

## **AMENDMENT NO. 2**

### **TO CITY OF CARSON TOWING AND STORAGE NON-EXCLUSIVE FRANCHISE AGREEMENT**

**THIS AMENDMENT NO. 2 TO CITY OF CARSON TOWING AND STORAGE NON-EXCLUSIVE FRANCHISE AGREEMENT** (“Amendment No. 2”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and KRUGER TOWING, INC., a California corporation (“Operator”), is effective as of the 15th day of February, 2023.

#### **RECITALS**

A. 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.

B. 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.

C. 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 September 1, 2021, Operator was delinquent on its franchise fee payments under the 2017 Agreement in the amount of \$25,000, and Operator asked City to waive these fees (“Delinquent Fees”).

D. As of September 1, 2021, City sought 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 agreed that Operator no longer shall be delinquent in payment of any franchise fees under the 2017 Agreement, and moreover, City agreed to give Operator a credit of \$5,000 for franchise fees that otherwise would have been due so that Operator would not thereafter pay any more franchise fees.

E. Accordingly, and in order to effectuate the parties’ desire to deem the annual franchise fee to be \$5,000 under the 2017 Agreement and Operator having paid the \$25,000 franchise fee in December 2017, and City having given Operator a credit of \$5,000 for franchise fees, on September 1, 2021, City and Operator entered into that certain City of Carson Towing & Storage Non-Exclusive Franchise Agreement (“2021 Agreement”) for a one (1) year term ending August 31, 2022, with an annual franchise fee of \$5,000. However, due to the \$5,000 credit given

to Operator for payment of fees made under the 2017 Agreement, Operator was not required to remit any portion of the franchise fee under the 2021 Agreement.

F. Through Amendment No. 1, City and Operator extended the term of the 2021 Agreement by an additional six (6) months to February 28, 2023, to allow Operator to continue to provide towing and storage of vehicles as requested by City, while City explores adoption and implementation of a new tow franchise ordinance that will formally establish City's tow franchise program and provide codified regulations for same.

G. The City Council adopted such ordinance (Ordinance No. 23-2301) on January 17, 2023, and the ordinance will go into effect February 16, 2023. However, in order to properly transition the City's tow franchise program under the regulations of the new ordinance, City staff will need additional time which will necessitate extension of the 2021 Agreement by 30 days, until March 31, 2023. Operator will be responsible for payment of the annual franchise fee, on a pro-rated basis, during such extended one (1) month extension period.

## **TERMS**

1. **Recitals.** The foregoing recitals are true and correct, and are incorporated herein by this reference.

2. **Contract Changes.** The Agreement is amended as provided herein (added text shown in ***bold italics***, deleted text shown in ~~strike through~~).

A. **Section 1 of the Agreement, "Term of Agreement," is hereby amended to read in its entirety as follows:**

**"1. TERM OF AGREEMENT.**

The term of this Agreement is for ***a nineteen*** ~~an eighteen (1918)~~ month period commencing on September 1, 2021 and concluding on the close of business on ***March 31, 2023*** ~~February 28, 2023.~~"

B. **Section 14 of the Agreement, "Licenses, Permits & Franchise Fee," is hereby amended to read in its entirety as follows:**

**"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 through August 31, 2022, but will be required to remit a pro-rated share of the annual \$5,000 franchise fee thereafter until expiration of this Agreement at end of business **March 31, 2023**~~February 28, 2023.~~”

3. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2, all provisions of the Agreement and Amendment No. 1 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 1 and this Amendment No. 2.

4. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Operator each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 1 and this Amendment No. 2, is currently an effective, valid, and binding obligation.

Operator represents and warrants to City that, as of the date of this Amendment No. 2, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Operator that, as of the date of this Amendment No. 2, Operator is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

5. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

6. **Authority.** The persons executing this Amendment No. 2 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 2 on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
David C. Roberts, City Manager

**ATTEST:**

\_\_\_\_\_  
Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[rjl]

**OPERATOR:**

KRUGER TOWING, INC., a California corporation

By:\_\_\_\_\_  
Name: Joe Gonzalez  
Title: President

By:\_\_\_\_\_  
Name: Paul Raedyn  
Title: Secretary  
Address: 17803 South Santa Fe Avenue  
Rancho Dominguez, CA 90221

Two corporate officer signatures required when Operator is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. OPERATOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO OPERATOR'S BUSINESS ENTITY.

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	_____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	_____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		_____
_____		_____
_____		_____
		SIGNER(S) OTHER THAN NAMED ABOVE

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

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<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		DATE OF DOCUMENT
_____ _____ _____		_____ _____ SIGNER(S) OTHER THAN NAMED ABOVE