

1 MEMORANDUM OF UNDERSTANDING BETWEEN
2 CITY OF LONG BEACH AND CITY OF SIGNAL HILL
3 REGARDING VEHICLE REPAIR AND SERVICE

4 **35003**

5 THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and
6 entered into this 19th day of JUNE, 2018, by and between the CITY OF LONG
7 BEACH, through the FLEET SERVICES BUREAU, ("Facility") and the CITY OF SIGNAL
8 HILL ("Customer"), collectively referred to herein as "Parties."

9 RECITALS

10 A. From time to time, Customer requests vehicle repair and
11 maintenance services ("Services") from Facility for fleet vehicles owned by Customer
12 ("Service Requests"), and Facility provides such Services.

13 B. The Parties agree that the nature and cost of such Services is best
14 determined at the time that each Service Request is made. However, the Parties now
15 wish to clarify some of the duties and responsibilities of the Parties that will apply to all
16 Service Requests and the provision of all Services.

17 THE PARTIES THEREFORE AGREE AS FOLLOWS:

18 1. AUTHORIZATION. Customer expressly represents and
19 warrants that Customer has the lawful right to authorize repairs or maintenance to
20 be performed on each vehicle for which Customer makes Service Requests
21 ("Vehicle"), whether by right of ownership, leasehold interest, or direct
22 authorization from the owner of the Vehicle. Customer authorizes Facility to repair
23 or service Vehicle and further authorizes Facility to move, test drive, or otherwise
24 operate the Vehicle for purposes of repairing and/or servicing the Vehicle and
25 determining its functionality.

26 2. PAYMENT. Customer agrees to pay for repairs, parts, fees,
27 taxes, services, and charges necessary to complete the Service Request, which
28 may include charges for towing, parking, and/or storage ("Costs"). Facility shall

1 present Customer with a final invoice at the close of repairs or service that
2 identifies all repairs, parts, fees, taxes, services, and charges for the service
3 and/or repair. Facility will identify any proceeds or payments received for the Costs
4 and any outstanding balance which must be paid by Customer prior to release of
5 the Vehicle from Facility.

6 3. SERVICE/REPAIR PROCESS.

7 a. Analysis.

8 Customer agrees to pay for repairs to the Vehicle specified by
9 Facility's analysis of damage, expected repair cost, and repair plan or
10 Customer's maintenance schedule ("Analysis"), a copy of which shall be
11 provided to Customer and discussed with and approved in writing by
12 Customer prior to the performance of repairs or service.

13 b. Additional Damage/Service.

14 Additional damage may be discovered and the need for
15 additional repairs not included on the Analysis may become necessary
16 during the course of servicing/repair. In that event, the Facility will promptly
17 notify the Customer of the additional repairs to be made to the vehicle and
18 the expected cost. Facility shall either provide a supplemental Analysis or
19 incorporate the additional repairs into a revised version of the original
20 Analysis. Such supplemental Analysis shall be provided to Customer and
21 discussed with and approved by Customer prior to the performance of
22 additional repairs.

23 4. EFFECTS OF REPAIRS WITH PARTS OTHER THAN NEW
24 OEM PARTS.

25 a. Lease or Finance Agreement Violation.

26 Customer understands that allowing major repairs of the
27 Vehicle to be made with parts made by an entity that is not the
28 manufacturer of the Vehicle (which may be called imitation crash parts,

1 non-original equipment manufacturer parts, "quality replacement parts"
2 (QRP), or "aftermarket parts") or salvage parts (which may be called "like,
3 kind, and quality" (LKQ), or by some other designation) may place
4 Customer in violation of the terms of a lease agreement or finance
5 agreement concerning the Vehicle.

6 b. Decrease In Value.

7 Customer acknowledges that allowing major repairs of the
8 Vehicle to be made with other than new original equipment manufacturer
9 ("OEM") parts may adversely affect the value of the Vehicle.

10 c. Parts Warranty.

11 Customer acknowledges that allowing major repairs of the
12 Vehicle to be made with other than new OEM parts may adversely impact
13 Customer's ability to have warranty repairs provided and paid for by the
14 manufacturer or distributor in the event of a defect or problem. In addition,
15 salvage parts do not carry any warranty.

16 d. Parts Election.

17 If Facility intends to make major repairs to Vehicle using
18 anything other than new OEM parts, Facility shall give written notice to
19 Customer of the parts that Facility proposes to use, including any
20 information about warranties guaranteeing the quality of such parts and the
21 reason why new OEM parts cannot be used. Facility shall not make major
22 repairs to Vehicle with anything other than new OEM parts without the prior
23 written authorization of Customer.

24 e. Wear and Common Parts.

25 For purposes of this Section 4, "major repairs" means all
26 repairs other than replacement of wear items, such as filters and hoses,
27 and common hardware, such as screws, clamps, springs, etc.

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5. RIGHT TO REFUSE REPAIR TECHNIQUES OR PARTS.

Even if the Customer authorizes the Vehicle to be repaired with parts other than new OEM parts (e.g., “remanufactured wheels”), or by utilizing certain repair techniques (e.g. “clipping”), Facility, in the exercise of its professional judgment has the right to refuse to install any part or perform any procedure Facility (and any member of its staff) believes to be unsafe or unethical. If Facility has any reason to believe that a repair authorized by Customer would be unsafe or unethical, Facility shall inform Customer of such reasons and shall not proceed with such repair without the written authorization of Customer.

6. WORKMANSHIP WARRANTY.

Facility warrants to Customer that the workmanship of the service and repairs performed on the Vehicle will be under a limited one-year warranty from the date the Vehicle is released to the Customer, and Facility will correct any defects in workmanship at no charge to customer within that time frame. Customer must notify Facility of the defect and provide Facility with an opportunity to remedy the problem. This warranty is provided for Facility’s workmanship only and does not extend to any parts, whether new OEM, new imitation crash parts, or salvage parts, used in the repair or servicing of the vehicle. The warranty provided in this Section shall survive the termination of this Agreement.

7. POSSESSION AND REPLEVIN.

Customer agrees that Facility shall have a lien against the Vehicle for any and all amounts identified in Section 2 until paid and shall have the right to retain the Vehicle until Facility is paid in full, as permissible by state law. Customer agrees to pay any and all costs and expenses, including reasonable attorney fees, Facility incurs, relating to any action in replevin.

8. BINDING EFFECT.

This Agreement shall be binding upon the Parties, their transferees, successors and assigns, including any person or entity to whom title of the Vehicle

1 is transferred until termination of the Agreement, except as stated in Sections 6
2 and 9 of this Agreement.

3 9. INDEMNIFICATION.

4 In contemplation of the provisions of Section 895.2 of the
5 Government Code of the State of California imposing certain tort liability jointly
6 upon public entities solely by reason of such entities being parties to an
7 Agreement as defined by Section 895 of said Code, the parties hereto, as among
8 themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of
9 said Code, will each assume the full liability imposed upon it, or any of its officers,
10 agents, or employees by law for injury caused by a negligent or wrongful act or
11 omission occurring in the performance of this Agreement to the same extent that
12 such liability would be imposed in the absence of Section 895.2 of said Code. To
13 achieve the above-stated purpose, each party indemnifies and holds harmless the
14 other party for any loss, cost, or expense that may be imposed upon such other
15 party solely by virtue of said Section 895.2. Parties to this Agreement agree to
16 indemnify, defend, and hold harmless each other against any and all liability,
17 expense, and claims arising from their respective acts and omissions. The
18 provisions of Section 2778 of the California Civil Code are made a part hereof as if
19 fully set forth. The provisions of the Section shall survive the termination of this
20 Agreement.

21 10. ENTIRE AGREEMENT.

22 This document sets forth the entire agreement of the Parties
23 regarding its content. This Agreement may not be altered orally and may only be
24 altered by an agreement in writing signed by both Parties.

25 11. SEVERABILITY.

26 In the event that any one or more of the phrases, sentences,
27 clauses, paragraphs, or sections contained in this Agreement shall be declared
28 invalid or unenforceable by a valid judgment or decree of a court of competent

1 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the
2 date and year first-above written.

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4 CITY OF SIGNAL HILL, a municipal
5 corporation

6 7/19, 2018

7 By [Signature]
8 Charlie Honeycutt, City Manager
9 City of Signal Hill
10 2175 Cherry Avenue
11 Signal Hill, CA 90755-3799

12 "Customer"

13 CITY OF LONG BEACH, a municipal
14 corporation

15 July 30, 2018

16 By [Signature]
17 City Manager

18 "Facility"

19 This Agreement is hereby approved as to form on July 25, 2018.

20 CHARLES PARKIN, City Attorney

21 By [Signature]
22 Deputy

23 Tom Modica
24 Assistant City Manager
25 EXECUTED PURSUANT
26 TO SECTION 301 OF
27 THE CITY CHARTER
28

OFFICE OF THE CITY ATTORNEY
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