

**AGREEMENT FOR
ANNUAL-FORD VEHICLE SERVICE & REPAIRS**

THIS AGREEMENT ("Agreement") is made and entered into as of the date of execution by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Sam Galloway Ford, Inc., a Florida corporation, whose address is 1800 Boy Scout Drive, Fort Myers, Florida, 33907, and whose federal tax identification number is 59-0329880, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase Ford vehicle service and repairs for County vehicles from the Vendor in connection with "Annual-Ford Vehicle Service & Repairs" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B180548TJM on January 12, 2018; and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Intended Decision on February 28, 2018; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase in accordance with the project Scope of Work made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. B180548TJM, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.

II. TERM AND DELIVERY

This Agreement shall commence immediately upon execution by both the County and the Vendor, and shall continue, on an as needed basis, for a period of one (1) year. The County reserves the right to renew this

Agreement for up to three (3) additional one (1) year periods, upon mutual written agreement of both parties.

- A. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.
- B. Products and services shall be delivered in accordance with Exhibit A, Scope of Work, attached hereto and incorporated herein. The schedule shall commence on the date of the purchase order.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to Solicitation No. B180548TJM, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any work under this Agreement until receipt of a purchase order from the County. Vendor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no purchase orders. If a purchase order is issued, the County reserves the right to amend, reduce, or cancel the purchase order in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the address indicated on the purchase order on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.

B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VII or better. No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.

B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon fifteen (15) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or

3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XI. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit A) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Vendor shall refund to the County any money which has been paid for same.
- C. Vendor shall secure a full factory warranty, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

XVI. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether

express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.

- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name: Roy Hardin
Service Director

Title: _____

Address: 1800 Boy Scout Drive
Fort Myers, FL 33907

Telephone: 239-939-5000

Facsimile: N/A

E-mail: rhardin@gallowayauto.com

County's Representatives:

Names: Roger Desjarlais Mary Tucker

Titles: County Manager Director of Procurement Management

Address: P.O. Box 398
Fort Myers, FL 33902

Telephone: 239-533-2221 239-533-8881

Facsimile: 239-485-2262 239-485-8383

E-Mail: rdesjarlais@leegov.com mtucker@leegov.com

- I. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- J. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- K. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
1. Agreement
 2. County's Purchase Order
 3. Solicitation No. B180548TJM
 4. Vendor's Submittal in Response to Solicitation No. B180548TJM

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Signed By: *Sally A Phillips*

Print Name: Sally A Phillips

Sam Galloway Ford, Inc.

Signed By: *Roy Hardin*

Print Name: Roy Hardin

Title: Service Director

Date: March 21, 2018

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *[Signature]*

CHAIR

DATE: 4-24-18

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *Joyce Townsend*

DEPUTY CLERK

Commissioner Cecil L Pendergrass
Lee County Board of County Commissioners
District 2

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *Chuck Lira*

OFFICE OF THE COUNTY ATTORNEY



EXHIBIT A SCOPE OF WORK

SCOPE OF WORK

1. PURPOSE

Lee County is interested in obtaining bids for the service and repairs of Ford vehicles. The parts to be provided are to be priced out as markup over the dealer's net cost.

2. WARRANTY

All parts shall carry a full factory warranty.

3. PARTS

NOTE: THE SALES PRICE SHALL BE BASED ON FORD MOTOR COMPANY/MOTORCRAFT DEALER NET COST PLUS A MARKUP. ALL REBATES, VOLUME DISCOUNTS, FLEET ALLOWANCES, ETC. SHALL BE INCLUDED IN THE PRICE BID.

As a requirement of the bid the awarded vendor, within 10 calendar days of the award, the awarded vendor(s) shall, at no cost to Lee County, provide two current Ford Motor Company/Motorcraft Dealer net Cost Pricing Lists; one (3) for Fleet, Solid Waste, Lee Tran and one (1) for Finance. Fleet and Finance require that the price guides be supplied on either CD or flash drive showing dealer pricing. Dealer net cost lists must be provided to verify the cost of parts and for prepayment audit. Prices will be allowed to change, but only as the dealer net cost price list changes, and only after the new net cost price lists are provided to both Fleet, Solid Waste, Lee Tran and Finance. Awarded vendor or vendors shall also provide log in info on website showing dealer pricing (if applicable).

4. SERVICE RATE CHANGES

The labor rates bid shall be firm and will not vary during the first year of the agreement. However, if the awarded vendor requests a price increase during the remaining years of the contract, it will be reviewed by the Department. If accepted by the Department, the increase will only take effect after the awarded vendor receives the approval in writing from the Department. The mark-ups for materials will remain constant throughout the life of the contract.

5. INVOICING

All invoices should include as a minimum the following information; quote number, manufacturer, manufacturer part number, current dealer net cost, mark up and the final cost of the item. Additionally for labor the invoice should reflect the appropriate billing at 1/10th of the hourly rate as stated in the vendor's contract and the number of hours that were used to complete the work and a total labor cost. A sample of your invoice may be required to insure vendor compliance with quote requirements for invoicing.

End of Scope of Work and Specifications Section

B180548TJM Annual-Ford Vehicle Service & Repairs

**EXHIBIT B
FEE SCHEDULE**

Item #	Description	Unit of Measure	Unit Cost
PARTS PRICING			
1	<u>Dealer Net Cost Plus Markup</u>	Percentage	10%
SERVICE LABOR RATES (NO VARIABLE RATES ALLOWED)			
Item	Description	Unit of Measure	Unit Cost
2	Labor rates for preventive maintenance work for cars, suv's and light trucks under 3/4 ton (to be billed at 1/10th of the hourly rate)	Per Hour	\$80.00
3	Labor rates for preventive maintenance work for trucks 3/4 ton and over (to be billed at 1/10th of the hourly rate)	Per Hour	\$80.00
4	Labor rates for repair work for cars, suv's and trucks under 3/4 ton (to be billed at 1/10th of the hourly rate)	Per Hour	\$80.00
5	Labor rates for repair work for cars, suv's and trucks 3/4 ton and over (to be billed at 1/10th of the hourly rate)	Per Hour	\$80.00

**EXHIBIT C
INSURANCE REQUIREMENTS**



Major Insurance Requirements
with Garage Keepers

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the Vendor's interest or liabilities. The following are the required minimums the Vendor must maintain throughout the duration of this Contract. The County reserves the right to request additional documentation regarding insurance provided.*

a. Commercial General Liability/Garage/Garage Keepers/On-Hook Legal Liability -

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, and contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

b. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL) or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

c. Workers' Compensation - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Contract or Agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers' Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

*The required minimum limit of liability shown in a. and b. may be provided in the form of

“Excess Insurance” or “Commercial Umbrella Policies,” in which case, a “Following Form

EXHIBIT C INSURANCE REQUIREMENTS

Endorsement” will be required on the “Excess Insurance Policy” or “Commercial Umbrella Policy.”

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the Contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
 - b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials”* will be named as an “Additional Insured” on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

1. An appropriate “Indemnification” clause shall be made a provision of the Contract.
2. If applicable, it is the responsibility of the general contractor to ensure that all subcontractors comply with all insurance requirements.