

# CONTRACT

No. 1623

THIS CONTRACT is executed this 4<sup>th</sup> day of January 2008, by and between the **CITY OF TALLAHASSEE**, a Florida municipal corporation, hereinafter called the "City" and **NEECE TIRE & AUTO SERVICE, INC.**, hereinafter called the "Contractor",

## WITNESSETH:

WHEREAS, the City issued RFP No. 0086-07-BM-TC ("RFP") seeking proposals for furnishing of certain new or recap tires and accessories; and,

WHEREAS, the Contractor submitted a certain proposal dated February 9, 2006 ("Proposal") in response to that RFP; and,

WHEREAS, the City and the Contractor desire to enter into a contract for the purchase of various new or recap tires ("Tires") and accessories ("Accessories"), as more particularly set forth in this Contract;

NOW, THEREFORE, in consideration of the mutual promises and covenants, obligations, and terms hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

### **SECTION 1.0 PURCHASE OF TIRES AND ACCESSORIES.**

Contractor shall provide such Tires and Accessories as may be ordered from time to time by the City. All Tires and Accessories shall be priced, designed and manufactured in accordance with the specifications set forth in the Proposal and applicable Change Orders executed by the parties unless otherwise stated in this Contract. All Tires and Accessories shall conform and comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations.

### **SECTION 2.0 INVENTORY OF TIRES AND ACCESSORIES.**

2.1 The Contractor shall maintain sufficient inventory of normal and high-use Tires and Accessories purchased by the City as may be required to make timely delivery of all Tires and Accessories ordered from time to time by the City. All new or recap Tires and Accessories ordered by the City shall be delivered F.O.B to the City Fleet Management Division within one hour from placement of the order. Delays beyond the reasonable control of the Contractor shall be subject to Section 10.10; provided, however, the Contractor, in such event, shall promptly provide Notice to the City regarding the details of any such delay so the City can make a final determination regarding responsibility. It is understood the contractor shall not be required to have in inventory tires for the Fire Department

Crash Vehicles. Upon request every effort shall be made to acquire the proper tire at the most reasonable cost.

- 2.2 The Contractor shall maintain, at City Fleet Management Division facilities, an inventory of certain high volume new or recap Tires and Accessories purchased by the City. Such Tires and Accessories shall remain the property of the Contractor until used by the City.

### **SECTION 3.0 TERM.**

The Term of this Contract shall be a period of five (5) years, commencing on October 1, 2007, unless earlier terminated in accordance with the terms of this Contract. Such term may be extended for an additional five (5) year period, subject to mutual agreement of the parties.

### **SECTION 4.0 CONTRACT PRICING AND PAYMENT.**

- 4.1 Pricing. During the Term, the City shall pay the Contractor for Tires and Accessories ordered and received by the City based upon the Contractor's current pricing at the time a particular order is placed, provided, however, that such price shall not exceed the following: (i) for new tires, a cost equal to the "G" number cost provided by Goodyear Tire and Rubber company or (ii) for recap tires and accessories, the pricing limitations set forth in the Proposal. Prices shall be F.O.B. City of Tallahassee, Fleet Management, Tallahassee, Florida, 400 Dupree Street. In addition to the limitations set forth in Section 4.1 above, the prices offered to the City during the Term shall be no greater than the lowest price offered by the Contractor to any governmental customer. The "G" number pricing shall be no greater than the lowest price offered any governmental agency by the Contractor. The City shall have the right to annually review and audit all Contractor contracts and sales records to verify that the Contractor is in compliance with this most favored pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within 30 days of its receipt of such notice, shall pay to the City the applicable price differential for all affected Tires and Accessories purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of final acceptance of the affected Tires and Accessories through the date of such notice from the City.

- 4.2 Payment. Prices for all Tires and Accessories shall be F.O.B. City of Tallahassee, Fleet Management Division, 400 Dupree Street, Tallahassee, Florida. All proper invoices shall be paid by the City in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

- 4.3 Setoff. In addition to other remedies available under this Contract, the City shall have the right to deduct, offset against, or withhold from sums or payments otherwise due the Contractor any sums or amounts which the Contractor may

owe to the City pursuant to provisions of this Contract, as a result of breach or termination of this Contract, or otherwise.

## **SECTION 6.0 INDEMNIFICATION.**

- 6.1 The Contractor shall indemnify and save harmless the City, its officials and employees, from all losses, damages, costs, expenses, liability, claims, actions, and judgments of any kind whatsoever, including reasonable attorney's fees and costs of litigation, to the extent arising out of or caused by any act or omission of the Contractor, its subcontractors, or their respective employees, officers, directors, or agents, in the performance under this Contract. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under any Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act.
- 6.2 The Contractor shall, at its sole expense, defend any claim, suit or proceeding brought against the City, its official or employees, to the extend such claim, suit or proceeding is based on a claim that any Tires or Accessories furnished under this Contract (collectively, "Infringing Work") constitutes infringement of any registered patent of the United States of America or county of manufacture, provided that City shall give the Contractor prompt written notice of any such claim, suit or proceeding and shall give the Contractor authority, information and assistance in a timely manner for the defense of the same. The Contractor shall indemnify and hold the City, its officials or employees, harmless from and against all costs and damages awarded, and all attorney's fees incurred or awarded, in any suit or proceeding so defended. The Contractor will not be responsible for any settlement or proceeding made without its prior written approval. In case said Infringing Work is held to constitute an infringement and the use of said Infringing Work is enjoined, the Contractor shall, at its own expense and at its option, either (a) procure for City the right to continue using said Infringing Work, (b) replace said Infringing Work with substantially equivalent, equally functional, non-infringing Work, parts or combination thereof, or (c) modify such Infringing Work so that it becomes non-infringing, while maintaining the same functionality.

## **SECTION 7.0 INSURANCE.**

- 7.1 Prior to commencing work, Contractor shall procure and maintain at Contractor's own cost and expense for the duration of the Contract, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the Scope of Services hereunder by Contractor, its agents, representatives, employees or sub-consultants. The cost of such insurance shall be borne by Contractor.

7.1.1 Contractor shall maintain the following coverage with limits no less than the indicated amounts:

- (a) *Commercial General/Umbrella Liability Insurance* - \$1,000,000 limit per occurrence for property damage and bodily injury. The service provider should indicate in its proposal whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
  - (i) Premise/Operations
  - (ii) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
  - (iii) Products/Completed Operations
  - (iv) Contractual
  - (v) Independent Contractors
  - (vi) Broad Form Property Damage
  - (vii) Personal Injury
- (b) *Business Automobile/Umbrella Liability Insurance* - \$1,000,000 limit per accident for property damage and personal injury.
  - (i) Owned/Leased Autos
  - (ii) Non-owned Autos
  - (iii) Hired Autos
- (c) *Workers' Compensation and Employers'/Umbrella Liability Insurance* - Workers' Compensation statutory limits as required by Chapter 440, Florida Statutes. This policy should include Employers'/Umbrella Liability Coverage for \$1,000,000 per accident.

7.1.2 *Other Insurance Provisions*

- (a) *Commercial General Liability and Automobile Liability Coverage*
  - (i) City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor or premises on which Contractor is performing Services on behalf of City. The coverage shall contain no special limitations on the scope of protection afforded to City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers.
  - (ii). The Contractor insurance coverage shall be primary insurance as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers shall be excess of Contractor insurance and shall not contribute with it.
  - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its City Commission, boards, commissions

and committees, officers, agents, employees and volunteers.

- (iv) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) *Workers' Compensation and Employers' Liability and Property Coverage*

The insurer shall agree to waive all rights of subrogation against City, member of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of Services under this Contract.

(c) *All Coverage*

- (i) Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City in accordance with this Contract.

- (ii) If Contractor, for any reason, fails to maintain any insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from Contractor resulting from said breach.

- (iii) Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

7.1.3. *Deductibles and Self-Insured Retention's*

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

7.1.4. *Acceptability of Insurers*

Insurance is to be placed with Florida admitted insurers rated B+X or better by *A.M. Best's* rating service.

7.1.5. *Verification of Coverage*

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be submitted with the proposal as a first peer review. Upon execution of the contract documents, the certificates and

endorsements are to be received and approved by City before work commences.

## **SECTION 8.0    TERMINATION.**

- 8.1    The City may, by written notice to the Contractor, terminate this Contract in whole or in part, at any time, either for the convenience of City or because of failure of the Contractor to fulfill its obligations. Upon receipt of such notice, the Contractor shall immediately discontinue all work affected (unless the notice directs otherwise).
- 8.2    If the termination is for the convenience of the City, the Contractor shall be paid for each cab and chassis, parts, and equipment delivered and finally accepted as of the effective date of termination.
- 8.3    If the termination is due to the failure of the Contractor to fulfill its obligations under this Contract, the Contractor shall be liable to City for reasonable additional costs incurred by City as a result of such breach.
- 8.4    If, after notice of termination for failure to fulfill its obligations under this Contract, it is determined that Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of City.
- 8.5    The rights and remedies of the parties provided in this Section 8 are in addition to any other rights and remedies such party may have at law, in equity, or under this Contract.

## **SECTION 9.0    WARRANTY AND MAINTENANCE.**

- 9.1    The Contractor hereby warrants all Tires and Accessories as set forth in its Proposal and the individual manufacturer's warranty documents. The Contractor will respond, on-site in Tallahassee, for all warranty repairs within one hour following notice from the City.
- 9.2    The Contractor, at its cost, agrees to place at least one manufacturer-trained technician, approved by the City's Superintendent, Fleet Management ("Superintendent"), at the Fleet Management Division facilities at 400 Dupree Street. This technician shall be on-site during such normal City working hours as may be required by the City, at its discretion, and shall facilitate, perform, and expedite both warranty and non-warranty work and repairs, as directed by the Superintendent. The Contractor shall process all paper work in conjunction with warranty-related work or claims. The City shall not be obligated to pay the Contractor for any warranty-related repairs or replacements; however, the Contractor shall be entitled to receive any reimbursement or payment that may be offered by the manufacturer with respect to warranty repairs, replacements, or claims performed or paid by the Contractor. Non-Warranty repairs performed by the Contractor at the City's facility will be billed to the City at per hour at the time repairs are performed. This labor rate shall not increase more than the per-cent

increase in the Contractor's actual cost for such labor for the duration of this Contract.

## **SECTION 10.0 MISCELLANEOUS PROVISIONS.**

- 10.1 Time shall be of the essence in performance of this Contract; provided, however, that either party shall be excused from timely performance under this Contract to the extent that, but only to the extent that, such delay is the result of any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence of, the party claiming such excuse from timely performance.
- 10.2 Failure to enforce or insist upon compliance with any of the terms or conditions of this Contract or failure to give notice or declare this Contract terminated shall not constitute a general waiver or relinquishment of the same or any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.
- 10.3 If written notice to a party is required under this Contract, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, to Contractor as follows:

Neece Tire & Auto Services, Inc..  
4792 Blountstown Highway  
Tallahassee, FL 32304  
Attn: Jack Neece

and to the City as follows:

City of Tallahassee  
Fleet Management Division  
400 Dupree Street  
Tallahassee, Florida 32304  
Attn: Fleet Superintendent

- 10.4 Contractor shall not assign any of their rights or obligations under this Contract without prior approval by the City.
- 10.5 Contractor shall be responsible for the actions of any and all of their subcontractors and consultants. Neither subcontractors nor any consultants shall interface directly with the City.
- 10.6 This Contract and every question arising hereunder shall be construed, interpreted, or determined according to the laws of the State of Florida. Venue for any action brought in relation to this Contract shall be placed in a court of competent jurisdiction in Leon County, Florida.
- 10.7 As required by Section 287.133, (2 (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public

entity for the construction or repair of a public building or a public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.010 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Any person must notify the City within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person.

- 10.8 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either City or Contractor. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract. If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.
- 10.9 Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, gender, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, creed, color, sex, marital status or national origin. The Contractor will post a copy of this pledge in a conspicuous place, available to all employees and job applicants and will place or cause to be placed a statement in all solicitations or advertisement for job applicants, including subcontracts, that the respondent is an "Equal Opportunity Employer".
- 10.10 Either party shall be excused from timely performance under this Agreement to the extent, but only to the extent, such delay is the result of any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence on the part of, the party claiming such excuse from timely performance.
- 10.11 The Contractor shall make Tires available to other governmental entities on the same terms and conditions as set forth in this Contract. Should any such governmental entity purchase any Tires on such basis, the Contractor shall report such purchase to the City and, within thirty (30) days following final payment for each purchase of such Tires, shall provide a credit to the City, which can be used toward the purchase of Tires from the Contractor, in the amount of 0.5% of the purchase price of such Tires. This provision shall apply to all purchases initiated during the term of this Agreement, even if such purchase continues and payment is received after the expiration of such term.
- 10.12 It is understood and agreed that this Contract, including exhibits and references (if any), is the entire Contract between the parties and supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof. City and Contractor, by mutual agreement, may change or amend the

terms and conditions of this Contract. All such changes or amendments shall be set forth in a written amendment to this Contract.

10.13 If any portion of this Contract, or any Exhibit or portion thereof, is held to be invalid by a court of law, such provision shall be considered severable, and the remainder of this Contract shall be construed and enforced in a manner consistent with the intent of the Parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives, effective the date first above written.

**CITY OF TALLAHASSEE**

Attest:

\_\_\_\_\_  
Gary Herndon  
City Treasurer-Clerk

By:\_\_\_\_\_  
Cathy Kilpatrick  
Manager For Procurement Services

**NEECE TIRE & AUTO SERVICES, INC.**

\_\_\_\_\_  
Witness as to the Contractor

By:\_\_\_\_\_  
\_\_\_\_\_  
(Type or print name and title of signatory)

\_\_\_\_\_  
Witness as to the Contractor

Approved as to form:

By:\_\_\_\_\_  
City Attorney