

AGREEMENT WITH LONG BEACH BMW MOTORCYCLES TO PROVIDE AUTOMOTIVE, MOTORCYCLE AND TRUCK REPAIR SERVICES

THIS AGREEMENT is made and entered into on this 20TH day of February, 2024 by and between R.C.A. Investments, Inc., a California corporation dba Long Beach BMW Motorcycles (“Contractor”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

RECITALS

- A. On August 29, 2023, the City issued Request for Proposal No. 23-098 seeking proposals from qualified contractors to provide automotive, motorcycle, and truck repair services for city-owned fleet vehicles to the Public Works Agency, Parks, Fleet, Facilities Division, on an as-needed basis.
- B. Contractor submitted a responsive proposal that was amongst one of the eleven (11) vendors selected by the City. Contractor represents that it is able and willing to provide the services described in the scope of work that was included in the RFP.
- C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional contracting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Contractor shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Exhibit A**, attached hereto and incorporated by reference.

2. COMPENSATION

- a. City neither warrants nor guarantees any minimum or maximum compensation to Contractor under this Agreement. Contractor shall be paid only for actual services performed under this Agreement at the rates and charges identified in **Exhibit B**. The total aggregate sum for services, provided by all eleven (11) Contractors selected under RFP 23-098, shall not exceed **\$2,500,000** for the entire term of this Agreement, including any extension periods exercised by the parties, as detailed below. The annual aggregate amount, available to all the selected Contractors, shall not exceed **\$500,000**.
- b. Costs for parts required to provide services may be subject to change. Increased costs for parts shall not affect the compensation amounts detailed in Section 2.a. Increase to the compensation amount may only be increased by amendment subject to approval by

the City Council of the City of Santa Ana.

- c. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. City and Contractor agree that all payments due and owing under this Agreement shall be made through Automated Clearing House (ACH) transfers. Contractor agrees to execute the City's standard ACH Vendor Payment Authorization and provide required documentation. Upon verification of the data provided, the City will be authorized to deposit payments directly into Contractor's account(s) with financial institutions. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

3. TERM

This Agreement shall commence on the date first written above for a three (3) year term with the option for the City to grant up to two (2) one (1) year renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 15, below.

4. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent Contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were provided to Contractor by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6. INSURANCE

Prior to undertaking performance of work under this Agreement, Contractor shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below for the duration of this Agreement:

a. Minimum Scope and Limit of Insurance

- (1) **Commercial General Liability (CGL).** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (2) **Garage Keepers Legal Liability.** With limits no less than \$75,000 per occurrence.
- (3) **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- (4) **Workers’ Compensation.** As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (5) **Broader Coverage.** If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

b. Other Insurance Provisions

- (1) **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 2037 if a later edition is used).

- (2) **Primary Coverage.** For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (3) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (4) **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation that any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (5) **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- (6) **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- (7) **Verification of Coverage.** Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- (8) **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

- (9) **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. INDEMNIFICATION

Contractor agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Contractor, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Contractor further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Contractor's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

8. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Contractor to the City pursuant to this Agreement.

9. RECORDS

Contractor shall keep records and invoices in connection with the work to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

10. CONFIDENTIALITY

If Contractor receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Contractor agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Contractor disclosed in a publicly available source; (c) is in rightful possession of the Contractor without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Contractor without reference to information disclosed by the City.

11. CONFLICT OF INTEREST CLAUSE

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

12. NON-DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

13. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

14. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Contractors retained by City.

15. TERMINATION

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Contractor shall be entitled to receive and the City shall pay Contractor compensation for all services performed by Contractor prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Contractor to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Contractor consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

16. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

17. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. PROFESSIONAL LICENSES

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Contractor shall notify the City immediately and

in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

19. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

City Clerk
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

Executive Director, Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, California 92702

To Contractor:

Long Beach BMW Motorcycles
Attn: Charles Berthon, Owner/GM
2125 E. Spring St.
Long Beach, CA 90755

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

20. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and

attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

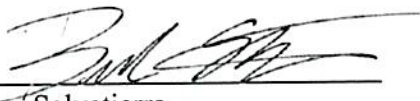
Jennifer L. Hall
City Clerk

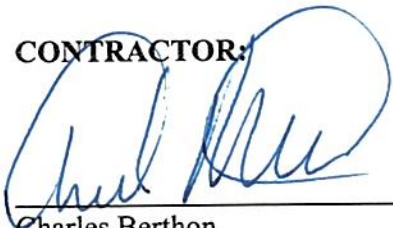
Thomas R. Hatch
Interim City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONTRACTOR:

By: 
Brandon Salvatierra
Deputy City Attorney


Charles Berthon
Owner/GM

RECOMMENDED FOR APPROVAL:

Nabil Saba, P.E.
Executive Director
Public Works Agency

EXHIBIT A

SCOPE OF SERVICES



CITY OF SANTA ANA

EXHIBIT I

SCOPE OF SERVICES

Contractor shall perform services as set forth below.

I. SERVICE

- A. Contractor(s) shall provide all parts, labor, non-consumable material and equipment necessary to perform automotive repairs on both domestic and foreign vehicles as indicated in **Exhibit III**.

Typical repairs and services include, but are not limited to:

1. Vehicle, motorcycle, and truck diagnostic testing
2. Smog testing/opacity testing
3. Alignment/front end repairs
4. Alternative fuel repair/tank certification
5. Hydraulic systems and controls
6. Diagnosis and repairs powertrain/off road equipment
7. Electrical and electronic repairs
8. Miscellaneous engine work
9. Diagnosis & repairs of complete powertrain
10. Powertrain and P.T.O. general repair
11. Muffler/exhaust repairs
12. Other various repair and replacement of parts for cars, trucks, electric vehicles & motorcycles

- B. Contractor must provide written estimates for repairs needed and obtain City approval prior to performing work on any vehicles. The City shall not pay for any unauthorized repairs. If additional work is requested after initial repairs have been made, the Contractor must contact appraiser and the City for further approval. All old parts must be returned to the City.

- C. The Contractor must pick-up and/or deliver vehicles **AT NO CHARGE TO THE CITY**.

- D. **ALL REPAIRS MADE UNDER THIS CONTRACT WILL BE COMPLETED NO MORE THAN TEN (10) WORKING DAYS FROM THE DATE THE CITY APPROVED THE REPAIR.**

II. SECURITY

Contractor shall be held responsible for any damage or theft to city vehicles while on the vendor's premises/possession. Should such incidents occur, the vendor would be required to reimburse the City and/or repair the damage at no cost to the City.

III. PAYMENT

The successful vendor(s) shall submit itemized invoices that reflect unit prices and/or percentage discounts as outlined on the bid schedule.



CITY OF SANTA ANA

The Following must be written on all invoices submitted for payment:

- A. Vehicle plate number;
- B. Number of hours (per/man) utilized in performing repairs;
- C. Complete list of parts used with list price, the discount as shown on Cost Proposal, and resulting net price;
- D. Name of City staff requesting service;
- E. Date service request was made by City;
- F. Description of parts/service; and
- G. Date vehicle was delivered to City.

EXHIBIT B
COST PROPOSAL



2125 E. Spring St. Long Beach CA 90806 / 562-426-1200

Cost Proposal

- Service- \$136.00 per Hour
- Parts- 10% off MSRP