

CITY OF CARSON TOWING & STORAGE NON-EXCLUSIVE FRANCHISE AGREEMENT

This TOWING & STORAGE NON-EXCLUSIVE FRANCHISE AGREEMENT is entered into effective the 1st day of September, 2021 (“Agreement”) by and between CITY OF CARSON, a charter city & municipal corporation (“City”) and KRUGER TOWING, INC., a California corporation (“Operator”) (collectively, the “Parties”).

RECITALS

A. As a material inducement to City entering into this Agreement, Operator represents and warrants that Operator is a first class provider of towing and storage of vehicles as requested by City, and is experienced in performing the work and services contemplated herein. In light of such status and experience, Operator warrants and represents that it shall follow the highest professional standards in performing the work and services required hereunder. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class operators performing similar work or services under similar circumstances.

B. This Agreement contains terms and conditions that Operator agrees to comply with in consideration of the non-exclusive and rotational nature of this Agreement.

C. This Agreement does not establish any agency relationship between Operator and City, and Operator is not acting as an agent for City when performing services under this Agreement.

D. City intends that all non-cancelled tows requested by City will be dispatched on a one to one rotating basis between Operator and Falcon Towing. That is: one tow to Operator, then the next tow to Falcon Towing, and then the next tow to Operator, and then the next tow to Falcon Towing without a change of interval in an continuous rotation. City’s rotation pattern shall be applied to all City requested tows. This Agreement shall not apply to tows requested or originated by the Los Angeles County Sheriff’s Department, Carson Station, or to tows requested by private parties not affiliated with City.

E. City and Operator entered into that certain City of Carson Towing and Storage Non-Exclusive Franchise Agreement dated September 30, 2017 (“2017 Agreement”), whereby Operator agreed to provide services for towing and storage of vehicles as requested by City for a three-year term, with two (2) one-year options to extend at City’s election.

F. Section 14 of the 2017 Agreement provided that Operator shall pay City an annual franchise fee of \$25,000 within five (5) business days of September 1 of each year of the 2017 Agreement term.

G. In December 2017, Operator paid City a \$25,000 franchise fee but in October 2018, Operator terminated the 2017 Agreement due to various unforeseen and uncontrollable circumstances. Specifically, Operator encountered an exponential rise in the number of RVs and

other “atypical” vehicles abandoned in the City which, according to Operator, resulted in vastly higher costs to Operator from towing and eventual demolition of these RVs as compared to costs from towing and handling more “normal” vehicles which is the scenario that was contemplated under the 2017 Agreement, thereby placing Operator in a situation of operating its business at a loss. As of the effective date of this Agreement, Operator is delinquent on its franchise fee payments under the 2017 Agreement in the amount of \$25,000, and Operator has asked City to waive these fees (“Delinquent Fees”).

H. City has agreed to waive the Delinquent Fees and to retroactively deem the annual franchise fee to be \$5,000 under the 2017 Agreement. Based on this retroactive treatment of fees under the 2017 Agreement being \$5,000 per year and because Operator paid the \$25,000 franchise fee in December 2017, City has agreed that Operator no longer shall be delinquent in payment of any franchise fees under the 2017 Agreement, and moreover, Operator shall be given a credit of \$5,000 for franchise fees that otherwise would have been due under this Agreement so that Operator will not need to pay any franchise fees hereunder.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants, promises, and undertakings hereafter contained, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

A G R E E M E N T

1. TERM OF AGREEMENT.

The term of this Agreement is for a one (1) year period commencing on September 1, 2021 and concluding on the close of business on August 31, 2022.

2. INCORPORATION OF CALIFORNIA HIGHWAY PATROL TOW SERVICE AGREEMENT, CHP 234 (07-2021) OPI 061.

A. Operator’s performance of this Agreement shall be governed, unless otherwise provided herein, by the terms and conditions of that certain “Tow Service Agreement, 2021-2022,” executed and issued by the State of California Department of California Highway Patrol, CHP 234 (07-2021) OPI 061 (the “CHP Tow Service Requirements”) and attached hereto as Exhibit “A,” which terms and conditions are expressly incorporated into this Agreement. If, during the term of this Agreement or during any extended term thereto, the California Highway Patrol changes the CHP Tow Service Requirements, Operator shall provide written notice to the City per Section 23 of said changes within thirty (30) days. If the City Manager, in his/her sole discretion, approves of the changes to the CHP Tow Service Requirements, he/she may incorporate said changes into this Agreement by approving of the changes in writing. If, however, the changes to the CHP Tow Service Requirements materially alter the City’s monetary or non-monetary obligations in this Agreement, or materially alter the scope or nature of the services provided hereunder, then the City Manager shall present the changes to the City Council for review and approval. It shall be within the

discretion of the City Manager to determine if an alteration to the CHP Tow Service Requirements is material.

- B. During the entire term of this Agreement, or any extension(s) thereof, Operator shall be a signatory to, approved for, and in good standing with, the CHP Tow Services Requirements, as the same may be amended from time to time. No work or services under this Agreement shall commence until Operator has provided City with proof that it is a signatory to and in good standing with the CHP Tow Services Requirements.
- C. Where Operator shall be required to perform services hereunder different than, or in addition to, those specified in the CHP Tow Service Requirements, the same shall be specified herein. Where there is a conflict between this Agreement and the CHP Tow Services Requirements, this Agreement shall govern.

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3. TOW TRUCK CLASSIFICATIONS.

- A. Operator shall equip, repair, and maintain all tow trucks covered under this Agreement in accordance with the provisions set forth in the CHP Tow Service Requirements. In addition, Operator shall have in its fleet of vehicles and available to provide requested services to City at least three (3) vehicles in each of the following classes of vehicles:
 - 1. Class A - Light Duty. Class A tow trucks shall have a manufacturer's GVWR of at least 14,000 pounds.
 - 2. Class B - Medium Duty. Class B tow trucks shall have a GVWR of at least 26,001 pounds. The truck shall be capable of providing and maintaining continuous air to the towed vehicle.

4. TOW TRUCK DRIVERS.

- A. Operator shall comply with the provisions set forth in the CHP Tow Service Requirements.
- B. In addition, Operator shall ensure that tow truck drivers ("Drivers") responding to calls initiated by CITY are qualified and competent employees of Operator. Operator shall ensure that the tow truck Drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through CITY rotation. Tow truck Drivers shall be at least 18 years old and possess the following minimum class Driver license:
 - 1. Class A tow truck - A valid Class C license, or a valid Class A license with valid medical certificate. The Class A license must be endorsed to allow operation of special vehicle configurations and/or special cargoes.

2. Class B tow truck - A valid Class B license for non-regulated vehicles, or a valid Class A license with valid medical certificate for regulated vehicles pursuant to Vehicle Code § 34500.

C. Operator shall maintain a current list of drivers.

1. Operator shall provide a current list of his/her Drivers to City upon implementation of this Agreement and not less than monthly thereafter. Operator shall notify City in writing upon any change in Driver status, including the addition of any new Driver(s), or the deletion of any Driver(s) and revocation or suspension of a Driver's license. An updated list shall be provided to City within seven (7) calendar days of any change in driver status.
2. Operator shall, at a minimum, maintain the following information for each employee, and provide the same to the Police Chief not less than monthly:
 - a. Full name.
 - b. Date of Birth.
 - c. California driver license number and expiration date.
 - d. Copy of valid medical certificate (if required).
 - e. Job title/description.
 - f. Current home address.
 - g. Current home phone number.
 - h. Type(s) of truck(s) driver has been trained and instructed to operate.
 - i. Certificate showing driver is California Tow Truck Association (CTTA) trained.

D. Drivers must maintain a neat, clean, and professional appearance at all times. Drivers must wear a distinctive uniform with shirttails tucked into the waistband of their pants.

5. **RATES.**

A. As of the effective date of this Agreement, the approved rate structure for all towing, storage, and related services requested by CITY is contained in the CHP Tow Service Requirements and as attached hereto as Exhibit "B" and incorporated herein by reference.

- B. Operator agrees that it shall provide, at no cost to City, roadside service to City vehicles up to one (1) ton GVWR as may be requested by City from time to time including, but not limited to, towing, battery services, and tire changes; provided, however, that such roadside service shall occur within the geographic boundaries of City or within ten (10) miles of the geographic boundaries of City. Operator further agrees to tow City's "show mobile" (City's semi tractor-trailer with a mobile stage used for performances, concerts, and exhibits), if any, at no charge, to not more than 25 different locations in any year of this Agreement, provided such locations shall not exceed a distance of ten (10) miles from the show mobile's point of origin.
- C. If Operator charges rates above those approved in Exhibit "B," attached hereto, Operator shall be in violation of the Agreement and subject to termination.

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6. OPERATOR RESPONSE TO CALLS.

Operator shall comply with the provisions set forth in the CHP Tow Service Requirements. Operator shall be dispatched to calls according to a rotation system as articulated in Recital D, above.

7. STORAGE OPERATIONS.

- A. Operator Responsibilities. Operator shall comply with the CHP Tow Service Requirements.
- B. In addition, Operator shall comply with each of the following requirements:
 1. Operator shall be responsible for all vehicles stored by Operator, together with all accessories and equipment on each vehicle and all personal property in each vehicle. It shall be Operator's responsibility to protect the stored equipment and property against loss or damage by fire, theft, weather or other causes. In the event of loss or damage to a stored vehicle, its accessories or equipment, or personal property contained in the vehicle, Operator shall be responsible to the owner for all losses or damages. Personal property in vehicles stored by Operator shall not be disposed of to defray any charges for the towing or storing of a vehicle; and, if not called for by the owner within thirty (30) days after date of notice by City of impound or storage, all such property shall be disposed of in accordance with all State, County and Municipal laws, statutes, ordinances and regulations.
 2. Operator shall take all reasonable precautions as directed by City to avoid damage to any evidence, such as finger prints or stains. Vehicles taken into custody that involve evidence shall be stored in a secured locked area

which is protected against entry by unauthorized persons. Operator shall park all stored or impounded vehicles in such a manner as to prevent any damage while other vehicles are being moved or parked in the vicinity of said vehicles.

C. Storage Facilities.

1. Operator shall maintain a vehicle storage area to impound towed vehicles large enough to accommodate all vehicles stored less than thirty (30) days. The primary vehicle storage area must have the legal storage capacity for one hundred fifty (150) vehicles.
2. All vehicles impounded or taken into custody by City must be stored by Operator in areas that are enclosed by substantial wire fences or walls that have gates or doors which lock. Such fences or wall enclosures shall be not less than six (6) feet in height and shall have not less than one (1) gate or door of adequate width and height. A fence or wall enclosures shall be maintained and repaired in good condition throughout the term of this Agreement. Such fences or walls shall be repaired within twenty-four (24) hours of the time of any damage thereto to insure proper protection of the stored vehicles. The storage area must be paved with concrete or asphalt and maintained in good condition. The City Manager, or his/her designee, may modify security requirements necessary to coincide with local conditions.
3. The storage facility shall be open and attended from 8:00 a.m. to 5:00 p.m., Monday through Friday, 8:00 a.m. to 10:00 a. m. on Saturday, Sunday and legal holidays. The storage facility shall have a responsible person on call on a twenty-four (24) hour basis, seven (7) days a week. The designated on-call person(s) shall be available to release vehicles during the hours the storage facility is not open and attended.
4. In addition to the foregoing, Operator shall also comply with Section III of the "Request for Towing and Storage Services" issued by City.

D. Location and Maintenance of Storage Facility.

1. Operator shall maintain and provide a place of business and storage facilities for the vehicles stored under this Agreement within five (5) miles from the boundaries of City, as may be modified from time to time. The business address and primary storage facility shall be located reasonably close to the police station, as determined by the City Manager in his/her sole opinion.
2. The primary storage facility shall be at the same location as the business address. The vehicle and personal property shall be released at a primary storage facility upon request of the owner. Upon proper identification or proof of authority, the owner or his designated representative shall be

permitted to remove personal effects from a stored vehicle without reference to any costs or charges pending because of towing or storage of said vehicle.

3. Operator shall furnish the City Manager, or his/her designee, with the addresses of all storage facilities whenever there is a change.
4. All storage facilities shall meet all City land use, zoning ordinance requirements and the specifications stated in this Agreement and shall be approved by City Director of Community Development. All landscaped and paved areas of Operator's premises shall be maintained in a neat and orderly condition with the landscape in a healthy condition and free of weeds and litter. Any graffiti shall be removed within 24 hours of discovery by Operator or notice from the City.
5. Any unpaved storage space shall be kept free of weeds, litter, debris, and any other materials or substances or any automotive parts unless said parts are stored as evidence for the Police Department. Operator shall avoid contamination of soil with gasoline, oil, grease, or any other contaminating substance as specified by Federal, State, County or Municipal regulations.
6. Operator shall post not less than one outdoor sign at each storage facility, at or near the entrance thereof, identifying Operator's name, telephone number, and the business telephone number of CITY. All such signs shall comply with City's Municipal Codes, and to the satisfaction of its Director of Community Development.
7. In addition to the foregoing, Operator shall also comply with Section IV of the "Request for Towing and Storage Services" issued by City.

8. INSURANCE REQUIREMENTS.

- A. Operator shall comply with the CHP Tow Service Requirements, except:
 - (a) The Commercial Business Automobile Liability Insurance will have a combined single limit of not less than \$2,000,000 for each class of tow trucks for bodily injury and property damage coverage;
 - (b) The Garage Liability Insurance shall have a combined single limit of not less than \$2,000,000
- B. Contractor also shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:
 - (a) Commercial General Liability Insurance. A policy of commercial general liability insurance with coverage limits of no less than \$2,000,000 per occurrence

for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits.

(b) On Hook Physical Damage Liability Insurance. A policy of on hook physical damage insurance with limits of not less than \$150,000 per vehicle.

(c) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits, limits, deductibles, self-insurance retentions, or similar forms of coverage limitations or modifications as required by state law.

C. No work or services under this Agreement shall commence until Operator has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City. Proof of insurance certificates must be sent directly to the City Clerk's Office. All of the above policies of insurance shall be primary insurance and shall name City, its officers, employees and agents as additional insureds through an Insurance Endorsement. The insurer shall waive all rights of subrogation and contribution it may have against City, its representatives, officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by registered mail to City. In the event any of said policies of insurance are cancelled, Operator shall, prior to the cancellation date, submit new evidence of insurance to City.

9. INSPECTIONS.

Operator shall comply with the CHP Tow Service Requirements.

10. BUSINESS RECORDS.

- A. Operator shall maintain records, at its place of business, relating to tow services furnished under this Agreement, including a description of vehicles, nature of service, tow truck Driver's name, start time, end time, location of call, and itemized costs of towing and storage.
- B. Operator shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, FCC licensing, and non-City tows.
- C. City may inspect all Operator City business records related to performance of the Agreement without notice during normal business hours.

- D. Operator shall permit City to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. City shall provide a receipt for any (original) records removed from the place of business.
- E. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement.
- F. Failure of Operator to comply with the records requirement shall be cause for termination of this Agreement.
- G. Operator shall notify City monthly in writing of all vehicles that have been sold via Lien Sale.

11. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT.

The experience, knowledge, capability and reputation of Operator, its principals and employees were a substantial inducement for City entering into this Agreement. Except for towing requiring Class C or Class D tow trucks, Operator shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. As a condition of approval, City may require any subcontractor to provide City with Certificates of Insurance naming City as an additional insured and other documentation of compliance with Vehicle Code provisions applicable to a towing operation, such as current inspection reports by CHP. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Operator, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Operator or any surety of Operator of any liability hereunder without the express consent of City. City's consent to one assignment shall in no way be deemed to be acceptance to any further assignment.

12. DEMEANOR AND CONDUCT.

- A. While involved in City requested tow operations, Operator and/or its employees shall refrain from any act(s) of misconduct, to include, but not limited to, any of the following:
 1. Rude or discourteous behavior.
 2. Lack of service, selective service, or refusal to provide service which Operator is/should be capable of performing.
 3. Any act of sexual harassment or sexual impropriety.

4. Unsafe driving practices.
5. Exhibiting any objective symptoms of alcohol and/or drug use.
6. Appearing at the scene of a City tow call with the odor of an alcoholic beverage emitting from his/her breath. Operator/tow truck Driver shall submit to a preliminary alcohol screening test upon demand of City.

B. All City related tow service complaints received by City against Operator (or its employees) will be accepted and investigated in a fair and impartial manner. In any event, Operator will be notified of the results of any investigation.

13. COMPLIANCE WITH LAW.

- A. Operator, and its employees, shall, at all times, comply with all federal, state, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to Operator as promulgated by the California Department of Transportation, the California Highway Patrol, and industry practices endorsed by the California Tow Truck Association (refer to Exhibit "A" for selected California Vehicle Code Sections for general guidelines).
 1. In the event of a misdemeanor traffic violation(s) by Operator's tow truck Driver(s) which is/are known by City, Operator shall be advised of the violation(s) by City. Operator will be granted the opportunity to take necessary steps to ensure that such Driver(s) drives in compliance with law. Any subsequent traffic violation(s) may be cause for termination of this Agreement and/or suspension of involved employee(s).
 2. Any traffic violation(s) involving a felony may be cause for termination of this Agreement and/or suspension of the involved employee.
- B. The provisions contained herein do not preclude City from taking appropriate enforcement or administrative action for any violations of law.
- C. Any conviction of Operator or its officers involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, felon driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug while involved in a City requested tow, shall be cause for declaring a default of this Agreement.
- D. Any conviction of an employee of Operator involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, felony driving while under the influence of alcohol and/or a drug, misdemeanor driving while under the influence of alcohol and/or a drug while involved in a City requested tow, shall be cause for declaring a default of this Agreement.

E. Operator, its officer(s), agent(s), or employee(s), arrested/charged for a violation involving any of the above crimes may be suspended until the case is adjudicated.

14. LICENSES, PERMITS & FRANCHISE FEE.

A. Operator shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Operator shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the services requested by this Agreement.

B. The Franchise fee under this Agreement is Five Thousand Dollars (\$5,000.00); however, due to the \$5,000 credit given to Operator for payment of fees made under the 2017 Agreement, Operator shall not be required to remit any portion of the Franchise fee.

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15. ADVERTISING.

A. Operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with City.

1. Examples include, without limitation, "Official Carson Tow," "Approved by Carson," "Carson Tow."
2. The provisions under this Section 15 shall not preclude the City Manager, or his/her designee, from implementing a system to mark and identify particular tow trucks as having passed City inspection.

16. TERMINATION OF AGREEMENT FOR CAUSE.

A. Notice & Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. Events of default include, without limitation:

1. Overcharging by Operator
2. Failure by Operator to respond to calls as required, meet the maximum response time requirements set by the CHP Tow Service Requirements, meet the Average Response Time on a regular basis, or perform the required towing or service as required by this Agreement;
3. Failure of Operator to maintain the minimum insurance requirements as set forth in the Agreement;

4. Driver misconduct or criminal violations identified hereinabove;
5. The prohibited transfer or subcontracting/assignment of services in violation of this Agreement;
6. Failure to maintain all permits, licenses, or certifications required by law;
7. Failure to maintain storage operations in a secure, safe, neat and clean condition; or
8. A violation of the Biennial Inspection of Terminals (BIT) Program requirements.

The Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) calendar days after the date of such notice ("Cure Period"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) calendar day period;
2. Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;
3. Promptly commences to cure the Default within the thirty (30) calendar day period;
4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
5. Diligently prosecutes such cure to completion.

B. Termination. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, or should the default prove uncurable or persistent after attempted cure, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement for cause ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement within thirty (30) calendar days (or less) and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Except as otherwise provided herein, upon such termination all executory obligations under this Agreement that accrue or arise subsequent to the date of

termination shall also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect.

- C. **Rights & Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.
- D. **No Waiver.** Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- E. **Suspension Form Rotation.** City may suspend Operator from its participation in the rotation for any period in which Operator is in default of this Agreement, including without limitation, while (i) Operator is in the process of curing a default or pending the cure periods set forth above, or (ii) pending any investigation of a default. City will use reasonable, good faith efforts to conduct investigations identified in this Section without unreasonable delay. City shall promptly notify Operator of its intent to suspend Operator's services under the rotation list in a writing stating the grounds for such suspension.

17. TERMINATION FOR CONVENIENCE.

Notwithstanding any other termination rights in this Agreement, City may elect, in its sole discretion, to terminate this Agreement, with or without cause, upon thirty (30) days advance written notice to Operator. Operator may elect, in its sole discretion, to terminate this Agreement, with or without cause, upon ninety (90) days advance written notice to City. Where the City determines to terminate this Agreement without cause, the period of notice may be such shorter time as may be determined by City. Upon receipt of any notice of termination from the City, Operator shall immediately cease all services hereunder except such as may be specifically approved or directed by City. Termination pursuant to this Section shall be performed without liability on behalf of City.

18. COMPENSATION.

Operator agrees to perform the services herein and to receive, as full payment, the rates described in Exhibit "B" as the same may be modified from time to time only if the Parties agree in writing.

19. INDEMNIFICATION.

Operator agrees to indemnify City, its officers, agents, and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys' fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Operator, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Operator hereunder, or arising from Operator's negligent performance of or failure to perform any term, provision covenant or condition of this Agreement, but excluding such claims or liabilities to the extent caused by the active negligence or willful misconduct of City.

20. ATTORNEY'S FEES.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

21. CORPORATE AUTHORITY.

- A. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) such party is authorized to execute and deliver this Agreement on behalf of said party, (iii) entering into this Agreement is not contrary to the contentions of any party in any litigation involving the parties hereto, (iv) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (v) the entering into this Agreement does not violate any provision of any other Agreement to which such party is bound.
- B. Operator, and the agents and employees of Operator, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of City.

22. NOTICE.

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth immediately below as to City, and the address following the signatures below as to Operator. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing, if mailed as provided in this Section.

To City: City of Carson

701 East Carson Street
Carson, CA 90745
Attn: City Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave Ste. 1700
Irvine, California 92612
Attn: Sunny Soltani, Esq.

23. INTERPRETATION.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. All recitals preceding the terms of this Agreement are incorporated into the terms hereof and understood as binding obligations.

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24. INTEGRATION; AMENDMENT.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

25. SEVERABILITY.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

26. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES.

No officer or employee of City shall be personally liable to Operator, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Operator or to its successor, or for breach of any obligation of the terms of this Agreement.

27. CONFLICT OF INTEREST.

No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Operator warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

28. COVENANT AGAINST DISCRIMINATION.

Operator covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Operator shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

29. AMENDMENTS.

The terms of this Agreement may be modified only by written amendment executed by both Parties hereto.

30. WAIVER AND CIVIL CODE SECTION 1542 WAIVER.

Operator hereby releases and waives any rights to refund of any franchise fees paid to City under the 2017 Agreement. Further, Operator acknowledges that it has been informed of the provisions of California Civil Code Section 1542, and expressly agrees to waive and relinquish all rights and benefits it may have under California Civil Code Section 1542. That section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date stated in hereinabove in this Agreement.

"CITY"

CITY OF CARSON,
a charter city & municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

John W. Carroll, Sr.
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

"OPERATOR"

KRUGER TOWING, INC., a California corporation

Name: Joe Gonzalez
Title: President

Name: Paul Raedyn
Title: Secretary

Address: 17803 South Santa Fe Avenue,
Rancho Dominguez, Cal. 90221
Telephone: 310.639.3107
Fax: 310.635.4877
E-mail: krugertowman@sbcglobal.net

[END OF SIGNATURES]

EXHIBIT "A"
TOW SERVICE AGREEMENT, 2021-2022,
STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL,
CHP 234 (07-2021) OPI 061

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EXHIBIT “B”

KRUGER TOWING RATES FOR TOWING AND STORAGE SERVICES

1. The following rate structure shall apply for all towing and storage services requested by City shall be applicable for the term commencing on September 1, 2021 and apply through the remainder of the Initial Term of this Agreement (except as specified in the Agreement relating to an extended term):

A. **LIGHT DUTY TOWING RATE:** \$155.00 PER HOUR
(No Minimum)

The base rate per tow shall apply to all towed passenger vehicles and trucks rated at less than 10,000 lbs. gross vehicle weight. This rate also applies to difficult removal work involving the removal of vehicles from deep ditches or flood control channels or burning apart of two entangled vehicles.

B. **MEDIUM DUTY TOWING RATE:** \$255.00 PER HOUR
(No Minimum)

The two (2) axle category shall apply to all towed vehicles with a rate capacity of 10,000 lbs. gross vehicle weight to, but not including, vehicles with 30,000 lbs. gross vehicle weight.

C. **HEAVY DUTY TOWING RATE:** \$345.00 PER HOUR
(No Minimum)

The three (3) axle hourly rate shall apply to all towed vehicles with a rate capacity of 30,000 pounds gross vehicle weight or more.

The hourly rate for medium and heavy duty towing (two and three axle) shall commence when the tow truck arrives on the scene and includes difficult removal work involving the removal of vehicles from deep ditches or flood control channels, burning apart two entangled vehicles, up righting overturned vehicles, and the use of special equipment and preparation prior to towing.

D. **STORAGE/SERVICE/FUEL:**

- 1) Automobiles \$50.00 Per Day
- 2) Motorcycles \$50.00 Per Day
- 3) Trucks, light duty -- \$50.00 Per Day
- 4) Trucks, medium duty -- \$55.00 Per Day
- 5) Trucks, heavy duty -- \$65.00 Per Day

- 6) Service Call -- \$77.50 Per Call
- 7) Fuel Charge -- \$10.00 Per Call

The above standard rates apply per vehicle for storage per twenty-four hour period, or any portion thereof.

E. ADDITIONAL CONDITIONS:

- 1) Above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered.
- 2) There shall be no additional charge for disconnecting a drive shaft where required for towing.
- 3) The service of reconnecting the drive shaft, in the event such reconnecting is necessary, shall be performed without additional charge.
- 4) Except for the towing and storage set forth in this Exhibit, there shall be no additional or ancillary charges, of any kind, including, but not limited to, charges for "lock-out fees," "dolly fees," "non-hazardous waste/collision clean-up fees," or "go-jack fees."

F. RATE SCHEDULE:

- 1) The rates charged by Operator for towing and storage services shall be applicable for the term of this Agreement. Should there be a dispute regarding the fees and charges for towing and/or storage of vehicles or other charges, said dispute shall be decided by the City Manager, or his/her designee. Such decision by the City Manager, or his/her designee, shall be final and binding upon Operator; and Operator shall not make any demand upon the owner of the vehicle for a sum in excess of the amount determined by the City Manager, or his/her designee.
- 2) Posting Rate Schedules. Operator shall post and maintain a sign or signs which have received the approval of the City Manager, or his/her designee, in a conspicuous place or places on Operator's premises, in a location designated by the City Manager, or his designee, which gives notice of:
 - (A) The approved Rate Schedule for towing and storage services under this Agreement, and
 - (B) The method of payment(s) which are acceptable, which include credit cards and U. S. currency, and

- (C) The requirement stating that a written receipt shall be supplied by Operator for amount of payment received, and
- (D) The telephone number and address of the City Manager, or his/her designee.