

**COOPERATIVE PROCUREMENT CONTRACT BETWEEN
THE CITY OF SAN DIEGO
AND
MICHELIN NORTH AMERICA INC.
FOR VEHICLE TIRES, ACCESSORIES, AND RELATED SERVICES**

I. RECITALS

A. San Diego Municipal Code (SDMC) section 22.3208 authorizes the City of San Diego, a municipal corporation (City), to use a cooperative procurement contract awarded by another agency where the City's Purchasing Agent certifies in writing that the cooperative procurement contract is in the City's best interests, to the City's economic advantage, and the agency's contract was awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.

B. The City of Mesa Arizona (Agency) issued a Request for Proposal Number 2019209 (RFP) for the procurement of Vehicle Tires, Accessories, and Related Services by posting the solicitation on Agency's advertising website and by advertising in fourteen (14) newspapers of general circulation at least fifty (50) days before the bid or proposal was due. The RFP solicitation was put out in conjunction with OMNIA Partners with the result being a cooperative contract to be used by all public entities.

C. On November 21, 2019, based on the results of the competitive process, Agency awarded a contract with Michelin North America Inc. (Contractor) and executed the Vehicle Tires, Accessories, and Related Services with Contractor, identified as Solicitation Number 2019209, which was subsequently amended on January 6, 2020 (Amendment No. 1) to update Contractor's Contract Manager pursuant to Sections 2 and 7.10 of Exhibit A Scope of Work of the Agency Agreement, (cumulatively referred to as the "Agency Agreement"), attached as Exhibit 1; and

D. On February 17, 2021, the City's Purchasing Agent certified in writing that the Agency Agreement meets the requirements set forth in SDMC section 22.3208.

E. Contractor has agreed to provide to City the same pricing offered to Agency for Vehicle Tires, Accessories, and Related Services consistent with the terms and conditions in the Agency Agreement except as modified herein.

F. As of the date of execution of this Contract, Parkhouse Tire Service, Inc. is known and understood to be an authorized dealer of Michelin North America Inc. and is located within the City of San Diego. As allowed under the Contract Documents, which include the Agency Agreement, Parkhouse Tire Service, Inc. will provide the goods and services to be procured under this Contract. Parkhouse Tire Service, Inc. represents it is authorized to execute and sign this Contract as an authorized dealer of Michelin North America Inc. City chooses Parkhouse Tire Service, Inc. to provide the goods and services to be procured under this Contract as Parkhouse Tire Service, Inc. is familiar with the City's processes, has an existing business relationship with the City, and has the largest selection of products and services.

II. GENERAL PROVISIONS

In consideration of the above recitals and mutual covenants and conditions set forth in this Contract, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Contractor hereby agree to the terms and conditions as set forth in the Agency Agreement with the exception of the following modifications:

1. **Incorporation.** This Contract shall fully incorporate the Recitals which the parties agree are true and correct.
2. **Effective Date.** This Contract is effective on the last date that this Contract is signed by City and Contractor and approved by the City Attorney through November 30, 2024. The total duration of this Contract, including the exercise of any options under this section, shall not exceed five (5) years without approval of the City of San Diego Council by Ordinance.
3. **Early Termination.** Contractor must provide written notice within ten (10) calendar days of the date in which the Agency Agreement is terminated to the Contract Administrator identified in Section III, below. Such written notice must explain the basis for termination and the date upon which the termination is effective. Early termination of the Agency Agreement by Agency or Contractor, or failure by Agency to exercise an option to extend the Agency Agreement, shall not in any way affect the existence of this Contract.
4. **Compliance with Controlling Laws.** Contractor shall comply with all applicable local, state, and federal laws and regulations. In addition, Contractor shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
5. **Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.
6. **Jurisdiction and Venue.** The venue for any suit concerning this Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.
7. **Modifications.** The modifications described in Exhibit 2, which is attached hereto and incorporated herein by reference, shall affect only the page(s) and section(s) and terms and conditions referred to therein. All other terms and conditions of the Agency Agreement shall be in full force and effect as to City and Contractor as incorporated in this Contract.

III. CONTRACT ADMINISTRATOR

1. **Contract Administrator.** The Fleet Operations Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Fleet Operations Department
Attention: Jeffrey Vance

2740 Caminito Chollas
San Diego, CA 92101
(619) 527-7584
JVance@sandiego.gov

2. Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent or Requesting Department. Proper notice shall be effective on the date of personal delivery or five (5) days after deposit in the United States postal mailbox. Notices shall be sent to:

Purchasing and Contracting Department
Attention: Tammy Ferguson
1200 3rd Avenue – Suite 200
San Diego, CA 92101
(619) 236-6043
tferguson@sandiego.gov

IV. COMPENSATION

1. City shall pay Contractor for the goods or services provided in accordance with this Contract in an amount not to exceed \$3,000,000.00. Contractor is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless this Contract is amended in writing duly executed by City and Contractor increasing this not-to-exceed amount.

2. Annual Appropriation of Funds. Contractor acknowledges that the contract term may extend over multiple City fiscal years, and agrees that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by the City Council.

V. CONTRACT

1. Contract Documents. This Contract consists of this Contract and its Exhibits, the Agency's Solicitation Number 2019209, Contractor's Response to Solicitation Number 2019209, the Agency Agreement, Amendment No. 1 to the Agency Agreement effective January 6, 2020, which are attached as Exhibits hereto and incorporated by reference (collectively, "Contract Documents"). These documents together contain all the terms and conditions of the Contract between City and Contractor.

2. Contract Interpretation. The Contract Documents completely describe the goods and/or services to be provided. Contractor shall provide any goods or services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction

industry trade meaning and are used to describe goods or services will be interpreted in accordance with that meaning unless a different definition has been provided in the Contract Documents.

3. Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, City and Contractor will use the order of precedence as set forth below. The document in highest order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st This Contract
- 2nd Agency Agreement, and any executed Amendments to the Agency Agreement
- 3rd Contractor's Response to Solicitation
- 4th Agency's Solicitation and any Addenda

4. Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all parties executed the same page.

5. Public Agencies. Other public agencies as defined by California Government Code section 6500 may choose to use the terms of this Contract, subject to Contractor's acceptance. City is not liable or responsible for any obligations related to a subsequent agreement between Contractor and another public agency.

VI. CITY'S ADDITIONAL TERMS

1. Compliance with the City's Equal Employment Opportunity Outreach Program (EOCP): Contractor shall comply with the City's EOCP requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime Contractor liable for any discriminatory practice of its subcontractors.

2. Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in remedies being ordered against Contractor up to and including contract termination, debarment, and other sanctions.

3. Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate and to provide a copy to the City before any contract is executed.

4. Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

5. Noise Abatement. Contractor shall not operate, conduct, or construct within City's jurisdictional limits in violation the City's Noise Abatement Ordinance codified in SDMC sections 59.5.0101 through 59.5.0301.

6. Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers. Parkhouse Tire Service, Inc. agrees to comply with and be bound by the terms of this Contract as an authorized dealer of Michelin North America Inc.

MICHELIN NORTH AMERICA INC.

By: Brian Parkhouse
Parkhouse Tire Service, Inc., an authorized
dealer of Michelin North America Inc.

Name: Brian Parkhouse

Title: President

Date: 2/26/21

THE CITY OF SAN DIEGO

By: C. Pabara

Name: Claudia C. Pabara

Title: Interim Director

Date: March 11, 2021

Approved as to form this 19th day of
March, 2021.

MARA W. ELLIOTT, City Attorney

By: Markecia Simmons
Deputy City Attorney

Print Name: Markecia Simmons

EXHIBIT 1: AGENCY AGREEMENT

EXHIBIT 2: MODIFICATIONS TO THE AGENCY AGREEMENT

1. References. All references to “City of Mesa, Arizona” and “City” in the Agency Agreement shall mean and be understood to be “City of San Diego”. All references to “Authorized Dealer”, “Authorized Michelin Dealer,” and “Michelin Independent Dealer” in the Agency Agreement shall mean and be understood to be “Parkhouse Tire Service, Inc.”

2. Delivery and Inspection

2.1 Right to Pre-Inspection. City reserves the right to pre-inspect any equipment at Contractor’s authorized dealership before delivery. Pre-inspection terms should be arranged at the time of Contractor’s advance notice of delivery.

2.2 All equipment deliveries shall be FOB destination, freight added, to the following sites:

Fleet Operations Department

<u>Chollas</u>	<u>Rose Canyon</u>
2740 Caminito Chollas	3775 Morena Blvd.
San Diego, CA 92105	San Diego, CA 92117
6:00 a.m. - 11:30 p.m.	6:00 a.m. - 11:30 p.m.

<u>Miramar Fire & Refuse</u>
8323 Miramar Place
San Diego, CA 92121
24 - Hour Operation

Safety Light Fleet Department

<u>Central/VMF Police</u>	<u>Southern PD</u>
3940 Federal Blvd.	1120 27 th street
San Diego, CA 92102	San Diego, CA 92154
6:00 a.m. - 11:30 p.m.	6:00 a.m. - 2:30 p.m.

<u>Western PD</u>	<u>Northwestern PD</u>
5215 Gaines Street	12610 El Camino Real
San Diego, CA 92110	San Diego, CA 92130
6:00 a.m. - 2:30 p.m.	6:00 a.m. - 2:30 p.m.

<u>Mid-City PD</u>	<u>Southeastern PD</u>
4310 Landis Street	7222 Skyline Drive
San Diego, CA 92105	San Diego, CA 92114
6:00 a.m. - 2:30 p.m.	6:00 a.m. - 2:30 p.m.

<u>Eastern PD</u>	<u>Northeastern</u>
9225 Aero Drive	13396-Salmon River Road
San Diego, CA 92123	San Diego, CA 92129
6:00 a.m. - 2:30 p.m.	6:00 a.m. - 2:30 p.m.

<u>Northern PD</u>	<u>Fire Dept</u>
4275 East Gate Mall	3870 Kearny Villa Rd
San Diego, CA 92037	San Diego, Ca 92123
6:00 a.m. - 2:30 p.m.	24 - Hour Operation

2.3 To optimize the City’s labor requirements, all new product deliveries shall be scheduled in advance. Contractor, upon receipt of City Purchase Order and prior to submittal of factory order, shall contact the Fleet Manager at (619) 527-7584 to establish delivery intervals. Delivery time is Monday through Friday, 9:00 a.m. to 8:00 p.m.

2.4 The City will not pay for any equipment that is not delivered as specified in the proposal. Conformity to equipment specification and the subsequent equipment acceptance date will be determined by the Fleet Manager at (619) 527-7584. Payment terms will be based on date of acceptance by the City.

2.5 Invoice Detail. Contractor’s invoice must be on Contractor’s stationary with Contractor’s name, address, and remittance address if different. Contractor’s invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due. Invoices must be emailed to:

Email: IOB-Fleet-AcctsPayable PWAcctsPayable@sandiego.gov

3. Warranty. As described in the Contract Documents.
4. Insurance. As described in the Contract Documents.
5. Indemnification; and Liability. As described in the Contract Documents.
6. The remaining portions of the Agency Agreement shall remain in full force and effect.