

# SERVICE AGREEMENT

No. \_\_\_\_\_

THIS **SERVICE AGREEMENT** (this "Agreement") is entered into by and between Corpus Christi CyclePlaza (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City") effective for all purposes upon execution by the City Manager or designee (the "City Manager").

WHEREAS Contractor has proposed to provide **POLICE MOTORCYCLE MAINTENANCE SERVICES** in response to **Request for Proposal No. BI-0087-13**, which is incorporated by reference and attached hereto as Exhibit A; and

WHEREAS the City has determined Contractor to be the most advantageous Proposer;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. **Services.** Contractor will provide **POLICE MOTORCYCLE MAINTENANCE SERVICES** in accordance with **Request for Proposal No. BI-0087-13**, which is incorporated by reference and attached hereto as Exhibit A.

2. **Fee for Services.** The City agrees to pay the Contractor the mutually agreed upon fees as follows: \$13,500.00 per year. Fees are fixed and firm for the duration of the contract.

3. **Term.** This Agreement commences on the date signed by the last signatory and shall continue for one (1) year and includes three (3) automatic one-year extensions, subject to the approval of the Contractor and the City Manager or designee ("City Manager").

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non performance and authorizations for payment. All of Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the **TRAFFIC DIVISION CAPTAIN**.

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5. **Independent Contractor.** Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of Contractor be considered an employee of the City.

6. **Insurance.** Before activities can begin under this Agreement, Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages to the Contract Administrator. Additionally, the Certificate must state that the **Contract Administrator** will be given at least thirty (30) days' advance written notice of cancellation, material change in the coverages,

or intent not to renew any of the policies by certified mail. The City must be named as an Additional Insured. The City Attorney must be given copies of all insurance policies within fifteen (15) days of the City Manager's written request. Insurance requirements are incorporated herein in Request for Proposal No. BI-0087-13, which is incorporated herein as Exhibit A, and may be revised annually by the City Manager upon thirty (30) days' advance written notice to Contractor.

**7. Assignment.** No assignment of this Agreement or any right or interest therein by Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City.

**8. Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City, which fiscal year ends on July 31 annually, is subject to appropriations and budget approval providing for such contract item as an expenditure in that budget. The City does not represent that the budget item for this agreement will be actually adopted, since that determination is within the sole discretion of the City Council at the time of adoption of each budget.

**9. Waiver.** No waiver of any breach of any term or condition of this Agreement or Contractor's bid offer to **Request for Proposal No. BI-0087-13** waives any subsequent breach of the same.

**10. Compliance with Laws.** This Agreement is subject to all applicable federal, state and local laws, rules and regulations. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas and the venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

**11. Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, Contractor must obtain prior written approval from the **Contract Administrator**. In using subcontractors, Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of Contractor. All requirements set forth as part of this Agreement are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

**12. Amendments.** This Agreement may be amended only by written agreement signed by duly authorized representatives of the parties hereto.

**13. Termination.** The City Manager may terminate this Agreement for Contractor's failure to perform the services specified in **Request for Proposal No. BI-0087-13**. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give Contractor at least 5 work-days' advance written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

Alternatively, City may terminate this Agreement, with or without cause, upon twenty (20) days' advance written notice to Contractor. However, City may terminate this Agreement on 24-hours'

advance written notice to Contractor for failure to pay or provide proof of payment of taxes as set out in Section 14 of this Agreement.

**14. Taxes.** Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to Circular E Employer's Tax Guide, publication 15, as it may be amended. Contractor must provide proof of payment of these taxes within thirty (30) days after City Manager's written request therefore. Failure to pay or provide proof of payment is grounds for the City Manager to terminate this Agreement after providing 24 hours' advance written notice to Contractor.

**15. Drug Policy.** Contractor must adopt a Drug Free Workplace and drug testing policy that substantially conforms to the City's policy.

**16. Violence Policy.** Contractor must adopt a Violence in the Workplace policy that substantially conforms to the City's policy.

**17. Notice.** Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after deposit in the U.S. Mail, if sent certified mail. Notice shall be sent as follows:

**IF TO CITY:**

City of Corpus Christi  
Attention: Traffic Division Captain  
P. O. Box 9277  
Corpus Christi, Texas 78469 9277

**IF TO CONTRACTOR:**

Contractor Name:	<u>Corpus Christi CyclePlaza</u>		
Contact Person:	<u>Matt Werkhoven</u>		
Address:	<u>2937 SPID</u>		
City, State, Zip:	<u>Corpus Christi</u>	<u>TX</u>	<u>78415-</u>

**18. Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new **POLICE MOTORCYCLE MAINTENANCE SERVICES** contract upon the expiration of this Agreement, then Contractor must continue to provide services under this Agreement, at its then-current fee under the term of this Agreement, on a month-to-month basis until a new contract is awarded by Council. This Agreement automatically expires on the effective date of a ~~new contract; the Contract Administrator will provide written notice of the effective date of the new~~ contract to Contractor.

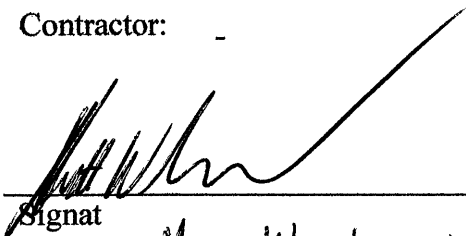
**19. Indemnification.** PROPOSER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS,

**ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THE CONTRACT OR THE PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. PROPOSER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF PROPOSER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE CONTRACT.**

20. **Severability.** Each provision of the Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

SIGNED this 4th day of April, 2013.

Contractor: -

  
\_\_\_\_\_  
Signature  
Name: Matt Werkhoven  
Title: Manager

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Michael Barrera  
Assistant Director of Financial Services

\_\_\_\_\_  
Date

Incorporated by Reference:

Exhibit A: Request for Proposal No. BI-0087-13

Exhibit B: Proposer's Proposal, as clarified via clarification questions and responses