

G & O Towing Inc

THIRD AMENDMENT TO AGREEMENT FOR SERVICES #3604

THIS THIRD AMENDMENT to that Agreement for Services #3604 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and G & O Body Shop, Inc., a California corporation duly qualified to conduct business in the State of California, doing business as G & O Towing, whose principal place of business is 7515 Green Valley Road, Placerville, California 95667 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, G & O Body Shop, Inc. has been engaged by County to provide Vehicle Abatement services for both the Eastern and Western Slopes of El Dorado County on an "as requested" basis for the Sheriff's Office, in accordance with Agreement for Services #3604 dated January 25, 2019, Amendment I, dated January 4, 2021, and Amendment II, dated June 22, 2021, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, On May 10, 2021, G & O Towing Inc filed paperwork with the California Secretary of State to create a separate entity specifically for towing services as G & O Body Shop, Inc. changed its business structure and the services it provided. G & O Towing Inc purchased all of the towing assets, including contracts, from G & O Body Shop, Inc. and officially began operating separately and independently of G & O Body Shop, Inc. effective September 1, 2021;

WHEREAS, ARTICLE VIII, Assignment and Delegation, of the Agreement prohibits G & O Body Shop, Inc., from subcontracting, delegating, or assigning services to be provided, in whole or in part, to any other person or entity without prior written consent of County;

WHEREAS, G & O Body Shop, Inc. executed an assignment agreement granting, assigning, transferring, conveying, delivering, delegating, and setting over unto G & O Towing Inc all of G & O Body Shop, Inc.'s rights, title, interest, duties, obligations, and liabilities in, to, and under Agreement #3604. G & O Body Shop, Inc.'s assignment agreement is incorporated herein as Exhibit A, marked "Assignment, Assumption, and Consent Agreement," effective as of the last signatory date contained on Exhibit A;

WHEREAS, G & O Body Shop, Inc., has requested that County accept work under the Agreement and assign all of its rights, obligations, and liabilities to G & O Towing Inc;

WHEREAS, G & O Towing Inc, acknowledges and agrees that all existing indemnity and insurance obligations shall remain in full force and effect for the duration of Agreement #3604, and as thereafter required by the Agreement;

WHEREAS, G & O Towing Inc, shall assume all Contractor's rights, obligations, and liabilities under the Agreement, including outstanding rights, obligations, and liabilities with providing on-call towing and emergency roadside assistance;

WHEREAS, County will accept this Third Amendment to Agreement for Services #3604 on condition that G & O Towing Inc, assumes and fulfills the terms and conditions of this Third Amendment, First and Second Amendment, and the Agreement;

WHEREAS, the parties hereto desire to amend the Agreement to revise the rate for abating Trailers and Recreational Vehicles, amending the relevant portion of **ARTICLE III, Compensation for Services**;

WHEREAS, the parties hereto desire to amend the Agreement to update the notice recipients, amending **ARTICLE XIII, Notice to Parties**;

WHEREAS, the parties hereto desire to fully-replace specific Articles and add new Articles to include updated contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and G & O Body Shop, Inc., mutually agree to amend the terms of the Agreement in this Third Amendment to Agreement for Services #3604 on the following terms and conditions:

- I. All references to G & O Body Shop, Inc., throughout the Agreement shall read G & O Towing Inc. G & O Towing Inc assumes all rights, obligations, and liabilities for any and all services provided under this Agreement, including any services provided prior to the execution of this Third Amendment.
- II. **ARTICLE III, Compensation for Services**, the second sentence of Paragraph 2 of the Agreement is amended as follows:

Trailers and Recreational Vehicles on the Western Slope will be billed a rate of (1) \$1,375 for each such vehicle, which includes removal of all propane tanks, coolant oils, and septic/grey water, pickup of vehicle and making it safe to tow, and (2) an additional \$1,100 disposal fee for each such vehicle, for a total of \$2,475 for each such vehicle.

Paragraph five is amended in its entirety to read as follows:

Invoices for other vehicles as requested by the Sheriff's Department shall be mailed to County at the following address:

County of El Dorado
Sheriff's Office
200 Industrial Drive
Placerville, California 95667

Attn.: Accounting Department

III. ARTICLE XII, Notice to Parties, of the Agreement is amended in its entirety to read as follows:

ARTICLE XII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Sheriff's Office
200 Industrial Drive
Placerville, California 95667

Attn.: Lance Bryant
Lieutenant

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts
Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

G & O Towing Inc
5821 Mother Lode Drive
Placerville, California 95667

Attn.: Gary Cooper Jr., Chief Executive Officer

or to such other location as Contractor directs.

IV. The following Articles of the Agreement are fully-replaced in their entirety to read as follows:

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing,

authorizes that agreement or sharing of information.

ARTICLE VIII

Independent Contractor: The parties intend that an independent Contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XI

Default, Termination, and Cancellation:

- A. **Termination by Default:** If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has thirty (30) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within thirty (30) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

1. If County terminates this Agreement, in whole or in part, for default: County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and reasonably satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.
 3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XIX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XIV

Indemnity: To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all third party liability, claims, suits, losses, damages, or expenses of every name, kind and description, including reasonable attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the negligent acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVIII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be a "Contractor" within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are considered to be a "Contractor" within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any

officer or employee of Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XII, Default, Termination, and Cancellation.

ARTICLE XIX

Nondiscrimination:

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature executing this Agreement shall provide any

certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

V. The following Articles of the Agreement are added to read as follows:

ARTICLE XXXI

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXXII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XXXIII

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

Except as herein amended, all other parts and sections of Agreement for Services #3604 shall remain unchanged and in full force and effect.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE

By: _____

Lance Bryant
Lieutenant
Sheriff's Office

Dated: _____

By: _____

Jon D'Agostini
Sheriff

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement for Services #3604 on the dates indicated below.

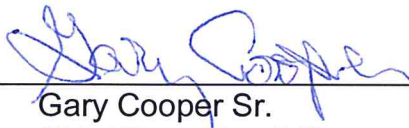
-- COUNTY OF EL DORADO --

By: _____

Dated: _____

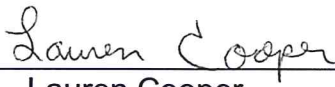
Purchasing Agent
Chief Administrative Office
"County"

-- G & O BODY SHOP, INC. --

By:  _____

Dated: 3-15-2022

Gary Cooper Sr.
Chief Executive Officer
"Contractor"

By:  _____

Dated: 3-15-22

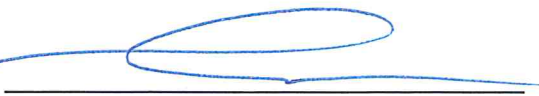
Lauren Cooper
Corporate Secretary

-- G & O TOWING INC --

By:  _____

Dated: 3/15/22

Gary Cooper Jr.
Chief Executive Officer
"Contractor"

By:  _____

Dated: 3-15-22

Chad Wilkinson
Corporate Secretary

G & O Towing Inc

Exhibit A

ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT

This Assignment, Assumption, and Consent Agreement (this "Assignment Consent") is entered into effective as of the date of last signature, and is by and among G & O Body Shop, Inc. ("Assignor"), a corporation duly qualified to conduct business in the State of California, and G & O Towing Inc, a corporation duly qualified to conduct business in the State of California, ("Assignee").

RECITALS

A. Assignor is "Contractor" under that certain Agreement for Services #3604 with County dated January 25, 2019 (the "Service Agreement").

B. The Service Agreement pertains to Vehicle Abatement services for both the Eastern and Western slope of El Dorado County, requested by the Sheriff's Office.

C. This Assignment Consent is being executed by Assignor and Assignee to memorialize: (i) the assignment of the Service Agreement from Assignor to Assignee; (ii) the Assignee's agreement to accept, assume, and discharge all of Assignor's duties, obligations, and liabilities related thereto; and (iii) County's consent thereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby grants, assigns, transfers, conveys, delivers, delegates and sets over unto Assignee the Service Agreement and all of Assignor's rights, title, interest, duties, obligations and liabilities in, to and under the Service Agreement.

2. Assumption. Assignee hereby agrees to take assignment of the Service Agreement. As such, Assignee hereby assumes all of Assignor's rights, title, interest, duties, obligations and liabilities in, to and under the Service Agreement and agrees to be bound by all of the terms and conditions of the Service Agreement, to assume and undertake to perform and discharge all of the duties, obligations and liabilities of Assignor arising under the Service Agreement, and to receive the benefits of the Service Agreement, all from and after the Effective Date hereof.

3. Counterparts. This Assignment Consent may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Assignment Consent delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

4. Severability. If any term or provision of this Assignment Consent is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Assignment Consent or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner.

5. Headings. The headings in this Assignment Consent are for reference only and do not affect the interpretation.

6. Successors and Assigns. This Assignment Consent is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Consent on the dates indicated below.

Assignor:


G & O BODY SHOP, INC.

By: 

Name: Gary Cooper Sr.

Title: Chief Executive Officer

Date: 3-15-2022

By: 

Name: Lauren Cooper

Title: Corporate Secretary

Date: 3-15-22

Assignee:

G & O TOWING INC

By: 

Name: Gary Cooper Jr.

Title: Chief Executive Officer

Date: 3/15/22

By: 

Name: Chad Wilkinson

Title: Corporate Secretary

Date: 3-15-22