

**ABANDONED VEHICLE AND TOWING AGREEMENT
BETWEEN THE CITY OF LA CROSSE
AND DON'S TOWING & REPAIR, INC.**

This Agreement is made and entered into this 1ST day of Aug, 2018 by and between the City of La Crosse (hereinafter "City"), a municipal corporation with offices located at 400 La Crosse Street, La Crosse, WI 54601, and Don's Towing and Repair, Inc. (hereinafter "Contractor"), with offices located at 816 Monitor Street, La Crosse, WI 54603.

WHEREAS, the City desires to obtain professional services for the towing, storage, and appropriate disposal of abandoned vehicles, and

WHEREAS, Don's Towing and Repair, Inc. has provided that it has the necessary qualifications and desires to tow, store, and appropriately dispose of abandoned vehicles, and

WHEREAS, the parties desire to enter into this Agreement for the towing, storage, and appropriate disposal of abandoned vehicles.

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged and received, the parties hereby covenant and agree as follows:

ARTICLE I: Term and Termination

1.1 *Term.* The initial term of this Agreement shall be for an initial term of two (2) years commencing from the date of this Agreement set forth above. Following the initial term, the City, at its sole discretion, may extend the Agreement for an additional one (1) year under the same terms and conditions. The City will provide written notice of such renewal to Contractor at least thirty (30) days prior to the termination of the initial term of the Agreement or as the parties otherwise agree.

1.2 *Termination for Cause.* In the event of a breach of any term or condition of this Agreement by Contractor, the City may terminate the Agreement upon three (3) days notice.

1.3 *Termination for Convenience.* The City may terminate this Agreement for any reason upon thirty (30) days written notice to Contractor.

ARTICLE II: Services by Contractor and Payment

2.1 *Scope of Services.* Contractor is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. Contractor is required to furnish all services and labor necessary as indicated in this Agreement, including but not limited to materials, equipment, supplies, and incidentals.

The scopes of services to be performed shall include, without limitation, those services set forth in this Agreement.

2.2 *General Services.* Contractor shall provide professional services for the towing, storage, and appropriate disposal of abandoned vehicles for the City in compliance with sec. 342.40, Wis. Stat. and applicable local laws, and as such laws may be amended from time to time.

2.3 *Towing Services.* Upon notification by the City designating a vehicle to be towed, Contractor shall respond and tow such vehicle within twenty-four (24) hours, unless otherwise agreed by the City. Contractor must be available to tow abandoned vehicles between the hours of 8:00 a.m. and 8:00 p.m. Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Contractor must be available to tow vehicles from anywhere within the corporate limits of the City of La Crosse.

2.4 *Payment to City.* Contractor shall pay City \$459.00 per vehicle towed pursuant to this Agreement and not claimed by the owner. Payment shall be made to the City of La Crosse Police Department by the fifteenth day of each month for vehicles towed during the previous month. For example, payment is due by February 15th for vehicles towed during the previous month of January. Contractor when remitting payment shall provide a detailed statement with a description of each vehicle towed and state the status of each vehicle, including whether it was returned to owner, remains in storage, or was disposed of pursuant to applicable law.

2.5 *Storage Services.* Vehicles towed by Contractor pursuant to this Agreement shall be stored at a location within La Crosse County. Contractor shall provide secured storage at said permitted locations in a secure yard with a fence of not less than six feet in height, or as otherwise agreed by the City. Contractor may store the vehicles at its business location, 816 Monitor Street, La Crosse, WI 54603.

2.6 *Payment for Towing and Storage Services for Claimed Vehicles.* If an abandoned vehicle is subsequently claimed, the contractor is permitted to charge up to \$150.00 for a towing fee and up to \$30.00 per day for a storage fee, as well as any other reasonable and applicable fees. Contractor is solely responsible for obtaining payment for towing and storage fees from the vehicle owner.

2.7 *Disposal Services.* Contractor shall appropriately dispose of towed vehicles pursuant to the requirements of sec. 342.40, Wis. Stat. and local law, and as such laws may be amended from time to time. The City will provide the Contractor with the proper forms as provided by the WI DOT for disposal.

ARTICLE III: Permits, Licensing, and Compliance with Law

3.1 *Permits and Licenses.* Contractor shall obtain and maintain all necessary permits and licenses, at its sole expense, in order to provide the services under this Agreement, including but not limited to any requirements under state and local law.

3.2 *Fully Qualified.* Contractor represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized and permitted under state and local law to perform the services.

3.3 *Compliance With Law.* Contractor shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

ARTICLE IV: Insurance and Indemnification

4.1 *Insurance.* Contractor shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage.
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles in relationship to this Agreement.
- 3) To the extent that Contractor employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

Such insurance must also include liability coverage for the vehicles that are towed and stored by Contractor. On the certificate of insurance, the City of La Crosse shall be named as an additional insured on any General Liability Insurance and Automobile Liability Insurance. Prior to the execution of this Agreement, Contractor shall file with City a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contractor shall provide City with a thirty (30) day notice prior to termination or cancellation of the policy. City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

4.2 *Indemnification.* To the fullest extent allowable by law, Contractor hereby indemnifies and shall defend and hold harmless, at Contractor's expense, the City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence,

whether active or passive of Contractor, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitations and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contractor shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

ARTICLE V: Assignment and Subcontracting

5.1 *Assignment, Sublet, and Transfer.* Contractor shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contractor shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

5.2 *Subcontracting.* The services to be performed under this Agreement may be subcontracted by Contractor upon approval by the City under the following conditions: 1) Contractor shall provide in writing the legal business name, address, phone number, and agent of any subcontractor; 2) Contractor shall require that any subcontractor enter into a written agreement with Contractor and shall be subject to each provision of this Agreement; 3) Contractor shall provide City with evidence that the subcontractor is in compliance with the insurance provisions set forth in this Agreement; and 4) Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

ARTICLE VI: Miscellaneous and Additional Provisions

6.1 *Independent Contractors.* The parties, their employees, agents, subcontractors, volunteers, and representatives shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

6.2 *No Personal Liability.* Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of City have any personal liability arising out of this Agreement and Contractor shall not seek or claim any such personal liability.

6.3 *Governing Law.* This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

6.4 *Jury Trial Waiver.* The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

6.5 *Notification.* Contractor shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contractor with respect thereto.

(2) Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contractor contained in this Agreement to be untrue.

(3) Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contractor or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contractor or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contractor or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.6 *Severability.* The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

6.7 *No Waiver.* The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term,

covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

6.8 *Conflicts of Interest.* Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contractor or its employee must be disclosed to City.

6.9 *Non-Discrimination.* Pursuant to law, it is unlawful and Contractor agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

6.10 *Political Activities.* Contractor shall not engage in any political activities while in performance of any and all services and work under this Agreement.

6.11 *Entire and Superseding Agreement.* This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

6.12 *Amendment.* This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

6.13 *Notices.* Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after

deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk	Attn. City Attorney	Attn: Police Chief
	City of La Crosse	City of La Crosse	City of La Crosse
	400 La Crosse Street	400 La Crosse Street	400 La Crosse Street
	La Crosse, WI 54601	La Crosse, WI 54601	La Crosse, WI 54601

To the Contractor: Don's Towing and Repair, Inc.
816 Monitor Street
La Crosse, WI 54603

6.14 *Access to Records.* Contractor, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. City, or any of its duly authorized representatives, shall have access, at no cost to City, to such books, records, documents, papers or any records, including electronic, of Contractor which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

6.15 *Public Records Law.* Contractor understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Contractor agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contractor agrees to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, Contractor agrees to indemnify and hold harmless City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Contractor's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Contractor decides not to retain its records for a period of seven (7) years, then it shall provide written notice to City whereupon City shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

6.16 *Construction.* This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

6.17 *No Third-Party Beneficiary.* Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

6.18 *Good Standing.* Contractor affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contractor is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.19 *Authority.* The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

6.20 *Execution of Agreement.* Contractor shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contractor's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

6.21 *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

6.22 *Survival.* All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS WHEREOF, the parties to this Agreement cause this instrument to be executed by their authorized representatives on the date and year first above written.

City of La Crosse ("City"):

By: Timothy Kabat
Timothy Kabat, Mayor

By: Teri Lehrke
Teri Lehrke, City Clerk

Don's Towing and Repair, Inc. ("Contractor"):

By: Michael Marlock *UW*
Michael Marlock, Owner