RESOLUTION NO. 2011-77

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO VEHICLE MAINTENANCE AND REPAIR; AUTHORIZING THE SELECTION OF AUTO ELECTRIC SERVICE, INC. TO CONTINUE PROVIDING VEHICLE MAINTENANCE AND REPAIR FOR THE VILLAGE OF PALMETTO BAY FLEET; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED $6,500.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, to date, the Village fleet is made up of twelve (12) vehicles; and,

WHEREAS, the Department of Public Works acknowledges the importance of ensuring that all of its vehicles operate smoothly and efficiently at the lowest possible cost and highest possible quality for the Village; and,

WHEREAS, currently, the Village of Palmetto Bay outsources the repair and maintenance service of the Village fleet; and,

WHEREAS, the Village of Palmetto Bay is responsible for all repairs and maintenance of the twelve (12) trucks in the Village fleet and requires a contractor to repair and maintain all vehicles in the fleet; and,

WHEREAS, Auto Electric Services, Inc. was contracted per resolution No. 09-73 dated September 14, 2009 to provide vehicle repair and maintenance service for the Village of Palmetto fleet on an as needed basis; and,

WHEREAS, the Department of Public Works contacted, Auto Electric Services, Inc. and received authorization to continue to "piggy back" onto the existing Town of Cutler Bay Vehicle Repair and Maintenance contract as executed by the Town of Cutler Bay, on May 20, 2009; and,

WHEREAS, Pursuant to the Village's purchasing procedures, the Village may enter into contracts for services with contractors without following competitive bidding procedures when another public agency has already followed proper formal bid procedures; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1: The Village Manager is authorized to continue the agreement with Auto Electric Service, Inc. for vehicle maintenance and repair for the Village of Palmetto Bay fleet in an amount not to exceed $6,500.

Section 2: This resolution shall take effect immediately upon approval.

PASSED and **ADOPTED** this 5th day of December, 2011.

ATTEST:

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

READ AND APPROVED AS TO FORM:

Eve Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	YES
Council Member Howard J. Tendrich	YES
Council Member Joan S. Lindsay	YES
Vice-Mayor Brian W. Pariser	YES
Mayor Shelley Stanczyk	YES

VENDOR SERVICES AGREEMENT

This Agreement is entered into this 16th day of December, 2011, between the Village of Palmetto Bay, Florida, a municipal corporation located at 9705 E Hibiscus Street, Palmetto Bay, FL 33157, and Auto Electric Service, Inc. as Vendor, whose address is 8745 SW 129 Terrace, Miami, FL 33176.

RECITALS:

WHEREAS, the Village Manager is responsible for contracting; and,

WHEREAS, Vendor is amenable to providing services; and,

WHEREAS, the Village Manager consents, after council approval to the use of Vendor for services, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the sum of $10.00, the mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. The above whereas clauses are incorporated and made a part of this contract. Village Manager and Vendor agree, to the use of Vendor's services and the scope of duties shall be as set forth in the attached Exhibit "A". The Vendor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, equipment, machinery and services for the proper vehicle repair and maintenance. Prior to the commencement of any work, the Vendor shall be responsible for investigating the conditions affecting the work, including but not limited to those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric, power, roads and uncertainties of weather, water tables or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Vendor shall further acknowledge that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Village on the site or any contiguous site, as well as from information presented by Drawings and Specifications made part of this document and subsequent contract, or any other information made available to them prior to receipt of bids. Any failure by the Vendor to acquaint themselves with the available information will not relieve them from responsibility for estimating property the difficulty or cost of successfully performing work. The Village assumes no responsibility for any conclusions or interpretations made by the Vendor on the basis of the information made available by the Village.

2. Vendor shall be entitled to a Vendor fee for services rendered as delineated in Exhibit "A."

____ Village
____ Vendor

3. This Agreement may be terminated for convenience of either the Village, or by Vendor, by giving written notice to the other party(ies) of such termination, which shall become effective 30 days following receipt by the other party of the written termination notice.

4. In the event of such termination for convenience of either party, the Vendor shall be paid a sum equal to all payments due to him up to the date of termination of this Agreement, provided Vendor is continuing to provide all services pursuant to the Agreement up to the date of termination.

5. None of the work or services under this contract shall be subcontracted unless contractor obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this contract and contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

6. The contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the contractor to the Village.

7. During the term of this Agreement, the parties agree and acknowledge that Vendor shall be acting under the direction and control of the Village Manager. Accordingly, during the term of this Agreement, the Village agrees to indemnify, defend, and hold harmless the Vendor, and its officers, employees, and agents from and against any and all actions, claims, liabilities, losses, and expenses, including but not limited to, attorney's fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, in law or in equity, which may arise or be alleged to have arisen from the negligent acts or omissions or other wrongful conduct of the Vendor in connection with the Vendor's performance of services pursuant to the Agreement, and/or otherwise pursuant to Vendor's duties and/or other acts while performing services.

8. All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices.

To Village: Ron E. Williams, Village Manager
9705 E. Hibiscus Street
Palmetto Bay, FL 33157

And

Village: Eve Boutsis, counsel for Village
18001 Old Cutler Road, Suite 533

____ Village
____ Vendor

Palmetto Bay, Florida 33157-6416
(305)-235-9344

To Vendor: Auto Electric Service, Inc.
8745 SW 129 Terrace
Miami, FL 33176

11. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

It is further agreed that this Agreement may be altered, extended and amended only upon the written consent of both parties and Vendor hereto, provided any amendment as to price complies with the Village Charter and Code of Ordinances.

12. BY ENTERING INTO THIS AGREEMENT, VILLAGE AND VENDOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

13. The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

14. Should any paragraph or any part of any paragraph of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

15. The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties.

16. Vendor shall warrant the workmanship, installation, and materials for one year subsequent to installation.
If work under this contract is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Vendor, of any sums as the Village may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Vendor with 10 days prior written notice in the event that it elects to exercise its right to withhold under this paragraph.

____ Village
____ Vendor

17. The Village shall make payment to Vendor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Florida Statutes Section 218.74. Vendor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

18. The Vendor, Subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property.

19. The Vendor is furnishing its services as an independent Vendor and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.

20. Insurance. The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Vendor or its Subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Vendor, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Vendor or Subcontractors. The Vendor shall not commence work under this contract until it has obtained all insurance required by the Village. The Vendor shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the Vendor, or the Vendor's Subcontractors, suppliers and laborers incident to the performance of the Vendor's services under this contract. The Vendor shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence. The Vendor shall maintain during the term of this contract the following insurance:

A. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of $1,000,000.00 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein.

B. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended.

C. The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the Village.

____ Village
____ Vendor

D. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida.

The Vendor shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Vendor has obtained insurance in the type, amount, and classification as required for strict compliance with this paragraph and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village. Compliance with the foregoing requirements shall not relieve the Vendor of its liability and obligations under this contract.

21. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this contract, the Vendor agrees it Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. The Vendor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor. The Vendor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Vendor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with the rules, regulations, and orders.

22. In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

23. The Village, or any of their duly authorized representatives, shall, until 3 years after final payment under this contract, have access to and the right to examine any of the contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions. he right to access and examination of records in section shall continue until disposition of any mediation, claims, litigation or appeals.

25. The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this contract as of the date first above written.

____ Village
____ Vendor

The Village of Palmetto Bay

By: _____
Ron E. Williams,
Village Manager

Vendor

By: _____
Oscar Garcia,
President

ATTEST:

VILLAGE CLERK

By: _____
Meighan J. Rader

VILLAGE ATTORNEY

By: _____
Eve A. Boutsis

____ Village
____ Vendor