

Master Contract Number: C2022-0092

Office Use Only

SUB-CONTRACT NUMBER:

C2023-0068

FIRST RENEWAL AND AMENDMENT TO PURCHASE OF COMMODITIES CONTRACT

THIS FIRST RENEWAL AND AMENDMENT is made and entered into this date _____, by and between the City of Branson, Missouri (the "City") and **Mitchem Tire Company** ("Seller") for renewal period **One** from **April 1, 2023 to March 31, 2024**.

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Seller as follows:

1. **Renewal.** The City desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in the original contract attached as **Exhibit 1**.

2. **Amendment. Article 2, Subsection C, is deleted in its entirety and replaced with the following: Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this Renewal exceed the sum of **Sixty-Seven Thousand Five Hundred Dollars And Zero Cents (\$67,500.00)**, **all of which is dependent upon budget appropriations.**

3. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

4. Except as amended by this First Renewal and Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Renewal and Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Renewal and Amendment.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SELLER:

By: Steve Knise 2/6/2023
DocuSigned by: 813C1D014852423...
 (Signature) Date

CITY OF BRANSON, MISSOURI

Larry D. Milton
 Mayor Date

ATTEST:

Lisa K Westfall
 City Clerk Date

APPROVED AS TO FORM:

Bridget M. Findley #72572 2/6/2023
DocuSigned by: 447844DD323C4C3...
 Interim City Attorney Date

Office Use Only MASTER CONTRACT NUMBER: C2022-0092
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PURCHASE OF COMMODITIES CONTRACT

THIS AGREEMENT made and entered into this 8th day of March, 2022, by and between the City of Branson, Missouri (the "City") and **Mitchem Tire Company** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (bid); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

1. Item(s) and dates of Purchase. The City agrees to purchase and the Seller agrees to sell the following item(s): **tires and tubes, from a date beginning on April 1, 2022 to a date ending March 31, 2023, with the option to renew the contract for up to one (1) additional successive one-year term. Each additional year will require a contract and Board of Aldermen approval.**

2. Quantities to be Purchased and Purchase Price.

- a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
- b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
- c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **Sixty Seven Thousand Five Hundred Dollars (\$67,500.00), all of which is dependent upon budget appropriations.**

3. Delivery and Shipment.

- a. The Seller is responsible for the costs of shipment.
- b. Time is of the essence with respect to each shipment.
- c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
- d. Deliveries are to be made to: **616 Stockstill Service Center, Branson, Missouri 65616.**

Mitchem Tire Company
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4. Invoices. An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.

5. Inspection and Acceptance.

- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
- b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
- c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.

6. Warranty.

- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
- b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- c. Any implied warranties are not altered by this written contract.
- d. Additional terms: N/A.

7. Patents. Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.

8. Bankruptcy or Insolvency. In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

9. Compliance with Applicable Laws. The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items

covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any Time if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of The City. In the event of such termination, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby.
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

17. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SELLER:

By: [Signature] 2/18/22
(Signature) Date

Name: Steve Kruse
(Printed Name)

Title: Co. Owner

Company Name: Mitchem Tire Co

Address: 3100 S Campbell Ave
Springfield, MO 65807

Phone: 417-882-3100

E-Mail: SKRUSE@MITCHEMTIRE.NET

Tax ID: 43-0990051

CITY OF BRANSON, MISSOURI

[Signature] 3/9/2022
Larry D. Milton Date
Mayor

ATTEST: [Signature] 3/9/2022
Lisa K Westfall Date
City Clerk

APPROVED AS TO FORM:

[Signature] 2/1/22
Chris Lebeck #51831 Date
City Attorney



Exhibit A

Mitchem Tire Company
5558 Gretna Rd
Branson, MO 65616

SCOPE OF WORK

1. Purpose: Mitchem Tire Company agrees to provide various types of tires and tubes through contracts awarded to serve State of Missouri agencies, political subdivisions or governmental entities specified by the State of Missouri. The contracts are piggy-back contracts off of current NASPO ValuePoint contracts.
2. Pricing: Pricing is provided in accordance with the applicable percentage discounts off of current list prices found in the specific tire manufacturer catalogs. The chart herein provides the percentage discount for each of the available tire and tube categories. List below provides current contract period net prices for all tires available from Bridgestone America Tire Operation (CC191557001).
3. Delivery: The contracts allow for agencies to order and pick-up tires at dealerships participating in the contract.

Exhibit B

PRICING PAGE**TIRES and TUBES**
STATEWIDE NOTICE**The State of Missouri Tire Contract Percentage Discount Off List Pricing:****BRIDGESTONE**

Tires and Tubes Percentage Discounts by Subcategory					
Sub-category #	Tire and Tube Type	Percent Discount	MPL Name	MPL Date	MPL REF. Numbers
B1	Pursuit and Performance Tires	57%	Bridgestone Government Catalog	7/1/2018	N/A
B2	Automobile/Passenger Vehicles	41%	Bridgestone Government Catalog	7/1/2018	N/A
B3	Light Duty Trucks (Radial Only):	37%	Bridgestone Government Catalog	7/1/2018	N/A
B4	Medium Commercial/Heavy Duty Trucks/Buses	46%	Bridgestone Government Catalog	7/1/2018	N/A
B5	Off Road	37%	Bridgestone Government Catalog	7/1/2018	N/A
	5a. Off Road Radial	37%	Bridgestone Government Catalog	7/1/2018	N/A
	5b. Off Road Bias	37%	Bridgestone Government Catalog	7/1/2018	N/A
B6	Agriculture/Farm	23%	Bridgestone Government Catalog	7/1/2018	N/A
B7	Industrial	23%	Bridgestone Government Catalog	7/1/2018	N/A