

CONTRACT

No. 3637

THIS CONTRACT is executed this 2nd day of February, 2016 by and between the **CITY OF TALLAHASSEE**, a Florida municipal corporation, hereinafter called the "City" and **TRANSPORT EQUIPMENT COMPANY**, a Georgia corporation, hereinafter called the "Contractor",

RECITALS.

The City issued Request for Proposals No. 0059-15-KM-RC (such document and all addenda thereto, if any, being hereafter referred to as "RFP") seeking proposals for furnishing light, medium and heavy duty truck bodies and all associated equipment ("Truck Bodies"); and the Contractor submitted a certain proposal on June 23, 2015 ("Proposal") in response to that RFP. The City and the Contractor now desire to enter into a contract for the purchase of light, medium, and heavy truck bodies as more particularly set forth in this Contract;

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 TRUCK BODIES

1.1 Contractor shall provide various Truck Bodies as may be ordered from time to time by the City. All Truck Bodies shall be priced, designed, constructed, and equipped 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 Truck Bodies shall conform and comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations.

1.1.1 The Contractor and the City Fleet Management Division shall schedule the following meetings with respect to each order received from the City.

- (i) A pre-production meeting to completely review the specifications and the drawings prior to commencing assembly or production. This meeting shall include the cab and chassis manufacturer if appropriate. The Contractor shall be represented by qualified technicians/engineers to properly facilitate the design and construction requirements. At the option of the City, this meeting will be held either at City Fleet Management Division facilities or at the facilities of the body manufacturer.
- (ii) A second meeting will be planned according to the needs of Fleet Management. At the option of the City, this meeting will be held either at City Fleet Management Division facilities or at the facilities of the body manufacturer.
- (iii) A final review and inspection when each Truck Body is considered by the Contractor to be complete. In addition to a complete inspection, City representatives will conduct a full performance test of each Truck Body

and of all integral systems. The Contractor shall provide all technical information and representatives reasonably required to assist the City in these inspections and shall make available to the City all reasonably required third-party certifications. A technician shall be available to complete any needed repairs or to replace items not meeting specifications. At the option of the City, this meeting will be held either at City Fleet Management Division facilities or at the facilities of the body manufacturer.

The Contractor shall coordinate arrangements for these meetings with the City Fleet Management Division and the cab and chassis manufacturer at least three weeks prior to the scheduled meeting. The Contractor shall bear all costs related to participation of its representatives or personnel in these meetings and activities.

1.1.2 The City or the Contractor, at any time, may request changes in the specifications or requirements related to a particular Truck Body. No changes shall become effective until reduced to writing and signed by duly authorized representatives of each party ("Change Order"). All such Change Orders shall include, as a minimum, the following information:

- (i) The specific changes to be made (i.e., chassis, chassis components, equipment, equipment components, bodies etc.);
- (ii) Changes, if any, in the time for delivery of the Truck Bodies; and,
- (iii) Changes in the price of the Truck Bodies.

1.2 Equipment. The Contractor shall provide associated equipment and tools as may be ordered from time to time by the City.

SECTION 2.0 PURCHASE OF PARTS

The Contractor shall provide such parts for all Truck Bodies purchased by the City as may be ordered from time to time by the City. The Contractor shall provide on-line parts ordering capability, if available, for the City and, upon request, will provide original manufacturer part numbers. All parts ordered by the City shall be delivered FOB to the City Fleet Management Division within 24 hours from placement of the order. Delays in shipment beyond the reasonable control of the Contractor shall be subject to Section 10.1; 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.

SECTION 3.0 TERM

The Term of this Contract shall be a period of Five (5) years, commencing on the date set forth in the introductory paragraph, 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 Truck Bodies.

4.1.1 During the Term, the City shall pay the Contractor for each Truck Body ordered 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 the current model year, the initial prices as set forth in the Proposal.
- (ii) For subsequent model years, the purchase price paid for such model during the preceding model year plus any price increases from the manufacturer to Contractor, if Contractor submits confirmation of such increase satisfactory to the City, in its discretion.
- (iii) For any models or associated equipment not quoted in the Proposal, a price to be set by mutual agreement, which shall be no greater than the lowest price offered by the Contractor to any other customer.

The City reserves the right to purchase Truck Bodies from other manufacturer(s) or dealer(s) whenever the City, in its discretion, determines that it is in its best interest to do so.

4.1.2 All 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 4.1.1 above, the prices offered to the City during the term of this Contract shall be no greater than the lowest price offered by the Contractor to any customer. 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 Truck Bodies purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of final acceptance of each affected Truck Body through the date of such notice from the City.

4.1.3 A standard warranty package (as described in the Proposal) is included in the price of each Truck Body.

4.2 Parts and Accessories. The Contractor shall sell to the City all parts and accessories', including OEM parts, at Contractor's cost plus 15%. The City shall also pay applicable freight charges. The pricing offered to the City during the term of this Contract shall be

no greater than the lowest price offered by the Contractor to any customer. The City shall have the right to annually review and audit all Contractor records to verify that the Contractor is in compliance with this 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 parts and associated equipment purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of delivery of the affected parts or associated equipment through the date of such notice from the City.

4.3 Payment

4.3.1 All Truck Bodies, parts, and associated equipment prices shall be F.O.B. City of Tallahassee, Fleet Management Division, 400 Dupree Street, Tallahassee, Florida.

4.3.2 All proper invoices shall be paid by the City in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

4.3.3 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 5.0 DELIVERY AND ACCEPTANCE

5.1 The Contractor shall mount or install each Truck Body on a specified cab and chassis provided by the City ("Installed Truck Body") and shall deliver each cab and chassis with Installed Truck Body ("Completed Truck") to the City in accordance with the schedule set forth in the Proposal or such other time period as may be agreed by the parties. The Contractor and the City agree that timely delivery by the Contractor is of the essence of this Contract that the City will suffer damages in the event the Contractor fails to so perform, and that such damages may be difficult to precisely calculate or prove. As a result, the Contractor shall pay to the City, as liquidated damages and not as a penalty, the amount of \$100 per day, or portion thereof, for each day of delay in delivery of each Completed Truck ordered by the City. Such liquidated damages shall be paid in addition to any other recourse that may be available to City in the event of such a breach.

5.2 The Contractor shall fully assemble, service, and adjust each Installed Truck Body prior to delivery and shall demonstrate, to the satisfaction of the City that each delivered Installed Truck Body is in perfect mechanical condition. In the event a cab and chassis is shipped to the Contractor's facility for installation of a Truck Body, the inspection and acceptance of that cab and chassis by the City shall be performed at the Contractor's facility under the direction and assistance of the Contractor. An inspection form approved by the City, provided by the cab and chassis manufacturer, will be completed by the Contractor to establish receipt date and condition of each cab and chassis. Upon delivery to the Contractor's facility, the Contractor shall be responsible for, and shall bear all risk of loss and damage to, each cab and chassis until the Completed Truck is delivered to the City at its specified location.

- 5.3 Delivery of a Completed Truck to the City does not constitute acceptance of the Installed Truck Body for the purpose of payment or warranty start time. The City shall inspect and test each delivered Installed Truck Body to determine whether it meets all specifications and requirements set forth in this Contract and within ten (10) days following delivery, the City shall notify the Contractor, in writing, of either its final acceptance of the Installed Truck Body or the failure of the Installed Truck Body to meet certain specifications and requirements. In the latter case, the Contractor, within ten (10) days following its receipt of written notice from the City, shall deliver to the City a detailed proposal and schedule for corrective action. If the proposed corrective action is acceptable to the City, the Contractor will be given a written notice to proceed, and a new inspection, testing, and notice process shall commence upon completion of corrective action. If the proposed corrective action or schedule is not acceptable, or if approved corrective action is not timely completed, the City may refuse the Installed Truck Body. Contractor shall bear all risk of loss or damage to each Installed Truck Body until final acceptance by the City.
- 5.4 With each Truck Body, the Contractor shall deliver to the City, in an electronic format or hard copy the following:
- (i) Up to three (3) copies of the technical and service manuals for the Truck Body, equipment and accessories;
 - (ii) Up to three (3) copies of the Parts manual for bodies, equipment and accessories
 - (ii) One copy of the manufacturer's preventive maintenance schedule; and one copy of the operator's manual.
 - (iii) The manufacturer's statement of origin, title application, and all warranty documents.
- 5.5 All Truck Bodies delivered to the City shall be owned by the Contractor and shall be delivered free and clear of all liens and security interests of any kind.

SECTION 6.0 INDEMNIFICATIONS.

- 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 Truck Body, or any portion thereof, furnished under this Contract (collectively, "Infringing Work") constitutes infringement of any registered patent of the United States of America or country 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 attorneys' 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 certificate of insurance shall state 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 insured's 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.
- (iii) 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. 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 Truck Body, all parts, and all associated 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 Truck Bodies as set forth in its Proposal and the individual warranty documents delivered with each truck or various type of equipment. The Contractor will respond, on-site in Tallahassee, for all warranty repairs within 24 hours following notice from the City. Contractor may request an additional 24 hours where circumstances prohibit agreed upon response time. The City reserves the right to deny any such requests based on the needs of the City.
- 9.2 The Contractor shall provide training as provided for in the Proposal. The City prefers to have the Contractor complete all warranty work, and the City shall perform such work only in the event of exigent circumstances. The Contractor, within thirty (30) days of receipt of an invoice therefore, will pay the City for all such warranty work completed by the City in an amount equal to the fully loaded costs for personnel performing such work. At the request of the Contractor, the City will provide documentation of such costs.

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:

Transport Equipment Company
3416 Sylvester Rd.
Albany Ga. 31705
Atten: David Dowdy

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 The Contractor shall make Truck Bodies available to other entities on the same terms and conditions as set forth in this Contract. Should any such entity purchase a Truck Body on such basis, the Contractor shall report such purchases to the City and, within thirty (30) days following final payment for each such purchase, shall provide a credit to the City, which can be used toward the purchase of parts and associated equipment from the Contractor, in the amount of 0.75% of the purchase price of such Truck Bodies. 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.

- 10.11 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.
- 10.12 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.

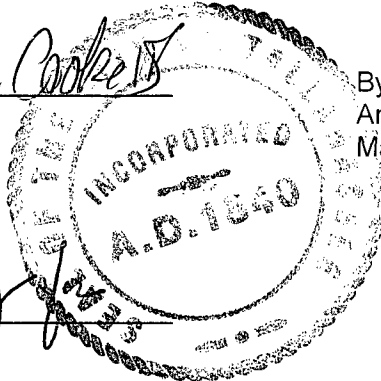
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives, effective the date first above written.

CITY OF TALLAHASSEE

Attest:

By: James O. Cooke, IV
James O. Cooke, IV
City Treasurer-Clerk

By: Andre Libroth
Andre Libroth
Manager for Procurement Services



Approved as to form:

By: [Signature]
City Attorney

TRANSPORT EQUIPMENT COMPANY

By: [Signature]
Name: Fred Dent
Title: President

[Signature]
Witness as to Contractor

[Signature]
Witness as to Contractor