver's license from the City of Newark.

Section 7 DISPLAY OF INFORMATION AND RATES

a. Each tower which contracts with the Parking Authority of the City of Newark to provide nonconsensual towing services for towing vehicles involved in accidents, criminal or State Motor Vehicle Code investigations to be towed and secured at the applicant's facility shall maintain in good condition at all times, at each entrance to such tow facility, a sign to apprise persons of the:

1. Name of licensee;
2. Address of premises;
3. Opening and closing hours; and
4. Rates charged for towing and storage, including such rates for vehicles which may be towed from private property and how to prevent such tows.
5. The tower shall also have a printed sheet available in the cab of the tower's vehicle to distribute to the owner or driver if requested.

Signs giving all the above information shall be erected only at points of ingress on private property. If point of ingress is more than fifty (50) feet wide, the signs must be so positioned as to be no more than fifty (50) feet from the point of ingress.

The signs shall be of sheet metal or other suitable material and shall be displayed at a height of not less than four (4) feet (bottom edge) and not more than twelve (12) feet (top edge) above the street level. No sign shall be less than twenty (20) nor more than fifty (50) square feet.

Signs shall be erected so as to be visible to a motorist before he leaves the thoroughfare and before he enters the tow lot.

Signs shall be composed of a solid background and the letters, numerals, or symbols shall all be of the same contrasting color. The upper-case (capital) to be two (2) inches high; all letters sans serif. Letters and numerals shall be proportionately spaced and shall neither be contracted nor expanded so as to inhibit readability. Each classification and the applicable rate or rates thereunder shall be listed on a separate line not to exceed forty (40) inches in width. The lines shall be spaced one and one-half (1 1/2) inches apart, as measured between the upper-case (capital) letters.

b. Each tower which contracts with the Parking Authority of the City of Newark to provide nonconsensual towing services for towing vehicles involved in illegal parking or other parking violations and which vehicles are to be towed to the storage facility of the Parking Authority of the City of Newark shall maintain in good condition at all times and clearly visible on the side or rear cab portion of the tower's vehicle a sign to apprise persons of the:

1. Name of licensee;

2. Address of licensee's premises;
 3. Address of the Parking Authority's premises where the vehicle may be reclaimed, and the opening and closing hours; and
 4. Rates charged for towing and storage, including such rates for vehicles which may be towed from private property and how to prevent such tows.
 5. The tower shall also have a printed sheet available in the cab of the tower's vehicle to distribute to the owner if requested.
- c. Copies of the schedule of fees that may be charged by Official Towers shall be made available to the public during normal business hours at the offices of Parking Authority of the City of Newark. Copies shall also be made available to the public at each Official Tower's place of business.

Section 8 NO ASSIGNMENT OR SUBCONTRACT.

No Official Tower shall subcontract or assign any work that is to be performed by the Official Tower under the provisions of this Resolution without the express written authorization of the Board of Commissioners of the Parking Authority.

Section 9 SUSPENSION OR REVOCATION OF OFFICIAL TOWERS CONTRACTS

Any contract between an Official Tower and the Parking Authority of the City of Newark shall be subject to revocation by the Director for violation of any provision of the contract or for the following reasons, or both:

1. The Official Tower made false, misleading or fraudulent statements of material fact in the application or in any document required pursuant to this Chapter.
2. The Official Tower or a Wrecker Driver in the employ of the Official Tower committed a violation of any Federal law, State law, statute, rule and/or regulation or City ordinance or regulation relating to the operation of a motor vehicle or the provision of towing services while in the course of providing any towing or emergency service during the Official Tower's rotation.
3. The Official Tower or a Wrecker Driver in the employ of the Official Tower committed a violation of any rule or regulation promulgated by the New Jersey Department of Insurance which shall be determined in the sole discretion of the Director with right of final appeal to the Board of Commissioners of the Parking Authority of the City of Newark.
4. The Official Tower or a Wrecker Driver in the employ of the Official Tower rendered unsatisfactory service while in the course of providing any towing or emergency service during the Official Tower's rotation.

5. The Official Tower failed to annually certify continuing compliance with the requirements of these rules and regulations; and,

IT IS FURTHER RESOLVED by the Parking Authority of the City of Newark that the above rules and regulations shall go into effect following publication.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
ADOPTING TOWING AND STORAGE RATES FOR THE PARKING AUTHORITY
OF THE CITY OF NEWARK IN ACCORDANCE WITH THE NEW JERSEY
PREDATORY TOWING PREVENTION ACT AND THE INTERLOCAL
AGREEMENT WITH THE CITY OF NEWARK

Commissioners AYE NAY NV AB Commissioners AYE NAY NV
AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK ADOPTING TOWING AND STORAGE RATES FOR THE PARKING AUTHORITY OF THE CITY OF NEWARK IN ACCORDANCE WITH THE NEW JERSEY PREDATORY TOWING PREVENTION ACT AND THE INTERLOCAL AGREEMENT WITH THE CITY OF NEWARK" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February, 2013.

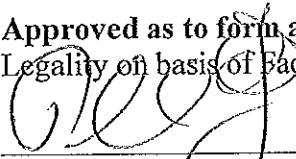
PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LAVAR YOUNG, Chairman

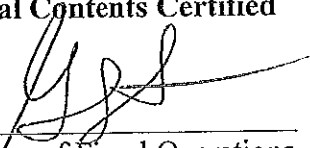
**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE
FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN
THE CITY OF NEWARK RELATED TO VEHICLES DISABLED BY ACCIDENT OR
IMPOUNDED BY LAW ENFORCEMENT FOR MOTOR VEHICLE VIOLATIONS OR
CRIMINAL ACTIVITY**

Approved as to form and
Legality on basis of Facts



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by



Manager of Fiscal Operations

Resolution No. 02-2013- **13**

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed or impounded for criminal or traffic violations or as a result of motor vehicle accidents pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed or impounded for criminal or traffic violations or as a result of motor vehicle accidents pursuant to the Interlocal Agreement with the City of Newark.

X - Indicates Vote AB -- Absent NV -- Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
 AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR
 BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY
 OF NEWARK RELATED TO VEHICLES DISABLED BY ACCIDENT OR IMPOUNDED
 BY LAW ENFORCEMENT FOR MOTOR VEHICLE VIOLATIONS OR CRIMINAL
 ACTIVITY

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

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Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO VEHICLES DISABLED BY ACCIDENT OR IMPOUNDED BY LAW ENFORCEMENT FOR MOTOR VEHICLE VIOLATIONS OR CRIMINAL ACTIVITY" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

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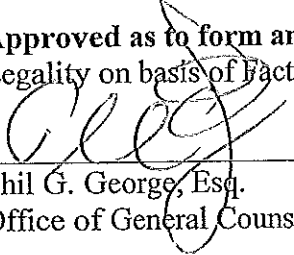
PARKING AUTHORITY OF THE
 CITY OF NEWARK

LAVAR YOUNG
 Chairman

[SEAL]


**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE
FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN
THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE
VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS**

Approved as to form and
Legality on basis of facts



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by



Manager of Fiscal Operations

Resolution No. 02-2013-

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark.

Commmisioner

Seconded the Motion

X - Indicates Vote AB - Absent NV - Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR
BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY
OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR
ALTERNATE SIDE PARKING VIOLATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

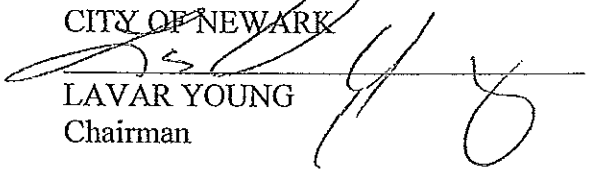
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February 2013.

PARKING AUTHORITY OF THE
CITY OF NEWARK

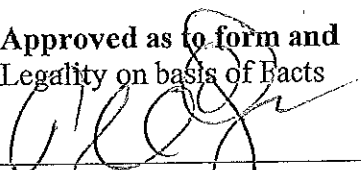
[SEAL]

LAVAR YOUNG
Chairman



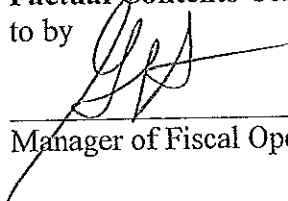
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THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE
VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS**

Approved as to form and
Legality on basis of Facts



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by



Manager of Fiscal Operations

Resolution No. 02-2013-

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark.

Commmisioner

Seconded the Motion

X - Indicates Vote AB - Absent NV - Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR
BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY
OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR
ALTERNATE SIDE PARKING VIOLATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

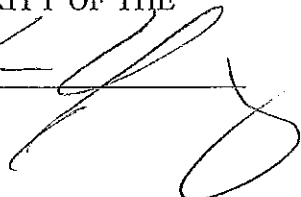
I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

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PARKING AUTHORITY OF THE
CITY OF NEWARK

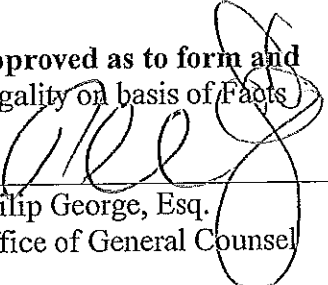
LAVAR YOUNG
Chairman



[SEAL]

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING
AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE
DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF
PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO
INSTITUTION AND EXPANSION OF TOWING OPERATIONS**

Approved as to form and
Legality on basis of Facts


Philip George, Esq.
Office of General Counsel

Factual Contents Certified
to by


Director of Administration

RESOLUTION NO.: 02-2013-

WHEREAS, the Commissioners of the Parking Authority of the City of Newark have concurrently with this Resolution approved a Resolution to enter into a lease of space with which to conduct towing storage operations for nonconsensual towing pursuant to an Order of the court in *Dente Brothers Towing, Inc., v. City of Newark*; and,

WHEREAS, the City of Newark has also entered into an agreement with the Newark Housing Authority and the New Jersey Devils and their officers, subsidiaries and other entities to resolve certain litigation and disputes arising between them with regard to the Newark Downtown Core Redevelopment District and the Arena Redevelopment District, which may lead to further agreements with the Parking Authority of the City of Newark to engage in planning, construction, financing or management of certain projects and programs in said districts or elsewhere within the City of Newark; and,

WHEREAS, the Executive Director has advised the Commissioners of the Parking Authority of the City of Newark that such present or future plans will likely require an expansion of facilities of the Parking Authority of the City of Newark as well as an increase in administrative staff and Parking Enforcement Officer staff; and,

WHEREAS, the Executive Director wishes to present an organized plan to implement such expansion by examining facilities, staff, and projected needs to the Board of Commissioners:

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of Newark that the Executive Director is authorized, in conjunction with his administrative staff, to conduct a study of present facilities and staff, and projected facility needs and staff, in conjunction with the projected expansion of Parking Authority operations to include bidding, selecting and implementing nonconsensual towing as well as other projected projects or agreements which may become part of the Parking Authority's conducting of business in the near and short term.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO INSTITUTION AND EXPANSION OF TOWING OPERATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

LaVar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

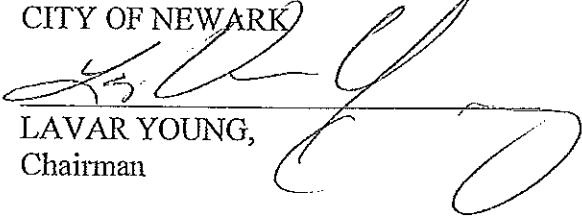
I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO INSTITUTION AND EXPANSION OF TOWING OPERATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013, in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

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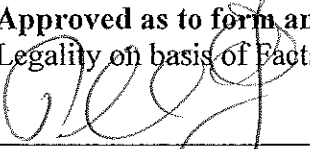
PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LAVAR YOUNG,
Chairman

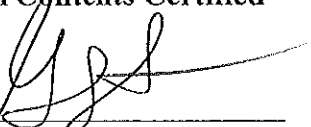
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IMPOUNDED BY LAW ENFORCEMENT FOR MOTOR VEHICLE VIOLATIONS OR
CRIMINAL ACTIVITY**

**Approved as to form and
Legality on basis of Facts**



Phil G. George, Esq.
Office of General Counsel

**Factual Contents Certified
to by**



Manager of Fiscal Operations

Resolution No. 02-2013-

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed or impounded for criminal or traffic violations or as a result of motor vehicle accidents pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed or impounded for criminal or traffic violations or as a result of motor vehicle accidents pursuant to the Interlocal Agreement with the City of Newark.

X - Indicates Vote AB - Absent NV - Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO VEHICLES DISABLED BY ACCIDENT OR IMPOUNDED BY LAW ENFORCEMENT FOR MOTOR VEHICLE VIOLATIONS OR CRIMINAL ACTIVITY

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
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PARKING AUTHORITY OF THE CITY OF NEWARK

LAVAR YOUNG
Chairman

[SEAL]


**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE
FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN
THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE
VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS**

**Approved as to form and
Legality on basis of Facts**



Phil G. George, Esq.
Office of General Counsel

**Factual Contents/Certified
to by**



Manager of Fiscal Operations

Resolution No. 02-2013- 14

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark.

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February 2013.

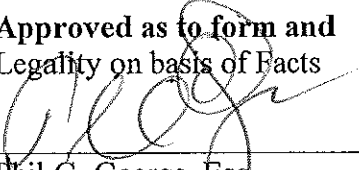
PARKING AUTHORITY OF THE CITY OF NEWARK

[SEAL]

LAVAR YOUNG
Chairman

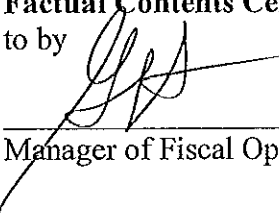
**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE
FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN
THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE
VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS**

Approved as to form and
Legality on basis of Facts



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by



Manager of Fiscal Operations

Resolution No. 02-2013-

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark has opted to award a contract for services under a fair and open Process, as defined in N.J.S.A. 19:44A-20.7; and

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark have determined that there is a need to obtain bids from the field of towing service providers for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark which is to be implemented in accordance with the Order of the court in *Dente Brothers Towing, Inc., v. City of Newark* dated February 13, 2013:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Parking Authority of the City of Newark, that the Executive Director for the Authority be and is hereby authorized to prepare and advertise a Request for Qualifications under the Fair and Open Process for the provision of nonconsensual towing of vehicles which may be towed for parking violations, bus lane violations or alternate side parking violations pursuant to the Interlocal Agreement with the City of Newark.

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

Lavar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

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Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ADVERTISE FOR BIDS FOR THE PROVISION OF NONCONSENSUAL TOWING SERVICES IN THE CITY OF NEWARK RELATED TO PARKING VIOLATIONS, BUS LANE VIOLATIONS OR ALTERNATE SIDE PARKING VIOLATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February 2013.

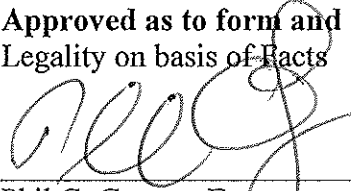
PARKING AUTHORITY OF THE CITY OF NEWARK

LAVAR YOUNG
Chairman

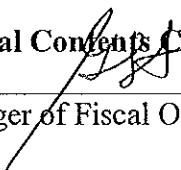
[SEAL]

**RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXPENDITURE OF UP TO \$200,000.00 FROM DESIGNATED
CAPITAL EXPENDITURE FUNDS FOR CERTAIN IMPROVEMENTS TO REAL
PROPERTY AND FACILITIES RELATED TO TOWING OPERATIONS**

Approved as to form and
Legality on basis of Facts



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by 

Manager of Fiscal Operations

Resolution No. 02-2013- 15

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark (hereinafter referred to as the "Authority") had previously authorized the Authority to issue a request for proposals to acquire appropriate storage space in the City of Newark to commence nonconsensual towing in the City of Newark pursuant to that Interlocal Agreement executed between the Authority and the City of Newark on August 8, 2003; and

WHEREAS, as has been memorialized in a separate Resolution regarding acquisition of towing facilities pursuant to that Interlocal Agreement, under the authority of the Parking Authority Law, *N.J.S.A. 40:11A-6(4)(c)* and *N.J.S.A. 40:11A-23(c)*, the Authority commenced negotiations with Snap Parking, Inc., and 98 Frelinghuysen Real Estate Urban Renewal Entity, LLC (hereinafter referred to as the "Lessor") for a lease for space to conduct such nonconsensual towing operations; and,

WHEREAS, the Board of Commissioners in a separate Resolution have deemed it financially reasonable and responsible to enter into the proposed lease of facilities with the Lessor on the terms and conditions therein; and,

WHEREAS, the Board of Commissioners has by separate Resolution authorized the Executive Director to enter into a lease agreement with Lessor to enable the Authority to commence its towing obligations under the said Interlocal Agreement; and,

WHEREAS, the Board of Commissioners also authorized the Authority's administration to take all such actions as may be required to implement the said agreement, subject to Board approval of any expense or cost in excess of \$5,000.00 individually; and,

WHEREAS, the Executive Director has indicated to the Board that the improvements required to prepare the leased premises for towing and storage operations in compliance with all statutes, rules and regulations will exceed \$5,000.00 and will cost up to \$200,000.00; and,

WHEREAS, the Chief Financial Officer of the Authority has certified that Funds are available for such expenditures:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Parking Authority of the City of Newark, County of Essex, State of New Jersey, that the Executive Director of the Authority is hereby authorized to expend up to \$200,000.00 in allocated Authority funds for improvements to the facility upon full execution of a lease with 98 Frelinghuysen Real Estate Urban Renewal Entity, LLC.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

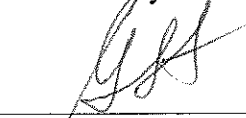
Purpose of appropriation: To provide funds to make improvements to a facility to be leased for the implementation of nonconsensual towing pursuant to an Interlocal Agreement .

Date(s) of occurrence: continuing

Have any contracts been awarded or purchase orders placed in connection with this appropriation? Yes.

Funds are available for this purchase.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 28th day of February, 2013.



Gabrielle Santos
Manager of Fiscal Operations
Parking Authority of the City of Newark

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting
Board of Commissioners Vote of Final Passage

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK
AUTHORIZING THE EXPENDITURE OF UP TO \$200,000.00 FROM DESIGNATED
CAPITAL EXPENDITURE FUNDS FOR CERTAIN IMPROVEMENTS TO REAL
PROPERTY AND FACILITIES RELATED TO TOWING OPERATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

LaVar Young, Chair					DeAndre Rudolph Treasurer				
Raquel Cagley									
A.Dean Rawls Secretary									
Hubert Graham Vice-Chair									

CERTIFICATION

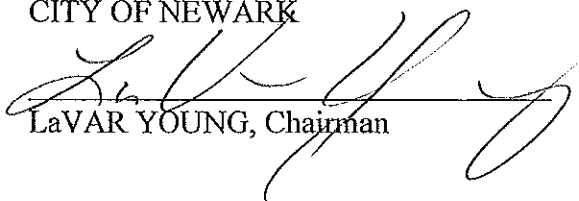
I, LaVAR YOUNG, Chair of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXPENDITURE OF UP TO \$200,000.00 FROM DESIGNATED CAPITAL EXPENDITURE FUNDS FOR CERTAIN IMPROVEMENTS TO REAL PROPERTY AND FACILITIES RELATED TO TOWING OPERATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February, 2013.

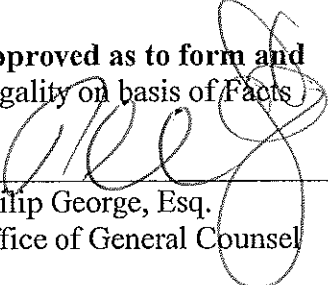
PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LaVAR YOUNG, Chairman

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING
AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE
DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF
PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO
INSTITUTION AND EXPANSION OF TOWING OPERATIONS**

Approved as to form and
Legality on basis of Facts



Philip George, Esq.
Office of General Counsel

Factual Contents Certified
to by



Director of Administration

RESOLUTION NO.: 02-2013-16

WHEREAS, the Commissioners of the Parking Authority of the City of Newark have concurrently with this Resolution approved a Resolution to enter into a lease of space with which to conduct towing storage operations for nonconsensual towing pursuant to an Order of the court in *Dente Brothers Towing, Inc., v. City of Newark*; and,

WHEREAS, the City of Newark has also entered into an agreement with the Newark Housing Authority and the New Jersey Devils and their officers, subsidiaries and other entities to resolve certain litigation and disputes arising between them with regard to the Newark Downtown Core Redevelopment District and the Arena Redevelopment District, which may lead to further agreements with the Parking Authority of the City of Newark to engage in planning, construction, financing or management of certain projects and programs in said districts or elsewhere within the City of Newark; and,

WHEREAS, the Executive Director has advised the Commissioners of the Parking Authority of the City of Newark that such present or future plans will likely require an expansion of facilities of the Parking Authority of the City of Newark as well as an increase in administrative staff and Parking Enforcement Officer staff; and,

WHEREAS, the Executive Director wishes to present an organized plan to implement such expansion by examining facilities, staff, and projected needs to the Board of Commissioners:

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of Newark that the Executive Director is authorized, in conjunction with his administrative staff, to conduct a study of present facilities and staff, and projected facility needs and staff, in conjunction with the projected expansion of Parking Authority operations to include bidding, selecting and implementing nonconsensual towing as well as other projected projects or agreements which may become part of the Parking Authority's conducting of business in the near and short term.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO INSTITUTION AND EXPANSION OF TOWING OPERATIONS

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

LaVar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

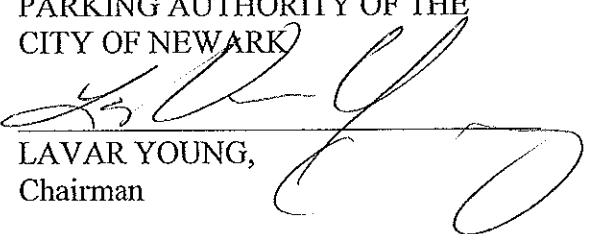
I, LAVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO PERFORM AN EVALUATION OF PERSONNEL, FACILITIES AND EQUIPMENT RELATED TO INSTITUTION AND EXPANSION OF TOWING OPERATIONS" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013, in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February 2013.

PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LAVAR YOUNG,
Chairman

**RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
SNAP PARKING, INC. AND 98 FRELINGHUYSEN REAL ESTATE URBAN
RENEWAL ENTITY, LLC FOR LEASE OF SPACE TO OPERATE
TOWING STORAGE FOR NONCONSENSUAL TOWING**

**Approved as to form and
Legality on basis of Facts**



Phil G. George, Esq.
Office of General Counsel

Factual Contents Certified
to by 
For Newark Parking Authority

Resolution No. 02-2013-17

WHEREAS, the Board of Commissioners of the Parking Authority of the City of Newark (hereinafter referred to as the "Authority") had previously authorized the Authority to issue a request for proposals to acquire appropriate storage space in the City of Newark to commence nonconsensual towing in the City of Newark pursuant to that Interlocal Agreement executed between the Authority and the City of Newark on August 8, 2003; and

WHEREAS, on three (3) separate occasions, pursuant to *N.J.S.A.* 40A:11-4, the Authority has released a request for proposals for such towing space, but bids received were non-responsive or structured so as to be incapable of providing appropriate comparison of space or costs within the permitted limits of the Ordinances of the City of Newark and the New Jersey Predatory Towing Act and thus such bids were therefore rejected as nonresponsive to the request for proposals; and,

WHEREAS, the Authority thereafter commenced due diligence pursuant to *N.J.S.A.* 40A:11-5(b) to determine whether the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit, and determined that no such

governmental agency had such space as is required for conducting storage of nonconsensual towing operations; and,

WHEREAS, subsequently, the Superior Court of New Jersey, Law Division, Essex County in the matter of *Dente Brothers Towing, Inc., v. City of Newark*, et al, Docket No. ESX-L-5800-12, directed enforcement of the terms of the Interlocal Agreement with regard to the bidding and selection of towing operators for nonconsensual towing; and,

WHEREAS, under the authority of the Parking Authority Law, *N.J.S.A. 40:11A-6(4)(c)* and *N.J.S.A. 40:11A-23(c)*, the Authority had commenced negotiations with Snap Parking, Inc., and 98 Frelinghuysen Real Estate Urban Renewal Entity, LLC (hereinafter referred to as the “Lessor”) for a lease for space to conduct such nonconsensual towing operations, and although the said statutes exempt the Authority from public bidding, the terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to *N.J.S.A. 40A:11-4*; and,

WHEREAS, the Authority has negotiated for a provision of all spaces needed for operations at any time, as well as the provision of pad space for acceptance and release of vehicles, and at a price which is lower than any bids which were previously received for storage of vehicles and which includes internal storage operations provided by the lessor, which terms differ from any bids previously received but which provide more services at lesser or no cost to the Authority; and,

WHEREAS, the Board of Commissioners deem it financially reasonable and responsible to enter into the proposed lease of facilities with the Lessor on the terms and conditions therein, which are annexed hereto and incorporated as if more fully set forth at length; and,

WHEREAS, the Board of Commissioners desires to authorize the Executive Director, Ernest R. Booker, Esq. to enter into a lease agreement with Lessor to enable the Authority to commence its towing obligations under the said Interlocal Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Parking Authority of the City of Newark, County of Essex, State of New Jersey, that the Executive Director of the Authority is hereby authorized to negotiate, execute and enter into a lease agreement with Snap Parking, Inc., and 98 Frelinghuysen Real Estate Urban Renewal Entity, LLC as set forth in the Agreement which is annexed hereto and incorporated as if more fully set forth herein; and, it is

FURTHER RESOLVED, that the Parking Authority of the City of Newark by and through its administrative officers and personnel is authorized to take all such actions as may be required to implement the said agreement, subject to Board approval of any expense or cost in excess of \$5,000.00 individually.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting
Board of Commissioners Vote of Final Passage

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT
SNAP PARKING, INC. AND 98 FRELINGHUYSEN REAL ESTATE URBAN RENEWAL
ENTITY, LLC FOR LEASE OF SPACE TO OPERATE
TOWING STORAGE FOR NONCONSENSUAL TOWING

Commissioners AYE NAY NV AB Commissioners AYE NAY NV AB

LaVar Young, Chair					DeAndre Rudolph Treasurer				
Raquel Cagley									
A. Dean Rawls Secretary									
Hubert Graham Vice-Chair									

CERTIFICATION

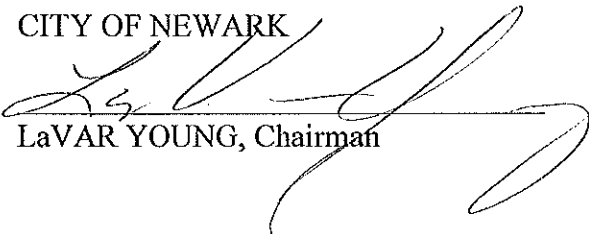
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February, 2013.

PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LaVAR YOUNG, Chairman

ANGELO J. GENOVA ◊+*
JAMES M. BURNS ◊
FRANCIS J. GIANTOMASI ◊+
ELNARDO J. WEBSTER II ◊^
JOHN C. PETRELLA ◊
JAMES J. MCGOVERN III ◊
LAURENCE D. LAUFER +
JEFFREY R. RICH ◊+
JUDSON M. STEIN ◊
KATHLEEN BARNETT EDNHORN ◊+
CELIA S. BOSCO ◊+
BRIAN W. KROMICK ◊
JAMES BUCCI ◊+*
PATRICK W. MCGOVERN ◊+
WILLIAM F. HARRISON ◊
DOUGLAS E. SOLOMON ◊+
DENA B. CALO ◊*
JASON L. SOBEL ◊+
JENNIFER MAZAWAY ◊+
CHRISTOPHER M. HARTWYK ◊

KEITH A. KRAUSS ◊^
MICHAEL J. OLIVEIRA ◊+
HARRY G. KAPRALOS ◊+
REBECCA MOLL FREED ◊+
JOHN R. VREELAND ◊+
JENNIFER BOREK ◊+
DINA M. MASTELLONE ◊+
JONI NOBLE MCDONNELL ◊
JISHA V. DYMOND ◊+
KENNETH J. SHEEHAN ◊
GEORGE L. GARCIA ◊+
MATTHEW R. KAPLAN ◊+
JOSEPH M. HANNON ◊+
LISA A. JOHN ◊
RAJIV D. PARIKH ◊+

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NICHOLAS R. AMATO ◊
HARVEY WEISSBARD ◊
BRUNO GENOVA ◊

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NICHOLAS J. REPICI ◊*
JENNIFER CARRILLO-PEREZ ◊
GEMMA M. GIANTOMASI ◊+
JENNIFER ROSELLE ◊+
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HARRIS S. FREIER ◊+^
JODI M. LUCIANI ◊+
JODI C. LIPKA ◊+
CYNTHIA L. M. HOLLAND ◊+
KATHRYN E. DUGAN ◊
EILEEN FITZGERALD ADDISON ◊
MATTHEW KERTZ ◊+^
CHARLES J. MESSINA ◊+
JOHN SUWATSON ◊+

JOSHUA E. KNAPP ◊+
WILLIAM G. NESTOR, III ◊+
JUSTIN A. JACOBS ◊+
PHILLIP M. ROFSKY ◊
ANA J. MURTEIRA ◊
DOUGLAS KLEIN ◊+
MICHAEL K. FORTUNATO ◊
REBECCA FINK ◊+
FRANCIS M. GIANTOMASI ◊
ERICA B. LOWENTHAL ◊+
ALEXANDRA M. HILL ◊*
BRETT M. PUGACH ◊+
JENNA M. BEATRICE ◊+
MARIA R. FRUCI ◊+
JANE KHODARKOVSKY ◊+
JOSEPH V. MANNEY ◊+
EDWARD W. SCHROLL ◊+

STEPHEN R. PACICCO ◊
ERIN K. PHALON ◊
SARANNE E. WEIMER ◊

RONALD H. DEMARIA
(1939-2004)

MEMBER OF NEW JERSEY BAR ◊
MEMBER OF NEW YORK BAR +
MEMBER OF PENNSYLVANIA BAR *
MEMBER OF DISTRICT OF COLUMBIA ^
MEMBER OF CONNECTICUT BAR ^
MEMBER OF VIRGINIA BAR *

February 28, 2013

Philip G. George, Esq.
Eric M. Bernstein & Associates LLC
34 Mountain Boulevard, Building A
P. O. Box 4922
Warren, NJ 07059

Re: Letter of Intent
98 Frelinghuysen Real Estate Urban Renewal Entity, LLC

Dear Mr. George:

As you are aware, this firm represents 98 Frelinghuysen Real Estate Urban Renewal Entity, LLC ("98") in connection with the above-referenced matter. Please let this letter serve as a letter of intent to memorialize the recent discussions between 98 and the Newark Parking Authority ("NPA") (collectively, the "parties") concerning the parties' understanding of the contingencies underlying the commencement of an agreement entered into by and between 98 and the Newark Parking Authority ("NPA") for the lease of a Towing and Impoundment Facility (hereinafter the "Agreement").

The parties recognize, and have negotiated further in light of, litigation which was filed in or about October, 2012 in the matter of *Dente Brothers Towing, Inc., v. City of Newark, Newark Parking Authority and B&C Towing, Inc., Intervenors*, Superior Court of New Jersey, Law Division, Essex County, Docket No. ESX-L-5800-12 (the "litigation"), which challenges the competitive bidding process for nonconsensual towing in the City of Newark. The parties recognize that the court has entered a Memorandum Decision filed on January 18, 2013, invalidating the bidding process of the City of Newark commenced on or about January 26, 2012, and validating the provisions of the Interlocal Agreement between the City of Newark and the NPA as to NPA's sole right and obligation to prepare and administer all bidding for nonconsensual towing in the City of Newark. The court has entered a subsequent Memorandum

Decision and Order on February 12, 2013, which enforces the Interlocal Agreement and orders the NPA to advertise bids for city wide towing services within sixty (60) days.

The parties further recognize that the Municipal Council of the City of Newark has not enacted any amendments to the Nonconsensual Towing provisions of the City of Newark as of February 28, 2013, which have been proposed by NPA. Therefore, the parties will reserve on the issue of storage fees until an amount for storage fees has been established, in accordance with any applicable law, and to the satisfaction of both parties.

NPA agrees that the agreement will be in effect so long as NPA has the authority to conduct nonconsensual towing pursuant to any applicable agreement, law or Ordinance regulating nonconsensual towing in the City of Newark.

The parties further understand that NPA shall at its sole expense defend any lawsuit, arbitration or regulatory or administrative proceeding by any person or entity challenging its authority as the sole agency responsible for preparation of specifications for public bidding or for a non-bid rotational towing system for nonconsensual towing and selection of towers to perform nonconsensual towing.

If the above conforms to your and your client's understanding of the contingencies of the Agreement, please acknowledge same below and remit an executed copy of this letter to our office. Should you wish to discuss this further, please do not hesitate to contact me.

Very truly yours,

By: _____

Elnardo J. Webster, II, Esq.
On behalf of 98 Frelinghuysen Real
Estate Urban Renewal Entity, LLC

So Agreed:

By: _____

Philip G. George, Esq.
On Behalf of Newark Parking Authority

MUNICIPAL TOWING AND IMPOUNDMENT FACILITY
LEASE, MANAGEMENT & OPERATING AGREEMENT

BETWEEN **NEWARK PARKING AUTHORITY**, a public body corporate and politic of the State of New Jersey having a place of business at 60 Park Place, Suite 919, Newark, New Jersey 07102 (hereinafter referred to as "*Operator*" or "*NPA*").

AND **98 FRELINGHUYSEN REAL ESTATE URBAN RENEWAL ENTITY, LLC**, a corporation authorized to do business in the State of New Jersey having a place of business at 564 Broadway, 2nd Floor, Bayonne, New Jersey 07002 (hereinafter referred to as "*Owner*" or "*98*").

NOW THEREFORE, in consideration of the mutual agreements herein set forth, the parties mutually agree as follows:

1. DEFINITIONS AND INTERPRETATIONS.

1.1 DEFINITIONS.

For purposes of this agreement, the capitalized words used in the heading and recitals of this agreement and the following terms whenever initially capitalized shall have the following meanings:

"*Commencement Date*" shall mean the date upon which NPA commences the actual storage of towed vehicles at the Parking Facility.

"*Fiscal Year*" is used herein to mean each twelve month or such lesser period ending December 31, which coincides with the NPA's fiscal year and budget.

"*Effective Date*" shall mean the date upon which this Agreement becomes effective.

"*Municipal Towing and Impoundment Facility*" shall mean the grounds, structures and accessory uses, manned and operational, and maintained for the purpose of the NPA's conduct of nonconsensual towing pursuant to state and local laws, ordinances and regulations.

"*Parking Facility*" means the garage building located at 98 Frelinghuysen Avenue, Newark, NJ 07102, comprised of all of the internal parking spaces therein, the entrances, traffic lanes, exits, attendant booth, fencing external parking spaces and other features, all as more particularly described in the Exhibits attached hereto and incorporated as if more fully set forth herein.

"*Revenue Sharing/Pro Rata Share*" means the percentage share of Revenue payable to the

respective party, excluding any monthly rents or fees, as established in Section 8.

"Weekday Daytime" means Monday through Friday, excluding legal holidays as determined by the State of New Jersey, from the hours of seven o'clock in the morning (7:00am) through six o'clock in the evening (6:00pm).

"Weekday evenings and weekend daytime and evenings" means all other times not included in the hours and days of the week defining *"Weekday Daytime."*

1.2 INTERPRETATIONS.

1.2.1 Article, section and paragraph headings and any table of contents are not to be considered part of this agreement, are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof.

1.2.2 The use of the terms "herein," "hereunder," "hereof" and like terms shall be deemed to refer to this entire agreement and not merely to the particular provision in which the term is contained, unless the context clearly indicates otherwise.

1.2.3 The use of the word "including" or a like term shall be construed to mean "including but not limited to."

1.2.4 Exhibits and schedules to this agreement are an integral part of this agreement.

1.2.5 Words not importing a particular gender mean and include every other gender and words importing the singular number mean and include the plural number and visa-versa, unless the context clearly indicated otherwise.

1.2.6 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or item requires.

1.2.7 This agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements relative to such subject matter.

1.2.8 If any provisions of this agreement or the application thereof to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this agreement or the application of such provisions to such person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

1.2.9 This agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or to the same counterpart.

1.2.10 The term "person" shall include natural persons, firms, partnerships, corporations, limited liability companies and any other public and private legal entities.

1.2.11 The term "provisions," when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, and conditions and/or"

1.2.12 No inference in favor of any party shall be drawn from the fact that such party has drafted any portion hereof.

1.2.13 The term "date hereof" shall be construed to mean the date when this agreement is executed by the representatives of the last party to sign it.

2. PREMISES LEASED.

2.1 NPA does hereby enter into an Agreement with 98 to operate a Municipal Towing and Impoundment Facility (hereinafter referred to as a "Tow Facility") at, in and about the Parking Facility owned by 98, also known as Block 2780, Lot 1 on the official tax map of the City of Newark, also commonly known as 98 Frelinghuysen Avenue, Newark, NJ 07102 as set forth and outlined on Exhibit A, which is attached hereto.

2.2 Owner shall assign to NPA the following space(s) for use as a Tow Facility pursuant to this operating agreement:

Four Hundred (400) parking spaces within Owner's Parking Facility

Such space(s) may be located on any floor and shall be selected at Owner's or Owner's designated agent's discretion in conjunction with Owner's other uses of the Property Included with such spaces are such ramps, entrances, exits or ancillary structures as are necessary and appropriate for accessing and using the spaces thereon for the purposes herein intended.

2.3. In addition to the premises leased and assigned to NPA by 98 set forth in Section 2.2, 98 shall make available pad space in the surface parking area of the parking facility along the rear boundary line of the premises as set forth more particularly in Exhibit B, which is annexed and incorporated as if more fully set forth at length herein. . Such pad space shall be sufficient for the construction at NPA's sole costs of a free-standing structure for NPA's on-site administrative offices and ancillary structures such as associated lanes and curbing for the NPA's nonconsensual towing operations. Such additional space and structures shall be designed to permit 24-hour operations and access by such persons who wish to reclaim vehicles from impoundment in accordance with the requirements of state and local laws, while separating 98's operations from NPA's operations. Owner shall permit NPA to arrange for separate utility connections for electric, water, sewer, gas, Internet, telephone, cable, fiber optic or other such utility installation, or each or any of them, or the parties may agree upon a connection with Owner's existing facilities and utilities at NPA's sole cost. Owner and NPA may agree to the

construction and installation of any items provided by Section 2.3 by Owner, the cost of which shall be paid by NPA.

2.4. In addition to the premises leased and assigned to NPA by 98 set forth in Section 2.3, 98 also leases and assigns to NPA such space on the roof, on the external facade of the Property, and on a portion of the space on the eighth floor as may be needed to install one or more outdoor digital billboards, public service announcement and/or marketing devices and/or signs (collectively, "Signage") in any such size as may be permitted by law, and to erect the pillars, girders, stanchions, power lines, lightning rods and other structural units. NPA intends to contract with third-party providers for the construction and operation of the Signage. Prior to requesting bids from third-party providers, NPA shall prepare specifications for the Signage and submit the same to 98 for 98's review and written approval. Prior to awarding a contract to a prospective third-party provider, NPA shall submit the proposed contract to 98 for 98's review and written approval. 98 acknowledges that such billboards use hundreds of light-emitting diodes (LEDs) to create an image and may be subject to additional requirements of law regarding installation, maintenance or proximity to designated flight corridors. If the construction and installation of any items provided by Section 2.4 are performed by NPA or at NPA's expense, such expense shall be paid by NPA.

2.5 The parties reserve the option to locate a Newark Police Department investigative office or substation ("Police Facility") within the Parking Facility on their mutual agreement as to the same. The Police Facility shall be constructed at NPA's sole expense.

2.6 NPA shall obtain all specifications, plans, permits and other governmental approvals required for NPA's improvements in connection with its Tow Facility at NPA's sole expense.

3. USE AND OPERATION OF PREMISES.

The Tow Facility shall be operated by NPA during weekday daytime and weekday evenings and weekend daytime and evenings for the storage, impoundment and release of towed vehicles which are towed by the NPA, its staff, employees or independent contractors in accordance with the ordinances of the City of Newark, the InterLocal Agreement between the City of Newark and the Parking Authority of the City of Newark dated August 8, 2008, and the statutes of the State of New Jersey for the conducting of nonconsensual towing in the City of Newark.

3.1 NPA shall manage, operate and utilize the Tow Facility as follows:

3.1.1 During weekday daytime and weekday evenings and weekend daytime and evenings NPA's independent contractors will tow vehicles which have been impounded in accordance with such laws and ordinances as are made and provided in such cases. NPA shall erect signs and a separate entrance for the Tow Facility and NPA's independent contractors will tow vehicles onto and exit the Tow Facility solely via the separate entrance for the Tow Facility.

3.1.2 NPA shall man, or cause to be manned, its designated pad site facilities for the purpose of intake and release of towed vehicles during all hours as are required by state law or

local ordinance. NPA's obligations with regard to the Tow Facility shall be confined to its designated pad site facilities. At the time of intake or release of towed vehicles, NPA shall communicate with Owner or Owner's designated agent regarding the need for intake or release of a towed vehicle as described in section 3.1.3 below.

3.1.3 Owner or Owner's designated agent shall provide facilities, equipment and/or manpower sufficient to permit the movement of towed vehicles from NPA's pad site vehicle stacking or parking area to the Owner's Parking Facility at the time of intake, and the movement of towed vehicles from the Owner's Parking Facility to NPA's pad site vehicle stacking or parking area at the time of release at all times when the nonconsensual towing operations of the NPA are being conducted. NPA personnel shall not be utilized for the movement of towed vehicles between NPA's pad site vehicle stacking or parking area and the Owner's Parking Facility. Such facilities, and equipment shall be designed, and manpower shall be trained, so as to provide for the movement and storage of vehicles without damage of any kind. Owner shall provide such services so as to permit NPA to conform with applicable law relating to the towing and impoundment of vehicles.

3.2 In the event that vehicle storage exceeds the four hundred (400) total spaces allocated to the NPA , to be referred to as "overflow parking," 98 agrees to provide such space as may be required for the overflow parking of towed vehicles on any remaining floors which are designed or constructed for the parking of vehicles. NPA shall determine such needs in its sole discretion, but based upon contemporaneous needs and upon reasonably anticipated need, and 98 shall determine any such location for overflow parking in its sole discretion. The "overflow parking" space shall be subject to availability within 98's Parking Facility, and 98 shall not have an obligation to accept "overflow parking" if space is not available within 98's Parking Facility.

3.3 NPA shall utilize accepted industry practices, and shall require conformance of its independent contractors, with accepted industry practices for the moving, loading, unloading, storage and release of vehicles which have been towed to the Parking Facility.

4. TERM

The term of this agreement shall commence on March 1, 2013, and shall continue for ten (10) years, with three (3) options to renew of ten (10) years each; or, until the first to occur of the following:

- (a) Termination of this agreement by mutual consent of the parties;
- (b) Upon the occurrence of damage or destruction of the Parking Facility, either partially or totally, such that the Parking Facility becomes unusable and is thereafter is not rebuilt.
- (c) In accordance with a rate reduction as specified in Section 8.5. This agreement shall remain binding upon the parties, and their successors and assigns and shall run with and bind the land comprising the Parking Facility, and may be recorded by the NPA.

5. NPA ACCEPTANCE OF PARKING FACILITY MANAGEMENT &

OPERATION.

It is the intention of the parties that to the greatest extent possible, the management and operation of the Tow Facility is intended to generate the maximum net revenue available for nonconsensual towing, storage and parking, consistent with the goals and objectives of NPA and city-wide parking policies.

The NPA hereby agrees to perform or cause to be performed and NPA is hereby authorized to perform all services reasonably necessary for due diligence and for the care, management and operation of the Tow Facility for the purposes set forth in Section 3.1, including, but not limited to, the following:

- (a) Study the Tow Facility and its operating requirements, develop an operating plan, prepare a financial plan and conduct such due diligence as may be necessary to plan and work with 98 to construct and implement such facilities as may be required to operate a Municipal Towing and Impoundment Facility in accordance with industry practices, safety of the public and the vehicles being towed, and safety of the employees of NPA and 98.
- (b) Manage those leased portions of the Parking Facility, including any overflow parking, in a manner comparable to other similar parking facilities in the Essex County/Hudson County area. Subject to paragraphs 3.1.2 and 3.1.3, NPA shall staff its Tow Facility with competent personnel in order to achieve such results. In managing the Tow Facility, NPA shall use reasonable efforts to provide for safe and expeditious traffic flow and the efficient use of the available parking spaces.
- (c) Hire, employ, discharge and pay all employees employed in the operation and management of the Tow Facility, or contractors who provide NPA's required services at the Tow Facility.
- (d) Purchase and maintain all parking and other equipment, supplies, tools, appliances, signs, uniforms and other materials and services reasonably required in connection with the operation of the Tow Facility and the collection of Towing and Storage Fees.
- (e) Supervise the making of all alterations, maintenance and signage needed at the Parking Facility to provide adequate instruction and direction concerning NPA's towing and storage operations and minimize undue impact on 98's operations.
- (f) Prepare and file all employment documents and reports required under any federal or state legislation or regulations, including all withholding tax or other returns required for NPA employees at the Tow Facility, and pay all amounts required to be paid there under.

- (g) Maintain full books of account with correct entries for all receipts and expenditures arising from the management and operation of the Tow operations at the Parking Facility. Such books of account shall be the property of NPA and shall at all reasonable times be open to inspection by 98 or any of its duly authorized agents.
- (h) Maintain operating reports which show such information as the number of tows, Special Event transient transactions, parking fee, number of Special Event parking permits sold (if applicable), employee time worked, vehicle counts and any other information that the NPA believes to be necessary or desirable for proper management, control or statistical purposes.
- (i) Apply for all necessary governmental permits, licenses and authorizations necessary for lawful operation of the Tow Facility, including any renewals of any such permits, licenses and authorizations whenever necessary to keep the same in effect during the term. The expenses of any filing fees permit or license fees shall be borne solely by NPA.
- (j) Prepare and file with the City of Newark, Division of Tax Abatement and Special Taxes, Quarterly Parking Tax and Event Parking Tax Surcharge reports, and pay all amounts required to be paid, which shall be borne solely by NPA.
- (k) Notify 98 promptly of any unusual conditions which have or may develop in the Parking Facility or in connection with its operation of a Tow Facility, including fire, flood, breakage or casualty damage to the Parking Facility, or to any person or property, whether or not alleged to be caused by the NPA or 98 and whether arising from the use or operation of the Tow Facility or otherwise.
- (l) Purchase or add to existing policies of the NPA such garage man's, general risk and/or operations insurance as may be required by NPA's Board of Commissioners or Insurance Advisors, with 98 as an additional named insured therein, and as further set forth in Section 14, below.

NPA may perform such services either directly through its employees or, in whole or in part, through independent contractors selected by NPA in its sole discretion. The performance of services for the Tow Facility shall be separate and distinct from the parking operations of Owner or Owner's designated agent, and the services described above shall not apply to the separate parking operations of Owner or Owner's designated agent. NPA shall provide 98 with the opportunity to review and comment upon any proposed contracts contemplated hereby for any impact upon 98, financial or otherwise, but 98 shall have no right of approval or denial thereto except as expressly provided in this Agreement.

6. EXCLUSIVE MANAGER: NPA STANDARD OF PERFORMANCE

NPA and 98 agree that NPA is hereby appointed as the exclusive manager and operator of the Tow Facility, except for the duties delegated to 98 or its designated agent as specifically set forth in this Agreement. At all times during the term of this agreement, the general standard of performance of NPA's obligations hereunder shall be the level of performance applied to the management of properties and facilities by public parking operators within fifteen miles of the City of Newark, New Jersey.

98 or any of its subsidiaries shall not conduct any nonconsensual towing activity at the Parking Facility for the City of Newark or any contiguous municipality or other governmental agency or authority, except in conformity with the New Jersey Local Public Contracts Law and New Jersey Public Ethics Law.

7. HOURS OF OPERATION.

98 will provide access to those portions of the Parking Facility which will be used as the Tow Facility, including overflow space, if any, during the hours of operation required by law, which the parties acknowledge is currently 24 hours per day, seven days per week. NPA shall provide on-site staffing, according to a schedule of parking hours necessary to satisfy legal requirements for a Tow Facility as revised from time to time by the NPA to best serve the aforesaid objectives.

8. RENT; REVENUE SHARING; TAXES.

8.1 98 and NPA acknowledge that any significant changes to the day and/or hours of operation, staffing and parking rates or towing fees, or to the laws of the State of New Jersey, the ordinances of the City of Newark or any regulations thereunder could impact upon the Revenue generated by the Parking Facility.

8.2 NPA agrees to compensate 98 for use of the Parking Facility under the terms of this Agreement on a Revenue Sharing basis, which provides for the sharing of NPA's Gross Revenue derived from nonconsensual towing and other operations at the Parking Facility.

8.3 Upon the Commencement Date, the Gross Revenue shall be divided between 98 and NPA on a monthly basis in equal shares of fifty percent (50%).

8.4 Income collected from the operation of a Tow Facility and related nonconsensual towing activities at the Parking Facility shall be deposited daily into a separate account established and maintained by NPA at any of its designated banks in the City of Newark. The NPA shall provide 98 within fifteen (15) days of the close of each month of operation of the Tow Facility a gross revenue report. The NPA shall remit on a monthly basis to 98 its share of the Gross Revenue at the time of delivery of the monthly revenue report.

8.5 The rates charged for towing, storage and release of vehicles shall be determined by

NPA in its sole discretion and shall reflect the requirements of the ordinances of the City of Newark and/or statutes and regulations of the State of New Jersey as well as to provide adequate compensation for the providing of towing, safe impoundment and services and equipment specifically attributable to such activities, and to reflect the Market Rate charged by the private sector for the type of each towing operation and storage in the Counties of Essex and Hudson, consistent with such statutes made and provided in such cases. Such rates may be revised by the NPA in its sole discretion from time to time to reflect these factors and conditions, or on account of other extraordinary unspecifiable circumstances. NPA shall notify 98 of all initial Towing and Storage Rates and any changes, alterations or adjustments thereto within five (5) business days of the determination of such rates. If at any time the rates authorized by law or regulation to be charged for storage of vehicles shall fall below \$20.00 per day, then 98 or NPA shall have the option to terminate this Agreement by giving ninety (90) days advance written notice of its intention to terminate the Agreement.

8.6 In the event that NPA applies for and receives municipal and all other governmental approvals for installation and operation of a digital outdoor billboard or billboards as set forth in Section 2.4, above, then NPA and 98 shall share equally in all gross revenues received by or on behalf of NPA in connection with the operation of such digital outdoor billboard or billboards.

8.7 NPA and 98 acknowledge and agree that, while operation of the demised premises may result in tax advantages to 98, the parties may be required to or may obtain further advantage by negotiating for payment in lieu of taxes (PILOT) agreements with the City of Newark, and agree that they will mutually endeavor to obtain the maximum benefit to 98.

9. OPERATIONS & EXPENSES.

9.1 NPA's Operating Expenses shall be paid by NPA in a timely fashion and from funds of the NPA.

9.2 Each party shall provide at its own cost and expense all insurance, utility costs, lighting, sweeping, pothole repair, repaving, building maintenance and snow removal for each party's respective exclusive areas – as to NPA, the pad area and as to 98 all portions of the Parking Facility. In the event that NPA obtains approvals for installation and operation of a digital outdoor billboard or billboards, NPA shall be responsible for all insurance, installation, operation and utility costs unless otherwise agreed upon.

9.3 Each party shall during the course of this agreement provide lot sweeping, trash removal, repair potholes, repave, restripe and remove ice or snow within each party's respective exclusive areas – as to NPA, the pad area and as to Owner all portions of the Parking Facility other than NPA's pad area.

9.4 NPA shall maintain its portions of the Parking Facility in good condition, until expiration of the term hereof. The NPA shall take good care of the premises. The NPA shall deliver up the managed Tow Facility in the condition as found, wear and tear from reasonable

use thereof and damage by the elements not resulting from neglect or fault of the NPA, excepted.

9.5 The NPA shall not obstruct the sidewalk, nor in any way impair the use of other 98 Parking Facilities located at or adjacent to the above location.

9.6 The NPA shall place signs at the devised premises noting when the Parking Facility will be available for recovery of vehicles and the fees to be charged for all nonconsensual towing operations according to law.

9.7 NPA shall make no structural repairs, alterations or additions to the Parking Facility without the prior written consent of 98. 98 and their agents, employees, or other representatives, shall have the right to enter into and upon the said premises demised premises or any part thereof, at all reasonable hours, for the purpose of examining the same or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

10. SECURITY.

NPA shall provide security for the Tow Facility as determined by the NPA to be reasonable and consistent with security provided at publicly owned and operated parking facilities in the City of Newark area, and shall consult and coordinate such security with 98.

11. INSURANCE; WAIVER OF SUBROGATION.

11.1 The NPA shall arrange for, purchase and keep in force, throughout the term of this agreement, the following insurance to protect the interests of 98 and the NPA, as their respective interests may appear,:

- (1) Comprehensive General Liability and Garage Liability Insurance which shall include coverage for premises, operations, completed operations, independent contractors, broad form property damage, contractual and personal injury with a combined single limit of liability not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (2) Garage Keepers Legal Liability Insurance, covering the NPA's and 98 FREURE' legal liability for physical damage, to vehicles under the care, custody and control of the NPA, with a limit of liability of not less than \$1,000,000 per occurrence and in the aggregate.
- (3) NPA shall arrange for and provide, under its Workers' Compensation program, statutory workers' compensation benefits in accordance with the laws of the state of New Jersey for all employees of NPA employed at the Parking Facility.

11.2 The costs of insurance referred to in section 13.1 including insurance policy deductibles incurred shall be paid solely by NPA.

11.3 The policies of insurance referred to in section 13.1 shall:

- (1) Name 98 and the NPA as insureds, as their respective interests may appear;
and,
- (2) Provide as primary coverage, irrespective of any other valid and collectible insurance or program of self-insurance, carried or maintained by 98 or the NPA, and such other insurance or self-insurance shall be excess and noncontributory.

11.4 Each party agrees to use reasonable efforts to include in each of its policies insuring against loss, damage or destruction by fire or other insured casualty or public liability coverage either (1) a waiver of the insured's right of subrogation against the other party (and against any additional insured) or (2) should such waiver be unobtainable, (i) an express agreement that such policy shall not be invalidated if the insured waives or has waived before the casualty or (ii) any other form of permission from the insurer for the release of such responsible party. If such waiver, agreement or permission shall not be obtainable without additional charge or at all, the insured party shall so notify the other party promptly. If such waiver, agreement or permission shall be obtainable at additional charge and if the other party agrees to pay such charge, then it shall be included in the policy.

11.5 98 shall maintain adequate insurance on the Parking Facility as may be required by its lenders or risk managers.

12. WAIVER.

No delay or failure by any party to exercise any right under this agreement, and no partial or single exercise of any right under this agreement, shall constitute a waiver of that right or any other right granted to such party herein. Any waiver to be enforceable must be in writing and signed by the party against whom such waiver is sought to be enforced.

13. NOTICES.

Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon any of the parties, or if any of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto, each such notice, demand, request or other communication shall be in writing, and, any law or statute to the contrary notwithstanding, shall be given or served as follows:

(a) if given or served by 98, by email, fax, hand delivery, commercial document delivery service or by mailing the same to NPA by registered or certified mail, postage prepaid, return receipt requested, addressed to NPA at the address first set forth above or at such other address as NPA may from time to time designate by notice given to 98 in the manner herein provided.

(b) if given or served by NPA, by email, fax, hand delivery, commercial document delivery service or by mailing the same to 98 by registered or certified mail, postage prepaid, return receipt requested, addressed to 98 at the address first set forth above or at such other address as 98 may from time to time designate by notice given to NPA in the manner herein

provided.

All notices shall be deemed to have been given either when emailed, faxed, hand-delivered or two (2) days following the date of mailing.

14. APPLICABLE LAW.

This agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. Any dispute arising out of this agreement shall be the subject of binding arbitration, conducted by a single arbitrator with not less than ten (10) years' experience handling commercial disputes, selected by the parties. In the event that the parties cannot reach agreement upon the selection of an arbitrator, the parties shall utilize the rules of the American Arbitration Association or other similar commercial arbitration organization for the selection of the single arbitrator selected by the party seeking arbitration. In the event of any such dispute, the parties hereof consent to the personal jurisdiction of Newark, Essex County, NJ as the site for arbitration and waive any objection to arbitration as a proper venue for binding dispute resolution. The parties waive any rights they may have to any appeal of the arbitrator's binding decision to the Superior Courts of the State of New Jersey, except as to enforcement of the arbitrator's binding decision in accordance with law.

15. AMENDMENTS.

The provisions of this agreement can be effectively modified or amended only by an instrument or instruments in writing signed by both NPA and 98.

16. CONDITIONS TO EFFECTIVENESS OF

16.1 This Agreement shall be in full force and effect so long as NPA has the authority to conduct nonconsensual towing pursuant to any applicable agreement, law or Ordinance regulating nonconsensual towing in the City of Newark.

16.2 NPA shall at its sole expense defend any lawsuit, arbitration or regulatory or administrative proceeding by any person or entity challenging such authority, and this Agreement shall continue until a final judgment is entered against such authority of the NPA unless enjoined by a court of competent jurisdiction prior to final judgment.

16.3 NPA shall at its sole expense institute litigation, arbitration or any administrative or regulatory proceeding to challenge law or Ordinance that removes or terminates NPA's authority to conduct nonconsensual towing in the City of Newark and this Agreement shall continue in full force and effect until a final Order upholding such law or Ordinance is entered unless restrained by an Order of a court or agency of competent jurisdiction.

IN WITNESS WHEREOF, 98 and NPA have signed and sealed this agreement as of this day and year first above written.

ATTEST:

NEWARK PARKING AUTHORITY

By: _____
Name:
Title: Secretary

By: _____
Name:
Title: Chairman

ATTEST:

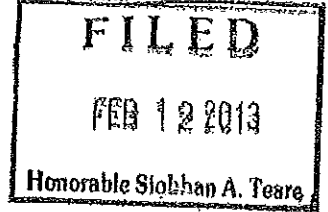
**98 FRELINGHUYSEN REAL ESTATE
URBAN RENEWAL ENTITY, LLC**

By: _____
Name:
Title:
659722_1

By: _____
Name:
Title:

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12



DENTE BROTHERS TOWING, INC
and B&C TOWING, INC.,

Plaintiffs:
vs.

CITY OF NEWARK and THE
PARKING AUTHORITY OF THE
CITY OF NEWARK.

Defendants:

MEMORANDUM
DECISION

SIOBHAN A. TEARE, J.S.C.

Written Decision After a Request for Briefs on the Issue of Damages
Written Decision Delivered on February 12, 2013
Decided: February 12, 2013

William J. Pollinger, P.A.
Attorneys for Plaintiff Dente Brothers Towing, Inc.

Gabriel H. Halpern, Esq.
Pinilis Halpern, LLP
Attorney for Plaintiff Intervenor B&C Towing, Inc

Alice Mireles, Assistant Corporation Counsel
Former Attorney for Defendant City of Newark

John R. Scott, Esq.
Hardin, Kundla, McKeon & Poletto, P.A.
Attorney for Defendant City of Newark

Philip G. George, Esq.
Eric M. Bernstein & Associates, LLC
Attorney for Defendant Intervenor the Parking Authority of the City of Newark

Procedural History

In a written decision, dated January 18, 2013, the Court dismissed all of the counts of both Dente Brothers' Amended Complaint and B&C Towing's Complaint in Intervention with the exception of Counts Five and Six, which were severed¹ and Count Two of the respective complaints. The Court requested briefs on the remaining count of each complaint, specifically with regards to the issue of whether plaintiffs are entitled to damages under 42 U.S.C. § 1983 or attorneys fees under 42 U.S.C. § 1988.

Plaintiff Dente Brothers filed its brief in a letter dated January 21, 2012. Plaintiff-intervenor B&C Towing did not file a brief with respect to these issues. Defendant-intervenor Parking Authority of the City of Newark filed its opposition in a letter dated January 25, 2013. Defendant City of Newark, now represented by John R. Scott, Esq. of Hardin, Kundla, McKeon & Poletto, P.A., filed its opposition in a brief and certification dated January 25, 2013.

Plaintiffs' Claims for Damages

In its brief, Dente Brothers seeks damages under 42 U.S.C. § 1983 and attorneys fees under 42 U.S.C. § 1988 because it claims that the City's failure to award it the towing contract constitutes a violation of due process. According to Dente Brothers, it had a property interest for due process purposes in the contract for towing services, and the City's actions in this case constitute a violation of both substantive and procedural due process.

While B&C Towing has not filed a brief with respect to these issues, the counts in their Complaint in Intervention are nearly identical to the Amended Complaint of Dente Brothers, and thus the issues are examined together.

¹ The Court held that the discovery necessary to litigate the issues under these two counts would go far beyond the scope of the current litigation. The Court concluded that those issues would best be handled in a separate action with a separate discovery process.

As the Appellate Division has stated, it is clear that monetary damages are not generally available to unsuccessful bidders under the Local Public Contracts Law. "An unsuccessful bidder may attack the award of the contract but may not recover money damages, even if the challenge succeeds. To permit the low bidder to recover damages would simply twice penalize the public. Submission of the lowest bid in answer to an advertisement for bids by the State for public work cannot be the basis of a claim for damages based upon the failure or refusal to accept such bid. This rule seems to be universal in application." Delta Chem. Corp. v. Ocean County Utils. Auth., 250 N.J. Super. 395, 400-01 (App. Div. 1991) (internal citations omitted).

While the Court acknowledges that Delta Chemical is more than twenty years old, plaintiffs have not provided, and independent research has not revealed, any case law suggesting that Delta Chemical is no longer good law. See id.

It is also clear that money damages cannot be recovered by unsuccessful bidders in § 1983 actions. In order to state a claim under § 1983 for deprivation of due process rights, a plaintiff must allege that he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of "life, liberty, or property." Fariello Bus Serv., LLC v. Old Bridge Bd. of Educ., 2011 U.S. Dist. LEXIS 65498, at 11.

In Feriozzi Co., Inc. v. City of Atlantic City, 268 N.J. Super. 310, 316-17 (Law Div. 1993), the trial court rejected the plaintiff's claim that it should still be entitled to compensatory damages on its constitutional claim under § 1983. The Court discussed at great length why an unsuccessful bidder under the Local Public Contracts Law in New Jersey does not have a property interest for due process purposes, and thus should not have a claim for damages under § 1983:

The reason why an unsuccessful bidder may not receive money damages, even if the challenge to the award of the contract succeeds, is to prevent the public from paying twice. It is the public interest, not the private interest of the bidder, which is paramount. The purpose of competitive bidding is "to secure competition and to guard against favoritism, improvidence, extravagance and corruption." Hillside Twp. v. Sternin, 25 N.J. 317, 322, 136 A.2d 265 (1957). "Consequently, whatever rights a bidder may have in the process are 'conferred . . . to the end that the public will obtain all that is due it in the procurement process, rather than for [the bidder's] individual aggrandizement.'" Morie Energy Management v. Badame, 241 N.J.Super. 572, 576, 575 A.2d 885 (App.Div.1990) (citing Trap Rock Industries v. Kohl, 59 N.J. 471, 480, 284 A.2d 161 (1971)). The overriding public interest involved is the promotion of competitive bidding. Id. 241 N.J.Super at 577, 575 A.2d 885.

With these propositions in mind, plaintiff's challenge to the affirmative action provisions of the City bidding documents must be viewed as a challenge for the benefit of the public, not for the private benefit of plaintiff. The relief secured by plaintiff protects the integrity of the public bidding process by prohibiting public officials from engaging in unconstitutional conduct. It affords protection to the public by the promotion of competitive bidding. Thus the injured "person" under § 1983 would not be plaintiff, but rather the public at large.

Constitutional rights do not exist in a vacuum. Memphis Community School Dist. v. Stachura, 477 U.S. 299, 307-308 (1986). Their purpose is to protect persons from injuries to particular interests. Id. The particular interest to be protected in the instant case is a public interest. The status conferred upon plaintiff to support its claim "is conferred upon [it] to the end that the public will obtain all that is due in the procurement process." Trap Rock Industries, Inc., supra, 59 N.J. at 479-480, 284 A.2d 161.

Standing to challenge the bid is granted [s]imply and solely in order that the public interest might be served by compelling the lax or erring public official to properly perform his public trust. It was not thereby intended to create or establish in the bidder entitled to the award of the contract a right which, if violated, would render the public agency liable in damages to the bidder. [M.A. Stephen Const Co., supra, 125 N.J.Super. at 74, 308 A.2d 380.]

Plaintiff's standing to challenge the bid award was for the benefit of the public. The particular interests to be protected, the interests in the bidding process and in equal protection, were the public's, not the plaintiff's. I therefore am satisfied that plaintiff is not entitled to compensatory damages.

While research has revealed no recent New Jersey case law regarding this issue, a recent federal case recognized and applied this same standard, thus, supporting that Feriozzi is still good law. “Because bidding laws exist for the benefit of the public, New Jersey courts have consistently held that unsuccessful bidders of a public contract may attack the award of a contract, but may not recover damages even if the challenge succeeds.” Fariello Bus Serv., LLC v. Old Bridge Bd. of Educ., 2011 U.S. Dist. LEXIS 65498 (D.N.J. 2011).

Whatever merit an unsuccessful bidder’s claims against a municipality may have under the Local Public Contracts Law, it is clear that these claims do not constitute a property right for due process purposes. Accordingly, plaintiffs’ claims under 42 U.S.C. § 1983, 42 U.S.C. § 1988 and any other allegation that the defendants have violated due process under the federal constitution must be dismissed. Thus, the remaining counts of plaintiffs’ complaints, (i.e., Count Two of Dente Brothers’ Amended Complaint and Count Two of B&C Towing’s Complaint in Intervention), are dismissed with prejudice.

Plaintiffs have not sought attorneys’ fees under any provision of New Jersey law. The Court notes that while the Court finds the behavior of the City of Newark especially troubling in this action, there does not appear to be any statutory basis for granting attorneys’ fees under state law.

The Court also notes that in its brief, the City of Newark has challenged some of the Court’s holdings with respect to the Interlocal Agreement between the City of Newark and the Parking Authority. Those arguments are not properly before the Court, as the Court requested that the parties brief solely the issues of damages and attorneys fees. The issues raised by the City of Newark should only have been raised in a motion for reconsideration or in an appeal to the Appellate Division.

The Continued Use of Emergency Contracts

N.J.S.A. § 40A:11-6 governs the use of emergency contracts under the Local Public Contracts Law. It is clear to the Court that the City and/or the Parking Authority, having operated under emergency contracts for five years, have not complied with the provisions of N.J.S.A. § 40A:11-6.

First, emergency contracts can only be awarded “when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services[.]” It is clear to the Court that no such emergency has existed for approximately five years.

N.J.S.A. § 40A:11-6(a) further provides that:

The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.

The Court is not aware if the City was in compliance with the requirements of this provision when it initially awarded emergency contracts approximately five years ago. However, it is clear to the Court that even if a valid emergency existed when these emergency contracts first existed, at this time, there is no need for the continued performance of an emergency contract, and the “nature of the emergency[.]” “the time of its occurrence[.]” and “the

need for invoking this section" all warrant that the City and/or the Parking Authority must comply with the bidding requirements of the Local Public Contracts Law.

N.J.A.C. § 5:34-6.1, promulgated pursuant to N.J.S.A. § 40A:11-6(c), further provides that the use of emergency contracts pursuant shall be subject to the following pertinent requirements:

1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;

3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;

4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and

5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

These provisions further demonstrate that the City's actions in awarding its contracts have far exceeded any reasonable use of the emergency contracts provision.

Accordingly, the Court orders that the City and the Parking Authority take the following actions:

First, in accordance with the Court's written decision of January 18, 2013, under the terms of the Interlocal Agreement, the Parking Authority currently has the responsibility to advertise bids for city wide towing services. Within sixty (60) days of the date of this Order, the Parking Authority must either advertise that it will receive sealed proposals for city wide towing services, or else transfer that power back to the City pursuant to Section 711 or any other applicable terms of the Interlocal Agreement.

FILED
FEB 12 2013
Honorable Siobhan A. Teare

This Order is prepared and entered by the Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12

DENTE BROTHERS TOWING, INC
and B&C TOWING, INC.,

Plaintiffs:

vs.

CITY OF NEWARK and THE
PARKING AUTHORITY OF THE
CITY OF NEWARK.

Defendants:

ORDER

The Court, having requested briefs from the parties on the issue of damages at a hearing held on January 4, 2013, and having thoroughly reviewed the same:

IT IS HEREBY ORDERED, on the 12th day of February, 2013, as follows:

1. Because plaintiffs do not have a property right in their unsuccessful bids for due process purposes, Count Two of Dente Brothers' Amended Complaint and Count Two of B&C Towing, Inc's Complaint in Intervention, the sole remaining counts in this action, are hereby dismissed with prejudice;
2. Dente Brothers' Amended Complaint and B&C Towing, Inc's Complaint in Intervention are thus dismissed with prejudice;



SIOBHAN A. TEARE, J.S.C.

FILED
FEB 12 2013
Honorable Stohhan A. Teare

This Order is prepared and entered by the Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.: L-5800-12

DENTE BROTHERS TOWING, INC
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Plaintiffs:

vs.

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Defendants:

S U P P L E M E N T A L
O R D E R

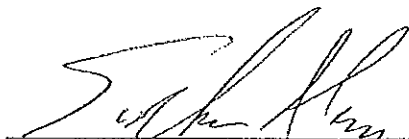
The Court, having heard arguments from the parties at a hearing held on January 4, 2013, issued a written decision on January 18, 2013. In that decision, the Court dismissed Counts One, Three, and Four of Dente Brothers' Amended Complaint and Counts One, Three, and Four of B&C Towing's Complaint in Intervention because the Court could not, as a matter of law, award a towing contract to either plaintiff under the Local Public Contracts Law. The Court held that the City of Newark's invitation to bid was an *ultra vires* act based on the Parking Authority's assumption of duties under the Interlocal Agreement with respect to the City's towing operations.

During the litigation, the Court also requested that the parties address the issue of the City of Newark's use of emergency contracts for its towing services for approximately the last five years. After a careful review of the parties' submissions and after hearing oral arguments, and

after further reviewing the provisions of the Local Public Contracts Law, the Court hereby supplements its Order dated January 18, 2013:

IT IS HEREBY ORDERED, on the 12th day of February, 2013, as follows:

1. In accordance with the Court's written decision of January 18, 2013, under the terms of the Interlocal Agreement, the Parking Authority currently has the responsibility to advertise bids for city wide towing services. Within sixty (60) days of the date of this Order, the Parking Authority must either advertise that it will receive sealed proposals for city wide towing services, or else transfer that power back to the City pursuant to Section 711 or any other applicable term of the Interlocal Agreement.
2. If the Parking Authority does transfer the power to advertise bids for city wide towing services back to the City, the City shall have sixty (60) days from the date of that transfer to advertise that it will receive sealed proposals for city wide towing services.
3. The bidding process, whether it is undertaken by the Parking Authority or the City, must be in material compliance with the applicable provisions of the Local Public Contracts Law.
4. If either the Parking Authority or the City fails to timely comply with the Court's Order, the Court will entertain an application for the imposition of sanctions, at the rate of \$100 per business day, against any of the two parties not in compliance with the Court's Order.



SIOBHAN A. TEARE, J.S.C.

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING
AUTHORITY OF THE CITY OF NEWARK AUTHORIZING
NEGOTIATIONS WITH THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA WITH REGARD TO LOST
METER AND ENFORCEMENT REVENUE ON BROAD STREET**

Approved as to form and
Legality on basis of Facts

Philip George, Esq.
Office of General Counsel

Factual Contents Certified
to by

Director of Administration

RESOLUTION NO.: 02-2013-18

WHEREAS, the Parking Authority of the City of Newark has as a stated public purpose the provision of on street metered parking and off-street parking facilities in order to benefit the public and aid traffic flow in and about the City of Newark pursuant to *N.J.S.A. 40:11A-6, et seq.*; and,

WHEREAS, the Parking Authority of the City of Newark has previously had in place parking meters and/or multispace meters along the westerly side of Broad Street between Central Avenue and State Street; and,

WHEREAS, Prudential Insurance Company of America has begun construction of world headquarters at properties along the westerly side of Broad Street between Central and State Streets, which construction resulted in the erroneous removal of numerous parking meters and related spaces by the City of Newark and Prudential Insurance Company of America, which resulted in lost meter revenue and enforcement revenues to the Authority and the City of Newark; and,

WHEREAS, the Parking Authority, through its Executive Director, has conducted several negotiation sessions with the representatives of Prudential Insurance

Company in order to reach possible agreement concerning lost revenue and wishes to continue such negotiations; and,

WHEREAS, the negotiations have progressed to the point where an Agreement can be proposed and may be entered into upon terms under discussion which are confidential pursuant to the Open Public Meetings Act at this time, but which have been disclosed to the Commissioners in Executive Session and which will be released consistent with the Open Public Meetings Act upon signing the said Agreement, should that occur; and,

WHEREAS, the Commissioners of the Parking Authority of the City of Newark now wish to authorize the Executive Director, with the assistance of such consultants as may be needed from time to time, to enter into an Agreement with representatives of Prudential Insurance Company of America regarding lost Broad Street meter revenues:

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of Newark that the Executive Director, with the assistance of the Parking Authority's consultants as may be required, be authorized to negotiate an Agreement Prudential Insurance Company of America upon such terms as may be discussed and agreed upon in further negotiations, subject to final approval by vote of the Board of Commissioners if said agreement is accepted; and,

IT IS FURTHER RESOLVED by the Parking Authority of the City of Newark that the Executive Director or his designee shall report on the progress of Agreement, subject to the provisions of the Open Public Meetings Act, at the next general meeting of the Commissioners of the Parking Authority of the City of Newark.

Commissioner

Seconded the Motion

X - Indicates Vote AB – Absent NV – Not Voting

Board of Commissioners Vote of Final Passage

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING NEGOTIATIONS WITH THE PRUDENTIAL INSURANCE COMPANY OF AMERICA WITH REGARD TO LOST METER AND ENFORCEMENT REVENUE ON BROAD STREET

Commissioners AYE NAY NV AB Commissioners AYE NAY NV
AB

LaVar Young, Chairman					DeAndre Rudolph				
Raquel Cagley									
A. Dean Rawls									
Hubert Graham									

CERTIFICATION

I, LEVAR YOUNG, Chairman of the Parking Authority of the City of Newark (the "Authority"), a public body corporate and politic and a political subdivision of the State of New Jersey, DO HEREBY CERTIFY as follows:

Attached hereto is a copy of a resolution entitled, "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PARKING AUTHORITY OF THE CITY OF NEWARK AUTHORIZING NEGOTIATIONS WITH THE PRUDENTIAL INSURANCE COMPANY OF AMERICA WITH REGARD TO LOST METER AND ENFORCEMENT REVENUE ON BROAD STREET" (the "Resolution"), which Resolution was adopted at a regular meeting of the Authority duly called, advertised and held on February 28, 2013 in accordance with the Open Public Meetings Act, *N.J.S.A. 10:4-6 et seq.*, as amended and supplemented, at which meeting a quorum was present and acting throughout, which copy of said Resolution has been compared by me with the original thereof as officially recorded in the Minute Book of the Authority and that said copy is a true, complete and correct copy of said Resolution and that said Resolution has been duly adopted and has not been modified, amended or repealed and is in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Authority hereto this 28th day of February, 2013.

PARKING AUTHORITY OF THE
CITY OF NEWARK

[SEAL]


LAVAR YOUNG, Chairman