

STATE OF UTAH – STATE COOPERATIVE CONTRACT
CONTRACT NUMBER MA210

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following **CONTRACTOR:**

Bridgestone Americas Tire Operations, LLC
Name
525 Marriott Dr
Address
Nashville TN 37214-0991
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Federal Tax ID# 88-335067 Vendor # _____ Commodity Codes: 86305
Vendor Contact Person: Vicky Dunbar Vendor Phone #: 615 937-3693
Vendor Fax #: 615 493-0000 Vendor email address: dunbarvicky@bfusa.com

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this Contract is to provide:

Tires, tubes, and Service

3. **CONTRACT PERIOD:** Effective date 4/1/2012 Termination date 3/31/2015 unless terminated early or extended in accordance with the terms and conditions of this contract.
Renewal option: two (2) renewal options for two (2) years each

4. **PRICING AS PER THE ATTACHED PRICE LIST** –Bridgestone/Firestone 2012 Government Catalog Pricing
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: 30
MINIMUM ORDER: None
FREIGHT TERMS: FOB Destination

5. **ATTACHMENT A:** Standard Terms and Conditions, Western States Contracting Alliance
ATTACHMENT B: Summary of General Contract Requirements and Information in RFP
ATTACHMENT C: Pricing Discounts and Service Pricing
ATTACHMENT D: Superseding Provisions to State cooperative

6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, CONTRACTOR'S response to Bid # RT1200, dated 11/30/2011 and Best and Final Offer dated 1/27/2012.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.
CONTRACTOR

Linda Alberstadt
Contractor's signature

Linda Alberstadt
Type or Print Name and Title
Mgr. PR, Military + Govt
3-9-12
Date

STATE OF UTAH
Kent D. Beers
for
Director, Division of Purchasing

3-9-2012
Date

Attachment A
Standard Contract Terms and Conditions
Western States Contracting Alliance

PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Other states and their political subdivisions are also eligible to participate in WSCA contracts. Obligations under this contract are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

QUALITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the RFP states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the Request for Proposals. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at an offeror's request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals, no proposal may be modified or withdrawn, unless done in response to a request for a "Best and Final Offer" from WSCA.

PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the additional terms and conditions listed in the solicitation. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. However, the Dealer Agreement, signed by dealers with each participating state, relating to this master agreement will satisfy the "nondiscrimination" term and condition".

SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

PAYMENT: Payment for completion of a contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the additional terms and conditions listed in the solicitation for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in proposal preparation.

CONFLICT OF INTEREST: The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

CANCELLATION: Unless otherwise stated in the additional terms and conditions listed in the RFP, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the additional terms and conditions listed in this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these Standard Terms and Conditions and any additional terms and conditions listed in the solicitation; the additional terms and conditions listed in the solicitation shall govern.

REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

HOLD HARMLESS: The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the additional terms and conditions listed in the solicitation. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY: As used herein "Buyer" refers to any Participating State agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the Participating States shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

ENTITY PARTICIPATION: Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

Attachment B

Summary of General Contract Requirements and Information in RFP

PURPOSE OF PRICE AGREEMENT

To provide competitive pricing for tire products and services through manufacturers' retail distribution networks to all WSCA participating states. The contracts may be used by other non-WSCA states with the authorization from the WSCA Directors and the approval of the individual state procurement directors.

LENGTH OF PRICE AGREEMENT

The Master Price Agreement will be a three (3) year Master Price Agreement. The Master Price Agreement may be extended beyond the initial term up to two (2) optional two year renewals for a maximum of seven years upon mutual agreement of the parties.

PRICE GUARANTEE PERIOD

Pricing shall be considered firm for the first 12 months of the Master Price Agreement and no change in the Manufacturers Price List (referred to as the MPL) will be accepted during that time.

Price adjustments for tires, tubes and tire services may be allowed only during the contract anniversary date or renewal period providing the adjustment is made owing to legitimate increases in the contractor's operating expenses, e.g. raw materials, fuel, taxes, labor, etc. The percentage of discount from the published MPL shall remain the same for all renewal terms of this contract.

A written request for an increase with supporting documentation e.g. updated MPL must be received by the Contract Administrator, State of Utah Division of Purchasing at least thirty (30) days prior to the effective date of the increase. Increases shall not be effective unless they are approved by the Director, State of Utah Division of Purchasing.

Price decreases or higher discounts available from the manufacturer shall be immediately passed on to the WSCA Participating States. When the manufacturer offers price reductions or higher discounts, the Contractor must notify Contract Administrator, State of Utah Division of Purchasing and must pass those discounts on to the WSCA Participating States at once.

MASTER PRICE LIST DOCUMENTS and ORDER OF PRECEDENCE

Order of Precedence

1. A Participating Entity's "Participating Addendum" (PA) Ref: 5.9 below including state specific Terms and Conditions where applicable.
2. Superseding Provisions to State Cooperative (Attachment D)
3. WSCA Standard Terms and Conditions.
4. The Solicitation.
5. Offeror's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to the documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor.

ISSUING OFFICE AND WSCA CONTRACT ADMINISTRATOR

The State of Utah, Division of Purchasing has been designated by WSCA as the Lead State conducted this procurement and will manage the Price Agreement. The reference number for this Solicitation is RT12002. The WSCA Contract Administrator designated by the State of Utah, Division of Purchasing is:

Reed Taylor, Purchasing Manger
State of Utah, Division of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, UT 84114-1061

Email: rtaylor@utah.gov
Voice: 801-538-3709
Fax: 801-538-3882

WSCA ADMINISTRATION FEE

A fee of 1/2 of 1% of the total purchases will be provided to the WSCA Contract Administrator on a quarterly basis. The check must be made payable to WSCA and sent to: Reed Taylor, Contract Administrator. A statement, submitted electronically, will be a summary report of quarterly purchases by participating WSCA states. The Administrative Fee and submitted reports are to coincide with the quarters and date ranges as outlined below:

- Quarter 1: January 1st through March 31st - due by April 30th
- Quarter 2: April 1st through June 30th - due by July 30th
- Quarter 3: July 1st through September 30th - due by October 30th
- Quarter 4: October 1st through December 31st - due by January 30th

After contract award, the Contractor will be provided, by e-mail an Excel spreadsheet template that includes instructions, sample date and all information that must be provided.

PARTICIPATING STATE ADMINISTRATIVE FEE

Each participating State may establish and include by participating addendum, an additional Administrative Fee based on that state's own purchases, which will be disbursed directly to that participating state. Where applicable, pricing may be adjusted accordingly.

OTHER STATES REPORTING REQUIREMENTS

Each participating State may establish and include, by participating addendum, a reporting requirement for that state's own purchases, which will be provided directly to that participating State.

CONTRACT PARTICIPANTS

States listed on page 12 of the RFP indicated their intent to participate in the master price agreement(s). This Intent to Participate is not binding. Other States may participate in the Master Price Agreement(s) at any time during which the Master Price Agreement(s) is in place.

A Participating Addendum (PA) shall be executed for each contractor by the individual Participating State or Participating Entity desiring to use the Master Price Agreement. The Participating State or Participating Entity and contractor shall negotiate and agree upon any additional terms and conditions prior to the execution of a PA. States are not required to sign a PA with all awarded contractors.

ULTIMATE VENDOR/PURCHASING FORM

Some vendors may request that a form (Ultimate Vendor/Purchaser or similar title form) be signed by agencies attesting to the fact that the entity for which the tires are being purchased is a government entity and not subject to the federal excise tax. This type of documentation is required by the Federal Government in order for the tire dealer to receive reimbursement for the Federal Excise Tax paid when the tires are purchased from the manufacturer. If necessary, the use of such a form may be addressed in a state's participating addendum.

MANUFACTURER DEALER AGREEMENT FORM

In order for a dealer to be authorized to sell tires, tubes, and service under the master price agreement, each dealer must sign a Dealer Agreement Form and send it to the manufacturer. The manufacturer is responsible to insure the agreement is signed by the dealer prior to the dealer selling tires under the master price agreement. Copies of the signed dealer agreements are to be sent to the state where the dealer is located.

PRICING

Prices listed must take into consideration all inherent costs of providing the requested goods and services. The contractor agrees to pay any and all fees, including, but not limited to: fuel surcharges, delivery and transportation costs, duties, custom fees, permits, brokerage fees, licenses and registrations. The WSCA Participating States will not pay any additional charges beyond the price(s) listed in the response, unless otherwise provided for by law or expressly allowed by the terms of the solicitation.

PRODUCT GUARANTEE AND ADJUSTMENT

Tires furnished shall be guaranteed to be free from defects in workmanship and material for original tread life or 48 months whichever comes first. Any tire which fails this guarantee shall either be satisfactorily repaired by the Awarded Contractor or replaced with a new tire charging only for the mileage used based on the tread depth, or as agreed upon by the Using Agency. Allowances and replacement charges shall be based upon the Contract tire price. The Awarded Contractor shall defray all transportation costs on both the defective tire(s) and replacement tire(s). The Awarded Contractor shall provide a one (1) year warranty on all tubes and parts beginning on the date of installation, to repair and/or replace as necessary, as determined by the Using Agency, **AT NO COST TO THE USING AGENCY**. If such items are not normally warranted for one year, maintenance to supply the equivalent of a one (1) year warranty must be included in the cost. Shipping cost for returned tubes and parts warranty service **SHALL BE PAID BY THE AWARDED CONTRACTOR**.

INSURANCE REQUIREMENTS

Contractor and Approved Distributor will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. Concurrent with the execution of the contract for services, the Awarded Contractor and Approved Distributor will furnish a participating state the following certificates of insurance within ten (10) days upon request. Certificates shall be issued by an insurance company meeting the requirements to conduct business in the participating state. The Awarded Contractor and Approved Distributor shall name the participating State as additional insured on all insurance policies. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

The following certificates are to be furnished with the RFP upon request.

Liability insurance: A certificate of insurance evidencing insurance coverage for general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of at least \$1,000,000 for bodily injury, property damage and personal injury.

Worker's compensation and employer's liability: A certificate of insurance evidencing statutory coverage for worker's compensation coverage, injury and a limit of liability of \$1,000,000 for employer's liability, or a letter of certification from the industrial commission that the vendor is an authorized self insurer.

WSCA Tires, Tubes and Service Solicitation

ATTACHMENT C

Pricing Discounts & Service Pricing

Contract # MA210 Ref: Utah Bid RT12002

Bidder Name Bridgestone Americas Tire Operations, LLC

Tires and Tubes Subcategory	Discount on Products			
	Percent Discount	MPL Name	MPL Date	MPL REF. Number
1. Pursuit and Performance Tires	20%	1/1/2012 Confidential Government Catalog	1/1/12	
2. Automobile/Passenger Vehicles	20%	1/1/2012 Confidential Government Catalog		
3. Light Duty Trucks:	20%	1/1/2012 Confidential Government Catalog		
3a. Radial	20%	1/1/2012 Confidential Government Catalog	1/1/12	
3b. Bias	20%			
4. Medium Commercial/Heavy Duty Trucks/Buses	BS 25% FS 30%	1/1/2012 Confidential Government Catalog	1/1/12	
5. Off Road				
5a. Off Road Radial	20%	1/1/2012 Confidential Government Catalog	1/1/12	
5b. Off Road Bias	20%	1/1/2012 Confidential Government Catalog	1/1/12	
6. Agriculture/Farm	15%	1/1/2012 Confidential Government Catalog	1/1/12	
7. Industrial Tires	15%	1/1/2012 Confidential Government Catalog	1/1/12	
8. Specialty Tires	N/A	No Bid	No Bid	

B. Enter your fixed pricing for each of the services listed below. If any service listed is not provided, then enter NA.

WSCA Pricing for Services						
	Product	Product Sub-	Product Sub-	Product Sub-	Product	Product sub-

of six tons capacity)							
15. *Tire pressure monitoring kit (per Tire)	8.00	LCP	LCP	LCP	LCP	LCP	No Bid

ATTACHMENT D (Revised)

SUPERSEDING PROVISIONS TO STATE COOPERATIVE

WSCA RFP #RT12002 Ref: Utah Contract MA210

The following provisions are hereby made a part of WSCA RFP #RT12002 and the resulting Contract ("the Contract") and supplement all other provisions of the Contract and supersede any provision in conflict in whole or in part with the provisions set forth below:

1. ORDER OF PRECEDENCE.

Order of precedence would change to (1) Participating Addendum (PA), including state specific Terms and Conditions where applicable (2) this Attachment D (3) the WSCA Standard Terms and Conditions, (4) RFP RT12002, and (5) Contractor's response to RFP # 12002 dated November 29, 2011.

2. PATENTS, COPYRIGHTS, ETC.

Notwithstanding anything in this Contract to the contrary, Contractor warrants that the Products described herein and the sale or use of such Products, will not infringe or contribute to the infringement of any United States or foreign patent, trademark, copyright or corresponding right, and Contractor agrees to indemnify, hold harmless and protect Customer its parent, affiliated and subsidiary companies, its and their successors and assigns, from and against all losses, damages, liabilities, claims, costs, demands and suit at law or equity, including coverage of any reasonable attorney's fees, to the extent resulting from actual infringement of any patents, trademarks, copyrights or corresponding rights pertaining to the Products subject to this Agreement.

3. INDEMNIFICATION/HOLD HARMLESS.

(a) Indemnification/Hold Harmless as required by the Terms and Conditions in the original Request for Proposal and made part of the Contract shall be in full force and effect, except that with respect to subcontractors or volunteers of contractor, section 4 hereof shall apply. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the Buyer shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder; however, the contractor shall direct and control such defense.

(b) The following clause will apply only as it relates to the indemnification/Hold Harmless issues specifically for personal injury and property damage claims: Any Contractor submitted exclusions limiting this indemnification shall not apply to any reasonable "Foreseeable Use" of the tires by the Participating State ("State") under the Contract. "Foreseeable Use" is defined as general driving that a reasonable person would identify as reasonable foreseeable for the tires and the vehicles with driving adjustments for weather conditions. For Off-Highway Tires, the "Foreseeable Use" would include reasonable foreseeable driving in off-highway terrain that a reasonable person would identify as reasonable foreseeable for the tires and the vehicles being used. In addition, Contractor's submitted limited warranty shall apply to commercial and government use.

(c) Notwithstanding any of the above, to the extent there is personal property or personal injury damage incurred as a primary result of the wrongful acts or negligence of the State, its agents, employees

and anyone for whom the State is liable (i.e. customer abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage), the indemnification/hold harmless and defense obligations of contractor shall not apply. For clarification, each of the contractor and the state shall be responsible for any such personal property or personal injury damage to the extent caused by each respective party's actions.

4. OTHER SERVICE PROVIDERS

(a) Buyer recognizes that Contractor is providing services under this Contract through its own contracts with affiliated dealers, various installers and independent dealers. Contractor is responsible and liable to the Buyer for the wrongful acts or negligence of its "Affiliated Dealers". For purposes of this Addendum D, "Affiliated Dealers" mean the tire retailers owned and operated by Contractor.

(b) The parties agree that the independent dealers ("Dealers" herein shall mean Contractor's independent dealers") shall be responsible for the liabilities, insurance requirements, and warranties directly related for their actions and for the services they perform.

5. ASSIGNMENT OF CONTRACT

Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

Notwithstanding the foregoing, nothing herein shall prohibit the supply of products or service pursuant to this Contract by Contractor's authorized independent dealers, franchisees or affiliates.

6. FORCE MAJEURE

Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and /or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

Except for payment obligations, the Parties shall not be liable for a failure to perform that arises from causes or events beyond their reasonable control and without their fault or negligence. Neither Party will be liable for any failure or excusable delay in performing its obligations under the Agreement if such failure or excusable delay is due to unusually severe weather, strikes or labor disputes, natural disasters, fire, civil disturbance, terrorist attack, epidemic, war, or acts of God Contractor may suspend performance of its obligations under this Contract without obligation to WSCA during the occurrence of any excusable delay. Each party must inform the other in writing with proof of receipt within ten (10) business days of the existence of a force majeure event.

7. WARRANTY

In general, the contractor Standard written limited warranty shall apply for defects in materials and workmanship and will also warrant that (a) the product will be suitable for the ordinary purposes for which such product is used, and (b) when Contractor has listed exclusions in their submitted Warranties regarding replacing the worn or defective tires due to the tires being rotated within a specific mileage or timeframe, the exclusions will not apply if the lack of tire rotation did not reasonably affect the wear or defects on the tire.

8. FUTURE TAX/FEE INCREASES OR ENACTMENTS

All taxes billed to Customer under this contract are subject to increases or decrease from time to time to compensate for any tax, excise, or levy upon the products sold, or upon the manufacture, sales, transportation, or delivery of them or whenever any tax, excise, levy, law or governmental regulation has the effect, directly or indirectly, of increasing the cost of manufacture, sales, or delivery. If any government action or laws or regulation should have the effect of establishing a new tax or fee that is imposed on the transactions covered under this contract, Contractor has the right to bill Customer for the new or increased taxes or fees as they become due under the applicable law

IN WITNESS WHEREOF, the parties sign and agree to the terms in Attachment D.

CONTRACTOR

STATE OF UTAH

Linda Alberstadt 3-9-12

Signature

Date

Linda Alberstadt

Mgr, PR, Military + Govt

Name and Title of Signer

(Type or Print)

Nancy Orton 3-9-12

Signature

Date

Nancy Orton, Assistant Director

Name and Title of Signer

(Type or Print)