

**A Critical Look at New Haven's Tax-and-Tow Program:
Early Benefits and Long-Term Dangers of Monopoly Service Provision in Municipal
Contracting**

Substantial

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Introduction

In the spring of 2008, Crown Auto Center—along with four other New Haven towing companies—petitioned the City to investigate whether another towing operator, Anthony Monaco, had improperly gained a second spot on the police department's towing rotation.¹ As established by New Haven's "tow truck ordinance," the police department must rotate municipal towing assignments among eligible towers on a "reasonably fair, equitable, and nondiscriminatory basis"² Writing to the City, Crown and other protesting towers alleged that Mr. Monaco, already the owner of one towing outfit, Lombard Motors, had created a "new" sham business—Anthony's High-Tech—in an illegitimate attempt to gain a second spot on the rotation and thus increase his share of the City's towing assignments.³ Their letter to New Haven's then-Corporation Counsel, John Ward, noted that Anthony's was located next-door to Lombard and that Mr. Monaco remained the landlord for both properties.⁴ The letter then went on to express their

concern[] about the legality and fairness of allowing one business owner . . . to take two spots on the city's rotation list We understand that the Chief of Police can add up to ten tow companies to the rotation list. However we question the rationale of allowing double dipping or a *monopoly* to occur.⁵

¹ Paul Bass, "*We're Not Double-Dipping*," NEW HAVEN INDEP., Apr. 7, 2008, http://www.newhavenindependent.org/index.php/archives/entry/were_not_double-dipping.

² NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, §§ 29-105 to -119 (Municode 2012).

³ Bass, "*We're Not Double-Dipping*," *supra* note 1.

⁴ *Id.*

⁵ *Id.* (emphasis added); *see also* tit. III, art. V § 29-118 ("The chief of police or his designee shall prepare annually and maintain a list, to be called the "municipal towers list," of licensed towers in the city not to exceed ten (10) in number who may perform municipal towing services.").

Responding to the complaint, the City appeared to share these concerns and, in fact, decided to remove Mr. Monaco's second company from the rotation.⁶ When asked for comment, the City's Chief Administrative Officer, Rob Smuts, told the *New Haven Independent* that it was “not really in the public interest to have a restricted group of people doing the tows”⁷

However, in the fall of the following year, neither the City nor Crown seemed as concerned about the inequitable distribution of towing assignments—or potential “monopoly”—when the City decided to grant a substantial share of its municipal towing work exclusively to Crown.⁸ After soliciting and reviewing bids via the Request for Proposals (RFP) process,⁹ the City hired Crown to locate, boot, and, if necessary, tow all vehicles on which delinquent motor vehicle taxes and parking fines were owed.¹⁰ As part of this program (hereinafter, the tax-and-tow program), the City also gave Crown the responsibility of collecting payments on these delinquent bills after hours, so that vehicle owners could retrieve their cars even when the City's Tax and Collections offices were closed.¹¹

Now, Crown found itself on the opposite side of a petition to the City. Facing a decline in business, the other eight members of the towing rotation—Catapano's, Columbus, Fountain's,

⁶ Paul Bass, *Monaco Takes Another Hit*, NEW HAVEN INDEP., May 14, 2008, http://www.newhavenindependent.org/index.php/archives/entry/monaco_takes_another_hit. However, the City eventually did reinstate Anthony's High-Tech to the rotation after Mr. Monaco divided ownership of the two companies between him and his father. Interview with Officer Francis Lombardi, Chief of the Mun. Towing Unit, New Haven Police Dep't, in New Haven, Conn. (Apr. 10, 2013) [hereinafter Interview with Officer Lombardi] (included in appendix). For a further discussion of this controversial arrangement and an account of Mr. Monaco's more recent suspensions from the rotation, see.

⁷ Bass, “*We're Not Double-Dipping*,” *supra* note 1.

⁸ Paul Bass, *VioAlert Bags the Boot*, NEW HAVEN INDEP., Oct. 16, 2009, http://www.newhavenindependent.org/index.php/archives/entry/vioalert_bags_the_boot.

⁹ Request for Proposals No. 29-9-675: Wheel Immobilizers or Wheel Stops from the New Haven, Conn. Bureau of Purchases (Sept. 13, 2009) (on file with author) [hereinafter 2009 RFP].

¹⁰ See Agreement by & Between the City of New Haven, Conn. & Crown Auto Center (Oct. 30, 2009) (on file with the author) [hereinafter Crown Agreement No. 1].

¹¹ *Id.*

Megill's, Tony's Long Wharf, Unlimited, York, and even Lombard—wrote the Board of Aldermen to protest Crown's "monopoly" contract.¹² Representing the eight towers, Attorney Robert Oliver wrote that "[a]ssignment to one tower alone violates the [tow truck] ordinance," and added that "[p]ermitting a private company . . . to collect [the delinquent tax and parking bills] . . . is manifestly unwise and carries the risk of loss or misappropriation of the moneys."¹³ At a subsequent meeting with the Board, Oliver further charged that the program violated state law, arguing that Crown did not hold the license required to collect taxes in Connecticut.¹⁴

Much to the dismay of the aggrieved towers, the City successfully defended the program to the Board.¹⁵ The City emphasized that Crown's contract had been awarded via the "appropriate protocol"¹⁶—the RFP process—and that the program was "intended for the convenience of the taxpayer."¹⁷ The City also presented the Board with a letter from the State Department of Banking, certifying that Crown did not need a license to collect taxes.¹⁸ Satisfied by the State's approval, the Board allowed the City to continue the tax-and-tow program.¹⁹

¹² Thomas MacMillan, *Towing Companies Cry Foul at Crown's Monopoly*, NEW HAVEN INDEP., Apr. 12, 2010,

http://www.newhavenindependent.org/index.php/archives/entry/as_work_goes_to_crown_towing_o.

¹³ Letter from Att'y Robert Oliver to the New Haven, Conn. Bd. of Alderman 2 (Mar. 11, 2010), http://www.newhavenindependent.org/archives/upload/2010/04/Towing_Petition.doc [hereinafter *Towing Petition*]. Vin DiLauro, owner of Columbus Auto Body, explained that the petitioning towers had decided not to sue the City because "[t]he city's [already] got enough lawsuits" MacMillan, *Towing Companies Cry Foul at Crown's Monopoly*, *supra* note 12.

¹⁴ Thomas MacMillan, *Towing Companies: Prize Contract Breaks Law*, NEW HAVEN INDEP., May 18, 2010, http://www.newhavenindependent.org/index.php/archives/entry/towing_companies_city_is_breaking_the_law.

¹⁵ The aldermen did, however, question city officials about the legality and propriety of the program. Jay Dockendorf, *Alderman Want Answers on Towing Contract*, NEW HAVEN INDEP., June 4, 2010, http://www.newhavenindependent.org/index.php/archives/entry/aldermanic_council_hears_arguments_on_towing.

¹⁶ MacMillan, *Towing Companies Cry Foul at Crown's Monopoly*, *supra* note 12.

¹⁷ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

¹⁸ Letter from Howard F. Pitkin, State Banking Comm'r, Conn., to Kathleen M. Foster, Assistant Corp. Counsel, City of New Haven, Conn. (Dec. 23, 2010), <http://www.newhavenindependent.org/archives/upload/2010/12/Bankingletter.pdf> [hereinafter *State*

In fact, to this day, the City continues to operate this program and recently, via a January 2013 Request for Qualifications (RFQ),²⁰ decided to re-award its contract to Crown.²¹

Nevertheless, although the eight towers have proven unable to halt the program, the questions posed by their complaint remain: Was it a smart decision for the City to award the entire tax-and-tow contract to a single provider? Moreover, even if awarding the contract to a single provider brought improvements, what problems did that decision create for the program going forward? And how might the City address those issues?

To answer these questions, this paper will provide an in-depth case study of New Haven's effort to collect delinquent vehicle bills. Part I will provide both a history of the program's development and an overview of the City's current arrangement with Crown. Part II will then offer a preliminary assessment of this arrangement. This Part will describe how the City's decision to consolidate three previously separate services—booting, towing, and tax collection—into a single contract award helped improve the program in two significant ways: it allowed the City to (1) continue and expand the use of booting, as an alternative to towing; and (2) offer 24/7 bill payment and vehicle retrieval. However, despite these improvements, the City's arrangement with Crown still suffers from a substantial weakness: it does not adequately safeguard against the possibility of Crown's employees' misappropriating city funds.

Banking Letter]. The Banking Commissioner found that, because Crown was “not primarily engaged in the collection of debts from consumer debtors” and received the tax payments “in escrow for subsequent distribution to” the City, it was exempt from Connecticut's licensing and insurance requirements for tax collectors. *Id.*; see also Conn. Gen. Stat. § 36a-800 (West 2013).

¹⁹ Press Release, Mayor's Office, City of New Haven, Conn., State Banking Dept. Upholds City Towing Program (Dec. 28, 2010), <http://www.cityofnewhaven.com/Mayor/ReadMore.asp?ID={5D593739-3F09-47AF-BF7A-7A3F9E690BD0}>.

²⁰ Request for Qualifications No. 2014-1-880: Wheel Immobilizer Program from the New Haven, Conn. Bureau of Purchases (Jan. 21, 2013) (on file with author) [hereinafter 2013 RFQ].

²¹ Interview with Michael V. Fumiatti, Purchasing Agent, City of New Haven, Conn., in New Haven, Conn. (Apr. 8, 2013) [hereinafter Interview with Mr. Fumiatti] (included in appendix).

Part III will then show why competition in the program's provider market is highly unlikely to produce adequate safeguards against this problem. Because Crown does not face a credible threat of losing the contract to another vendor, it does not have sufficient incentive to develop adequate accountability mechanisms on its own. Part IV, however, will outline how the City can develop its own accountability mechanisms and recommend that the City use the Requests for Qualifications (RFQ) process to impose these mechanisms on Crown in subsequent bargaining rounds. Finally, Part V will offer some concluding remarks on the possibility of in-sourcing part of the program.

I. The Development of New Haven's Tax-and-Tow Program

According to the New Haven City Charter, the City's tax collector is responsible for "enforc[ing] payment of all taxes and assessments" owed to the City.²² This includes property taxes on motor vehicles that are either owned by New Haven residents or garaged within the city limits.²³ Connecticut municipalities have found these taxes notoriously difficult to collect,²⁴ and indeed New Haven has not been immune to this problem. Prior to 2004, the City relied exclusively on phone calls and mailed notices to encourage residents to pay their vehicle taxes.²⁵ Unsurprisingly, these methods were not as successful as the City would have liked. Thus, prior to

²² NEW HAVEN CITY CHARTER, art. VII, § 31.

²³ Conn. Gen. Stat. § 12-71 (West 2013).

²⁴ For a more extensive discussion of Connecticut's motor vehicle taxes, including their history and especial unpopularity, see generally Noelle Lyle, *Driving Us Crazy: A History and Analysis of New Haven's Personal Property Taxes* (May 3, 2011) (unpublished manuscript) (on file with the Yale Law Legal Scholarship Repository), http://digitalcommons.law.yale.edu/student_legal_history_papers/15. See also Keith M. Phaneuf, *Lawmakers Put Malloy's Car Tax Repeal Plan in Neutral*, CONN. POST (Apr. 19, 2013), <http://www.ctmirror.org/story/19766/lawmakers-put-malloys-car-tax-repeal-hold> (discussing Governor Malloy's recent plan to repeal Connecticut's motor vehicle taxes).

²⁵ John Christoffersen, ASSOCIATED PRESS, *New Tech Nabs Cars of Tax Evaders*, CBS NEWS (Mar. 3, 2005), <http://www.cbsnews.com/stories/2005/03/03/national/main677745.shtml>.

budgetary year 2004-2005, New Haven regularly posted collection rates around or often significantly below 90%, compared to its collection rates for real and personal property taxes which have typically exceeded 94% and 98%, respectively.²⁶

However, beginning in 2004, the City decided to harness the power of the tow truck in an effort to increase collection rates on delinquent motor vehicle taxes.²⁷ Starting that September, the City's Finance Department started "a program of towing parked cars with . . . \$100 or more in delinquent property taxes."²⁸ The City's aim was two-fold: (1) to encourage residents, via the threat of towing, to pay any back-owed car taxes; and, (2) if that threat failed and the vehicle was actually towed, to compel payment before releasing the vehicle to its owner.²⁹ At that time though, the tax-and-tow program was largely under-developed,³⁰ and still used the police department's rotation to assign the required tows.³¹ Since then, however, the program has—to quote its architect,³² former City Controller Mark Pietrosimone—"evolved [in]to . . . a very

²⁶ See Lyle, *supra* note 24, at 25.

²⁷ Agreement by & Between the City of New Haven, Conn. & Crown Auto Center 1 (Oct. 30, 2009) (on file with the author) [hereinafter Crown Agreement No. 2].

²⁸ *Id.*

²⁹ The City had good reason to believe that towing would effectively incentivize residents to pay their delinquent bills. *Cf.* Alexia Brunet Marks & Ronald J. Allen, *To Tow or Not To Tow: The Deterrence Effect of a Municipal Ordinance*, 47 CRIM. L. BULL. 3, 1 (2011) (finding that an increased threat of towing led to a significant reduction in both the number of parking tickets and even automobile accidents).

³⁰ Compare Request for Proposals No. 28-12-567: Motor Vehicle Wheel Immobilizers or Wheel Stop from the New Haven, Conn. Bureau of Purchases 5 (Dec. 16, 2007) (on file with author) [hereinafter 2007 RFP] (noting that the City "has put together a specific crew of personnel to search out delinquents on an infrequent basis" and had identified 2,405 total scofflaws between July 2005 and June 2006), with 2013 RFQ, at 7 (explaining that the City now had the plate numbers of about 98,000 vehicles on which overdue parking tickets were owed).

³¹ See, e.g., Elizabeth Benton, *Tow Firms Petition Aldermen Over Rules*, NEW HAVEN REG. (Apr. 7, 2010), <http://www.nhregister.com/articles/2010/04/07/news/a3-netowpetition.txt>.

³² Ed Zack, the City's Chief Internal Auditor, explained that Mark Pietrosimone deserves the credit for developing the Crown program. Interview with Michael O'Neil, Controller, & Ed Zack, Chief Internal Auditor, Dep't of Fin., City of New Haven, Conn. in New Haven, Conn. (Apr. 10, 2013) [hereinafter Interview with Mr. O'Neil & Mr. Zack] (included in appendix).

efficient [system].”³³ In fact, it is so efficient that the City now regularly reports motor vehicle tax collection rates above 97%.³⁴

To better understand how this program has “evolved,” this Part will proceed in two sections. First, Section A will offer a brief history of the various tax-and-tow programs that preceded the contract with Crown: Bootfinder, Plate Hunter, and finally the City’s failed contract with VioAlert. Second, Section B will describe the City’s program with Crown: how Crown was initially selected, how the current program operates, and finally the City’s plans for working with Crown in the future.

A. New Haven’s Predecessor “Tax-and-Tow” Programs

1. Bootfinder

In September of 2004, New Haven became the first town in Connecticut—and only the second in the country—to employ the “Bootfinder” technology for tax collection purposes.³⁵ This technology, which was originally designed to help police find stolen cars, gave the City the power to locate vehicles on which back taxes were owed.³⁶ That September, and then again in February and March of 2005, the City deployed towers—via the police rotation—to locate scofflaw vehicles using the City-owned Bootfinder technology.³⁷ Upon finding a vehicle with tax delinquency of \$100 or more, the towing company would request that the City’s then-tax

³³ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

³⁴ Mayor’s Office, *Proposed Budget: Fiscal Year 2013-2014*, CITY OF NEW HAVEN, CONN. (Mar. 1, 2013) (“The City’s tax collection rate for FY2012 was 97.84%, a slight decrease from last year’s rate of 98.00%.”).

³⁵ Christoffersen, *supra* note 25. The first city in the country to use Bootfinder for tax collection purposes was Arlington, Virginia; Bridgeport, Connecticut would shortly become the third. *Id.*

³⁶ *Id.* Tow trucks equipped with the Bootfinder would scan license plate numbers and match them against a City-created database. *Id.*; see also NEWHAVEN, CONN., CODE OF ORDINANCES, tit. II, art. IV, § 55 (Municode 2012) (granting the City to power “to install cumulative delinquent tax register cards for each delinquent taxpayer for keeping records to show the amount of the delinquent tax . . . due . . .”).

³⁷ Christoffersen, *supra* note 25.

collector, C.J. Cuticello, execute a warrant for the outstanding bill; once Mr. Cuticello or his designee executed the warrant, the tower could then haul the vehicle to its lot.³⁸ The vehicle's owner would then need to pay her outstanding bill at the City's Tax Office before she could retrieve her car.³⁹

As Mr. Cuticello told the *Associated Press*, this new tax-and-tow program was an immediate and radical improvement over the City's previous collection methods.⁴⁰ Over the course of two deployments, the City had collected more than \$1 million in delinquent taxes.⁴¹ Thus satisfied with the Bootfinder trial, the City decided not only to continue but also to expand the program.⁴² In 2006, the City hired three state marshals to increase the number of officials who could execute warrants.⁴³ That year, Mr. Cuticello reported that the City collected over \$3 million in delinquent tax bills over another two rounds of two-truck deployments.⁴⁴ Then, in August of 2007, the City further expanded the scope of the program to include parking delinquents.⁴⁵ Now, in addition to towing the tax scofflaws, the towing companies were also empowered to locate and haul away vehicles on which \$200 or more in parking fines were owed.⁴⁶ Similarly to a tax delinquent, a parking scofflaw first had pay her fine at the City's

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Paul Bass, *The Boot Is Back*, NEW HAVEN INDEP. (Sept. 13, 2006), http://www.newhavenindependent.org/index.php/archives/extra_extra/the_boot_is_back [hereinafter Bass, *The Boot Is Back I*]; Paul Bass, *The Boot is Back*, NEW HAVEN INDEP. (Aug. 16, 2007), http://www.newhavenindependent.org/archives/2007/08/the_boot_is_bac_1.php [hereinafter Bass, *The Boot Is Back II*].

⁴³ Bass, *The Boot Is Back II*, *supra* note 41.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Collections Office—during business hours—before she could retrieve her vehicle at the tower’s lot.⁴⁷

2. Plate Hunter

During the following deployment, in February of 2008, the City made an important technological change to the tax-and-tow program. The City replaced the Bootfinder with a new technology—the Plate Hunter—which gave tow trucks the ability not only to scan license plate numbers but also to recognize vehicles’ state of registration.⁴⁸ This upgrade was aimed at catching scofflaws with out-of-state plates⁴⁹—namely, local university students,⁵⁰ who, if they garage their vehicle in New Haven for three or more months at a time, are subject to the same vehicle taxes as the City’s more permanent residents.⁵¹ The idea was that the improved capabilities of the Plate Hunter, which also allowed towers to scan twice as many vehicles at once, would lead to even higher collection rates.⁵²

Unfortunately though, this new, more aggressive phase of the program encountered some problems. Namely, the state marshals, responsible for executing the tax warrants, proved over-

⁴⁷ *Id.*; Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

⁴⁸ Paul Bass, *Meet the Plate Hunter*, NEW HAVEN INDEP. (Feb. 14, 2008), http://www.newhavenindependent.org/index.php/archives/entry/meet_the_plate_hunter.

⁴⁹ *Id.*

⁵⁰ *Id.*; Melissa Bailey, *Tax Fraud Squad Targets Out-of-State Cars*, NEW HAVEN INDEP., (Aug. 25, 2009), http://www.newhavenindependent.org/index.php/archives/entry/tax_fraud_squad_targets_out-of-state_cars.

⁵¹ Conn. Gen. Stat. § 12-71(f)(3) (West 2013) (“Any motor vehicle owned by a nonresident of this state . . . shall be set in the list of the town where it is located for the three months or more in such year nearest to such assessment day.”). The City contracts with another vendor, Municipal Tax Services, to photograph plates and establish the residency of potential out-of-state scofflaws. Interview with Mr. O’Neil & Mr. Zack, *supra* note 32. In the interest of full disclosure, the author has never paid his vehicle taxes. So far, the City’s online system indicates, somewhat surprisingly and almost definitely erroneously, that he does not owe any. Online Servs., *Are You at Risk of Having Your Car Booted or Towed?*, CITY OF NEW HAVEN, CONN., <http://cityofnewhaven.com/lookup/CarTaxesTickets.asp> (last visited May 3, 2013).

⁵² Bass, *Meet the Plate Hunter*, *supra* note 46.

zealous in their collection tactics.⁵³ One marshal in particular, Peter Criscuolo, earned the ire of the public when he forced entry into a vehicle on which, it turned out, no back taxes were owed.⁵⁴ Later, this same marshal generated even more bad publicity for the program when he improperly called off the tow of a politically-connected reverend's SUV, even though the reverend, Boise Kimber, owed back taxes and parking fines on the car.⁵⁵

In response to these incidents, the Mayor's Office temporarily suspended the Plate Hunter program.⁵⁶ In addition, the City ordered the state marshals to attend "sensitivity training" before the program could resume.⁵⁷ The Board of Alderman, however, was not satisfied with this solution and, in May of 2008, ultimately decided to remove the state marshals from the program altogether and replace them with city constables.⁵⁸

3. VioAlert

In a further response to the public growing discontent with the program, the City also decided to relax the towing procedure for parking scofflaws. In May of 2008, the City contracted with VioAlert, a Georgia-based company, to boot, but not immediately tow, vehicles found with

⁵³ See, e.g., Melissa Bailey, *Third Towing Scrape Detailed*, NEW HAVEN INDEP. (Apr. 24, 2008) http://www.newhavenindependent.org/index.php/archives/entry/third_towing_scrape_detailed (describing two incidents in which state marshal Peter Criscuolo tried to serve warrants for taxes that had already been paid).

⁵⁴ *Id.*

⁵⁵ Melissa Bailey, *Kimber Gets Off the (Towing) Hook*, NEW HAVEN INDEP. (Apr. 8, 2008), http://www.newhavenindependent.org/index.php/archives/entry/kimber_gets_off_the_towing_hook.

⁵⁶ Paul Bass, *Towing Program Halted*, NEW HAVEN INDEP. (Apr. 11, 2008), http://www.newhavenindependent.org/archives/2008/04/towing_program.php.

⁵⁷ Paul Bass, *Marshals Sent to School*, NEW HAVEN INDEP. (Apr. 30, 2008), http://www.newhavenindependent.org/archives/2008/04/post_359.php. The City also instituted a new grievance procedure via the Police Commission to handle towing-related complaints. *Id.*

⁵⁸ Andrew Mangino, *Marshals Lose Towing Gig; Foreclosures Next?*, NEW HAVEN INDEP. (May 30, 2008), http://www.newhavenindependent.org/index.php/archives/entry/marshals_lose_towing_gig_foreclosures_next.

delinquent parking tags.⁵⁹ Under this reformed system, VioAlert would locate and then affix wheel immobilizers to parking fine delinquent vehicles; the parking scofflaw then had 12 hours to pay her debt before VioAlert would sub-contract with one of the City's towers to haul away the car.⁶⁰ Writing in the *New Haven Independent*, Paul Bass hailed the use of booting as a "customer-friendly" alternative to towing.⁶¹

However, although the use of the boot helped reduce the number of tows—and thus reduce the number of City residents displeased with the program—VioAlert found that it could not continue operating in New Haven.⁶² When asked why his company had decided to leave, VioAlert's CEO Ken Faerber explained that "[b]oot fees around the country are three times"⁶³ the \$55 that the City then—and now—allows companies to collect for booting.⁶⁴ Thus, finding the booting insufficiently profitable in New Haven, VioAlert left town in October of 2009.⁶⁵

⁵⁹ Bass, *VioAlert Bags the Boot*, *supra* note 8. The City announced its intent "to contract with a vendor, who has expertise in this field, to perform all necessary tasks relevant to the use of wheel immobilizers in the [parking] scofflaw program" on December 16, 2007 via the Request for Proposals process. 2007 RFP, *supra* note 30, at 5. By the end of the bidding period on January 22, 2008, the City had received only two proposals – one from Columbus Auto Body, which was non-responsive, and one from VioAlert. Memorandum from Bureau of Purchases, New Haven, Conn. on Wheel Immobilizer/Wheelstop 28-12-567 (Jan. 22, 2008) (on file with author).

⁶⁰ Interview with Mr. Fumiatti, *supra* note 21.

⁶¹ Paul Bass, *Marshals Sent to School*, *supra* note 57.

⁶² Bass, *VioAlert Bags the Boot*, *supra* note 8.

⁶³ *Id.*

⁶⁴ NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, § 29-119(f) (Municode 2012) (The fee for application and removal of a vehicle impound boot shall be fifty-five dollars (\$55.00).).

⁶⁵ Bass, *VioAlert Bags the Boot*, *supra* note 8

B. Crown's Contract

1. The 2009 RFP

Both in anticipation of VioAlert's exit and in a further attempt to reform its tax-and-tow program, the City released a new Request for Proposals on September 13, 2009.⁶⁶ With the RFP, the City indicated that it was seeking a vendor that could "perform all the necessary tasks relevant to the use of wheel immobilizers in the scofflaw program."⁶⁷ The Bureau of Purchases explained that the City would "[i]deally" contract with a single vendor who would locate, boot, and, if necessary, tow all vehicles on which either overdue parking fines or back taxes were owed.⁶⁸ Furthermore, the vendor would also be expected to collect and hold delinquent vehicle taxes for the City.⁶⁹ Finally, the City expressed preference for a vendor that could collect these payments and return vehicles after normal business hours, 7 days a week.⁷⁰

The reaction from potential bidders was mixed. Although the RFP kept open the possibility of the City using multiple towers,⁷¹ many towers expressed concern about the City's decision not to continue using the rotation.⁷² In addition, an unidentified vendor took issue with the RFP's preference for a vendor that could process payments "24 hours a day, 7 days a week,

⁶⁶ 2009 RFP, *supra* note 9, at 6. Per the New Haven City Charter, art. VII, § 74(b) ("Whenever any work is necessary to be done . . . [a]ll such contracts shall be . . . made in compliance with public notice published at least ten days before the time fixed for opening said bids or proposals."), the Bureau of Purchases posted the RFP notice in both the Sunday edition of the *New Haven Register* and on their online procurement database. Interview with Mr. Fumiatti, *supra* note 21.

⁶⁷ 2009 RFP, *supra* note 9, at 6.

⁶⁸ *Id.*

⁶⁹ *Id.* at 7.

⁷⁰ *Id.*

⁷¹ *Id.* at 6 ("[V]endor will arrange for the vehicle to be removed (towed) from the street either through their own towing service or through a towing service that they have subcontracted this work through . . .").

⁷² Interview with Mr. O'Neil & Mr. Zack, *supra* note 46. Mr. O'Neil said there was a rumor that many of the towing companies had collectively decided not to bid in a failed attempt to compel the City to continue using the rotation. *Id.* Obviously, if such an agreement actually existed, Crown did not follow it. See also Towing Petition, *supra* note 13 (explaining the complaining towers' concerns with Crown's "monopoly" contract).

365 days a year.”⁷³ In response, Michael Fumiatti, the City’s Purchasing Agent, explained that, although it was the City’s “*ideal* desire” that the vendor could handle payments after hours, “should a respondent to this solicitation not be able to provide such service; it does not preclude them from submitting and having their proposal favorably submitted.”⁷⁴

Despite Mr. Fumiatti’s efforts to clarify that after-hours collection would not be mandatory, the RFP generated only three responses.⁷⁵ Moreover, two of these so-called proposals—one from New Jersey-based PayLock, and the other from local tower Columbus Auto Body—were non-responsive,⁷⁶ although Columbus’s owner, Vin DiLauro, would later claim that his proposal was intended to preserve the towing rotation for tax-related tows.⁷⁷

Crown’s proposal, on the other hand, was responsive.⁷⁸ In a one-page “Statement of Proposal,” Crown’s owner, Albert Hansen, outlined the basics of what would become the current tax-and-tow program: that Crown would locate, boot, and, when necessary, tow all scofflaw vehicles, as “identified by the City.”⁷⁹ In addition, Crown offered to “make available . . . a customer service payment center,” where it would serve as a bill collection agent at hours to be determined by the City.⁸⁰ On these general terms, the City decided to award the program to

⁷³ Memorandum from Michael V. Fumiatti to Potential Bidders (Sept. 25, 2009) (on file with author).

⁷⁴ *Id.* Mr. Fumiatti’s memorandum also clarified that the booting and towing fees would be limited by New Haven’s “tow truck ordinance.” *Id.*; see NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, §§ 29-119 (Municode 2012) (setting towing fees at \$77 per vehicle and booting fees at \$55, including installation and removal).

⁷⁵ RFP/RFQ Respondents for Request for Proposals No. 29-9-675: Wheel Immobilizers or Wheel Stops from the New Haven, Conn. Bureau of Purchases (Sept. 29, 2009) (on file with author).

⁷⁶ Interview with Mr. Fumiatti, *supra* note 21; see also Response to RFP No. 29-9-675 from Columbus Auto Bodyworks, Inc., New Haven, Conn. (Sept. 28, 2009) (on file with author) [hereinafter Columbus’s Response to RFP No. 29-9-675] (showing that Vin DiLauro, Columbus’s owner, had not provided any substantive proposal beyond filling out his basic business information).

⁷⁷ Bass, *VioAlert Bags the Boot*, *supra* note 8.

⁷⁸ Response to RFP No. 29-9-675 from Crown Auto Center, New Haven, Conn. (Sept. 28, 2009) (on file with author) [hereinafter Crown’s Response to RFP No. 29-9-675].

⁷⁹ *Id.* at 1.

⁸⁰ *Id.*

Crown,⁸¹ and, on October 30, 2009, the two parties entered into a formal agreement.⁸² According to that contract's terms, the City "reserve[d] the right, at its sole option and discretion, to renew [the] Agreement for three additional one year periods, at similar terms and conditions."⁸³ The City has now exhausted these options, and the final contract period is set to expire on June 30, 2013.⁸⁴

2. The Current Tax-and-Tow Program

Although Crown's contract has changed in some substantive ways over the four contract periods—spanning from October 30, 2009 to today⁸⁵—the basics of the City-Crown program remain the same. Using an electronic database maintained by the Tax Collector and the Collections Receivable unit, Crown's tow trucks drive through New Haven's streets, scanning license plates in an effort to locate motor vehicle tax and parking tag delinquents.⁸⁶ To help ensure that Crown only boots or tows vehicles with ongoing delinquencies, Crown receives an updated version of this database at the start of every business day.⁸⁷ As a further safeguard, if the Tax Collector's Office is still open when Crown locates a potentially delinquent vehicle, the tow truck driver must call to confirm that the bill remains unpaid before applying the boot or deciding to tow.⁸⁸

Depending on the nature of the bill, Crown must then follow one of three procedures:

⁸¹ Interview with Mr. Fumiatti, *supra* note 21.

⁸² Crown Agreement No. 1, *supra* note 10.

⁸³ *Id.* at 3.

⁸⁴ Agreement by & Between the City of New Haven, Conn. & Crown Auto Center (July 1, 2012) (on file with the author) [hereinafter Crown Agreement No. 4].

⁸⁵ For a further discussion of these differences and how Crown has been able to extract concessions from the City in subsequent bargaining rounds, see *infra* text accompanying notes 181-88.

⁸⁶ Crown Agreement No. 1, *supra* note 10, app. A.

⁸⁷ Interview with Mr. O'Neil & Mr. Zack, *supra* note 32.

⁸⁸ *Id.*

- 1) If only overdue parking fines (between \$200 and \$400) are owed, Crown must boot the vehicle and attach a windshield notice, which explains how the owner can pay his delinquency.⁸⁹ If the owner makes payment within the allotted time—12 hours—Crown is responsible for retrieving the boot.⁹⁰ If, however, the owner fails to make payment, Crown may tow the vehicle to its lot at 388 Crown St.⁹¹ In the event that Crown locates a vehicle on which more than \$400 in overdue parking is owed, Crown may automatically tow without first booting.⁹²
- 2) If only delinquent taxes are owed (of \$100 or more), Crown generally must boot the vehicle, wait the allotted 12 hours, and then only tow if necessary, according to the procedures outlined above.⁹³ However, during two periods each year—typically between September 1 and November 30 and then again between March 1 and May 30—Crown instead automatically tows without booting.⁹⁴
- 3) Finally, if both back taxes (of \$100 or more) and back parking fines (of \$200 or more) are owed, the procedure for delinquent taxes takes precedence such that Crown can tow automatically without booting during the designated time periods.⁹⁵

To retrieve a vehicle that has been towed, the owner must first pay the delinquency, including the necessary booting and/or towing fees. During the City's operating hours—currently, Monday to Friday, from 9:00 a.m. to 5:00 p.m.—the owner must make these payments

⁸⁹ Crown Agreement No. 4, *supra* note 84, app. C.

⁹⁰ *Id.*

⁹¹ *Id.*; see also *infra* Figure 1 (showing Crown's location).

⁹² Crown Agreement No. 4, *supra* note 84, app. C. Note that this \$400 threshold is lower than the \$500 threshold in effect during the previous three contract periods. Compare *id.* with Agreement by & Between the City of New Haven, Conn. & Crown Auto Center, app C. (July 1, 2011) (on file with the author) [hereinafter Crown Agreement No. 3]; see also *infra* text accompanying note 188 (discussing this change as particularly advantageous to Crown).

⁹³ Crown Agreement No. 4, *supra* note 84, app. A.

⁹⁴ *Id.*

⁹⁵ *Id.* at app. C.

directly to the City, at either the Collections Receivable Unit or the Tax Office, which are both located at 165 Church St.⁹⁶ These payments may be made in cash or via MasterCard or Visa.⁹⁷ Upon receipt of payment, the City presents the vehicle owner with a release form, which she can then use to retrieve the vehicle from Crown's lot.⁹⁸ Later, after a monthly accounting, the City disburses to Crown any booting and towing fees it has collected.⁹⁹

If, however, the owner wants to pay after hours, she must pay the amount of her outstanding bill, plus the booting and towing fees, directly to Crown.¹⁰⁰ Previously, Crown could accept only cash, but has recently been allowed to also accept MasterCard and Visa, as long as the presented credit card bears the name of the vehicle owner.¹⁰¹ Upon receipt of payment, Crown then releases the vehicle to its owner and must disburse any collected taxes or parking fines to the City at the start of the next business day.¹⁰²

3. The 2013 RFQ: A Plan for the Future

With its agreement with Crown set on expire on June 30, 2013, the City recently announced its intention to continue the tax-and-tow program.¹⁰³ On January 21, 2013, the City's Bureau of Purchases released a Request for Qualifications for a program remarkably similar to its current arrangement with Crown.¹⁰⁴ In response, the City received two bids—one from Crown and one from another local tower, Tony's Long Wharf—but, citing both Crown's

⁹⁶ Dep't of Transp., Traffic & Parking, *Got Towed?*, CITY OF NEW HAVEN, CONN. (last visited Apr. 16, 2013), <http://www.cityofnewhaven.com/TrafficParking/GotTowed.asp>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Crown Agreement No. 4, *supra* note 84, at 4.

¹⁰⁰ *Id.*

¹⁰¹ Interview with Mr. O'Neil & Mr. Zack, *supra* note 32.

¹⁰² Crown Agreement No. 1, *supra* note 10, app. A.

¹⁰³ 2013 RFQ, *supra* note 20.

¹⁰⁴ Interview with Mr. O'Neil & Mr. Zack, *supra* note 32.

reputation for good service and its more central location as convenient for vehicle owners, the City ultimately decided to re-award the contract to Crown.¹⁰⁵ As of this writing, the City is actively negotiating the new agreement.¹⁰⁶

II. A Preliminary Assessment: Early Benefits, But A Major Weakness Remains

As indicated by its decision to re-award the contract, the City is very satisfied with Crown's performance and with the current tax-and-tow program, in general.¹⁰⁷ Indeed, since the inception of the program, collection rates for both delinquent motor vehicle taxes and overdue parking fines have dramatically increased. As noted above, the City now regularly posts collection rates for vehicle taxes around or above 97%.¹⁰⁸ Moreover, the City has also repeatedly stressed that the program requires no direct remuneration to Crown (though the City does pay to maintain the scofflaw database and provide Crown with the requisite plate-scanning technology).¹⁰⁹ It thus appears, as former Controller Mark Pietrosimone has said, that the City has a "very efficient" program with Crown.¹¹⁰

However, as many commentators have noted, efficiency is not the only criterion we should use to evaluate government contracts.¹¹¹ Instead, as the late political scientist James Q.

¹⁰⁵ *Id.* Mr. O'Neil and Mr. Zack stressed, however, that no single factor was determinative in their decision to re-award Crown the contract. *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Interview with Mr. O'Neil & Mr. Zack, *supra* note 32; *see also* Crown Agreement No. 4, *supra* note 84, at 2 ("[T]he City is *satisfied* with the Contractor's performance of its duties under the Original Agreement and subsequent agreements entered into with the Contractor for fiscal years ending June 30, 2011 and June 30, 2012, and intends to renew the arrangements for fiscal year ending June 30, 2013.) (emphasis added).

¹⁰⁸ *See supra* note 33.

¹⁰⁹ *E.g.*, Crown Agreement No. 3, *supra* note 92, at 4; *see also* 2013 RFQ, *supra* note 20, at 8 (explaining that the City provides the plate-scanning technology).

¹¹⁰ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

¹¹¹ *See, e.g.*, Janna J. Hansen, Note, *Limits of Competition: Accountability in Government Contracting*, 112 YALE L.J.2465, 2469 (2003) ("The difficulty of defining goals for government contracting is

Wilson has explained, “government has many [other] valued outputs, including a reputation for integrity [and] the confidence of the people”¹¹² Although it is exceedingly difficult to “measure” these outputs,¹¹³ this Part will use these criteria to provide a preliminary assessment of the Crown contract as compared to its predecessor programs.

To that end, this Part will explain how the decision to consolidate three previously separate services—booting, towing, and after-hours delinquent bill collection—into a single-provider contract award has improved both the program’s reputation and its actual fairness to City residents in two significant ways. First, Section A will explain how consolidation allowed the City to continue and expand the use of booting as a “customer-friendly” alternative to towing. Second, Section B will explain how consolidation to a single provider also allowed the City to offer 24/7 payment collection and vehicle retrieval as a convenience for vehicle owners. Despite these improvements, however, the current tax-and-tow program still suffers from a substantial weakness. As Section C will explain, the current program does not provide adequate safeguards against Crown’s employees’ misappropriating funds owed the City, and this weakness threatens to undermine the integrity of the entire tax-and-tow program.

exacerbated by the complexity of any given government tasks beyond simple efficacy of service or product delivery.”).

¹¹² JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 317 (1989).

¹¹³ *Id.* at 318.

A. A First Improvement: The Continued and Expanded Use of Booting as an Alternative to Towing

Booting, even for the relatively short period of 12 hours,¹¹⁴ provides a “customer-friendly” alternative to towing.¹¹⁵ While sharing towing’s key strength for the purposes of this program—that it is sufficiently inconvenient to compel payment of delinquent bills—booting can reduce the aggregate hardship a vehicle owner must experience to regain use of her car. Simply put, if the owner pays within the allotted time, she will pay a smaller financial penalty and waste less time retrieving the vehicle than if it had been towed.¹¹⁶

At least in New Haven, however, booting does not appear to be viable as a stand-alone contract. Previously, VioAlert had found that providing booting services at the City-set rate was insufficiently profitable.¹¹⁷ Moreover, Crown appears to have also believed that providing booting alone would not have been profitable, as it did not even bid on the 2008 RFP that generated the City’s contract with VioAlert.¹¹⁸ It thus seems highly unlikely the City could have found another vendor, or convinced Crown, to provide only the booting part of the program at the ordinance-set rates.¹¹⁹

But the contract award for booting, when coupled with the award for towing, was lucrative enough to attract not only Crown but also other vendors to bid for the program. In other words, although booting alone might still be a losing proposition, towing must at least be

¹¹⁴ See, e.g., *Booting, Towing, and Impoundment*, PHILA. PARKING AUTH. (last visited Apr. 30, 2013), <http://philapark.org/faqs/booting-towing-and-impoundment> (explaining that the City of Philadelphia leaves a vehicle booted for at least 72 hours before towing).

¹¹⁵ See *supra* text accompanying note 61.

¹¹⁶ Of course, this scenario assumes that the owner pays before the vehicle is towed. If the vehicle is both booted and towed, Crown charges for both services. Crown Agreement No. 1, *supra* note 10, app. A.

¹¹⁷ See *supra* text accompanying notes 62-65.

¹¹⁸ Memorandum from the Bureau of Purchases, New Haven, Conn., regarding Responses to RFP No. 28-12-567: Wheel Immobilizer/Wheelstop (Jan. 22, 2008) (on file with author).

¹¹⁹ NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, §§ 29-119 (Municode 2012).

profitable enough to subsidize any losses Crown incurs in providing the City with sufficient boots. (In fact, Crown's towing award appears to be so profitable that it originally offered to perform the perform booting services at a rate of \$42 per vehicle, \$13 less than the ordinance-limited rate that VioAlert did not find sufficiently profitable.¹²⁰)

Thus, the consolidation of booting and towing into a single contract award has made the continued use of booting possible. Indeed, in the current program, Crown uses booting not only for parking-related delinquencies, as VioAlert had before, but also for some tax-related delinquencies (i.e., when not towing automatically during the two City-authorized deployments).¹²¹ This increased use of the boot, as an alternative to immediate towing, has very likely had and will continue to have a positive effect on the program's reputation among New Haven residents.

B. A Second Improvement: Making 24/7 Payment Collection and Vehicle Retrieval Possible

In a similar vein, consolidation of the entire contract into a single award appears to have made possible another "customer-friendly" improvement to the program. Under the program's previous iterations, vehicle owners were not able to pay their delinquent bills after hours and thus could not retrieve their vehicles when the City's offices were closed, unless they had previously paid and obtained a release form during business hours.¹²² Indeed, in the worst case scenario, a resident whose vehicle was towed on Friday evening would not be able make payment, let alone

¹²⁰ Crown's Response to RFP No. 29-9-675, *supra* note 78, at 1.

¹²¹ Crown Agreement No. 1, *supra* note 10, app. A.

¹²² Interview with Mr. O'Neil & Mr. Zack, *supra* note 32.

retrieve her car, until the following Monday morning. Obviously, this posed a major inconvenience to scofflaws unfortunate enough to be towed after hours.¹²³

Solving this problem thus became a focus of the City's 2009 RFP.¹²⁴ As recounted above, the RFP expressed preference for vendors that could collect payments "during all non City business hours, so that the City can operate this program seven days per week, all day."¹²⁵ But, as the response to the RFP indicates, maintaining an after-hours collection center appears to be an expensive proposition for towing companies.¹²⁶ Indeed, one vendor told Mr. Fumiatti, the City's purchasing agent, that it could not submit a bid precisely because the RFP "call[ed] for" this feature.¹²⁷ It appears, then, that even the award of *all* towing and booting fees for the entire program would have been insufficient to justify this vendor expending the resources necessary to main an after-hours collection center. Moreover, even Crown seemed reticent to commit to after-hours collection. In its response to the RFP, Crown offered to "make available . . . a customer service payment center . . . [at] hours [that] will be determined by the City of New Haven," but did not specifically list its ability to make that center "available" 24 hours a day, 7 days a week, 365 days a year.¹²⁸

Eventually, of course, Crown did commit to an always-available collection center.¹²⁹ However, the City's experience with the 2009 RFP strongly suggests that maintaining the payment center was a point of difficulty for potential bidders and possibly even for Crown. Thus, it is reasonable to infer that the award of *all* towing and booting fees for the entire program was

¹²³ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

¹²⁴ Interview with Mr. Fumiatti, *supra* note 21.

¹²⁵ 2009 RFP, *supra* note 9, at 6; *supra* text accompany notes 70-74.

¹²⁶ *Id.*

¹²⁷ Memorandum from Michael V. Fumiatti to Potential Bidders (Sept. 25, 2009) (on file with author); *see supra* text accompanying notes 72-74 (explaining Mr. Fumiatti's response).

¹²⁸ Crown's Response to RFP No. 29-9-675, *supra* note 78.

¹²⁹ Crown Agreement No. 1, *supra* note 10, at 4.

necessary to attract a private vendor that would be willing to keep the center open according to the City's needs. In other words, it is highly unlikely that the City could have found multiple vendors willing to maintain after-hours collection centers 7 days a week, with each vendor receiving only a fraction of the contract award.

Consolidation has thus allowed the City to make a major improvement to its tax-and-tow program. Rightfully hailed by the program's architect, Mr. Pietrosimone, 24/7 vehicle retrieval is "intended for the convenience of the taxpayer" and thus likely to benefit the program's reputation and residents' confidence (even if only marginally) in the ability of city government to provide an adequate and fairly-administered service.¹³⁰

C. A Major Weakness: Inadequate Safeguards Against Employees' Misappropriating City Funds

Despite the improvements described above, the City's current arrangement with Crown suffers from at least one substantial weakness—the absence of adequate safeguards to protect against the company's drivers' misappropriating City funds. Recently, after an unfortunate incident, this weakness received considerable attention in the local press.¹³¹ On the evening of October 22, 2013, Robyn Handy and her daughter, Rojonna, went to Crown's lot to retrieve their vehicle, which had been towed earlier that day for a supposedly outstanding vehicle tax bill.¹³² However, according to the elder Ms. Handy, she had already paid the bill one month earlier, when one of Crown's tow truck drivers had told her he could accept payment in lieu of towing

¹³⁰ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

¹³¹ *E.g.*, Staff, *Tow Co. Clerk Assaulted*, NEW HAVEN INDEP. (Oct. 23, 2012), http://www.newhavenindependent.org/index.php/archives/entry/tow_company_clerk_assaulted.

¹³² Staff, *New Haven Mother, Daughter Charged with Assaulting Pregnant Woman*, NEW HAVEN REG. (Oct. 23, 2012), <http://www.nhregister.com/articles/2012/10/23/blotter/doc5086cefd08d53711733914.txt>.

her car.¹³³ Ms. Handy claimed that she had paid that driver the full amount of the delinquency—\$159—and, in return, the driver had given her a handwritten receipt on a copy of his business card.¹³⁴ This time though, when another of Crown’s drivers came to tow her car for the same bill, she presented him with the receipt, but this driver, confirming that the delinquency still existed according to city records, decided to tow the car anyway and refused to return the receipt to Ms. Handy.¹³⁵

Now, Ms. Handy and her daughter had arrived at Crown’s lot both to protest the tow and with the hope of reclaiming their vehicle.¹³⁶ There, they encountered Crown’s clerk, Ruth Zalabarria, who told them that no record of their supposed payment existed.¹³⁷ Ms. Zalabarria went on to explain that Crown’s drivers were not authorized to accept bill payments and any such business card receipt, if it ever existed, had since been lost.¹³⁸ She then asked that, if they were not going to pay the bill and requisite towing fee now, Ms. Handy and her daughter leave the lot and return the following morning to discuss the issue with Crown’s owner, Albert Hansen.¹³⁹

Unfortunately, the situation then took a turn for the worse. Unsatisfied with Ms. Zalabarria’s response and refusal to release the vehicle, Ms. Handy’s daughter entered the car and attempted to drive out of the lot, but Ms. Zalabarria refused to open the gate.¹⁴⁰ Now, even further enraged, Ms. Handy’s daughter exited the vehicle and, in an ensuing scuffle, pushed Ms.

¹³³ *Id.*

¹³⁴ Thomas MacMillan, *Protestors Call for Crown Towing Probe*, NEW HAVEN INDEP. (Oct. 25. 2012), http://www.newhavenindependent.org/index.php/archives/entry/arrested_women_cry_fraud.

¹³⁵ Staff, *New Haven Mother, Daughter Charged with Assaulting Pregnant Woman*, *supra* note 132.

¹³⁶ Staff, *Tow Co. Clerk Assaulted*, *supra* note 131.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Staff, *New Haven Mother, Daughter Charged with Assaulting Pregnant Woman*, *supra* note 132.

Zalabarria, then eight-months pregnant, from behind.¹⁴¹ Luckily, another Crown employee was able to break up the fight, but—after video surveillance footage confirmed Ms. Zalabarria’s account of the incident¹⁴²—both Ms. Handy and her daughter were arrested for assault and trespassing, and the at-issue vehicle was taken into police custody.¹⁴³

Only two days later, however, Ms. Handy and her daughter returned to Crown’s lot to protest both their arrests and their alleged mistreatment by the company.¹⁴⁴ This time, however, they did not come alone but instead were joined by Reverend Donald Morris, the activist pastor of Life Kingdom Ministries, and some two dozen other supporters.¹⁴⁵ As Rev. Morris explained, they had organized to protest the “illegal practice” of one of Crown’s drivers: “pocketing money given for unpaid taxes.”¹⁴⁶ Speaking to reporters, Rev. Morris further “called on the City to investigate Crown’s towing practices and to cease its contract with the company.”¹⁴⁷

In the resulting investigation, the City’s police department found that Crown did indeed have Ms. Handy’s “receipt.”¹⁴⁸ In fact, the police found the business card, which indicated the amount of back taxes that Ms. Handy had originally owed, torn to pieces in a company wastebasket.¹⁴⁹ Although Crown first attempted to explain away the business card as a “courteous” reminder to Ms. Handy of what she owed,¹⁵⁰ one of Crown’s drivers, Jonathan

¹⁴¹ Thomas MacMillan, *Let’s Go to the Videotape!*, NEW HAVEN INDEP. (Oct. 26, 2012), http://www.newhavenindependent.org/index.php/archives/entry/crown_towing_responds.

¹⁴² *Id.*

¹⁴³ Staff, *Tow Co. Clerk Assaulted*, *supra* note 131.

¹⁴⁴ MacMillan, *Protestors Call for Crown Towing Probe*, *supra* note 134.

¹⁴⁵ Mary E. O’Leary, *New Haven Protestors Back Mom, Daughter in Alleged Altercation at Crown Auto Center*, NEW HAVEN REG. (Oct. 25, 2012), http://www.nhregister.com/articles/2012/10/25/news/new_haven/doc5088bc1b3200f493213350.prt.

¹⁴⁶ MacMillan, *Protestors Call for Crown Towing Probe*, *supra* note 134.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Jeff Valin, *Crown Auto Owner Speaks About Dispute*, WTNH (Oct. 26, 2012), http://www.wtnh.com/dpp/news/new_haven_cty/crown-auto-owner-speaks-about-dispute. Crown’s

Esposito, eventually confessed to scamming city bill-payers.¹⁵¹ As Mr. Esposito explained, he would accept “payment” in cash in exchange for not towing the vehicle but then pocket that money, instead of returning it to Crown or the City—such that the delinquency would remain unpaid in city records.¹⁵² The police also found that, in addition to Ms. Handy, he had, on that very same day alone, run the same scam on two other hapless vehicle owners, who, like Ms. Handy, had their vehicles subsequently towed and had to pay their back taxes a second time.¹⁵³

It thus appears that the other eight towing companies, who originally petitioned the City to block the program, may have been right in at least one aspect of their complaint: the City’s current arrangement with Crown does not adequately safeguard against the “misappropriation” of taxpayer money or funds owed the City.¹⁵⁴ Under the current system, it is too easy for Crown’s drivers to take advantage of unfortunate vehicle owners, who both are desperate to prevent their cars from being towed and likely unaware that these drivers should not be accepting payment. This is not to say, of course, that Crown’s employees will typically or even likely engage in such a scam, but relying on their good intentions is, in the words of the other towers’ petition, “manifestly unwise.”¹⁵⁵ These types of incidents may result not only in the loss of

manager, Angel Rivera, suggested that Ms. Handy had likely altered the card to indicate payment. He continued:

People are always offering to pay on the street, [but] we tell them go to city hall. We hand out business cards to thousands of people and tell them this is what you owe, to be courteous, so we don’t get into a problem on the streets. They go on ahead and modify the card if they want, but we know that we hand out receipts here from the city, or the city hands them out also.

Id. Hansen ultimately admitted to tearing up the business card because he knew it might be fraudulent. Thomas MacMillan, *Tow Truck Driver Arrested, Admits Scamming*, NEW HAVEN INDEP. (Dec. 20, 2012), http://www.newhavenindependent.org/index.php/archives/entry/tow_truck_driver_admits_stealing_money.

¹⁵¹ MacMillan, *Tow Truck Driver Arrested, Admits Scamming*, *supra* note 150.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Towing Petition, *supra* note 13.

¹⁵⁵ *Id.*

taxpayer and city funds but also threaten to damage the program’s reputation among all New Haven residents.

III. Inadequate Competition in the Tax-and-Tow Provider Market: Lacking a Credible Threat of Contract Turnover

Under a traditional conception of government contracting, the City of New Haven could rely on the competitive forces of the provider market—that is, among towing companies able to bid on the tax-and-tow program—to help cure the program’s employee accountability problems.¹⁵⁶ As Professor Amanda M. Girth and her colleagues explain in their 2012 survey of local government contracting decisions, “market theory tells us that competition fosters . . . quality control because there are punitive consequences to inefficient behavior—namely, the purchaser’s selection of another supplier to provide the good or service.”¹⁵⁷ Following this logic, the City would benefit from competitive pressures in the provider market for the tax-and-tow award. That is, Crown, fearing the possibility of losing its award at subsequent bargaining rounds, would likely develop its own internal mechanisms to ensure that employee misbehavior did not cause the City to choose another provider. Crown could, for instance, develop a more rigorous system for hiring and retaining employees, or deploy dashboard monitoring systems to record employee conduct.

¹⁵⁶ See, e.g., Amanda M. Girth, Amir Hefetz, Jocelyn M. Johnston & Mildred E. Warner, *Outsourcing Public Service Delivery: Management Responses in Noncompetitive Markets*, 72 PUB. ADMIN. REV. 887, 887 (2012) [hereinafter Girth et al.] (describing “competition [as] a fundamental premise underlying the practice of government contracting [because it] offers government agencies the potential for improved quality . . . generated by market forces”); see also Amir Hefetz & Mildred E. Warner, *Contracting or Public Delivery?: The Importance of Service, Market, and Management Characteristics*, 22 J. PUB. ADMIN. RES. & THEORY 289, 303 (finding that “competition is the most important characteristic determining sourcing choice”).

¹⁵⁷ Girth et al., *supra* note 156, at 88.

Unfortunately though, as Girth et al. find in many other local government service provider markets,¹⁵⁸ there does not appear to be sufficient competition in the tax-and-tow provider market to generate a credible threat that Crown could lose the contract. Absent this threat, Crown is unlikely to independently develop employee accountability mechanisms strong enough to protect the program's reputation.¹⁵⁹ Indeed, the following sections will show that Crown faces woefully little competition from other potential providers. Section A will show that, because of the lack of price competition for the service, vendors are largely competing on location, where Crown enjoys a substantial—and, at least for now, insurmountable—advantage. Next, Section B will describe how, as the award's first recipient, Crown enjoys a further advantage over potential market entrants. Because of these advantages, Crown does not face a credible threat of contract turnover and thus enjoys significant bargaining power in its relationship with the City. In fact, as Section C will show, Crown has already exercised this power in earlier bargaining rounds and indeed, in its current round of negotiations, is looking to further exercise this power on the very issue of employee accountability.

A. Limited Competition in the Provider Market: Crown's Advantage in Location

Although there are eight towing companies currently active on the City's rotation,¹⁶⁰ there have been surprisingly few bids for the tax-and-tow award. As recounted above, for both the 2009 RFP and the 2013 RFQ, only two New Haven-based outfits, including Crown,

¹⁵⁸ *Id.* at 887 (“[T]hin’ provider markets . . . for government contracts are a common problem.”).

¹⁵⁹ While Crown's ownership does have an incentive—in the form of the \$77 towing fee—to ensure that all scofflaw vehicles are towed, the total amount of towing fees lost through scams like Mr. Esposito's is unlikely to be enough to incentivize Crown to develop adequate employee accountability mechanisms. After all, Crown may not even lose the towing fee on such a scam because the vehicle is likely to be towed when a second driver locates it.

¹⁶⁰ Interview with Officer Lombardi, *supra* note 6. There would be ten acting towing companies, but Anthony's High-Tech and Lombard Motors have both been suspended pending review. *Id.*

submitted proposals to the City.¹⁶¹ Moreover, in 2009, the other New Haven-based bid—from Columbus Auto—was non-responsive.¹⁶²

At first, this lack of vendor interest may seem puzzling,¹⁶³ but a more careful consideration of what the City was looking for—at both procurement rounds—sheds light on the likely reason more towing companies did not bid. As the City’s purchasing agent, Michael Fumiatti, explained in an interview, because the prices for booting and towing are set by city ordinance, vendors submitting bids for the tax-and-tow program are largely competing on intangibles, which can make their proposals difficult to assess.¹⁶⁴ However, bidders are competing on at least one tangible characteristic: as the City Controller Michael O’Neil and Chief Internal Auditor Ed Zack explained in a subsequent interview, potential program vendors are competing on location.¹⁶⁵

As it turns out, location of the retrieval lot is a key component of the program’s convenience for taxpayers.¹⁶⁶ City residents whose cars have been towed often do not have another vehicle to use and therefore must walk, bike, or take public transit to go reclaim their vehicle. As Mr. Zack further explained, Crown’s lot—at 388 Crown St.—is centrally located in

¹⁶¹ See *supra* text accompanying notes 75-80.

¹⁶² Columbus’s Response to RFP No. 29-9-675, *supra* note 76; see also Girth et al., *supra* note 156, at 888 (“As a rule of thumb, a set of three or more bidders is indicative of a minimum level of competition.”).

¹⁶³ In fact, researchers have found that towing is one of the few municipal services to have more than three providers on average across local markets. Mildred E. Warner & Amir Hefetz, *Insourcing and Outsourcing*, 78 J. AM. PLAN. ASS’N 313, 319. Importantly, however, these same researchers have found that tax collection consistently has one of the lowest levels of competition in provider markets. Hefetz & Warner, *Contracting or Public Delivery?: The Importance of Service, Market, and Management Characteristics*, *supra* note 156, at 299.

¹⁶⁴ Interview with Mr. Fumiatti, *supra* note 21.

¹⁶⁵ Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

¹⁶⁶ MacMillan, *Towing Companies: Prize Contract Breaks Law*, *supra* note 14.

the City and thus, compared to the other towers, provides the most convenient place for vehicle retrieval for the largest number of City residents.¹⁶⁷ Figure 1 best illustrates this point:



Fig. 1: New Haven's Towing Companies. Each yellow star indicates one of the towing companies on the police department's rotation (Note though that the two towers in Quinnipiac Meadows—Anthony's High-Tech and Lombard Motors—are located next door to each other, so it is difficult to see both stars on the map.). The blue flag indicates Crown's highly advantageous location downtown.

Indeed, Mr. Zack confirmed that, although no single factor was determinative, Crown's location was central to the City's decision to re-award the contract via the recent 2013 RFQ.¹⁶⁸

Moreover, Crown is not likely to lose this substantial advantage anytime soon. Even if another interested vendor wanted to invest in a towing lot with a comparable location to Crown, it is highly unlikely that the vendor could obtain approval from the City's Board of Zoning Appeals. As Officer Francis Lombardi, the head of the police department's municipal towing

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

unit, explained in another interview, the Board of Zoning Appeals is not currently inclined to grant the necessary variances to towing companies that want to operate downtown.¹⁶⁹ In fact, even Crown has experienced related difficulties with the Board. In May 2007, Crown applied for a Use Variance to permit the warehousing of vehicles at its 10 Olive St. location;¹⁷⁰ the Board, however, denied the application.¹⁷¹

Thus, with its substantial advantage in location unlikely to disappear, Crown currently experiences little, if any, competitive pressure from the provider market.

B. Limited Competition in the Provider Market: Crown's First-Recipient Advantage

Moreover, as the award's first recipient, Crown enjoys another substantial advantage over other potential providers.¹⁷² As many researchers have noted, local governments have a tendency to "settle" on service providers after a single round of procurement and then select them again in subsequent rounds.¹⁷³ Local governments "settle" for two reasons. First, institutional resource constraints may prevent city purchasing departments from extensive evaluation of alternative providers and thus incentivize against taking risks on relatively unknown vendors.¹⁷⁴ Second,

¹⁶⁹ Interview with Officer Lombardi, *supra* note 6. Officer Lombardi's familiarity with the Board of Zoning Appeals stems from his review of towers' applications to join the police department's rotation. *Id.* As part of the application process, a towing company must prove that it has a minimum of 100 spots to store vehicles within the City limits. NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, § 29-118(b)(6) (Municode 2012). To prove this, the tower must submit to an inspection from a zoning enforcement officer. § 29-110 ("After receipt of an application, the chief of police shall . . . transmit a copy of the application to the zoning enforcement officer for his review.").

¹⁷⁰ *Agenda: Public Hearing to Be Held by New Haven Bd. of Zoning Appeals* (Apr. 10, 2007), <http://www.cityofnewhaven.com/uploads/BZA%20Agenda%204-10-07.pdf>.

¹⁷¹ *City Notice: Bd. of Zoning Appeals Decisions* (May 14, 2007), <http://www.cityofnewhaven.com/uploads/BZA%20Decisions%205-8-07.pdf>.

¹⁷² This includes the 2013 RFQ round.

¹⁷³ Ernita M. Joaquin & Thomas J. Greitens, *Contract Management Capacity Breakdown? An Analysis of Local Governments*, 72 PUB. ADMIN. REV. 807, 813 (2012).

¹⁷⁴ *See id.* (suggesting that "local governments [may] have lost the capacity and temerity to seek better service providers . . .").

depending on the nature of the provided service, switching providers may require substantial investments that a city is not willing to make.

Both of these reasons appear to be present here. As to the first, the New Haven Bureau of Purchases appears to face resource constraints in evaluating the tax-and-tow program proposals. As the City’s purchasing agent, Michael Fumiatti, explained in an interview, these types of proposals—as opposed to bids—are very difficult to assess because they cannot be evaluated on the objective criterion of price.¹⁷⁵ It thus seems likely that the City—to avoid the significant costs of evaluation—would be more inclined to go with the “safe” choice of an incumbent provider. Even if that provider has had performance issues, at least the City already has information about its performance and can thus prepare for potential problems.¹⁷⁶ Indeed, the City appears to practice this relatively “safe” approach to procurement. As Mr. Fumiatti explained, out of all the City’s vendor contracts, it only declines one to two options to renew each year.¹⁷⁷

Second, as to the program’s start-up costs, the City expended significant resources in training Crown staff to interface with the Tax Office’s delinquency database and to accept delinquency payments.¹⁷⁸ Although this training is ongoing,¹⁷⁹ it consisted largely of a significant initial investment by relevant city officials.¹⁸⁰ If, at a later procurement round, the City wanted to select another vendor, it would have to consider the costs of switching to an untrained provider. As these costs appear to be substantial, the City seems sufficiently disincentivized against choosing a new vendor for the tax-and-tow program—at least as long as Crown’s training in the relevant technology remains valuable.

¹⁷⁵ Interview with Mr. Fumiatti, *supra* note 21; *see also supra* text accompanying note 164.

¹⁷⁶ *See* Joaquin & Greitens, *supra* note 173, at 813 (“Monitoring and evaluation might be standing in for agenda-setting capacity (in the sense of a ‘continuing’ feasibility study).”).

¹⁷⁷ Interview with Mr. Fumiatti, *supra* note 21.

¹⁷⁸ Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

¹⁷⁹ Crown Agreement No. 3, *supra* note 92, app. A.

¹⁸⁰ Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

Thus, because of its limited capacity to evaluate new, unknown vendors, and the significant costs of switching to a new provider, the City appears to have “settled” on Crown for the foreseeable future. Crown, therefore, enjoys significant advantages over other potential vendors from both its physical location in downtown New Haven and the City’s inclination towards re-hiring incumbent firms.

C. Crown’s Substantial Bargaining Power: Evidence from Past and Present Negotiations

Because of these substantial advantages, Crown does not currently face a credible threat of losing the tax-and-tow program award. Crown, therefore, can exercise significant bargaining power in its relationship with the City. In fact, over previous bargaining rounds, Crown has already exercised this power to obtain at least three advantageous changes to the City’s planned program. First, during the 2009 RFP negotiations, Crown was able to gain an additional renewal option in the program agreement. The City had proposed only two renewal options in the RFP,¹⁸¹ but Crown successfully negotiated that a third be added to the contract.¹⁸² As explained above, the City rarely declines these options,¹⁸³ so Crown was smart to negotiate an additional one.¹⁸⁴ Second, and also during the 2009 RFP negotiations, Crown was able to earn a higher booting fee than even it had originally proposed. In its response to the RFP, Crown had proposed a booting rate of \$42 per vehicle.¹⁸⁵ Crown, however, clearly overestimated its need to bid low and, thus,

¹⁸¹ 2009 RFP, *supra* note 9, at 4 (“[T]he term of this agreement as a result of this RFP . . . shall be for one Fiscal year with an option to renew for 2 additional one year periods at the same terms and conditions . . .”).

¹⁸² Crown Agreement No. 1, *supra* note 10, at 3.

¹⁸³ See *supra* text accompanying note 177.

¹⁸⁴ See also Meeyoung Lamothe & Scott Lamothe, *Beyond the Search for Competition in Social Service Contracting: Procurement, Consolidation, and Accountability*, 39 AMER. REV. PUB. ADMIN. 164, 166 (“[L]engthy contractual commitments to a few larger lead agencies . . . raise[] the possibility of private monopoly or oligopoly in the future.”).

¹⁸⁵ Crown’s Response to RFP No. 29-9-675, *supra* note 77, at 1.

realizing its mistake in subsequent negotiations, was able to raise the rate upwards to the maximum allowed by city ordinance.¹⁸⁶ Third, in more recent bargaining between renewal periods, Crown was also able to lower the threshold amount for which it could automatically tow vehicles with delinquent parking fines—from \$500 to \$400.¹⁸⁷ This is particularly advantageous to Crown because towing is typically more lucrative than booting.¹⁸⁸ Thus, Crown, in the absence of viable competitors, has been able to modify the City’s plans for the program.

Now, unfortunately, Crown has attempted to use its negotiating leverage to stop the City’s attempts at promoting employee accountability.¹⁸⁹ As part of the 2013 RFQ negotiations, the City has proposed affixing a label to all Crown tow trucks that would prominently indicate that Crown employees cannot accept payments.¹⁹⁰ As of this writing, however, Crown has met this proposal with resistance. Although Crown’s owner, Mr. Hansen, claims that the label would pose undue hardship to his employees, who are authorized to collect payments for private tows,¹⁹¹ this resistance—and indeed Crown’s very ability to resist—is a worrying indicator of the company’s market power and the possibility that accountability issues will only become more difficult to solve in the future.

¹⁸⁶ Crown Agreement No. 1, *supra* note 10, at 3; *see also* NEW HAVEN, CONN., CODE OF ORDINANCES, tit. III, art. V, § 29-119 (Municode 2012).

¹⁸⁷ *Compare* Agreement No. 4, *supra* note 84, app. C, with Crown Agreement No. 1, *supra* note 10, app. C.

¹⁸⁸ *See supra* text accompanying notes 114-21.

¹⁸⁹ Interview Ed Zack, Chief Internal Auditor, Dep’t of Fin., City of New Haven, Conn. in New Haven, Conn. (Apr. 12, 2013) [hereinafter Interview with Mr. Zack] (included in appendix).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

IV. Developing and Implementing Effective Accountability Mechanisms: An Alternative to Competition

Thus, at least for now, Crown appears immune from any competitive pressures in the provider market. The City, therefore, will not be able to rely on competition among potential vendors to incentivize Crown to develop adequate employee accountability mechanisms on its own. Instead, the City will need to focus its resources on developing these mechanisms in-house and work—to the greatest extent possible—to impose these measures on Crown in subsequent bargaining rounds.¹⁹² This Part will outline a strategy for designing and implementing such accountability measures. First, Section A will describe two measures that could directly improve employee accountability and help avoid the type of misappropriation of City funds described above.¹⁹³ Then, Section B will explain two ways the City could improve its ability to develop further accountability mechanisms. Finally, Section C will recommend a strategy for imposing these mechanisms on Crown, despite the company’s substantial bargaining power.

A. Two Measures to Improve Employee Accountability

In addition to the warning label that the City is currently negotiating with Crown,¹⁹⁴ the City could also attempt to negotiate the adoption of at least two other accountability mechanisms aimed at solving the specific problem of driver accountability. First, the City could seek to require further qualifications for drivers working on delinquency-related tows. For example, the City could request background checks or attempt to require that these drivers either hold some

¹⁹² See Girth et al., *supra* note 156, at 887 (“[I]n noncompetitive markets . . . governments need to . . . exercise greater oversight, given the lack of discipline instilled by competition. Under such conditions, governments might allocate scarce administrative resources to strategies designed to mitigate the disadvantages of these suboptimal markets.”).

¹⁹³ See *supra* text accompanying notes 151-53.

¹⁹⁴ See *supra* text accompanying notes 189-91.

number of years of experience with Crown, or have the same number of years of experience at another towing operator and can provide references to establish their past performance.¹⁹⁵

Currently, the City's arrangement with Crown requires only that drivers not currently be "serving a sentence in a penal or correctional institute"¹⁹⁶ Although such a mechanism would be far from perfect—as an employee's past performance may be both difficult to determine and not always the best predictor of future behavior—it would still be an improvement over the current system. In other words, it would substantially reduce the risk of employee misconduct.

Second, and even more promisingly, the City could seek to require that Crown maintain a two-way datastream with the City. Currently, the City sends an updated list of delinquent license plates to Crown each morning,¹⁹⁷ but Crown does not send its scanning data back to the City. The City thus runs the risk that Crown finds a match and, then, for one of two reasons, does not tow the vehicle. The first would be wholly legitimate. Indeed, as the City's contract with Crown outlines, Crown must, "to avoid confrontation with irate taxpayers, pass on a vehicle that may cause a confrontation."¹⁹⁸ Crown is then supposed to log and report such incidents to the Tax Office.¹⁹⁹ But the second reason would not be legitimate: that a taxpayer has paid the driver not to tow—whether because she believes she is paying her delinquency, as in the case of Ms.

¹⁹⁵ Interview with Officer Lombardi, *supra* note 6. Officer Lombardi would like to see stricter licensing requirements for all tow truck drivers on the rotation, as now tow truck drivers in Connecticut only need regular drivers' licenses. *Id.*

¹⁹⁶ Crown Agreement No. 4, *supra* note 84, at 9.

¹⁹⁷ See *supra* text accompanying note 87.

¹⁹⁸ Crown Agreement No. 4, *supra* note 86, app. A.

¹⁹⁹ *Id.*

Handy,²⁰⁰ or because she wants only to prevent the tow (but knows she is merely bribing the driver).²⁰¹

A two-way datastream, however, would reduce the chance of illegitimate decisions not to tow. The City would now have a record of every interaction between Crown's drivers and delinquent vehicles. If a vehicle owner in Ms. Handy's situation, for instance, wanted to protest a tow, the City could check whether there was a previous record of Crown's scanners finding her vehicle and then not subsequently towing. If, furthermore, there was no report that Ms. Handy had confronted the driver, such that he did not follow through with the tow, the City would have considerable evidence that one of Crown's drivers had engaged in foul play. Obviously, drivers could falsify confrontation reports, but both the City and Crown would have more information about which drivers, if any, were involved in such scams based on the relative number of missed tows.²⁰²

B. Developing Further Accountability Mechanisms

In addition to attempting to implement the accountability described mechanisms above, the City should also work continually to develop additional and better accountability mechanisms—aimed both at the problem of employee misbehavior and improving Crown's general contract performance. To develop these mechanisms, the City should take two steps. First, the City should expend administrative resources to routinize the complaint system for the entire

²⁰⁰ See *supra* text accompanying notes 133-34.

²⁰¹ While possibly unethical, this could be a rational taxpaying strategy. As long as she paid the driver less than the financial and inconvenience cost she would incur as a result of the tow, she could pay her delinquency immediately and still be better off.

²⁰² I recommended this system to Mr. Zack, and he appeared very receptive. As of this writing, he is discussing its feasibility with Corporation Counsel. Interview with Mr. Zack, *supra* note 189.

program.²⁰³ Currently, the City receives numerous complaints regarding both divisions of the program—delinquent tax and overdue parking fine collection.²⁰⁴ According to Mr. Zack, the Tax Office receives about 3-4 complaints a day, accounting for 60-70% of the complaints concerning the entire program.²⁰⁵ As of now though, the City treats them in an ad hoc way.²⁰⁶ Typically, the relevant officials will speak on the phone or meet with the complainant to describe what recourse may be available.²⁰⁷ The City, however, should create a formal system for logging complaints by various categories—nature of the incident, amount of the delinquency, Crown and City personnel involved—so that it has more information for improving the system in the future. Hopefully, such data collection would lead to insights about ways the City could create additional measures to hold Crown accountable.

Second, the City should regularize communication with other Connecticut municipalities who are conducting similar tax-and-tow programs. As an innovator in this area,²⁰⁸ the City did not have the benefit of looking to past programs’ experience in designing its own. Now, however, numerous other Connecticut municipalities have followed New Haven’s lead and administer their own versions of the program.²⁰⁹ Most notably, Bridgeport runs a program of similar scope but still uses multiple towing companies.²¹⁰ By regularly communicating with the relevant city officials in these other municipalities, the City could learn from their experiences

²⁰³ Unfortunately, local governments rarely “routinize contract monitoring . . .” systems. Hansen, Note, *Limits of Competition: Accountability in Government Contracting*, *supra* note 111, 2475.

²⁰⁴ Interview with Mr. Zack, *supra* note 189.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* This is typically Mr. Zack or Mr. O’Neil, though Mr. O’Neil tends to hear complaints that have been directed to him specifically by the Mayor’s Office. Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

²⁰⁸ See *supra* text accompanying note 35.

²⁰⁹ Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

²¹⁰ *Tax Collector: Frequently Asked Questions*, CITY OF BRIDGEPORT, CONN. (last visited May 4, 2013), <http://www.bridgeportct.gov/content/89019/89745/90655/90667.aspx>. In this program, however, taxpayer convenience does not seem to be a priority. Vehicle owners can discover which lot their car has been towed to only after paying their delinquency. *Id.*

and even anticipate problems that the New Haven program might encounter in the future. Moreover, some of these municipalities may have more robust provider markets, such that New Haven could learn what types of accountability mechanisms competition has created elsewhere and then try to implement those mechanisms here.

Thus, with both of these measures, the City could learn how to administer the program in a way that holds Crown and its employees more accountable.

C. The RFQ: A Strategy for Implementation

However, it will of course be difficult, given Crown's strong bargaining position, to implement any accountability measures that would be costly or even merely inconvenient to the company.²¹¹ Thus, to maximize the chance that Crown adopts city-developed accountability mechanisms, the City must be strategic in future rounds of bargaining. Namely, the City should use Requests for Qualifications instead of Requests for Proposals. While Requests for Proposals would allow the City to hear open-ended plans for providing the tax-and-tow service, they are unlikely, in this market, to be particularly useful for the City, as Crown remains the only realistic provider. Requests for Qualifications, on the other hand, allow the City to set more specific requirements; bidders merely describe what resources make them eligible to complete the tasks carefully-described in the request.²¹²

Thus, to increase the chance of Crown accepting accountability measures, the City should insert into the next RFQ the accountability measures that it has developed in-house—described

²¹¹ For instance, consider Crown's reaction to the City's suggestion of affixing warning labels to company vehicles. *Supra* text accompanying notes 189-91.

²¹² Interview with Mr. Fumiatti, *supra* note 21; *E.g.*, 2013 RFQ, *supra* note 20.

in as detailed a fashion as possible.²¹³ That way, Crown must either submit that it will follow those measures, or not bid, risking loss of the contract in hopes of calling the City’s bluff that it could operate the program successfully with another provider. While Crown may indeed have sufficient bargaining power to call this bluff and not bid, the City can always choose to announce a new, modified RFQ and hope for Crown’s acquiescence at that next round.²¹⁴ The use of the RFQ process, in lieu of the RFP process, can thus improve the City’s bargaining position, even in the absence of meaningful market competition.

V. Conclusion: The Possibility of In-Sourcing?

If the City is able to expend the necessary resources, it should be able to hold Crown accountable to the purposes of the program—not only to recoup lost City revenue but to provide a convenient and fair service to all New Haven residents. However, the City may find either that does not have or is not willing to spend the resources necessary to effectively administer the contract. In that scenario, the City might find, with Crown’s performance deteriorating, that it is more cost-effective and consistent with the program goals to provide at least part of the program—namely, providing 24/7 bill collection and vehicle retrieval in-house.²¹⁵

Although this possibility of in-sourcing may seem far-fetched, given city officials’ almost uniform praise of the program,²¹⁶ it would not be inconsistent with the experience of local governments in recent years. Indeed, researchers have found an increasing tendency to in-source

²¹³ See 2013 RFQ, *supra* note 20. The 2013 RFQ includes one such measure—“[s]atisfactory contractor/employee background check prior to award and also on an ongoing basis”—but I do not think it goes far enough. *Id.* at 9.

²¹⁴ NEW HAVEN CITY CHARTER, art. XIV, § 74.

²¹⁵ The City could use the towing rotation and then operate its own centrally-located storage lot.

²¹⁶ Interview with Mr. Fumiatti, *supra* note 21, Interview with Mr. O’Neil & Mr. Zack, *supra* note 32.

previously out-sourced services, including both towing and delinquent bill collection.²¹⁷ In-sourcing, however, may not be an ideal solution, as the City would have to incur substantial costs to provide 24/7 vehicle retrieval.

If, then, the City would like to avoid this fate, it would be wise to adopt the measures outlined above. Specifically, the City should re-focus its administrative resources away from the process of vendor selection and towards developing and implementing effective accountability mechanisms.

²¹⁷ See generally Warner & Hefetz, *supra* note 163 (describing the trend among municipal governments towards in-sourcing previously out-sourced activities). Warner & Hefetz found that vehicle towing, despite being one of the most consistently privatized services, was 1.25 times more likely be newly in-sourced than newly out-sourced by local governments, over the period of 2002-2007. *Id.* at 15. Similarly, tax collection was 1.11 times more likely to be newly in-sourced than newly out-sourced. *Id.* at 16.

Appendix A

Interview with Michael V. Fumiatti, City Purchasing Agent - April 8, 2013

General Questions

- 1) How does your office develop the evaluative criteria for the RFP? Does that come from another part of the City government or is it developed in-house? Is that revised during the negotiation process?
 - Develop criteria in conjunction with Department requesting the contract
 - Find a proposal that was done before, not “reinvent the wheel”
 - Either from another municipality
 - Or similar from past services
- 2) How does the city typically advertise/publicize RFP? I understand it is sometimes sent out to prospective parties – how does the city select these parties? Does the City have any obligation to contact some number/type of parties? How long do vendors have to respond?
 - Advertisement in the N.H. Register – (this is where the Office’s legal obligation stops)
 - But also post solicitation on website and, for every RFP notice, e-mail out to those that have registered as providers for those types of services; also reach out to anyone with past experience
 - In their interest to get more than 1 proposal, but sometimes people just don’t respond

- Post advertisement on a Sunday; bid minimum is 10 days; 2-3 weeks typically – can always change date if receiving questions (flexibility) but Fumiatti thinks this is usually a good amount of time
 - Bid is due at a specific date and time, but with RFP the City doesn't know exactly what it wants so may involve more back-and-forth
- 3) Is the city under an obligation to negotiate with multiple parties simultaneously? Is that a practice? If negotiating one-one-one, does the city have to or does it typically tell other interested parties how the contract is taking shape?
- Under no obligation to tell other bidders/proposers what's going on
 - Because negotiation, don't want to "tip our hand"
 - Not trying to play parties against each other – i.e. use that kind of leverage
 - Once RFP is on the street, vendor communication is shut down. All is done in writing – i.e. formal questions. Also Purchasing Department lets the other bureaus know the same. That way, they have to go through the appropriate channels for questions/clarification.
 - Since RFPs are more complicated, businesses may return with questions
 - RFPs are more complicated because the City doesn't know exactly what it wants. Need to have more engagement – so vendors submit questions/clarifications which the Purchasing Agent sends to the relevant Department.
 - Then the review happens between the Department and the Purchasing Bureau.
 - Vendors may come in for interview/presentation
 - Evaluating the qualifications are the *same people* who developed the criteria (from the Department).

- No actual internal rule or procedure, but Mr. Fumiatti abides by and tells his colleagues not to vote on contract if on committee *but* did not attend all presentations. But again no actual policy on this. This is Mr. Fumiatti's policy.
 - The value of the presentation is largely explanatory. Sometimes proposals don't show how good they are on paper.
- 4) Is the city under an obligation or does it have a right to give preference to locally-based companies?
- Local Preference Ordinance: 10% local preference. So if an outside vendor comes in with a contract for \$100, and then a local vendor says I can do it for 109. New Haven business gets the contract if they're willing to do it for \$100.
 - Different in regard to RFPs because no price involved: "All else being equal."
 - Mr. Fumiatti points out that this largely isn't a problem in towing because the tow storage needs to be in the city anyway, far for them to travel – i.e. the business isn't lucrative if you're coming from far away. So he says this concern is not as important as it might otherwise be.
 - But says generally very difficult to quantify "all else being equal"
 - Would be very easy if it was 4 tow trucks vs. 6
- 5) Once the contract is awarded, does administration pass to the City Controller, Michael O'Neill, or Chief Administrative Officer, Rob Smuts, or another official? If it's in-house, how does that communication look?
- Yes, passes on to the Department who developed criteria in the first place. Here, it's quite a complicated contract. Internal Audit, Tax Office – Ed Zack
 - Transportation & Parking

- 6) Does renewal require a new RFP? If so, is that process similar/different to the original RFP process?
- 1 year at a time – city budget reasons
 - So because of that, contract with options to renew
 - If no ability to renew, hardship to city because contracts wouldn't be desirable – i.e. need to make capital commitment for vendor affordable (Fumiatti says here there's not that big of a capital investment so that may be less of a concern)
 - City can decide not to renew – does this 1-2 times/year (so not common); tends to happen when vendors think it'll be easy working for the city, but then find out the city actually monitors its contracts
 - Do not need a new RFP for renewing, *but* do need one when run out of options to renew
- 7) Generally, what does the Purchasing office see as its main tools to ensure quality in service provision – length of contract (renewal process), relationships with businesses, specifications? Does the city often reserve the right to revoke a contract? Does the Bureau of Purchases make that decision?
- Fumiatti emphasized getting the specifications right before it goes out – so that price is really the determining factor; still important in these RFP cases as well
 - Let's say you have 2-3 shortlisted contractors; the Purchasing Bureau will then ask for the best and final proposal
 - Now in the case of towing, the pricing is set by statute; but in others, try to keep with “current market value,” which could mean someone's been doing a good job at 50/hr. Comes back and says we can continue doing that and the same price, and the City is likely going to accept that contract.

- *True negotiation* happens only with one vendor at a time. Don't pit them against one another. Says government contracting is different than private enterprise contracting – here, you're instead basing it on fairness.
- Based on questions/clarifications, the vendors should know what is important
- Government is different than private business – “open and transparent”
- Do allow for “best & final proposal” – by that time, in an RFP, everyone should know what's important

Towing

- 8) For what reasons did the City decide to go with Crown?
 - Got to be open 24/7
 - Credit card operations
 - Grab updated data
 - Also have to be able to adjust to legislation/regulation/policy changes
- 9) I understand the City received two other responses – one from Columbus Auto and one from an out-of-state company. I was wondering if you knew why Crown's proposal was found to be superior? Jessica Mayorga described the Columbus's as incomplete – in what way was that true? How was the other proposal inadequate?
 - 2 responses (no mention of the third response.)
 - 1 response was non-responsive
 - Only really had Crown to work with
 - So Controller, Internal Audit, Tax, Traffic & Parking worked with department to develop/negotiate the contract
 - First time that they were doing something like that

- So *now*, for 2013, this experience has allowed them to make a really good RFQ
- 2013 has been awarded to Crown
- Other respondent was Tony's Long Wharf
- Mr. Fumiatti was on the Committee
- Mr. Fumiatti wasn't at presentation, so recused himself from voting
- Awarded to Crown, "based on overall responsiveness"
- Reason they had new RFQ (note, not RFP) was that there were no more options to renew.
Once options are exhausted, can't renew.
- 2008: Columbus Auto had basically just filed in the proposal form but didn't actually draft a proposal of what they'd be doing. So there was no substance to evaluate them on.
- And Columbus didn't inquire. Mr. Fumiatti says they can't do RFP for them but they're happy to explain generally what needs to be done if asked – they make themselves available for this.

10) Relatedly, was the city under any obligation to contact any particular towing companies about the RFP process?

- Notified the towing companies via e-mail
- Via system that's been up and running for 5 years
- Login does expire annually or bi-annually
- Vendors have to login to renew. Don't do so, however, then left off the lists
- Do the renewal thing so they're not sending out constantly bouncing back proposal requests
- Mr. Fumiatti sees this as a very small burden to put on potential contractors

11) What's the time-frame for renewal on Crown Towing's contract? Does renewal require a new RFP? If so, is that process similar/different to the original RFP process?

- Think there were 4 options.

12) What does the City – and particularly, the Purchasing Bureau – see as its main contracting tools in making sure Crown, or any other towing service provider for that matter, provides its service in a high quality way?

- Didn't do a lot of negotiating (sounds like 2013) – proposal was very well written in terms of what was being done. That's really the key here: being able to ask for what you want and then getting the answer.
- Had a really good agreement to work from
- A lot of other variables not in play here – state prices
- Confirmed it's a RFQ

Miscellaneous:

Separate mechanism for Police Department towing – apply directly there to get on rotation. As long as in “good standing” with the City – no outstanding obligations. No contracts behind that, he thinks; no formal procurement process.

Appendix B

Interview with Officer Francis Lombardi, Chief of the Police Department's Municipal

Towing Unit – April 10, 2013

- 1) Walk me through a tow. What types of enforcement discretion decisions are made? Is this process formalized in a written way?
 - Up to 10 tows
 - Submit applications, renewal period is April 1-March 31 (*my note: starts with street sweeping*) then there is a *written contract*, saying they'll follow the policy.
 - 2 were suspended within the last few months (thinks January) – for criminal concerning a state warrant → father and son towing companies
 - 9 towing companies right now (8?) → father and son, no preclusion in ordinance that stops family members. Lombardi thinks the policy should be changed in the ordinance – family members can't, and define family members – not second cousin once-removed, but father & son, brothers, etc.
 - 8 or 9? One was nollied, so that might be the reason my notes are confusing on this.
 - If they get denied, there's an appeals process to the Board of Police Commissioners – and if not satisfied with that, can use the court system
 - But actual process: officers in field call communication point – PSAP (public safety answering point) → upstairs office, then call tow rotation, *since tows have different values to the companies, keep different tow lists* – accidents, recoveries, abandoned – Officer Lombardi says this goes on upstairs and they're more familiar with it. – Keep a record of who towed what; towing company (police)? Fills out H1-14; within 48 hours have to send a certified letter to the registered owner of the vehicle so they don't keep

incurring charges; vehicle owners call PSAP, who then punch plate into the database to see which company car was towed

- Categories: stolen & recoveries, accidents, police tow, tickets (which can be included under police tow, if police officer designates ticket) – this is not super clear, see above.
- (Abandoned are obviously least desirable cause no one ever pays them)
- Tows have to go through garage – that’s where pick-up happens
 - Zoning issues: go through Zoning for lot spaces – need 100 spaces. Can rent space in New Haven – but vehicles have to come through garage
 - Zoning does its own CI
 - Zoning not approving more tow lots; want desirable business
 - Garages have to be open 24/7
- Officer Lombardi would like to see update – ordinance says have to keep 2-way radios. Who uses 2-way radios anymore? Cell phones should be fine. Smart phone etc.
- Updates have to happen through Rob Smuts, Chief Administrative Officer – Officer Lombardi can’t implement them on his own. Obviously, Smuts is a busy guy.

2) City of New Haven Municipal Towing Policy. Any way to get the document?

- Gave it to me. Authored by City – Corporation Counsel – police, collaborative effort.

3) Is your department involved at all with the tax-and-tow system?

- *Not at all.*

4) How are the towers on the rotation list selected? What qualifications do they have to have?

What type of verbal/written communication do they have with the Department and is that available to public?

- Application puts in request with police

- Go through Zoning for lot spaces – need 100 spaces. Can rent space in New Haven – but vehicles have to come through garage
- Zoning does its own CI
- Zoning not approving more tow lots; want desirable business
- In application, have to show insurance per ordinance to the police
- Also have to be a licensed wrecker → which is a State application → have to have Service bay. Example, company in Hamden wanted to register its vehicles in New Haven and then tow to lot with rental spots. Couldn't though because it didn't have a service bay (other tow companies actually made Officer Lombardi aware of this) – didn't want to pay for the service bay so ended up not doing it.
- When State gives the OK – that involves lights, letter, phone numbers, fire extinguisher, broom, shovel, etc. – generally means OK to tow

5) How do towing companies affirmatively demonstrate compliance? Are there any contracts involved?

- *Annual* licensing process (Officer Lombardi seemed to emphasize annual part)
- Problem: licensing period doesn't run concurrent with tax period
 - I.e. next March, won't find out until then?
- Officer Lombardi suggests this be changed legislatively – make it concurrent. There was talk of having a July check-up with the Tax Collector, but those “fell by the wayside.”
- Towing companies under no duty to tell they're delinquent. No duty to inform

6) How often are there incidents with non-compliance? Is there a back-up queue of towers?

- Gotten pretty good – rarely hear complaints (couldn't put a number on it though...)

- Officer Lombardi would like a policy – ordinance? – that tow trucks have to have GPS. Apparently, a lot of the private towers want this on their own vehicles too. Earlier had gotten complaints about speeding. The speed limit for towing is 40mph. Apparently, there's technology that would ring the owner's cell-phone anytime a tower was speeding (vis-a-vis GPS).
- CT State police have policy that they ask to see towers' driver license when doing a tow. New Haven doesn't have this policy (while the police maintain the right to) – maybe should adopt one
- Towing owners like above because it helps lower their insurance rate?
- GPS apparently can also let you know a vehicle has been lifted – which is key, because an officer at scene in his discretion can make decision to have vehicle dropped – and then would know where owner could pick it up
- GPS not that expensive
- Also privately, video surveillance of lots for break-ins etc. – not in the best areas. Employee problems too.
- There are a few other companies that want to get on the list. But tough to open a lot → zoning for parking.

7) What types of incidents are there (both related to compliance and not really to compliance – e.g. vehicle damage)? How often do they occur? Do you keep any data on this? If so, can I have it?

- There's a complaint form online – don't get many complaints (again, no numbers though...)

- People sometimes complain about tow companies going the wrong way – they’re not authorized to do so, there’s even limitations on police going the wrong way. That’s messed up.
- But towing companies say it’s easier to pick up FWD from the front. So want to be able to go wrong way
- Also more AWAD
- Officer Lombardi talked about a new device that’s very expensive – from the side, do everything from the inside (like a forklift)
- Aside: private companies – police haven’t had a problem with liability – i.e. being blamed etc. for towing company mishap/damage
- Licensing – *technicians* – special license for towers. Not a city or state ordinance, but Officer Lombardi thinks this would be a good thing to add to the ordinance to make sure towers have a certain level of training. There’s a whole Tower’s Association.

8) Any changes in time over how towers are selected? Either in mechanism or criteria?

- No.

9) Private property tows?

- People come out – with street sweeping, for instance, you have to drop it when people come out
- But on private property, people have to come out *and have keys*
- There’s also the Go-Jack, which they’re not supposed to charge. Conn. DMV says there’s not supposed to – it helps them get into tight spots so don’t have to have a second person.
- Question of whether the Go-Jack and losing the keys policy should extend to private property

- Officer Lombardi thinks you should have to operate under the same rules on private as public property – towing companies object. His answer: If you're on our list, should have to follow for all tows on City, and you have to be on list.
- Another private property tow issue – some will tax cash only on these tows.
- Updates to these policies – and this issue have to be done with Rob Smuts, Chief Administrative Officer – sit down and meet to discuss tow policy. Frank says he's prepared materials for these meetings but haven't happened.

Miscellaneous:

- Update to include Amex. Think should be changed in ordinance.
- Tow Review has to be done by an outside department – so at 200 Orange. Officer Lombardi says they don't hear anything at 200 orange so either no issues or issues are being filtered and addressed there. Start to hear complaints at street sweeping times.
- -Snow issues:
 - Pre-tow, have to shovel vehicle out. They would start shoveling and then people would come out and say, "I'm ready to go," and per policy couldn't tow them. Frank told them to charge the \$88.
- Also, charge sales tax now, and \$4 fuel charge as long as diesel is more than \$3.50/gal.
- Not allowed to charge for mileage in the city – another question of if they're doing that with private property tows.

Appendix C

Interview with Michael O'Neil, City Controller & Ed Zack, Chief Internal Auditor –

April 10, 2013

- 1) It's my understanding that your office developed the criteria for the 2008 contract. How did you go about doing so? Was the idea of a sole provider in mind from the beginning? I know Columbus had related to the media that they would have kept the rotation for these services.
 - Prior to VioAlert, State Marshals
 - Prior to 2008, 1-year of VioAlert, who did booting and then contracted out for towing services themselves (VioAlert administered the separate contracts)
 - Problems with billings, too high an error rate → dealing with multiple towing companies
 - Mr. Zack: part of the RFP was to centralize
 - Mr. O'Neil: idea around town that other companies decided not to bid, so as to keep rotation system
 - Other criteria:
 - Ability to accept payments
 - 24/7 service
 - Ability to purchase boots
 - Situations where people would rather abandon cars, so need a vendor that can actually auction (responsibly)
- 2) Mr. Fumiatti mentioned using other model contracts or past experience? Was that the case here? Familiar with other municipalities that do something similar?
 - No previous models for this type of contract

- First one to start this kind of program in CT
 - Mark Pietrosimone deserves credit for coming up with it
 - Other cities have started too – Bridgeport does, thinks Hartford, some of the other smaller towns
- 3) How was the towing of tax-delinquent vehicles done previously? Were there any contracts?
- Prior to VioAlert, State Marshals
 - Prior to 2008, 1-year of VioAlert, who did booting and then contracted out for towing services themselves (VioAlert administered the separate contracts)
 - The program does not adequately safeguard against (1) Crown's employees' stealing funds from bill-payers; or (2) Crown's potential to improperly use discretion in determining which vehicles are actually booted or towed.
- 4) Walk me through a tax-and-tow today. The data pull, etc.
- Someone owes taxes
 - First send demand
 - Then issue warrant
 - For example, January taxes, due Feb 1, send demand in February, start towing March 1
 - Provide data file to Crown – via private operator LSAG
- 5) What happened with using Marshals? Does someone have to sign off each time now?
- Used Marshals with VioAlert
 - State Banking Commission letter – technically a warrant but not a physical letter (boot or tow)
 - For taxes, you get towed; for tickets, it's boot or tow – for example, SUVs though, might need to get different hauler

- For handicap, always get towed – that’s Traffic and Parking
- For \$200 or greater, boot
- For \$400 or greater, tow
- Crown has 2 trucks on at all times, and 1 additional car equipped with a plate reader (tow trucks also, I think)

6) 2013 RFQ – How were those criteria developed? What was the time-frame here for proposals (may need to ask Mr. Fumiatti)?

- O’Neil: in process, haven’t negotiated with them (Crown) yet.
- New criteria though – *reliability of drivers* – how long have they been employed?
Background checks? Ongoing procedures
- Mr. Zack: believes City has a lot of negotiating power. If you want to do business with us, you kinda have to listen to us. O’Neil + Corporate Counsel + Senior Management to make negotiation.
- O’Neil: Of course, though, you weigh any concerns about specific evaluative criteria vs. a desire to have a reliable vendor. I.e., Crown is reliable and thus has some negotiating leverage.
- O’Neil discussed a proposal – not agreed to by Crown yet – that there’d be a notification on the truck to not give payments to drivers. But Crown’s objecting because their drivers do accept payments for private tows. So couldn’t be permanently affixed?

7) What types of monitoring does your department do? Other departments? Has this been different in 2008 vs. 2013? What difficulties does the Department see in monitoring? What’s the system for inter-Departmental communication? Any issues with that?

- Compliance: radio-in contact, to Collections for tickets, and to Tax for taxes

- Mr. Zack: during work hours, taxpayers have to come to here, 200 Orange to pay
- During off-hours, weekends, go to Crown
- Mr. O'Neil – verification issue if someone has paid between data pull in the morning – the radio process tries to prevent that (i.e. making sure it hasn't been paid between data upload).
- Also, there are the red stickers on the windshield – proposal to try to add info to that to make it really clear – but the idea is to make sure the taxpayer is as informed as possible about their means of recourse etc.

10) What is the complaint system? Is it different if there's a problem with the tow vs. with the tax? Differences with new contract?

- O'Neil: working on making improvements (more a desire?) to the complaint process. I.e. the sticker.
- Mr. Zack: to avoid "status quo," make improvements in system. Internal Audit is contact for tax-related complaints. Corporate Counsel, Investigative Services handles, well, investigations.
- Make sure the red sticker is very clear – discussing this on upcoming Tuesday meeting
- Add language to sticker, but Crown doesn't want this (Mr. O'neil says); where payment should be made, how it can be made.

11) There seems to be an inherent difficulty with complaints – many are going to be frivolous.

How does the Department try to weed out the ones that require response & action?

- Mr. O'Neil sees this as a problem, even internally.
- Tax and Collections deal with everyday complaints

- Different complaints go to Mayor's Office – Mr. O'Neil: with “good set of circumstances.”
- Different problem:
 - Not dealing with abuse in Tax Office?
 - Keeping collection rate at 98%
- O'Neil: When told stories, etc. – different people, come from Mayor's office, says prone to be sympathetic
- Mr. Zack: Mike and Mark treat fairly every one and do an impressive job of doing so.
- O'Neil: problem – currently being discussed in 2013 contract. What do you with property in the vehicle?
 - Do you let people get it? Under what circumstances? What types of property? A cell phone might be more clear cut, but a car radio?
- Also, employees, what do you do about them? Trying to clarify this with the new contract

12) How did the Department try to incorporate these complaints, if any, into the new contract?

I'm thinking especially of the issue re: employees taking cash for tax payments.

- Proposal to try to add info to red windshield sticker– idea is to make sure the taxpayer is as informed as possible about their means of recourse. Make sure the red sticker is very clear – discussing this on upcoming Tuesday meeting
- Crown doesn't want to add info to sticker; where payment should be made, how it can be made.

13) Difference between 2008 and 2013:

- O'Neil: virtually the whole program has been refined in the last 5 years
 - Incremental, responsive to problems

- Most important details:
 - Employees
 - Recovering property in vehicles
 - Improving oversight and communications (structure)
 - Crown now accepts credit cards for tax payments, but only from registered owner

Miscellaneous:

- Mr. Zack: previously no enforcement of vehicle taxes.
 - Pursue delinquent vehicles
 - Compuplus – parking ticket vendor (guessing they would have noticed when back tax rolls?)
- Send out notices \$200 or greater – and then tax warrant
- Collection rate is now 98%
- MTS – discovery service, discovery of property
- MTS uses plate readers – ability to recognize plate – continue to troll, establish residency
- Choosing Crown over Tony’s in 2013 – convenience for property owner – better location
 - factor was not determinative, however
 - Committee with Traffic & Parking, Tax, and Collections.
 - Mr. O’Neil: all towing companies are known quantities because administration of municipal towing services
 - So there’s known reputation of vendor, and that obviously plays into the contract.
 - 95% of decision is about information submitted (so like 5% is reputation)

Appendix D

Interview with Ed Zack, Chief Internal Auditor – April 12, 2013

- 1) In designing the 2013 RFQ and in current negotiations with Crown, have there been any discussions regarding where to locate liability for improper tows? For example, if the City's record wasn't up to date regarding a particular taxpayer and that taxpayer was subsequently towed, would the City automatically pay the towing bill to Crown? Conversely, if Crown made a mistake, are they expected to waive charges for the tow? Has there been any discussion of the City or Crown (whoever was liable) also having to compensate the taxpayer for inconvenience? Was this a feature discussed in the 2008 contract? Was this part of the discussion in 2008?
 - Car damage, Crown's liability
 - Error in tow – with data – City pays amount of tow to customer (reimbursement)
 - Same as 2008
- 2) Is there any formalized appeals process for tax-related tows outside of the court system?
 - Yes, there's the Board of Alderman, Tax Appeals Commission
- 3) I understand the 2008 contract had three options to renew. How many options to renew is the 2013 contract expected to have? Has this been a point of internal discussion and/or negotiation with Crown?
 - Haven't started yet
 - Yearly renew, gives the City greater flexibility
 - Didn't get a firm answer on renewal periods
- 4) I imagine it's possible that Crown could bring some discretion into enforcement by declining to tow a specific delinquent vehicle. Has there been any discussion of requiring

that all scanned plate data go back to the City and make towing required whenever there's a match? If not, would your office be interested in such a policy? How do you think Crown would react?

- Every day at 5 o'clock – thumbnails, data is loaded into Crown's system
- Assume they're towing everyone
- Mr. Zack seems to think it should be mandatory, doesn't think Crown should have any discretion – City should (Mr. Zack seemed receptive to the idea of making it mandatory)

5) What are the rules if someone comes out while the car is actually being towed for back taxes and wants to pay (both for when your office is open and after hours)? Would it be possible to allow these payments (and thus stop the towing and further incurred charges) and have a notification affixed to the vehicle that says drivers must provide receipts?

- Tax program just goes in streets – and New Haven Parking Authority lots (based on separate permission; where they just boot, not tow); no driveways
- No way to stop tax payment at-side; idea is that boot is the time to pay.

6) I understand Crown might not want to add more information to the red notification sticker that they affix during booting. Does your office have an explanation for why they might not want to do so? Do you think this would reduce the overall number of tows?

- Issue with *size* of the sticker. They're the City's forms – the City buys and supplies them to Crown
- Issue over how big the sticker is going to be (City wants it bigger)
- Based on experience in the field, Crown thinks language is too restrictive → being discussed now with Corporation Counsel

7) My understanding is that Tax and Collection deal with the majority of “every day” complaints. What’s the volume of those complaints and the breakdown between the two offices?

- Tax is getting 3-4 complaints a day.
- And between Tax and Collections, Tax is about 60-70% of complaints related to towing (the majority)

8) Officer Lombardi talked about using technicians – requiring extra licensing for Crown. Would that be viable?

- Hasn’t been discussed – separate towing policies, but Mr. Zack thinks they should still be uniform, i.e. comply with Police Board
- Says the technicians might be a good point → Mr. Zack said he would discuss the feasibility with Corporation Counsel