

**THIS AGREEMENT** made in duplicate the \_\_\_\_ day of \_\_\_\_\_, 2018.

**THE CORPORATION OF THE TOWN OF KINGSVILLE**

(hereinafter the "Town")

-and-

**ANTHONY TANNOUS AND SAM TANNOUS o/a SAM'S SHELL & USED CARS**

(hereinafter the "Contractor")

**WHEREAS** the Contractor and the Town agree that the Contractor shall provide to the Town certain Fleet Maintenance Services;

**AND WHEREAS** the Contractor submitted a Proposal to the Town in response to the Request for Proposals that was posted on the Town's electronic bidding site;

**IN CONSIDERATION** of the mutual covenants herein and for such good and other valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

**Term**

1. The term of this Agreement shall be three (3) years commencing on the 1<sup>st</sup> day of May, 2018 and ending on the 30<sup>th</sup> day of April, 2021.
2. At the sole discretion of the Town and upon written notice to the Contractor, this Agreement may be extended for a period of no two (2) years. The total duration of this Agreement, including the exercise of any option under this provision, shall not exceed five (5) years.
3. This Agreement may be terminated in accordance with section(s) 19-21.

**Covenants and Services of the Contractor**

4. The Contractor agrees to provide to the Town Fleet Maintenance Services (the "Fleet Services"), on an as needed basis, as outlined in Appendix "A".
5. The Contractor shall:
  - a. Furnish all necessary machinery, tools, apparatus, equipment, facilities ("Equipment") and labour necessary to provide the Fleet Services and maintain said Equipment in a good mechanical condition;

- b. Ensure that all Fleet Services provided under this Agreement are provided by persons licensed to provide such service and are performed in a good and workmanlike manner;
  - c. Coordinate the Fleet Services so that it minimizes the disruption to the Town's business operations and provide the Town with priority service for vehicles that require unanticipated/unplanned service (i.e. no appointment) under this Agreement;
  - d. Ensure that all employees are properly trained in appropriate safety measures while providing the Fleet Services;
  - e. Abide by all by-laws, laws, regulations, orders and ordinances of any federal, provincial, and municipal authorities and public bodies having jurisdiction; and
6. The Contractor represents and warrants that:
- a. It has the requisite permits, qualifications, and approvals, of whatever nature, which are legally required for the Contractor to provide the Fleet Services under this Agreement and that it shall maintain and keep in effect during the term of this Agreement, at its sole cost and expense, any licences, permits, and approvals which are required for the Contractor to perform the services under this Agreement.
  - b. All Equipment utilized complies with current codes, practice standards, regulations, and statutes including, but not limited to, the:
    - i. Provincial Commercial Vehicle Inspection Facility; and
    - ii. Red Seal Endorsement or equivalent on the certificate of qualifications from a Canadian Government Agency.
  - c. All Fleet Services shall be guaranteed for a period of ninety (90) days, from the date the Fleet Services were completed, against any defects arising from faulty installation, parts, or workmanship.

#### **Covenants of the Town**

7. The Town agrees to compensate the Contractor in accordance with the rates as outlined in Appendix "B", which rates are not subject to increase during the term of this Agreement and any option to renew in accordance with paragraph 2 of this Agreement. Payments to the Contractor shall be made within sixty (60) days after receipt by the Town of the Contractor's itemized invoice.

8. Notwithstanding any payments made under section 7 of this Agreement, the Town has the right to perform an audit of the Contractor's relevant records pertaining to any charges for which the Town is invoiced.

#### **Records and Information**

9. The Contractor agrees to maintain full and accurate records with respect to all matters covered under this Agreement for three (3) years from the date of termination of this Agreement. The Town shall have the right to request copies of the records.
10. Requests for records shall be made by providing written notice to the Contractor. Upon receipt of written notice, the Contractor shall furnish the requested records to the Town within one week of receipt of the written request.

#### **Workplace Safety and Insurance**

11. The Contractor shall provide a certificate of good standing from the Workplace Safety and Insurance Board upon execution of this Agreement.

#### **Accessibility for Ontarians with Disabilities Act**

12. The Contractor shall ensure that persons in its organization who are required to receive training as required by the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c.11, as amended, and the associated regulations have received such training or will receive such training prior to commencement of work under this Agreement. The Town may require such persons to successfully complete an assessment of their knowledge of provision of goods and services to persons with disabilities prior to commencement of work for the Town.

#### **Occupational Health and Safety**

13. The Contractor shall comply with the Town's policies regarding human rights, harassment in the workplace and shall comply with the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended.

#### **Indemnity and Insurance**

14. The Contractor agrees to indemnify and save the Town, its employees, officers, or agents harmless in respect of all charges, costs, expenses, suits, demands, and claims whatsoever arising in connection with the provision of services contemplated by this Agreement and the activities of employees and contractors of the Contractor, save and except for any demands, expenses, actions, causes of action, losses, liability and injury arising from the Town's negligence of those for whom the Town is responsible for in law.

15. The Contractor shall forthwith furnish to the Town a satisfactory Certificate of Insurance containing the information below, for the duration of this Agreement, and any renewal or extension of this Agreement:
  - a. \$2,000,000.00 (per occurrence) general liability insurance, which includes third party bodily injury and property damage;
  - b. \$2,000,000.00 automobile liability policy; and
  - c. Garage Liability Insurance of \$2,000,000.00 that includes third party liability for non-owned vehicles and legal liability for own damage to Town vehicles for losses arising from specified perils and collision.
16. The policies of insurance shall be endorsed to provide that the policies will not be altered, cancelled or allowed to lapse without thirty (30) days' prior written notice to the Town.
17. The Certificate of Insurance shall name the Town as an additional insured.

#### **Assignment**

18. The Contractor shall not assign or transfer any right, duty, obligation or interest in this Agreement, nor the performance of any of the Contractor's obligations hereunder, without the prior written consent of the Manager of Public Works, or designate, at his sole discretion, and any attempt of the Contractor to so assign this Agreement or any right, duty or obligation hereunder shall be void and of no effect and a breach of this Agreement. Consent by the Town of any single assignment or transfer shall not constitute consent to any further assignment or transfer.

#### **Termination**

19. Either party may immediately termination this Agreement, without liability, cost or penalty, and without prejudice to any other rights or remedies under this Agreement if the other party:
  - a. Fails to cure a breach of its obligations under this Agreement or does not cease any conduct in violation of this Agreement within thirty (30) calendars days following written notice of such breach or violation from the other party; or
  - b. Ceases to carry on business, becomes or is declared insolvent or bankrupt, is subject to any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes a general assignment for the benefit of all or substantially all of its

creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations.

20. In the event of a recurring default, in which notice of the default was issued, and the breaching party does not satisfy the non-breaching party that such defaults will cease to occur, the non-breaching party shall be entitled to immediately terminate this Agreement upon the occurrence of such default, without liability, cost or penalty, and the breaching party shall not be permitted to cure such default.
21. This Agreement may be terminated by the Town, in its sole discretion, without liability, cost, or penalty, upon providing thirty (30) days written notice to the Contractor. The Contractor would be compensated for all work completed as at the date of termination, upon receipt by the Town of a final invoice itemizing all completed work.

#### **Notice**

22. Any notice required to be given under this Agreement shall be in writing and provided by way of:
  - a. Hand delivery, in which case notice shall be effective on the date of delivery; or
  - b. Regular letter mail, in which case notice shall be effective on the fifth day following the date of mailing,

TO: THE CORPORATION OF THE TOWN OF KINGSVILLE  
2021 Division Road North  
Kingsville, ON N9Y 2Y9  
Attention: Manager of Public Works

TO: SAM'S SHELL & USED CARS o/a SAM'S SERVICE FACILITY  
84 Division Road North  
Kingsville, ON  
Attention: Anthony Tannous

#### **Dispute Resolution**

23. The Parties agree to make reasonable efforts to resolve any dispute, claim or controversy arising out of the matters covered by this Agreement, as outlined in Appendix "C".

## **General Provisions**

24. The Contractor shall declare any relationship that would result in the disqualification of a member of the Council of the Town in accordance with the *Municipal Conflicts of Interest Act* or policy of the Town.
25. This Agreement and any documents referenced within this Agreement, contains the entire understand of the parties with regard to the subject matter contained herein. This Agreement will not be amended, restated, modified or supplemented except in writing executed by an authorized representative of each of the parties hereto.
26. Any term or provision of this Agreement may be waived, or the time of performance may be extended by the party entitled to benefit thereof. Any such waiver will be validly and sufficiency authorized for the purposes of its Agreement if authorized in writing by an authorized representative of such party. The failure of a party to enforce at any time any provision of this Agreement shall not be construed as a waiver of such provision nor effect the validity of this Agreement or the right of any party thereafter to enforce each and every provision.
27. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
28. This Agreement does not and shall not be construed to create or to establish an employment relationship, partnership, agency, joint venture, or any other relationship between the parties hereto, nor constitute any party as an agent of the other.
29. Where the Contractor is required to comply with any requirement in law, the Town may require the Contractor to deliver proof of such compliance to the Town in a form satisfactory to the Town.

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**IN WITNESS WHEREOF**, the Town and the Contractor have duly executed this Agreement.

**THE CORPORATION OF THE TOWN OF  
KINGSVILLE**

\_\_\_\_\_  
Nelson Santos, Mayor

\_\_\_\_\_  
Jennifer Astrologo, Clerk

We have authority to bind the Corporation

**CONTRACTOR**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Anthony Tannous

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Sam Tannous

## **Appendix “A” Fleet Maintenance Services**

### **Scope of Services**

1. The Contractor shall provide Fleet Repair and Maintenance Services on an “as needed, when required” basis as well as coordinated preventative and scheduled services, which includes but is not limited to:
  - a. Pre and post collision inspection
    - i. Pre-inspection is the inspection of vehicle involved in an accident to determine the extent of damage prior to repair;
    - ii. Post-inspection is the inspection to determine the quality of the repair;
  - b. Diesel and gas powered engine service and repair;
  - c. Wiring and electrical/electric diagnosis and repairs performed at a highly technical level;
  - d. Emission testing and repair;
  - e. Supplemental Restraint System (SRS) diagnosis and repair;
  - f. Anti-lock Brake System (ABS) diagnosis and repair;
  - g. Air-conditioning servicing and repair;
  - h. Body Control Module (BCM) diagnosis and repair;
  - i. Upholstery repair;
  - j. Tire mounting, repair, high speed balancing and Tire Pressure Monitoring System (TPMS) diagnosis and repair;
  - k. Fabrication and welding, i.e. repairing as opposed to replacing anything that will remain structurally sound (i.e. exhaust systems, push bars, underbody panels, metal seat frames & sliders etc.);
  - l. Complete driveline serving and repair; differential, transmission and transfer case;
  - m. Steering and suspension repairs;
  - n. On-site service calls when required;
  - o. Occasional shuttle services; and
  - p. Delivery and pick-up vehicles, if required.

### **Equipment, Vehicle Storage and Supplies**

2. The contractor is required to provide:
  - a. Secure indoor storage for vehicles left after hours;
  - b. A minimum of 2 equipped shop bays;
  - c. A computerized invoicing system with searchable history;
  - d. Access to all Original Equipment Manufacturer (OEM);
  - e. Up-to-date web based diagnostic repair information system (OEM & aftermarket);
  - f. Various types of vehicle lifting hoists with at least one heavy hoist of 14,000 lbs. or greater;



- g. Specialty equipment (i.e. welders, including Oxy Acetylene gas, Mig, Tig, Plasma cutter, various pullers, differential service tools, hydraulic press, engine crane, transmission jack, AC service equipment, current technology alignment equipment, etc.).

## **Appendix “B” Fee Schedule**

### **SHOP RATES**

#### Straight Time

Monday-Friday	7:00 AM – 6:00 PM	\$ 85.00
Saturday	7:00 AM – 2:00 PM	\$ 85.00

#### Overtime

Monday-Friday	6:00 PM – 7:00 AM	\$ 130.00
Saturday	after 2:00 PM	\$ 130.00

### **PARTS/MATERIALS**

A 30% markup on all parts and materials

## **Appendix “C” Dispute Resolution**

### **Negotiation**

1. The parties will make reasonable efforts to negotiate a resolution of any dispute that may arise with respect to those matters covered by this Agreement. The parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

### **Mediation**

2. If the parties cannot resolve their dispute, following the passage of thirty (30) days from the date the dispute arose, either party may provide written notice to the other party referring the matter to mediation (“Mediation Notice”).
3. Within ten (10) days of delivery of the Mediation Notice, the parties must appoint a mediator.
4. Within forty-five (45) days of the appointment of a mediator, the parties shall, with the assistance of the appointed mediator, hold a mediation in a good faith attempt to resolve the dispute that exists as between them.
5. Mediation shall be held in Kingsville, Ontario, or in such other jurisdiction as the parties may agree upon.
6. Each party shall bear its own costs of participation in the mediation.

### **Litigation**

7. If, within ninety (90) days of the Mediation Notice, the dispute is not resolved, or if the appointed mediator advises that there is no reasonable prospect of the parties reaching a resolution, then either party may, without further notice, commence litigation.
8. Any litigation shall be in Windsor, Ontario.