

TOWING SERVICES AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2021, by and between the City of Winona, a Minnesota municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "the City", and Borkowski Towing & Salvage Inc., a corporation under the laws of the State of Minnesota, hereinafter referred to as "the Company", (collectively the "Parties")

WITNESSETH:

In consideration of the mutual undertaking and agreements hereinafter set forth, the City and the Company agree as follows:

1. Term. The term of this Agreement shall be for One (1) year, commencing on December 1, 2021, and ending on November 30, 2022.
2. Services. The Company shall perform the towing and removal of impounded or illegally parked motor vehicles upon the request of the City's Police Department or Public Works Department for such services. Towing and removal of motor vehicles shall include storage (as set forth in paragraph 8 of this Agreement), unless the Company is directed to take the towed vehicle to another location specified by the City. In the case of disabled vehicles where the police summon a tow truck pursuant to the vehicle owner's or possessor's request where the owner or possessor does not express a preference for the provider of towing service, the Company shall be summoned.

3. City Towing. Nothing herein shall be deemed to apply to the City towing City-owned vehicles.

4. Hours. The Company shall provide service Twenty-four (24) hours a day and Seven (7) days a week. Office hours for vehicle reclaiming shall be Monday through Friday, 8:00 a.m. to 5:00 p.m., Saturday, 8:00 a.m. to 1:00 p.m., and Sunday (only after Saturday snow removal) 9:30 a.m. to 1:00 p.m.

5. Response Time. When summoned, the Company shall dispatch sufficient personnel and equipment within Fifteen (15) minutes from the time of notification by the City of the need for towing services. In the case of snow emergency towing, the Company shall provide up to Eight (8) tow trucks.

6. Equipment. The Company shall make up to Ten (10) fully equipped towing trucks registered to one company exclusively available for the City's towing services. The Company shall have equipment able to remove any motor vehicle from any City street. All equipment shall be maintained in a safe operating condition to ensure safe and efficient towing.

7. Towing Charges. The Company shall charge \$125.00 plus applicable sales tax for towing within the City limits of a passenger car, van or light truck pursuant to a citation for a parking violation, impoundment by the Police or other City ordered towing except removal of damaged vehicles from accident scenes or other towing requiring the use of special equipment or extraordinary effort. An additional charge of \$75.00 may be added when specialized equipment is required such as the use of flat beds or as required for "low-rider" vehicles. Oversized vehicles, such as motorhomes,

semi-tractors, trailers, are subject to additional towing charges. The owner of the vehicle shall pay the cost of towing. The City shall not be responsible for such charge unless (a) the vehicle towed is owned by the City, in which event it shall be towed to the City's garage or other location specified by the City. The Company shall not charge the City for the towing of vehicles subject to forfeiture proceedings. The City shall pay the Company \$200.00 for any vehicle that is ultimately sold at auction or \$200.00 for any vehicle kept for City use. Should any vehicle subject to forfeiture proceedings be released to the owner, the Company may charge the owner a towing fee of \$150.00 plus applicable sales tax. Oversized vehicles, such as motorhomes, semi-tractors, trailers, are subject to additional towing charges.

8. Storage. The Company shall provide storage for towed and forfeited vehicles. Such storage shall be in a completely fenced security lot located within the corporate limits of the City or the City of Goodview. The Company shall be responsible for all stored vehicles and shall comply with all applicable ordinances, laws or regulations governing such storage.

9. Personal Property Stored in Vehicles. In the event that the registered owner waives his/her right to reclaim the vehicle, i.e. the vehicle is surrendered to Borkowski for salvage or resale, the personal property stored in the vehicle shall be released to the registered owner by Borkowski without requiring the registered owner to pay the towing fee. Also, the personal property stored in a vehicle subject to forfeiture shall be released to the registered owner by Borkowski upon the request of the registered owner.

10. Storage Fees. The first Twenty-four (24) hours a vehicle is held shall be without charge. Second and subsequent day storage charges shall accumulate every Twenty-four (24) hours from the original time of the tow. A charge of \$50.00 per day, or fraction thereof, shall be imposed for each Twenty-four (24) hours after the initial Twenty-four (24) hour period. The owner of the vehicle shall pay the cost of storage. The City shall not be responsible for such charge. Oversized vehicles, such as motorhomes, semi-tractors, trailers, are subject to additional storage charges. The storage fee for a vehicle subject to a DWI forfeiture proceeding or a Drug-related forfeiture proceeding shall be calculated as hereinabove specified, but shall not exceed a total amount of \$500.00. Once a final disposition with regard to forfeiture is reached the Company may charge their regular rate for storage in excess of the \$500.00 limit, provided that notice has been sent by certified mail, return receipt requested, to the last known address of the registered owner of the vehicle and a period of at least Forty-eight (48) hours has elapsed since receipt of said notice. The City shall notify the Company in writing as soon as practicable after a vehicle has been released and convey to Company any conditions of release.

11. Permits and Licenses. The Company shall obtain and maintain all licenses or permits required by a governmental body, including the City. The Company shall be responsible for all license fees. The Company shall observe and comply with all State, Federal and local laws, ordinances, and regulations governing towing.

12. Disposal of Unclaimed Towed Vehicles. The Company, pursuant to State and local laws, shall dispose of unclaimed vehicles. The City shall not be liable

for any towing or storage fees. In the event the owner consents to disposal of a vehicle by the Company in lieu of redemption, the Company shall have the owner execute a form releasing and transferring the vehicle to the Company.

13. Personnel. The Company shall provide sufficient personnel for the safe and efficient removal of motor vehicles. The Company shall only employ personnel trained in the operation of the equipment and the safe and proper methods of towing motor vehicles.

14. Insurance. The Company shall procure and maintain during the term of this Agreement, or extension thereof, public liability insurance and property damage insurance with limits not less than the maximum liability limits for a municipality as provided in Minnesota Statutes Section 466.04; the City of Winona shall be a named insured. Said policy shall also contain an endorsement for contractual coverage for the protection of the parties hereto under the Indemnity and Hold Harmless provision of this Agreement. The Company's insurance policy and certificate shall not be cancelled or its conditions altered in any manner without Ten (10) days prior written notice to the City Manager of Winona. The insuring company shall deliver to the City Clerk of Winona certificates of all insurance required, signed by an authorized representative and stating that all provisions of the specified requirements are satisfied. If the Company does not furnish the required certificates within Thirty (30) days after execution of this Agreement, this Agreement shall become void. If insurance coverage lapses, this Agreement shall become void as of the date no valid approved insurance policy is in effect. The Company shall maintain Worker's Compensation insurance in such form and amount as

required by the laws of the State of Minnesota and provide proof thereof to the City Clerk of Winona.

15. Indemnify and Hold Harmless. The Company does hereby agree that it will, at all times during the initial term of this Agreement, or any extension of this Agreement, defend, indemnify, and hold harmless the City and its officers, agents, employees, or representatives, against any and all liability, loss, charges, damages, costs, expenses or attorney's fees, which the City may hereafter sustain, incur or be required to pay as a result of the willful or negligent act or omission of the Company or its employees, or resulting from the Company's failure to perform or observe any of the terms, covenants and conditions of this Agreement to be performed by the Company or by reason of any person suffering personal injury, death or property loss or damage while on the premises of the storage lot provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, expenses, or attorney's fees caused or resulting from the acts or omissions of the City or any of the officers, employees, agents, or representatives of the City, which may result in any person suffering personal injury, death or property loss or damage.

16. Default. If Company fails to perform any of the provisions of this Agreement or administers the services in such a manner as to endanger the performance of the Agreement, this shall constitute default. Unless Company's default is excused by the City, the City may, upon written notice, immediately cancel this Agreement or exercise any other rights or remedies available to the City under this Agreement or law.

17. Suspension of Work. If any work performed by Company is abandoned or suspended in whole or in part by the City, Company shall be paid for any services performed to the satisfaction of the Winona Police Chief prior to Company's receipt of written notice from the City of such abandonment or suspension.

18. Non-assignability. This Agreement shall not be assignable by Company without the written consent of the City. Consent shall not be unreasonably withheld.

19. Compliance with Law. In the performance of this Agreement, the Company hereby agrees to comply with all applicable State, Federal, and local laws, ordinances, and regulations.

20. General Terms.

A. Voluntary and Knowing Action. The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

B. Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

C. Independent Contractor Status. Company, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the City for any purpose. No statement contained in this Contract shall be construed so as to find Company to be an employee of the City, and Company shall not be entitled to any of the rights, privileges, or benefits of employees of the City, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

The City acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Company, and that it is Company's sole obligation to comply with the applicable provisions of all Federal and State tax laws.

Company shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein.

Company is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.

D. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and Company.

E. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Company agrees that the City, the State Auditor, or any of

their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Company and involve transactions relating to this Agreement.

F. Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

G. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

H. Interest by City Officials. No elected official, officer, or employee of the City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

I. Governing Law. This Agreement shall be deemed to have

been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

J. Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*

K. No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

L. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

M. Entire Agreement. These terms and conditions constitute the entire Agreement between the Parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

N. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

O. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of the City and Company arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
the dates below given.

BORKOWSKI TOWING & SALVAGE INC.

By: _____

Its: President

And By: _____

Its: Secretary

CITY OF WINONA, MINNESOTA

By: _____
Scott D. Sherman
Its: Mayor

And By: _____
Monica Hennessy Mohan
Its: City Clerk