

## **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 KAM’S AUTOMOTIVE, INC., a California corporation, dba FALCON TOWING (“Operator”), is effective as of the \_\_\_\_\_ day of August, 2021.

#### **RECITALS**

A. City and Operator, under the name “Falcon Towing, a California corporation,” entered into that certain City of Carson Towing and Storage Non-Exclusive Franchise Agreement dated September 28, 2017 (“Agreement”), whereby Operator agreed to provide towing and storage of vehicles as requested by City.

B. The full and correct legal name of Operator is and at all relevant times has been “KAM’S AUTOMOTIVE, INC., a California corporation.” Operator does business as “Falcon Towing” pursuant to a fictitious business name registered with the County of Los Angeles.

C. Section 1 of the Agreement provides that the term of the Agreement is for a three-year period commencing on September 1, 2017, and concluding, unless extended by City as authorized in the Agreement, on the close of business on August 31, 2020.

D. Section 1 of the Agreement further provides that “City, through its manager, shall have the right, in its sole and unfettered discretion, to extend the term of the Agreement . . . for two (2) additional one (1) year extended terms.”

E. After City, through its manager, exercised the first of its two options to extend the term of the Agreement for a one-year extension term pursuant to Section 1 of the Agreement, on August 31, 2020, City and Operator entered into that certain Amendment No. 1 to City of Carson Towing and Storage Non-Exclusive Franchise Agreement (“Amendment No. 1”) to effectuate City’s exercise of said option, thereby extending the term of the Agreement until the close of business on August 31, 2021, with one option remaining available to the City to extend the term of the Agreement for a further one-year period thereafter.

F. Through Amendment No. 1, City and Operator also clarified and corrected the legal name and description of Operator’s business entity for purposes of the Agreement, and to ratify and reaffirm the continuous and uninterrupted term of the Agreement from September 1, 2017 through the effective date of Amendment No.1.

G. City, through its manager, has exercised the second of its two options to extend the term of the Agreement for a one-year extension term pursuant to Section 1 of the Agreement, and now City and Operator desire to again amend the Agreement to effectuate City’s exercise of said option, thereby further extending the term of the Agreement until the close of business on August 31, 2022.

H. Section 14 of the Agreement provides 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 Agreement term.

I. In September 2017, Operator paid City the then requisite \$25,000 annual franchise fee but since that time, has failed to pay any subsequent annual fees due to various unforeseen and uncontrollable circumstances. Specifically, Operator has encountered an exponential rise in the number of RVs and other “atypical” vehicles abandoned in the City which, according to Operator, results 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 Agreement, thereby placing Operator in a situation of operating its business at a loss. As of the effective date of this Amendment No. 2, Operator is delinquent on its franchise fee payments in the amount of \$75,000, and Operator has asked City to waive these fees (“Delinquent Fees”).

J. City has agreed to waive the Delinquent Fees and to retroactively set the annual franchise fee to be \$5,000 as of the effective date of the Agreement, thereby treating the annual franchise fee amount as though it were \$5,000 under the Agreement. Because Operator paid the \$25,000 franchise fee in September 2017, City has agreed that Operator no longer shall be delinquent in payment of any franchise fees, and moreover, Operator shall not owe any franchise fees through August 31, 2022.

## 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:

“The term of this Agreement is for a ***five (5)*** ~~four (4)~~ year period commencing on September 1, 2017 and concluding, unless extended by City as authorized herein, on the close of business on August 31, ***2022*** ~~2021~~, ***it being understood that the Agreement has now been extended.*** ~~City, through its manager, shall have the right, in its sole and unfettered discretion, to extend the term of this Agreement by giving notice to Operator, not later than thirty (30) calendar days prior to expiration of this Agreement, for two (2) one (1) additional one (1) year extended terms. In the event City exercises its option to extend the term of the Agreement, All terms, conditions, and provisions of the original Agreement shall remain the same and apply during any the extension period, with the exception that (i) the service charges may be renegotiated between City and Operator in good faith, and (ii) City may impose any additional conditions necessary to improve service to the public. During any extension period If City~~

~~exercises its option under this Section 1,~~ Operator understands and agrees that, for any extended term of this Agreement, any adjustments (increases or decreases) in rates charged for towing services and/or additional conditions must be approved by the Carson City Council.”

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

“Operator shall, in consideration of this Agreement, pay to City an annual Franchise fee of ~~Twenty-Five Thousand Dollars (\$25,000.00)~~ **(\$5,000.00)** due and owing within five (5) business days of September 1 of each contract year of this Agreement.”

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 this Amendment No. 2 and Amendment No. 1.

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 and Amendment No. 1. 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 and Amendment No. 1. 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

\_\_\_\_\_  
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:**

KAM'S AUTOMOTIVE, INC., a California corporation, dba FALCON TOWING

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:  
Address: 15600 S. Main St.  
Gardena, CA 90248

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 \_\_\_\_\_, 2021 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.

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL	
<input type="checkbox"/> CORPORATE OFFICER	
<div style="text-align: center;">_____ TITLE(S)</div> <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	<div style="text-align: center;">_____ TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	<div style="text-align: center;">_____ NUMBER OF PAGES</div>
<input type="checkbox"/> OTHER _____	
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	<div style="text-align: center;">_____ DATE OF DOCUMENT</div>
	<div style="text-align: center;">_____ SIGNER(S) OTHER THAN NAMED ABOVE</div>

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<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