

TAB 5

POINT PAPER
PALMETTO POLICE DEPARTMENT
AUTOMOTIVE REPAIR SERVICES
OCTOBER 6, 2008

This point paper is intended as a follow-up to the issues presented at the meeting on September 22, 2008. Original recommendation and budget impact still stand. Please see the original point paper attached.

On July 16, 2008 an Invitation to Bid (ITB) went out for the automotive repair services of the Police Department's vehicles; the last ITB for these services went out in fiscal year 2004/2005. Bill Lee's Professional Automotive has consecutively been awarded the last two ITB with their last contract expiring on September 30, 2007.

A brief explanation of the differences between an Invitation to Bid and a Request for Proposal (RFP) may assist in understanding the evaluation process. An ITB is used when we can adequately describe the material or service needed. We detail the specifications and expectations in the ITB and the bidder agrees to these by responding to the bid. Evaluation is based strictly on the specification as we set forth in the ITB; discussion and negotiations are not necessary. Award is made to the lowest responsive and responsible bidder. Conversely, an RFP is used when the need is more complex and difficult to specify. A detailed Scope of Work would be done to include the criteria by which the responses would later be evaluated by a committee. Award is made to the offerer whose responsive bid is determined to be the most advantageous to the City.

The Police Department's request qualified to be an ITB and, as a result, the only comparison necessary is based on prices (copy attached). All bidders responded to the exact bid package.

As is our standard practice, the ITB was posted on our web site and advertised in the legal section of the Bradenton Herald (copy attached). We do not determine ad size. Most legal ads are the same width, and the length is determined by the size/number of words in the ad. To keep the advertising costs down, we only included the necessary information in our ads.

On the same day of advertisement, bid packages are sent out to all vendors in our system that qualify for the bid; qualification is based on commodity codes that were determined from the vendors own application. In the case of the automotive repair ITB, four packages went out (copy attached).

Throughout the year, vendors generally call in and ask how to be included in our bidding process. We give them directions to our web site, which includes all the required forms, and we explain the application process. Once a vendor applies and is added in our system, they receive a letter detailing how they can obtain bids from our web site and when they can expect to see them advertised in the paper.

**POINT PAPER
PALMETTO POLICE DEPARTMENT
AUTOMOTIVE REPAIR SERVICES
SEPTEMBER 22, 2008**

PROBLEM:

The City of Palmetto Police Department and the City of Palmetto have not solicited proposals for vehicle maintenance in more than three (3) years. In an effort to reduce the cost of vehicle maintenance an Invitation for Bids was solicited. Two (2) automotive repair establishments responded to this request. The lesser of the two bids was submitted by Lex's Automotive, located at 1045 Hasko Road, in the City of Palmetto, Florida. The higher of the two bids was submitted by Bill Lee's Professional Automotive Services, Inc. located at 4706 U S Highway 41 North, Palmetto, Florida.

BACKGROUND:

The Palmetto Police Department has a fleet of vehicles which require maintenance and periodic repairs to ensure proper performance and ensure that the value of the vehicles is protected. At this time, Bill Lee's Professional Automotive Service, Inc. is performing maintenance and repair to the fleet without a contract or written agreement. A former agreement/contract has expired. It is noted that Bill Lee's Professional Automotive Service, Inc. is not located within the City Limits of Palmetto, Florida. Lex's Automotive was substantially lower in all categories wherein the cost of service is subjective.

ALTERNATIVES:

1. Authorize the Mayor to execute the contract with Lex's Automotive for the maintenance and repair of vehicles for the Palmetto Police Department at the prices iterated within the submitted proposal which are less than those proposed costs submitted by Bill Lee's Professional Automotive Service, Inc.
2. Authorize the Mayor to contract with Bill Lee's Professional Automotive Service, Inc. for the maintenance and repair of vehicles for the Palmetto Police Department at the prices iterated within the submitted proposal which are higher than those proposed costs submitted by Lex's Automotive.
3. Continue to have the fleet maintained and repaired by Bill Lee's Professional Automotive Service, Inc. without benefit of a contract or agreement.

RECOMMENDATIONS:

Staff Recommends Alternative #1 to reduce costs by executing the contract with Lex's Automotive.

BUDGET IMPACT:

Per the adopted 2009 Budget not to exceed \$65,000.



**RECORD OF RECEIPTS FOR
BIDS AND PROPOSALS**

DEPT. Police	ADDENDUMS 1	INVITATION NUMBER ITB-PD-0708/AUTO-3-2008/NH Automotive Repair Services
OPENING		
TIME 2:00	A.M. P.M.	DATE 8/6/2008

NAMES, CITY & STATE OF RESPONDENTS	BID TOTAL	TIME AND DATE RECEIVED	
		TIME	DATE
1. Professional Automotive Services - Palmetto, FL	\$70Hr/40%	11:33a	8/1/2008
2. Lex's Automotive - Palmetto, FL	\$55Hr/40%	9:48a	8/6/2008
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I received 2 bids and/or responses.
(number)

Bid Opening Official (signature) 	Title Nixa Haisley Purchasing Agent	Date and Time 8/6/2008 2:15pm
Bid Opening Custodian (signature) 	Title Donna Gross Accounting Clerk	Date and Time 8/6/2008 2:15pm

Lex's Automotive

1045 Hasko Rd. Palmetto, Fl. 34221

Office: (941)723-0806 Fax: (941)729-6743


Website: Leksauto.com Email address: lexsauto@msn.com

August 4, 2008

City Of Palmetto
Police Department

Thank you for considering our business to assist the Palmetto Police Department in servicing their fleet. Lex's Automotive is family owned and operated in the City of Palmetto since 1995. We are located within the Enterprise Zone & the Palmetto CRA District. We are experienced in handling state/government fleet vehicle accounts and have been offering service and repair to the Department of Agriculture, USDA, Florida Park Service, North River Fire Dept. and Department of Motor Vehicles. We also service several commercial fleets and can provide references upon request. Our office offers computer generated invoices with detailed billing and vehicle databases for all repair history, see attached example. It will be our standard in maintaining adequate stock of filters, fluids and other parts needed for timely service for the maintenance of your fleet.

Sincerely,



Edward Lex, Pres.

Licensed & Insured MV# 26347
ASE & Ford Master Technicians
Manatee Chamber of Commerce Member
Better Business Council Member
Manatee 100 Club Member

**CITY OF PALMETTO
SPECIFICATIONS
SCHEDULE "A"**

The following items are requirements of a responsible, responsive bid for Police Vehicle Maintenance for the City of Palmetto. Unless otherwise noted in your response, it will be understood these specifications will be part of the cost provided in the bid response.

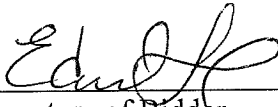
1. Only ASE certified mechanics will perform maintenance or repairs on Police Department vehicles.
2. Only ASE certified technicians with the appropriate ASE certification for automotive brakes, air conditioning, transmission, drive train, electrical and engine repair will perform maintenance or repair on Police Department vehicles. No repair or maintenance will be performed on a Police Department vehicle unless the assigned technician performing that repair is ASE certified for that repair or maintenance.
3. Valid and current ASE certifications must be conspicuously displayed at the repair location.
4. The repair facility must have sufficient fully functional repair bays so as to provide services within a reasonable repair time frame.
5. All parts and labor must be itemized separately per vehicle.
6. All repair and service invoices must be specific to the Police Department vehicle being serviced or repaired and include, as a minimum, the following:
 - A. Vehicle Identification Number
 - B. Vehicle (Unit) Number
 - C. Mileage
 - D. Date in and Date Completed
 - E. Name or ID of technician performing the repair or service.
 - F. Separate listing of parts and labor charges.
7. All repair records, invoices and vendor invoices must be available for inspection by any authorized representative of the Palmetto Police Department and/or authorized representative of the City of Palmetto upon request of said representative.
8. All chargeable labor hours will not exceed the standards set by the most current Mitchell Manual Flat Rate guidelines.
9. The repair facility must have appropriate and fully functional diagnostic equipment compatible with the Palmetto Police Department vehicles. Scanners, engine analyzers, and diagnostic testers must have current software and be housed at the repair facility.
10. Diagnostic software will be subject to inspection by the Police Department and/or the City of Palmetto representatives for proof of updates upon request by the respective representative.
11. The repair facility must have fuel injection cleaning, cooling system flush and refill machine, as well as automatic transmission flush and refill machine.
12. Storage capacity for up to twenty (20) police pursuit tires with at least an additional (2) complete sets of police pursuit tires mounted and balanced and available for immediate installation.

- 13. No patched tires are allowed on pursuit vehicles regardless if it is a marked car or unmarked car.
- 14. The facility must have on-site secure storage for no less than two Police Department vehicles. This storage should be out of normal view.
- 15. Bidder shall procure and maintain during the life of the Agreement, unless otherwise specified, Commercial General Liability, which shall have a minimum of no less than \$1,000,000.00 of coverage.
- 16. All parts installed on police pursuit vehicles must be OEM or parts approved for use by the manufacture of the police vehicle being serviced or repaired.

If a bidder has fleet management software suitable for management reports to the Police Department and City of Palmetto, this information should be specifically described as an addendum to the bid proposal (ex. Service schedule, repair incident history, cost history of vehicle, etc.)

I understand the requirements as stated above, and unless otherwise noted, provide a bid document that includes the requirements as listed.

Lexis Automotive 4 Wheel Drive Print Name Edward Lex
Company Name of Bidder Repair Inc.

 Date 8-4-08
Signature of Bidder

**CITY OF PALMETTO
SPECIFICATIONS
SCHEDULE "B"**

The following is a list of common services the City of Palmetto Police Department uses on a continuous basis for the vehicles listed in Schedule C. Please give the price per unit, including labor, for each item. NOTE: This is not an all inclusive list; other work will also be performed.

- | | |
|---|--|
| 1. Oil Change & 31 point check of vehicle | \$ <u>52.50 to 56.90</u> /each ^{45qt oil} |
| 2. Tire Mount & Balance | \$ <u>16.50</u> /each |
| 3. Change Wiper Blades | \$ <u>7.50 to 10.00</u> /each + Labor |
| 4. Battery -Heavy Duty | \$ <u>92.95 to 113.95</u> /each Interstate Battery |

In addition to the above items, please provide the following information:

- | | |
|-----------------------------------|---------------------|
| 1. Hourly Rate for Repair | \$ <u>55.00</u> /Hr |
| 2. Percentage over Cost for Parts | <u>40</u> % |

NOTE: Your invoice to verify cost of parts will be required, upon request, for each invoice that is billed to the City of Palmetto.

3. Cost plus labor for the following items:

- | | |
|--------------------------|-------------------------------|
| Radiators | \$ <u>*</u> /each |
| Alignment | \$ <u>59.95</u> /each |
| Replace Front Brake Pads | \$ <u>149 to 249.00</u> /each |
| Replace Back Brake Pads | \$ <u>139 to 169.00</u> /each |
| Turn Rotors | \$ <u>7.00</u> /each |
| Alternator | \$ <u>*</u> /each |
| Replace Spark Plugs | \$ <u>*</u> /each |

* See Attached

The above prices must be provided for a one-year period, with a potential for two one-year extensions of this contract.

	<u>RADIATOR</u>	<u>ALTERNATOR</u>	<u>SPARK PLUGS</u>	<u>NOTES</u>
03 - 08 Police Crown Vic 4.6 ltr	\$ 293.50	\$ 425.07	\$ 147.64	dealer part - alternator
99 - 02 Police Crown Vic 4.6 ltr	\$ 210.00	\$ 230.00	\$ 147.64	
05 - 08 Ford Expedition 5.4 ltr	\$ 330.00	\$ 392.00	\$ 306.20	dealer part - alternator
98 - 04 Ford Expedition 5.4 ltr	\$ 339.00	\$ 219.85	\$ 218.52	
93 Nissan Pickup 3.0 Auto	\$ 190.50	\$ 237.00	\$ 81.88	
05 Impala 3.8 ltr	\$ 389.50	\$ 266.00	\$ 130.60	based on 130 amp alternator
06 F150 5.4 auto	\$289 - \$400	\$275 or \$360.87	\$ 306.20	dealer part - alternator - price depends on amps
07 Ford E350 85.4 ltr	\$ 554.75	\$306 - \$360	\$ 241.14	dealer part - radiator & alternator
04 Dodge Intrepid 3.5 ltr	\$ 279.00	\$ 281.50	\$ 86.00	based on 130 amp alternator

**CITY OF PALMETTO
SPECIFICATIONS
SCHEDULE "A"**

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3. Valid and current ASE certifications must be conspicuously displayed at the repair location.
4. The repair facility must have sufficient fully functional repair bays so as to provide services within a reasonable repair time frame.
5. All parts and labor must be itemized separately per vehicle.
6. All repair and service invoices must be specific to the Police Department vehicle being serviced or repaired and include, as a minimum, the following:
 - A. Vehicle Identification Number
 - B. Vehicle (Unit) Number
 - C. Mileage
 - D. Date in and Date Completed
 - E. Name or ID of technician performing the repair or service.
 - F. Separate listing of parts and labor charges.
7. All repair records, invoices and vendor invoices must be available for inspection by any authorized representative of the Palmetto Police Department and/or authorized representative of the City of Palmetto upon request of said representative.
8. All chargeable labor hours will not exceed the standards set by the most current Mitchell Manual Flat Rate guidelines.
9. The repair facility must have appropriate and fully functional diagnostic equipment compatible with the Palmetto Police Department vehicles. Scanners, engine analyzers, and diagnostic testers must have current software and be housed at the repair facility.
10. Diagnostic software will be subject to inspection by the Police Department and/or the City of Palmetto representatives for proof of updates upon request by the respective representative.
11. The repair facility must have fuel injection cleaning, cooling system flush and refill machine, as well as automatic transmission flush and refill machine.
12. Storage capacity for up to twenty (20) police pursuit tires with at least an additional (2) complete sets of police pursuit tires mounted and balanced and available for immediate installation.

13. No patched tires are allowed on pursuit vehicles regardless if it is a marked car or unmarked car.
14. The facility must have on-site secure storage for no less than two Police Department vehicles. This storage should be out of normal view.
15. Bidder shall procure and maintain during the life of the Agreement, unless otherwise specified, Commercial General Liability, which shall have a minimum of no less than \$1,000,000.00 of coverage.
16. All parts installed on police pursuit vehicles must be OEM or parts approved for use by the manufacture of the police vehicle being serviced or repaired.

If a bidder has fleet management software suitable for management reports to the Police Department and City of Palmetto, this information should be specifically described as an addendum to the bid proposal (ex. Service schedule, repair incident history, cost history of vehicle, etc.)

I understand the requirements as stated above, and unless otherwise noted, provide a bid document that includes the requirements as listed.

Professional Automotive Services Print Name Bill Lee

Company Name of Bidder



Signature of Bidder

Date

7/31/08

**CITY OF PALMETTO
SPECIFICATIONS
SCHEDULE "B"**

The following is a list of common services the City of Palmetto Police Department uses on a continuous basis for the vehicles listed in Schedule C. Please give the price per unit, including labor, for each item. NOTE: This is not an all inclusive list; other work will also be performed.

- 1. Oil Change & 31 point check of vehicle \$ 65.00 /each *5qt Filter*
- 2. Tire Mount & Balance \$ 17.95 /each
- 3. Change Wiper Blades \$ 40 over cost /each
- 4. Battery -Heavy Duty \$ 0 /each

In addition to the above items, please provide the following information:

- 1. Hourly Rate for Repair \$ 70.00 /Hr
- 2. Percentage over Cost for Parts 40 %

NOTE: Your invoice to verify cost of parts will be required, upon request, for each invoice that is billed to the City of Palmetto.

3. Cost plus labor for the following items:

- Radiators \$ _____ /each
- Alignment \$ _____ /each
- Replace Front Brake Pads \$ 0/0 /each
- Replace Back Brake Pads \$ 40 /each
- Turn Rotors \$ 40 /each
- Alternator \$ _____ /each
- Replace Spark Plugs \$ 0 /each

The above prices must be provided for a one-year period, with a potential for two one-year extensions of this contract.

BRADENION HERALD

CLASSIFIED ADVERTISING

Order:	181838613	Pubs:	1,9	Rate:	LE
Phone:	9417234570	Class:	4995	Charges:	\$ 0.00
Account:	4089	Start Date:	07/15/2008	List Price:	\$ 92.35
Name:	CITY,	Stop Date:	07/15/2008	Payments:	\$ 0.00
Firm:	CITY PALMETTO	Insertions:	2	Balance:	\$ 92.35

LEGAL

**CITY OF PALMETTO
POLICE DEPARTMENT
Invitation to Bid
Automotive Repair
Services**

The City of Palmetto is requesting sealed bids from qualified vendors to provide automotive repairs parts and services for our Police Department fleet.

Copies of the ITB are available for pickup at the address below or you may email your request to nhaisley@palmettofl.org. In addition, you may download the ITB from our website at www.palmettofl.org.

City of Palmetto
Attn: Nixa Haisley
516 8th Ave West
Palmetto, FL 34221
(941) 723-4570

Bid responses must be submitted in one (1) sealed envelope marked as "BID FOR AUTOMOTIVE REPAIR PARTS & SERVICE" and will be received at the Purchasing Department until the time of opening which is at 2:00 P.M. on Wednesday, August 6, 2008 in Palmetto City Hall. Bids will be opened, read aloud, and recorded at that time; bids received after that time and date will be returned unopened.

In keeping with the best interests of the City, the City of Palmetto reserves the right to reject any and all bids with or without cause and to waive any or all irregularities with regards to the specifications.
07/16/2008

Proof

LEGAL

**CITY OF PALMETTO
POLICE DEPARTMENT
Invitation to Bid
Automotive Repair
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07/16/2008



PURCHASING DEPT.
516 8TH AVE W
PO BOX 1209
PALMETTO, FL 34220



PURCHASING DEPT.
516 8TH AVE W
PO BOX 1209
PALMETTO, FL 34220

INVITATION TO BID

ATTN: JULIE BROWN
PALMETTO AUTOMOTIVE
405 8TH AVENUE W
PALMETTO, FL 34221

INVITATION TO BID

ATTN: BILL LEE
PROFESSIONAL AUTOMOTIVE SERVICES
4706 US HIGHWAY 41 NORTH
PALMETTO, FL 34221



PURCHASING DEPT.
516 8TH AVE W
PO BOX 1209
PALMETTO, FL 34220



PURCHASING DEPT.
516 8TH AVE W
PO BOX 1209
PALMETTO, FL 34220

INVITATION TO BID

ATTN: TANYA
LEX'S AUTOMOTIVE
1045 HASKO ROAD
PALMETTO, FL 34221

INVITATION TO BID

ATTN: LARRY FOWLER
LFP AUTO LLC
2000 9TH STREET W
BRADENTON, FL 34205



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**AGREEMENT FOR AUTOMOBILE
MAINTENANCE AND REPAIR SERVICES**

THIS AGREEMENT for automobile maintenance and repair services is made on the date last set forth below between the CITY OF PALMETTO POLICE DEPARTMENT (“PPD”), through the CITY OF PALMETTO, a municipal corporation of the state of Florida and LEX’S AUTOMOTIVE AND 4-WHEEL DRIVE REPAIR, INC., (“CONTRACTOR”) a Florida corporation with a principle place of business located at 630 Hasko Road, Palmetto, Florida 34221.

WHEREAS, the PPD owns a fleet of automobiles used in its law enforcement function; and,

WHEREAS, PPD requires that maintenance and repairs be performed on the vehicles on a regular basis; and,

WHEREAS, CONTRACTOR is in the business of providing automobile maintenance and repair services and desires to perform such services for PPD; and

WHEREAS, CONTRACTOR was one of at least three bidders to submit a bid in response to an Invitations to Bid issued by PPD; and

WHEREAS, CONTRACTOR was ultimately selected to perform such services for PPD; and

WHEREAS, PPD desires to purchase and CONTRACTOR desires to furnish the services specified herein; and

WHEREAS, the City Commission has established a budget and allocated funds for the purchase of such services.

NOW THEREFORE, in consideration of the premises and the mutual agreements set forth herein, PPD and CONTRACTOR agree as follows:

Section I. GENERAL.

A. COMPLIANCE WITH LAWS; NONDISCRIMINATION. The performance of this Agreement shall be in compliance with all applicable laws, orders and codes of Federal, State, and local governments and the Americans with Disabilities Act. Additionally Contractor covenants and agrees that no person shall on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation or beliefs be excluded from participation in, be denied the benefits of employment by CONTRACTOR, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by the City.

B. **LICENSES.** CONTRACTOR shall obtain any licenses required to provide the Scope of Services and maintain full compliance with any licensure requirements.

C. **CONTRACTUAL LIABILITY.** The relationship of the Contractor to the City shall be that of an independent contractor. Nothing herein contained shall be construed as vesting or delegating to the Contractor or any of the officers, employees, personnel, contractors, or subcontractors of the Contractor any rights, interest or status as an employee of the City. The City shall not be liable to any person, firm or corporation that is employed by, contracts with or provides goods or services to the CONTRACTOR in connection with the Scope of Services or for debts or claims accruing to such parties. CONTRACTOR shall promptly pay, discharge or promptly take such action as may be necessary and reasonable to settle such debts or claims.

Section II. TERMS AND CONDITIONS. CONTRACTOR shall, at its own cost, provide all materials, equipment, labor and everything of every sort which may be necessary for the proper execution of all of the work included in this agreement, whether same may or may not be particularly described herein. CONTRACTOR agrees to abide by all the terms and conditions of this Agreement as follows:

- A. Only ASE certified mechanics will perform maintenance or repairs on Police Department vehicles.
- B. Only ASE certified technicians with the appropriate ASE certification for automotive brakes, air conditioning, transmission, drive train, electrical and engine repair will perform maintenance or repair on Police Department vehicles. No repair or maintenance will be performed on a Police Department vehicle unless the assigned technician performing that repair is ASE certified for that repair or maintenance.
- C. Valid and current ASE certifications must be conspicuously displayed at the repair location.
- D. The repair facility must sufficient fully functional repair bays so as to provide services within a reasonable repair time frame.
- E. All parts and labor must be itemized separately per vehicle.
- F. All repair and service invoices must be specific to the Police Department vehicle being serviced or repaired and include, as a minimum, the following:

1. Vehicle Identification Number
 2. Vehicle (Unit) Number
 3. Mileage
 4. Date in and Date Completed
 5. Name or ID of technician performing the repair or service.
 6. Separate listing of parts and labor charges.
- G. All repair records, invoices and vendor invoices must be available for inspection by any authorized representative of the Palmetto Police Department and/or authorized representative of the City of Palmetto upon request of said representative.
- H. All chargeable labor hours will not exceed the standards set by the Mitchell Flat Rate guidelines.
- I. The repair facility must have appropriate and fully functional diagnostic equipment compatible with the Palmetto Police Department vehicles. Scanners, engine analyzers, and diagnostic testers must have current software and be housed at the repair facility.
- J. Diagnostic software will be subject to inspection by the Police Department and/or the City of Palmetto representatives for proof of updates upon request by the respective representative.
- K. The repair facility must have fuel injection cleaning, cooling system flush and refill machine, as well as automatic transmission flush and refill machine.
- L. Storage capacity for up to twenty (20) police pursuit tires with at least an additional (2) complete sets of police pursuit tires mounted and balanced and available for immediate installation.
- M. No patched tires are allowed on pursuit vehicles regardless if it is a marked car or unmarked car.
- N. The facility must have a seven day a week, twenty-four hour a day towing service for police vehicles with on-site secure storage for no less than two Police Department vehicles. This storage should be out of normal view.

- O. CONTRACTOR shall procure and maintain during the life of this Agreement, unless otherwise specified, Commercial General Liability, which shall have a minimum of no less than \$1,000,000.00 of coverage.
- P. All parts installed on police pursuit vehicles must be OEM or parts approved for use by the manufacture of the police vehicle being serviced or repaired.

Section II. RATES. CONTRACTOR agrees to provide all labor at a rate of \$55.00 per hour or fraction thereof according to the Mitchell Flat Rate guidelines and to provide all parts at cost plus 40%.

Section III. PAYMENTS. CONTRACTOR will prepare and submit invoices as outlined in Section I (6) to the PPD. PPD agrees to pay all invoices within thirty (30) days of receipt.

Section IV. DURATION, TERMINATION AND AMENDMENT.

A. This Agreement shall be for a term of one year commencing on October 1, 2008. The Agreement may be renewed for an additional one (1) year term upon written agreement by both parties, which agreement may include an increase in the hourly rate by an amount not to exceed 3% of the rate in place during the initial term.

B. Either party may terminate this Agreement upon providing the other party with 60 days prior written notice of such termination. PPD may terminate this Agreement immediately if CONTRACTOR shall commit a default under any of the terms, provisions, conditions, or covenants contained in this Agreement and shall fail to take such steps to remedy such default within ten (10) calendar days after written notice thereof from PPD as PPD shall direct. Should PPD terminate this Agreement pursuant to this Section IV (2), CONTRACTOR shall cease all work immediately and PPD shall be entitled to have a third party complete work remaining under any and all outstanding Work Orders. CONTRACTOR shall receive no further compensation until all work remaining under any and all outstanding Work Orders is completed. If the unpaid balance otherwise due to CONTRACTOR exceeds the direct and indirect cost of completing the remaining work, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such cost exceeds such unpaid balance, CONTRACTOR will pay the difference to the PPD. Such cost incurred by the PPD will be reasonably determined by the PPD.

C. This Agreement may not be modified, amended or extended orally. This Agreement may be amended only by written agreement executed by both parties.

Section V. NON-ASSIGNABILITY. Contractor may not assign, transfer, or encumber this Agreement or any right or interest in this Agreement.

Section VI. INDEMNIFICATION. CONTRACTOR shall indemnify, keep and save harmless the City, its contractors, officials and employees, against all injuries, deaths, losses, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may accrue against the City arising out of the performance of or failure to perform the Scope of Services required by this Agreement or the terms of this Agreement, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the CONTRACTOR or its employees, subcontractors, licensees, invitees or guests. CONTRACTOR shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against the City in any such action, the CONTRACTOR shall, at its own expense, satisfy and discharge the same. CONTRACTOR expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by CONTRACTOR, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.

The indemnity hereunder shall continue until such time as any and all claims arising out of CONTRACTOR performance or failure to perform under this Agreement have been finally settled, regardless of when such claims are made.

In the event that any action, suit or proceeding is brought against the City upon any liability arising out of this Agreement, City at once shall give notice thereof in writing to CONTRACTOR at the above listed address. Upon receipt of notice, CONTRACTOR, at its own expense, may defend against such action and take all such steps as may be necessary or proper to prevent a judgment against the City. Nothing in this Agreement shall be deemed to affect City's right to provide its own defense and to recover from CONTRACTOR attorney's fees and expenses associated with such representation or the rights, privileges and immunities of the City as set forth in Florida Statutes, section 768.28.

Section VII. VENUE. The venue for any proceedings brought to enforce this agreement shall be Manatee County, Florida.

Section VIII SEVERABILITY. Should any portion of this agreement be found by a court of competent jurisdiction to be illegal or unconstitutional, then such portion shall be severed and the remaining portions of the agreement shall be unaffected thereby.

Section IX. ATTORNEY FEES. In the event of litigation to enforce any of the rights and obligations set forth in this Agreement for Automobile Maintenance and Repair Services, the prevailing party shall be entitled to recover reasonable attorney's fees and costs expended in enforcing those rights and obligations.

Both parties indicate their approval of this Agreement by their signatures below and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been taken.

ATTEST: James R. Freeman
City Clerk

**CITY OF PALMETTO, FLORIDA BY AND
THROUGH THE CITY COMMISSION OF
THE CITY OF PALMETTO**

By: _____
City Clerk/Deputy Clerk

By: _____
Lawrence E. Bustle, Jr., Mayor

Date: _____, 2008

Witnesses:

**LEX'S AUTOMOTIVE AND
4-WHEEL DRIVE, INC.**

Signature

By: _____

Print name: _____

Print name

Title: _____

Signature

Date: _____, 2008

Print name