

COUNCIL ACTION FORM

SUBJECT: INTERMITTENT USE OF DEALERSHIP CARS BY AMES POLICE DEPARTMENT

BACKGROUND:

During the course of Police operations, it is sometimes necessary to utilize vehicles that are not known to suspects or to the public and that do not resemble Police vehicles. Due to the short-term nature of many of these operations, it is financially impractical for the City to buy, sell, or trade vehicles for these short-term uses.

The Police Department has approached several local car dealerships about the possibility of using vehicles on a short-term basis specific to a police operation. Several local dealerships were willing to assist the City in fulfilling this need. In these situations, the City will insure and provide fuel for the vehicles, and will be responsible for any physical damage the vehicles sustain while in the Police Department's possession. The dealership will provide a contact person for the Police Department and will be responsible for any mechanical defects in the vehicles. City staff has developed a standardized written agreement that provides the participating dealers with a clear statement of responsibilities and liabilities. The department anticipates no new extra costs beyond the normal vehicle operations costs.

ALTERNATIVES:

1. Approve the agreements for the intermittent use of dealership cars by the City of Ames Police Department.
2. Do not approve the agreements and direct staff to identify other options for short-term use vehicles for police operations.

MANAGER'S RECOMMENDED ACTION:

The nature of police work means that on occasion the use of a vehicle not known to be, or that does not appear to be, a police vehicle is necessary. The proposed agreements will give the department access to a variety of vehicles on a short term basis while protecting both the City and the participating dealers by clearly setting forth the terms and conditions of that use.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

**AGREEMENT FOR THE INTERMITTENT USE OF
DEALERSHIP CARS BY THE
CITY OF AMES POLICE DEPARTMENT**

THIS AGREEMENT, made and entered into effective February 21, 2014 by and between the CITY OF AMES, IOWA, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter called "City") and _____, a _____, organized and existing pursuant to the laws of the State of Iowa (hereinafter called "Provider");

WITNESSETH THAT:

WHEREAS, the City has determined that certain services to be provided to the City and its citizens by Provider, such services and products being hereinafter described and set out, should be provided in accordance with the terms of a written agreement as hereinafter set out;

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I. PURPOSE

The purpose of this Agreement is to procure for the City certain services as hereinafter described and set out; to establish the methods, procedures, terms and conditions governing the procurement by the City for such services; and to establish other duties, responsibilities, terms and conditions mutually undertaken and agreed to by the parties hereto in consideration of the services to be provided.

II. RESPONSIBILITIES OF THE PARTIES

- A. The Provider shall be responsible for the following:
 - 1. Provide a vehicle(s) to the City upon request.
 - 2. Provider shall be responsible for any mechanical defects in any vehicle(s) provided to the City.

- B. The City shall be responsible for the following:
 - 1. The City shall, when possible, give the Provider a minimum of one (1) day notice when requesting a vehicle from Provider.
 - 2. The City shall be responsible for the cost of the fuel required to use the vehicle. The City shall also be responsible for refueling the vehicle upon return to the Provider.
 - 3. The City shall be responsible for body damage to the vehicle caused while in the City's possession.
 - 4. The City shall be responsible for providing dummy license plates for visual purposes only while the vehicle is in the City's possession.
 - 5. The City is responsible for insuring the vehicle while it is in the City's possession.

III. PAYMENT

Provider shall provide vehicles to the City at no cost.

IV. INSURANCE

A. The City shall maintain insurance on the vehicles while in the City’s possession. The City participates with other Iowa local government entities to provide risk sharing and risk protection in the Iowa Community Assurance Pool (ICAP) which is a local government risk pool formed pursuant to Chapter 670.7 of the Iowa Code. This protection includes Third Party Liability and Automobile Liability (including Medical Expenses, Uninsured and Underinsured Motorists) in accordance with ICAP’s risk sharing agreements, certificates, and coverage limits. The City agrees to maintain the ability to pay claims for which it is liable through insurance and/or self-insurance coverage, acknowledging that the City requirements will be partially met with a combination of self-insurance and risk protection through ICAP.

B. The City’s Risk Manager will forward Certificates of Coverage of commercial or self-insurance or ICAP insurance shown below and will notify the Provider of any changes in coverage thirty (30) days prior to the change:

Commercial General Liability Insurance, Self Insurance, or Statutory ICAP Minimums	
General Aggregate	\$5,000,000
Personal Injury and Adv. Injury Limit	\$1,000,000 each occurrence
Bodily Injury and Property Damage	\$1,000,000 each occurrence
Fire Damage	\$300,000 (any one fire)
Medical Expense	\$5,000 (any one person)
Business Auto Liability Insurance, Self Insurance, of Statutory ICAP Minimums	
Combined Single Limit Bodily Injury and Property Damage	\$1,000,000

C. At all times during the City’s sol operation or control of the vehicle, the physical damage to the vehicle itself, along with all of the contents and related equipment, shall be the responsibility of the City.

D. The provider shall maintain insurance coverage in scope and amounts acceptable to the City’s Risk Manager and will notify the City of any changes in coverage thirty (30) days prior to the change.

E. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.

F. To the fullest extent permitted by law, the Provider shall indemnify and hold harmless the City, its agents, and employees from and against all claims, damages, losses, and expenses including, but not limited to, attorneys’ fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of the Provider, any Subcontractor, anyone directly or indirectly employed by any of them or any one for whose acts, any of them may be liable.

G. In no case will the Provider’s coverage be construed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the City.

VI. PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION

Provider agrees to hold in trust and confidence any confidential and/or proprietary information or data relating to City business and shall not disseminate or disclose such confidential information to any individual or entity, except Provider's employees or subcontractors performing services hereunder (who shall be under a duty of confidentiality), and any other individuals specifically permitted in each instance by the City. Confidential information shall include the dissemination of the make, model, year, color, etc. of the vehicle provided to the City.

V. TERMINATION

The City of Ames or the Provider may terminate this Agreement without penalty at any time by giving written notice to the Provider at least thirty (30) days before the effective date of such termination. In any case where the Provider fails in whole or in part to substantially perform its obligations or has delivered nonconforming services, the City shall provide a Cure notice. If after notice the Provider continues to be in default, the City may terminate this agreement immediately. The City shall only be obligated to compensate the Provider for compliant services performed prior to notice of termination.

VI. INDEPENDENT CONTRACTOR STATUS

Provider agrees that the relationship between Provider and the City is that of an independent contractor for employment tax purposes. The Provider shall be solely responsible for all taxes relating to payments under this agreement including those of employees.

VII. LAWS

This contract is governed by the laws of the State of Iowa with venue in Story County District Court.

VIII. ASSIGNMENT

This Agreement may not be assigned or transferred by the Provider without the prior written consent of the City.

IX. AFFIRMATIVE ACTION

Provider shall place on file with the City a statement of nondiscrimination policy in the form of a completed Assurance of Compliance with the City of Ames, Iowa, Affirmative Action Program satisfactory to the Affirmative Action Officer of the City.

X. DURATION AND AUTOMATIC RENEWAL

This Agreement shall be in full force and effect from and after _____, 2014 until _____, 2015, and shall automatically renew for a yearly term on _____ of each year thereafter, or until terminated by the City or the Provider.

IN WITNESS WHEREOF, the parties hereto have, by their authorized representatives, set their hand and seal as of the date first above written.

CITY OF AMES, IOWA

DEALERSHIP

By: _____
Ann H. Campbell, Mayor

By: _____
, Owner

Attest by: _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

STATE OF IOWA, COUNTY OF STORY, ss:

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. ____ adopted by the City Council on the _____ day of _____, 20____, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

This instrument was acknowledged before me on _____, 20____, by _____ and _____, as _____ and _____, respectively, of _____.

Notary Public in and for the State of Iowa

Notary Public in and for the State of Iowa