AGREEMENT FOR TOWING SERVICES
BY AND BETWEEN
THE CITY OF LAKWOOD
AND
KUFNER TOWING, INC.

THIS AGREEMENT entered into this 7th day of February, 2018, by and between the City of Lakewood, (hereinafter "the City"), 12650 Detroit Avenue, Lakewood, Ohio, 44107 and Kufner Towing Inc., (hereinafter "Kufner Towing"), 3775 Ridge Road, Cleveland, Ohio 44144.

WITNESSETH:

For and in consideration of the mutual promises, covenants and agreements of the parties hereto as herein set forth, the parties hereby agree as follows:

1. **Term.** This Agreement is for a one year term commencing March 1, 2018 and may be renewed at the option of the City for two additional one year terms.

2. **Designation.** The City of Lakewood herby designates Kufner Towing as the firm to be called when towing services are necessary as the result of a vehicle being towed by order of the Division of Police or when a motor vehicle is disabled, due to motor vehicle accident damage or otherwise, in the public right-of-way and the owner or operator of the disabled vehicle has no preference as to a service provider.

3. **Conditions and Obligations.** Kufner Towing accepts the obligation to remove all cars designated as junked, damaged, abandoned, stolen, illegally parked, or to be moved pursuant to an arrest, when notified by police or other proper City officials without cost to the City, except as specifically provided herein. Kufner Towing will ordinarily maintain, as ready and on duty, sufficient equipment and qualified operators to respond to requests for towing services from the Lakewood Division of Police within ten (10) minutes of notification, except, that for rush-hour and planned

details requiring multiple tows, Kufner Towing will provide at least three (3) tow vehicles for more immediate response. All towing vehicles or equipment utilized to respond to calls for service under this Agreement shall clearly be marked "Kufner Towing" or have other such markings visible that will identify the tow vehicle as being owned and operated by Kufner Towing, Inc. Any tow vehicle or other equipment marked with any other business name shall not be permitted to be utilized to provide services under this Agreement.

Kufner Towing is prohibited from placing towed vehicles on any public property or private property not under its ownership or control for any length of time.

Nothing in this Agreement shall prohibit the City from contacting other companies for additional tow services where Kufner Towing, either due to the number of tows required, lack of adequate staffing, or any other circumstance, is unable to or fails to provide a timely response for towing services.

Kufner Towing employees shall not attempt to obtain a contract for motor vehicle repairs while engaging in police towing operations.

4. **Rates and Charges.** The rates to be charged for towing and road service provided in the removal of vehicles that are junk, abandoned, involved in a motor vehicle accident, or otherwise ordered removed at the direction of the Lakewood Division of Police are established in the Fee Schedule attached as Appendix A of this Agreement. The Fee Schedule shall be posted in a conspicuous place at Kufner Towing and a copy shall be provided to any customer who requests a list of fees. ***All charges are to be paid by the vehicle owner or other persons legally entitled to claim the vehicle.*** If vehicles are not claimed, costs may be recovered via salvage in accordance with State of Ohio Statutes. The rates shall include the cost for each of the following:

A. *Straight Hook-Up* - Rate <u>includes</u> the use of a sling and wheel lift tows and basic services such as disengaging the linkage of the transmission, clearing the scene of debris, allowing for one tire change, and four (4) hours of storage, unless the vehicle is taken to a City impound lot or other premises not controlled by Kufner Towing.

B. *Flat-Bed and Dolly Tow* – Rate includes basic services such as disengaging the linkage of the transmission, clearing the scene of debris, allow one tire change, and four (4) hours of storage, unless vehicle is taken to a City impound lot or other premises not controlled by Kufner Towing.

C. *Tractor-Trailer/ Semi-Trucks and Trailer Tows:* Rate includes basic services such as disengaging the linkage of the transmission, clearing the scene of debris, allow one tire change, and four (4) hours of storage, unless vehicle is taken to a City impound lot or other premises not controlled by Kufner Towing.

D. Vehicle Winching P: Rate includes equipment necessary to winch vehicles; mechanical, electric, hydraulic winches and various block and tackle. Remove vehicles on various inclines, or that may be stuck, wedged, or imbedded into various media.

E. *Roll over and vehicle up righting:* Rate includes equipment necessary to service vehicles that have rolled over or fallen to its' side. Service may require two-tow vehicles equipped with air bags, slings, winches, and block and tackle.

F. *Extra Service Labor:* Only tows requiring additional personnel or equipment shall be charged for extra service or labor. In the event that the extra charges are the result of the clean up of a motor vehicle accident, each vehicle towed from the scene of the accident shall share proportionately in the hourly cost of the additional labor as determined by the tow vehicle operator responding to the scene.

Kufner Towing shall assure that all charges for towing shall be based upon the type of equipment **needed** for an individual tow rather than the type of equipment actually used. For example, if a vehicle only needs be towed using a sling, but only a flatbed is available, the charge rendered shall be for the use of a sling tow. Any fees shall be substantiated on the tow bill by detailing any equipment or additional labor charged for and the reason for the use of the equipment.

Kufner Towing also agrees to accept and store vehicles ordered impounded by the police that are to be held for criminal forfeiture. These vehicles may remain in storage for an undetermined amount of time pending the outcome of the criminal case. The release of the vehicle will be governed by the procedures set for all police tows. Kufner Towing agrees to only one charged tow for tows that are brought to the Lakewood Police Department for evidence processing, then relocated to the impound lot.

5. **Documentation.** The provider shall be required to maintain records in the form of a tow bill on all vehicles towed and released on the order of the Lakewood Division of Police. These records shall include the following information on each vehicle.

A. The year, make, license and/or serial number;
B. The date and time vehicle was towed;
C. The date and time vehicle was released;
D. The breakdown of all fees included in the total charges indicating the type of tow, what type of equipment/additional equipment was used, and an explanation of any charges beyond those for a *straight hook-up;*
E. Total cost of applicable fees charged on release of vehicle
F. The signature of the individual to whom the vehicle was released confirming that the applicable charges were paid.

To the extent possible, these records will be stored electronically and available for transmission in that form to the Division of Police for inventory and related purposes. At a minimum, fax machine capability for transmission to and from police shall be required. Kufner Towing agrees to submit a report monthly for review showing all of the information detailed above and actual tow sheets if requested. The City agrees to review any original documents in a timely manner and return them within a reasonable period of time to Kufner Towing.

Kufner Towing acknowledges that records required to be kept under this agreement are subject to the Ohio Public Records Act within Chapter 149 of the Ohio Revised Code and failure to comply is subject to civil penalties. Any questions regarding maintaining, destroying or providing copies of such records should be directed to the City of Lakewood Law Department.

6. **Security and Access.** All facilities operated by Kufner Towing shall be maintained in a manner to provide safe, secure storage of vehicles and any contents. Kufner Towing must have at least one staff person on premises 24 hours a day, 7 days per week to grant vehicle releases and a sufficient number of wrecker operators on duty to handle all requests for service without unreasonable delay.

It is the responsibility of the provider to protect impounded vehicles and any contents until the vehicles have either been released to the proper person or disposed of, as authorized by law. Vehicles impounded at the direction of the Lakewood Division of Police shall be stored in lots approved the Chief of Police or his designee and not moved from said lot until released, junked, or title is transferred to the provider. Indoor storage and special security shall be available for up to ten (10) vehicles at any one time, at police request.

7. **Administrative Fee.** Pursuant to Lakewood Codified Ordinance §135.15, Kufner Towing shall collect, on behalf of the City of Lakewood, an administrative towing fee as established by ordinance, currently $25.00 per tow. The City of Lakewood shall provide Kufner Towing 30 days written notice of any change in the administrative fee. Such fee shall be in addition to the fees collected in accordance with Paragraph 4 above and Appendix A of this Agreement. Such fee shall not be applicable in the event that the vehicle is not returned to or claimed by the registered owner. Kufner Towing shall submit Administrative Towing Fees to the Division of Police along with an Excel spreadsheet (or other comparable report) detailing the fee collected, the vehicle owner, and tow number on a weekly basis to allow the City to adequately track compliance with the collection of this fee. Kufner Towing shall submit any other information or documentation reasonably requested by the City to ensure compliance with collection of the Administrative Fee.

8. **Release.** The Lakewood Division of Police will provide a written or electronic release to individuals entitled to claim vehicles impounded in accordance with this Agreement and Kufner Towing expressly agrees to require such release before surrendering the vehicle. This release must be presented to Kufner Towing for final release of the vehicle and settlement of towing, administrative and storage fees by the party claiming the vehicle.

Kufner Towing shall permit the owner and/or legal representative the right to inspect a stored vehicle prior to release and allow the owner and/or legal representative to remove ownership and

licensing paper from the vehicle necessary for obtaining a police release. Kufner Towing shall grant the release of other personal effects from vehicle after receiving a written release from the Lakewood Division of Police authorizing the release of personal effects.

9. **Termination.** Violations or failure to comply with any of the provisions of this Agreement, or any federal, state or local law may result in the suspension of this Agreement without notice or any opportunity to cure such violation. Repeated refusal or the inability by Kufner Towing to respond to a tow request will result in a review of the agency's performance and may result in a suspension or revocation of this towing Agreement. The City of Lakewood is not required to give a minimum notice of revocation or suspension in such instances, and Kufner Towing expressly waives any claims for damages, costs, or injuries of each and every kind whatsoever arising from the City of Lakewood's exercise of its rights of suspension or revocation as herein set forth.

Either the City of Lakewood or Kufner Towing, upon giving thirty (30) days written notice to the other party, may rescind this Agreement and be free from any and all future obligations except with respect to those vehicles previously towed.

10. **Insurance.** Kufner Towing shall provide the City certificates of insurance naming the City of Lakewood as an additional insured on policies of insurance having, at a minimum, the following overages:

a) General Liability	$1 million per occurrence/$2 million aggregate
b) Automobile Liability	$1 million per occurrence
c) Umbrella	$5 million

In addition to the coverages stated above, Kufner Towing shall maintain Workers' Compensation coverage for its employees.

11. **Indemnification.** Kufner Towing shall defend, indemnify and hold the City, its officers, its officials, agents and employees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands of every kind and nature (including

all reasonable costs and expert fees) arising by reason of bodily injury, death of any person, damage to property, arising out of, as a consequence of, or incidental to the acts and omissions of Kufner Towing, Kufner Towing's officers, agents, employees, licensees or invitees, in the provision of towing services under this Agreement. Upon determination of the City, its officers, officials, agents and employees, Kufner Towing shall defend, indemnify and hold the City harmless from any and all liabilities, losses, suits, claims, judgments, fines or demand of every kind and nature arising by reason of Kufner Towing's provision of towing services resulting from any claim of discrimination.

Kufner Towing shall defend all suits brought upon such claims and lawsuits and shall pay all costs and expenses incidental thereto, but the City shall have the right, at its option, to participate in the defense of the suit, without relieving Kufner Towing of any of its obligations hereunder. This paragraph shall survive expiration or early termination of this Contract.

12. **Transferability.** This Agreement is not transferable and shall not be assigned by either party.

13. **Entire Agreement.** This Agreement, together with Kufner Towing response to the RFP to the Request for Proposal, which are hereby incorporated, constitutes the entire Agreement between the Parties. Any conflict between this Agreement and Kufner Towing's responses shall be reconciled in favor of this Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

14. **Governing Law and Venue.** The construction and interpretation of the provisions of this Agreement shall be governed by the laws of the State of Ohio. Kufner Towing and City agree that any litigation or dispute over any matter related to or arising

from this Agreement or the performance or lack thereof, its terms and/or conditions shall be solely and exclusively venued in the Cuyahoga County Court of Common Pleas, Cuyahoga County, Ohio.

15. **Amendment.** This Agreement may be amended by the mutual agreement of the parties hereto in a writing to be attached to and incorporated into this Agreement.

16. **Legal Construction.** In the event that anyone or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable, it shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

Executed at Lakewood, Ohio on the day and year first above written.

CITY OF LAKEWOOD

Date 2-7-18 By: _____
Michael P. Summers, Mayor

KUFNER TOWING, INC.

Date 2-7-18 By: _____
Dale Kufner, Jr., Vice President

APPROVED AS TO LEGAL FORM:

_____
Jennifer L. Swallow
Chief Assistant Director of Law

CITY OF LAKEWOOD, OHIO

VEHICLE TOWING and STORAGE

(Appendix A)

FEE SCHEDULE

Regular Towing – Straight Hook-up ..... $ 75.00
(including motorcycles)

Flatbed/Dolly Tows ..... $ 85.00

Tractor-Trailer/Semi-Truck Tows ..... $ 150.00 per hour

Administrative Towing Fee..... $ 25.00

Roll-over & Vehicle Up-righting ..... $ 75.00 per hour/vehicles under 10,000 GVW
$150.00 per hour/vehicles over 10,000 GVW*

Vehicle Winching ..... $ 75.00 per hour/ vehicles under 10,000 GVW
$150.00 per hour/ vehicles over 10,000 GVW*

Labor charges for extra services ..... $ 50.00 per hour
(includes lock out services, half hour minimum applicable)

Booting Services ..... $ 75.00 for removal

Storage Fees ..... No Charge-first four (4) hours
$ 10.00 per calendar day – cars/light trucks
$ 10.00 per calendar day -scooters/motorcycles (outdoor)
$ 20.00 per calendar day -scooters/motorcycles (indoor)
$ 20.00 per calendar day – trucks/tractor trailers

*** Includes vehicles under 10,000 GVW when loaded weight exceeds 10,000 GVW**

(TO BE POSTED CONSPICUOUSLY AT TOW FACILITY)