

File No. 230207

Committee Item No. 7

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 12, 2023

Board of Supervisors Meeting Date _____

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OTHER (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date April 6, 2023

Completed by: Brent Jalipa Date _____

1 [Contract Agreement - Michelin North America, Inc. - SFMTA Tire Lease and Associated
2 Services - Not to Exceed \$18,900,000]

3 **Resolution authorizing the Office of Contract Administration to enter into**
4 **Contract 1000028080 between the City and County of San Francisco and**
5 **Michelin North America, Inc., for the lease of tires and associated services for**
6 **San Francisco Municipal Transportation Authority (SFMTA) buses and trolleys**
7 **with an initial contract not to exceed amount of \$13,500,000 for five years and**
8 **\$5,400,000 for an optional additional two years, for a total not to exceed amount**
9 **of \$18,900,000 and total contract duration of seven years commencing on**
10 **April 1, 2023, and ending on March 31, 2030.**

11
12 WHEREAS, Charter, Section 9.118(b), requires the Board of Supervisors to
13 approve by Resolution contracts estimated to cost the City \$10,000,000 or more; and

14 WHEREAS, The contract referenced above is on file with the Clerk of the Board of
15 Supervisors in File No. 230207, which is hereby declared to be part of this Resolution as
16 if set forth fully herein; and

17 WHEREAS, The Office of Contract Administration issued a competitive solicitation
18 on September 15, 2022, to procure the lease of tires and associated services, under
19 Sourcing Event 0000004939, and the solicitation resulted in no responsive bidders; as
20 such the contractor was selected pursuant to Section 21.6 of the San Francisco
21 Administration Code; and

22 WHEREAS, This is a contract that includes services and the Local Business
23 Entity (“LBE”) subcontracting participation requirement for the services component has
24 been waived; and

25

1 WHEREAS, The servicing and leasing of bus and trolley tires is critical to the
2 successful operation of the City's transit system; now, therefore, be it

3 RESOLVED, That the Board of Supervisors, under Charter, Section 9.118(b),
4 hereby authorizes the Purchaser and Director of the Office of Contract Administration
5 to execute Contract 1000028080 between the City and County of San Francisco and
6 Michelin North America, Inc., for the lease of tires and associated tire services for
7 SFMTA Busses and Trolleys with an initial contract not to exceed amount of
8 \$13,500,000 for five years and \$5,400,000 for an optional additional two years, for a
9 total not to exceed amount of \$18,900,000 and total contract duration of seven years
10 commencing on April 1, 2023, and ending on March 31, 2030; and, be it

11 FURTHER RESOLVED, That within 30 days of the contracts being fully
12 executed by all parties, the Purchaser shall provide the final copies of the contracts to
13 the Clerk of the Board for inclusion into the official file.

<p>Item 7 File 23-0207</p>	<p>Departments: Office of Contract Administration (OCA) Municipal Transportation Authority (MTA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The proposed resolution would approve a new agreement with Michelin North America, Inc. (Michelin) to lease tires for MTA buses and associated services. The initial contract amount is for \$13,500,000 for a five-year term from April 1, 2023 through March 31, 2028, with the option to extend the contract for an additional two years and \$5,400,000, for a potential total not to exceed amount of \$18,900,000 and total seven year term, ending on March 31, 2030. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> Michelin currently provides tire lease and associated services for MTA under a contract that ends on September 30, 2023. According to the Office of Contract Administration (OCA), the current contract end date included a buffer period to allow the City to procure a new tire lease agreement. Actual spending on the existing \$9,995,000 contract was \$9,640,000 as of March 2023. In September 2022, OCA issued a competitive solicitation for tire leasing. Michelin North America, Inc. was the only vendor to submit a bid, but it was deemed non-responsive because they failed to provide the required minimum qualifications documentation. OCA determined that the lack of responsive offers was not due to the solicitation content, and, in accordance with City Administrative Code Section 21.6, OCA selected Michelin to continue providing services under the proposed new agreement. OCA has since determined that Michelin meets the minimum qualifications of the solicitation. The proposed agreement includes a \$151,042 monthly fee to pay for Michelin staff at six MTA bus yards and \$0.00577-\$0.0075 per mile for each bus tire leased by MTA, amounting to approximately \$70,000 per month. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> The cost of staff and tire leasing both increase by 5.5 percent between the current and proposed contract. Contract costs are funded by the MTA operating budget. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> The current and proposed contract with Michelin does not include any performance metrics. MTA reports Michelin has been performing satisfactorily but does not document satisfactory/compliant performance. We reviewed summary mileage reports provided by MTA that showed the department was tracking the mileage for each of its buses, but the record did not contain information specific to each tire, which is tracked by Michelin. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

Since at least 2009, San Francisco Municipal Transportation Authority (MTA) has contracted for rubber tire leasing, maintenance, and disposal for its transit fleet of 860 buses, each of which has six to eight tires.

Previous Vendors

The contract for tire lease and associated services for MTA buses has previously been provided by the following vendors:

- Bridgestone Americas Tire Operations LLC: April 1, 2009 – March 31, 2014
- Michelin North America, Inc.: October 1, 2014 – September 30, 2018
- Michelin North America, Inc.: October 1, 2018 – September 30, 2023

The ongoing contract between the City and Michelin North America, Inc. (Michelin) provides for the lease by MTA from Michelin of an unlimited number of tires over the contract period with payment determined by the number of new tires, number of miles driven per tire, and maintenance on each tire. Each tire has a serial number and is tracked.

In addition, MTA pays a monthly fee of \$143,125 to Michelin to provide personnel and equipment at six separate MTA bus yards to support tire operations: Flynn, Islais Creek, Kirkland, Potrero, Presidio, and Woods. Michelin handles the entire lifecycle of the tire, including recycling and disposal.

MTA reports that leasing tires rather than purchasing from Michelin is beneficial because leasing reduces costs related to the disposal of the tires, reduces liability related to product quality, and provides for Michelin tire experts in six of the MTA bus yards. According to an April 2022 Personal Services Contract approval request from MTA to the Civil Service Commission, it is common practice for transit agencies to lease tires and contract for support services.

The current contract with Michelin has been modified twice. The first modification increased the contract's not-to-exceed amount by \$1.8 million, extended the contract term by one year, added a new tire size to the contract, but did not increase the existing tire lease costs or labor costs. The second modification extended the contract term by one additional year for a total five-year term and increased the not to exceed amount by \$195,000. The new contract amount totaled \$9,995,000, which is below the \$10 million threshold triggering Board of Supervisors approval.

Exhibit 1. Tire Lease and Associated Services Contract History (Contract No. 1000012572)

	Contract Term	Not to Exceed Amount
Original Contract	Oct. 1, 2018-Sept. 30, 2021	\$8,000,000
Modification No. 1	Oct. 1, 2018-Sept. 30, 2022	\$9,800,000
Modification No. 2	Oct. 1, 2018-Sept. 30, 2023	\$9,995,000

Source: OCA

The existing contract term ends September 30, 2023, but because MTA has nearly exhausted the \$9,995,000 contract authority, the Office of Contract Administration is recommending a new contract with a start date in April 2023.

New Solicitation for Bids

On September 15, 2022, the Office of Contract Administration (OCA) issued a competitive solicitation for bids for tire lease and associated services for San Francisco Municipal Transportation Agency. Eight suppliers were invited to the public pre-solicitation meeting including: SF Tire & SVC Ctrl Inc DBA Bid O Tires, Michelin North America, Inc., McCoy Tire & Auto Service, KA-PA Tire & Auto Service, Inland Industrial Tire, East Bay Tire Co, Doherty Tire of Sonora, and Bridgestone Americas Tire Operations, LLC. None attended. OCA extended the bid due date by one week to October 11, 2022, but there were still no responsive bidders to the solicitation. Michelin North America, Inc. was the only vendor to submit a bid, but it was deemed non-responsive because they failed to provide the required minimum qualifications documentation. OCA has since determined that Michelin meets the minimum qualifications of the solicitation.¹

City Administrative Code Section 21.6 states that when OCA issues a solicitation for goods or services and no responsive offers are received, OCA shall first review the solicitation to determine whether it could be altered and reissued in a manner that would be likely to attract a responsive offer. If OCA determines that the lack of responsive offers is not due to the content of the solicitation, OCA may purchase the goods or services from any source. OCA reports that it determined that the vendor requirements could not be changed to attempt to solicit additional bids. Therefore, in accordance with Section 21.6, OCA selected Michelin North America, Inc. to continue providing the contracted services under the proposed new agreement. OCA reports that it only uses Section 21.6 on rare occasions. OCA indicates it has used Section 21.6 six times since 2021, when OCA first started tracking use of this purchasing authority in the City’s Financial and Procurement system.

¹ Michelin did not initially submit the required documentation to demonstrate they met Minimum Qualifications (MQ) No. 3 or No. 6. However, post-solicitation, Michelin has submitted documentation demonstrating that the company does, in fact, meet these qualifications. MQ No. 3 requires the bidder to submit ten purchase orders or contracts issued within the last three years to the bidder by other entities of similar size and nature as the City and County of San Francisco. MQ No. 6. requires bidders to submit one representative form or document, as an example, demonstrating Bidder’s ability to individually track tires.

Maximized Current Contract Not to Exceed Amount

The contract is arriving before the Board of Supervisors for consideration at this time, six months before the expiration of the current five-year contract end date on September 30, 2023 because, according to OCA, the vendor has almost exceeded its not-to-exceed contract amount of \$9,995,000. Actual spending as of early March 2023 is \$9,640,000. According to OCA, the existing contract term had a buffer built in to allow for the procurement of a replacement contract.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new agreement with Michelin North America, Inc. to lease tires for MTA buses and associated services. The initial contract amount is for \$13,500,000 for a five-year term from April 1, 2023 through March 31, 2028, with the option to extend the contract for an additional two years and \$5,400,000, for a potential total not to exceed amount of \$18,900,000 and total seven year term, ending on March 31, 2030. Exercising the options to extend would not require Board of Supervisors' approval.

Scope of Services

MTA has a fleet of 860 rubber-tire revenue vehicles (buses), stationed across six City bus yards. Each bus needs six to ten tires per vehicle, not including spares. The contractor will lease, service and dispose of all tires used by MTA on its buses. The contractor is responsible for the manufacturing, procuring, and transporting a sufficient supply of tires as required to guarantee the continuity of services to transport the public. The contractor must mount and dismount tires, balance tires, maintain proper tire pressure, recap rear tires, provide emergency road-side service 24 hours/7days per week (required to arrive within 60 minutes of notification), conduct monthly maintenance checks on all tires, and track tires through all stages including proper tire disposal. Michelin is to provide at minimum 16 staff to support its tire services including a Manager, six shop Supervisors, and drivers (of buses to and from the tire areas).

Michelin is to maintain a detailed monthly report for MTA which depicts the tire mileage for each tire (by serial number) on every vehicle.

Contract Terms

As shown below in Exhibit 2, the tire leasing cost and monthly tire service cost would increase under the proposed contract. The resolution's not to exceed amount is based on the projected full seven-year term of the contract, using recent spending as a guide.

Michelin is responsible for recycling tires. The contract states that the Fresno-based business Jack's Tire and Oil will be used for tire recycling, and that as of March 2023, the recycling cost per tire is \$1.75.

Exhibit 2. Michelin Tire Lease and Service Contract Terms, current vs proposed

	Current Contract (10/1/2018-9/30/2023)	Proposed Contract (4/1/2023-3/31/2028)
Tire Leasing Cost ^a	\$0.00547-\$0.00711 per mile	\$0.00577-\$0.0075 per mile
Est. Lease Cost per Month ^b	\$70,000	\$70,000
Tire Service per Month	\$143,125	\$151,042
Est. Monthly Recycling Fee ^c	\$0	\$595
Total Annual Cost	\$2,557,500	\$2,659,644

Source: MTA

Notes: a) Leasing cost varies across the four different bus tire sizes; b) Lease cost estimate provided by OCA based on historical miles traveled per month. c) MTA estimates that 4,080 tires are scrapped annually, at a cost of \$1.75 per tire. Under the current contract, there is no fee recycling fee.

Under the proposed agreement, Michelin North America, Inc. would invoice the City on a monthly basis of \$151,042 for tire services, or approximately \$113,281 per FTE. This includes providing 24/7 roadside assistance. According to MTA, in FY 2021-22 Michelin provided a total of 1,793 roadside calls, varying from 110 to 184 calls per month. The proposed monthly tire service rate would increase by \$7,917 per month (approximately 5.5 percent) from the current agreement. Similarly, the cost of leasing tires would increase by 5.5 percent.

The current and proposed contracts allow for the vendor to request one annual price adjustment to reflect increases to the US Department of Labor’s Producer Price Index (PPI) for Truck and Bus Pneumatic Tires and regional Consumer Price Index (CPI). Between 2021—the most recent date when contract prices were adjusted via Contract Modification No. 1 – and September 2022, there has been a 29.5 percent increase in the PPI for commodities² and an approximately 7.8 percent increase in the CPI for the services in San Francisco-Oakland-Hayward, which are both more than the proposed 5.5 percent increase for labor and materials.

Reporting Requirements

The proposed contract requires Michelin to submit an annual usage report detailing the total quantity and dollar value of services ordered, by month, during the preceding calendar year. Additionally, the proposed contract introduces the requirement for Michelin to provide to MTA monthly reports detailing the average tire mileage for each size tire and a summary report of all damaged or destroyed tires.

² Bureau of Labor Statistics Commodities Series ID WPU07120105 - Rubber and plastic products - Truck and bus including off-the-highway pneumatic tires.

FISCAL IMPACT

Under the proposed contract, Michelin would invoice the city for the cost of tire leasing. This monthly cost varies depending on actual usage and the wear and tear on tires. According to MTA, in January 2023, the total number of tire miles traveled across all buses was 12,958,085 miles. All buses have a mileage counter, and when they reach a certain mileage milestone, Michelin checks the rubber for wear and makes repairs/replacement accordingly. Under the agreement, MTA would pay Michelin between approximately \$0.005 and \$0.007 per tire per mile.

According to MTA, funding for this contract comes from the MTA operating budget, subject to appropriation approval of the Board of Supervisors.

POLICY CONSIDERATION

Performance Management

The current and proposed contract with Michelin does not include any performance metrics, such as ensuring qualified and sufficient staffing and tire quality and availability. MTA reports Michelin has been performing satisfactorily but does not document satisfactory/compliant performance. We recommend OCA and MTA consider adding performance metrics and performance monitoring to future contracts.

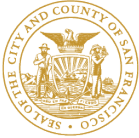
The current and proposed contract do require that Michelin maintain monthly reports of an inventory of all tires, showing location (Bus Number), date installed and/or removed and “other pertinent data.” We reviewed summary mileage reports provided by MTA that showed the department was tracking the mileage for each of its buses, but the record did not contain information specific to each tire, which is tracked by Michelin.

Single Bidder

As noted above, although eight suppliers were invited to bid, the solicitation for this contract resulted in one bidder, Michelin, that was deemed non-responsive due to a failure to submit its documentation of minimum qualifications. As we noted in our report on the Granite Rock asphalt products (File 23-0039), this could be an indication that the City’s procurement policies and procedures could be revised to increase competition. At the February 8, 2023 Budget & Finance meeting, at the recommendation of the Budget & Legislative Analyst, the Committee Chair requested the Purchaser and City Administrator to provide a report that: (1) assesses existing procurement strategies and municipal code requirements, (2) evaluates the feasibility of partnering with other governments to increase the number of joint procurements that the City participates in, and (3) provides recommendations to increase the number of bidders for goods, commodities, and services; by June 2023.

RECOMENDATION

Approve the proposed resolution.



**San Francisco Office of the City Administrator
City Administrator Carmen Chu**

Tire Lease & Associated Service for SFMTA Buses & Trolleys

File 23-0207

Office of Contract Administration

Board of Supervisors' Budget and Finance Committee

April 5, 2023

Contract Summary

- Provides for the lease of tires and associated tire services for fleet of 860 SFMTA buses and trolleys. Services take place at six SFMTA bus yards.
- Current contract with Michelin North America, Inc. (Michelin)
 - Current NTE \$9.995M, ending on September 30, 2023
 - Contract has been exhausted
- Competitive solicitation issued September 15, 2022 pursuant to Admin. Code § 21.03 to replace current contract
- Solicitation resulted in no responsive bidders
- OCA awarding contract to Michelin (incumbent) pursuant to Admin. Code § 21.6

Contract Pricing & Projected Expenditures

	Current Contract <i>(10/1/2018-9/30/2023)</i>	Proposed Contract <i>(4/1/2023-3/31/2028)</i>
Tire Lease Pricing	\$0.00547-\$0.00711 per mile	\$0.00577-\$0.0075 per mile
Est. Monthly Lease Cost	\$70,000	\$70,000
Monthly Tire Service (flat rate)	\$143,125	\$151,042
Est. Monthly Recycling Fee	\$0	\$595
Total Annual Cost	\$2,557,500	\$2,659,644

Proposed Action

OCA requests retroactive approval of the resolution to enter into contract as follows:

- Initial not-to-exceed amount of \$13,500,000 for five years from April 1, 2023 through March 31, 2028.
- Option to extend up to 7 years ending March 31, 2030, for total NTE of \$18,900,000.

Thank You

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco
and
Michelin North America, Inc.
1000028080**

AGREEMENT

This Agreement is made this First day of April, 2023, in the City and County of San Francisco (“City”), State of California, by and between Michelin North America, Inc. (“Contractor” or “Lessor”) and City.

Recitals

- A. The San Francisco Municipal Transportation Agency (“SFMTA” or “Department”) wishes to procure the services of Contractor to lease, service and dispose of tires for its rubber tire revenue fleet comprised of buses and trolleys that transport the public (“Services”).
- B. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- C. The City issued a competitive solicitation on September 15, 2022 to procure lease of tires and associated services, under Sourcing Event 0000004939, and the solicitation resulted in no responsive bidders; as such, Contractor was selected pursuant to Section 21.6 of the San Francisco Administration Code.
- D. This Agreement includes Services and the Local Business Entity (“LBE”) subcontracting participation requirement for the Services has been waived.
- E. Approval for the Agreement was obtained on May 16, 2022 from the Civil Service Commission under PSC number 49631-20/21 in the amount of \$9,900,000 through April 30, 2027; and
- F. The City’s Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission or Board action].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and all City Departments authorized to utilize this Agreement for the purpose of securing the Services described herein.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.6 “Contractor” means Michelin North America, Inc., One Parkway South, Greenville, SC, 29615.

1.7 “Day” means a calendar day, unless otherwise indicated.

1.8 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product (if any) described in Appendix A.

1.9 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 “Party” and “Parties” means the City and Contractor either collectively or individually.

1.11 “Purchasing” refers to the Purchasing Division of the City.

1.12 “Services” means the work performed by Contractor under this Agreement as specifically described in Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on April 1, 2023 and expire on March 31, 2028, unless earlier terminated as otherwise provided herein.

2.2 **Options.** The City has the option to renew the Agreement for a period of two additional years, for a total contract term of seven years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

2.3 **No Automatic Renewal.** Notwithstanding anything to the contrary contained in this Agreement (including, without limitation, any terms and conditions of Contractor attached hereto): (a) in no event shall the term of this Agreement be longer than the initial term expressly stated in this Agreement; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either Party) or any similar “evergreen” provision shall be deemed null and void ab initio; and (c) the term of this Agreement shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any inconsistency within this Agreement relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Agreement, then the term shall be one year from the date on which the term commences.

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Compensation shall be made for Services identified in the invoice that the City, in its sole discretion, concludes has been

satisfactorily performed. In no event shall the amount of this Agreement exceed Thirteen Million Five Hundred Thousand Dollars (\$13,500,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until City approves the Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to cure Services provided in an unsatisfactory manner, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured. Contractor shall not stop providing Services as a result of City's withholding of payments, as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information may not be processed for payment.

3.3.5 Reserved. (LBE Payment and Utilization Tracking System)

3.3.6 Getting paid by the City for Services.

(a) The City and County of San Francisco utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.7 Reserved. (Grant Funded Contracts)

3.3.8 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 Days, measured from (1) the rendering of Services

or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) Reserved. (Payment Discount Terms)

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor will permit City to audit, examine, copy, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Reserved. (Payment of Prevailing Wages)

3.7 Reserved. (Displaced Worker Protection Act)

Article 4 Services

4.1 Reserved. (Primary and Secondary Contractors)

4.2 Reserved. (Term Agreement – Indefinite Quantities)

4.3 Personnel.

4.3.1 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor’s authorized subcontractors) to perform the Services. Contractor will comply with City’s reasonable requests

regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3.2 Contractor Vaccination Policy.

(a) Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(i) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(ii) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to "Exemptions" to download the form).

4.4 Reserved.

4.5 Services.

4.5.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.5.2 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.5.3 Awarded Services. If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing or the SFMTA, it is understood and agreed that the service will be canceled and removed from the Agreement without penalty to City. City’s sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten Days’ notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing or the SFMTA. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, 30 Days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a Default.

4.5.4 Independent Contractor; Payment of Employment Taxes and Other Expenses

(a) Independent Contractor. For the purposes of this Section 4.5, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it delivers the Services required by this Agreement and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing any of the obligations pursuant to this Agreement, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records

demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

(b) **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.5 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.6 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.7 Reserved. (Liquidated Damages)

4.8 Performance Bond. Contractor is required to furnish a performance bond, in a form acceptable to the City, in a sum of not less than 20% of the annual amount of the Agreement

to guarantee the faithful performance of this Agreement. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

4.9 **Fidelity Bond.** Contractor shall maintain throughout the term of this Agreement, at no expense to City, a blanket fidelity bond or a Blanket Crime Policy (Employee Dishonesty Coverage) covering all officers and employees in an amount of not less than **\$50,000** with any deductible not to exceed **\$5,000** and including City as additional obligee or loss payee as its interest may appear.

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Each year, no later than February 15, Contractor shall prepare and submit to City an electronic report of the total Services rendered under this Agreement during the preceding calendar year (January 1 – December 31). The report must list by City department the following: (a) all Services ordered (“Order”) (b) all Services delivered; (c) the date on which each Order was placed; (d) the date on which each Order was delivered; and (e) total quantity and unit price of the Services contained within each Order. Contractor must also furnish a separate similar report for the total of all Services ordered by City which are not part of this Agreement. Contractor shall email reports to OCAVendor.Reports@sfgov.org.

4.11.2 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and “Annual Supplier Reporting” clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting
Re: Term Contract No. 71208A
City and County of San Francisco
Office of Contract Administration – Purchasing
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

4.11.3 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

4.12 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and

practices, and in conformance with generally accepted professional standards prevailing at the time the maintenance services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts:

- (a) Commercial General Liability Insurance with limits not less than \$5,000 each occurrence for Bodily Injury, including Contractual Liability, Personal Injury, Products and Completed Operations. Michelin may self-insure for product liability coverage.
- (b) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.
- (d) Reserved. (Professional Liability Insurance)
- (e) Reserved. (Technology Errors and Omissions Liability Insurance)
- (f) Reserved. (Cyber and Privacy Insurance)
- (g) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements.

- (a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (b) The Commercial Automobile Liability Insurance policy must include Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Waiver of Subrogation Endorsements

- (a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements

- (a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty (30) Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before delivering commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable

information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (iv) above) arises directly or indirectly from Contractor’s performance of this Agreement, including, but not limited to, Contractor’s use of facilities or equipment provided by City or others. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

5.2.2 In the event of negligence or intentional acts or omissions by more than one party arising out of a single incident, responsibility for such negligence or intentional acts or omissions will be allocated in accordance with the proportionate share of such party’s negligence or intentional acts or omissions. Nothing herein shall be construed as making any party liable for claims, actions, judgments, costs, penalties, liabilities, damages or losses and expenses caused by the sole negligence and/or willful misconduct of the other party.

5.2.3 In addition to Contractor’s obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.4 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor’s Services pursuant to this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 **Reserved. (Liability for Use of Equipment)**

6.3 **Reserved. (Liability for Incidental and Consequential Damages)**

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to

verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all obligations under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for Services.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any obligations that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 Days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth the cost of all Services delivered prior to City's notice of termination. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services rendered by Contractor under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.2.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for the Services rendered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service rendered by Contractor under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City’s payment obligation under this Section shall survive termination of this Agreement

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment		
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten Days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five DAYS for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor’s property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate

then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 Non-Waiver of Rights.

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.3.7	Reserved (Grant Funded Contracts).	11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records	11.7	Agreement Made in California; Venue
3.5	Submitting False Claims	11.8	Construction
Article 5	Insurance and Indemnity	11.9	Entire Agreement
6.1	Liability of City	11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages	11.11	Severability
Article 7	Payment of Taxes	Article 12	Department Specific Terms
8.1.6	Payment Obligation	Article 13	Data and Security
		Appendix D	Reserved (Business Associate Agreement).

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Reserved. (Rights in Deliverables)

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall

incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the

entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid, proposal or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would

conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Public Access to Nonprofit Records and Meetings. If Contractor is a non-profit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein; and receives a cumulative total per year of at least \$250,000 in City or City-administered funds and as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Distribution of Beverages and Water.

10.17.1 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 Packaged Water Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.18.1 Reserved.

10.19 Reserved. (Preservative Treated Wood Products)

10.20 Reserved. (Sweat Free Procurement)

10.21 Environment Code Chapter 5, Resource Conservation Ordinance.

10.21.1 Reserved. (Printing Services and/or Writing Paper Products)

10.21.2 Reserved. (Collection of Recyclable Materials)

10.22 Reserved. (Prop J Approval)

10.22 Use of City Opinion. Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor’s performance under this Agreement without prior written permission of Purchasing.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: OCA@sfgov.org Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	Ed Quigley Director of Operations, Services and Solutions AMN Michelin of North America, Inc. One Parkway South, Greenville, South Carolina 29615 michelin.fleetsolutions@michelin.com 864-458-5000

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II’s program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor’s performance of Services, and City’s payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of Services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.6.3 **Health and Human Service Contract Dispute Resolution Procedure.** If this Agreement is with a health and human services nonprofit, the Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in this Agreement and incorporated herein by this reference.

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees to perform the Services described herein in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City’s terms and Contractor’s printed terms attached, the City’s terms shall take precedence, followed by the procurement issued by the department, Contractor’s bid and/or proposal, and Contractor’s printed terms, respectively.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 Department Specific Terms

12.1 Third Party Beneficiaries.

No third parties are intended by the Parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 Exclusion Lists and Employee Verification.

12.2.1 Contractor acknowledges that some or all of the Services that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 (“Notices to the Parties”), within thirty (30) Days of any such exclusion, suspension,

ineligibility, or other sanction. This is a material term of this Agreement. Contractor agrees to indemnify and hold harmless City and City’s officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys’ fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor’s workforce (including those who oversee Contractor’s workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services pursuant to this Agreement, Contractor may have access to City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved. (Payment Card Industry (“PCI”) Requirements)

13.3 Business Associate Agreement.

The Parties acknowledge that City is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”).

The Parties acknowledge that CONTRACTOR will:

1. Do **at least one** or more of the following:
 - A. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
 - B. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing Services to or for City including legal, actuarial,

accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

For purposes of this Agreement, Contractor is a Business Associate of CITY, as defined under HIPAA. Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

2. **NOT do any of the activities listed above in subsection 1;**

Contractor is not a Business Associate of CITY. A Business Associate Agreement and Attestations are not required for the purposes of this Agreement.

13.2 Protected Health Information. Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

13.3 Management of City Data and Confidential Information

13.3.1 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-

related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) Days, return all data given to or collected by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City’s Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

Article 14 MacBride And Signature

14.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

Michelin of North America, Inc.

Shawn Peeters
Supervising Purchaser
Office of Contract Administration

Ed Quigley
Director of Operations, Services and Solutions
AMN
One Parkway South
Greenville, South Carolina 29615
City Supplier Number: 0000015104

Approved as to Form:

David Chiu
City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract
Administration, and Purchaser

By: _____
Jonathan Medwin

A: Scope of Services	
B: Calculation of Charges	
C: Regulatory and Compliance Requirements	
D: Reserved. (BAA)	
E. Reserved. (Forms P12U-C and 12U-I)	

Appendix A Scope of Work

A. General Service

In addition to furnishing leased tires, Lessor shall provide the following services to the City at Lessor's own expense:

- (1) Lessor shall mount and demount tires on and from rims, balance mounted tires, change wheels or rims to and from the Muni motor coach and trolley bus fleets, and keep all mounted tires inflated to their proper pressures.
- (2) Lessor's authorized personnel shall drive and operate buses in the SFMTA bus yard area as necessary to furnish proper tire service. The SFMTA has no obligation to move buses within bus yards for the Lessor to perform its services.
- (3) Lessor shall furnish at the Shops (as defined in Section C (Location of Services; Shifts; Site Representatives; Personnel), below) all tools and equipment necessary to perform its services, including but not limited to the following items: pneumatic impact wrenches, sockets, hoses for impact tools, hoses to air tires, tire gauges, tire cutters, balancer, bead busters, tubeless tire mounting machine, jacks, and hand tools necessary to perform tire maintenance.
- (4) Lessor shall furnish labor to balance front tires and equipment and materials for balancing. **Lessor shall visually inspect each bus and advise the SFMTA of defective mechanical conditions in writing when replacing or rotating front tires.** If the SFMTA has not responded within fifteen (15) Days after written notification of the Lessor's claims of mechanical problems, the Lessor may request an adjustment for unacceptable wear under the provisions of Section G (Loss and Abuse of Tires).
- (5) Lessor shall mount a reasonable number of tires as determined and directed by SFMTA on spare rims or wheels, supplied by SFMTA, in order that a sufficient reserve of mounted spare tires shall be available at all times.
- (6) Lessor shall retread or regroove all rear tires on the fleet that become worn to a point where further use would violate the applicable rules and regulations of the U.S. Department of Transportation, California State Public Utilities Commission, and/or California Highway Patrol, as well as all other applicable government laws, rules and regulations. Such retreading shall not cause undue interruptions to service or be a hazard to the safety of occupants of said buses. **Retread and/or regrooved tires shall be permitted on the rear wheels only.** All front tires shall be new.
- (7) Lessor shall inspect all tires on the fleet at least once each month (or more

frequently, if required) to ensure that the tread depth in all tires in operation shall conform to all applicable provisions of law. Where a tire is found to have tread depths that are not in conformity with the above provisions, Lessor shall notify the SFMTA of the fact in writing and the SFMTA will make such bus(es) available to the Lessor so that the wheels containing those tires can be changed. If the SFMTA has not responded within fifteen (15) Days after written notification of the Lessor's claims of mechanical problems causing excessive wear, the Lessor may request an adjustment for unacceptable wear under the provisions of the formula in Section G (Loss and Abuse of Tires) below.

(8) Lessor shall inform the SFMTA in a timely manner of misalignment or other mechanical problems likely to cause premature tire wear, as such problems are discovered by Lessor, and shall record such conditions, including date, bus number and mileage.

(9) Lessor shall maintain a sufficient supply of tires as required to guarantee continuity of bus service at all times. In the event of a manufacturing delay in tires due to a threatened strike, the Lessor shall, to the degree possible prior to the effective day of the threatened strike, ship additional spare tires to maintain SFMTA buses during the manufacturing delay. In any event, it is the Lessor's responsibility to assure an adequate supply of tires at all times.

(10) Lessor shall maintain and replenish usable mounted spares of the appropriate tire sizes and tread depths. The SFMTA will provide adequate space in each of the Shops (as defined in Section C below) for such spares. The SFMTA will provide a suitable place in an enclosed building for the storage of spare tires, including spares to be used by the Lessor's road service crews. Security and control of the stored tires shall be the sole responsibility of the Lessor and the Lessor shall bear the entire risk of loss. The Lessor shall maintain all care, custody and control for all tires, supplies and equipment under its custody and control under this agreement (e.g., in a secured area locked by Lessor).

(11) Lessor shall be responsible for the handling of all SFMTA-furnished documents and materials in a safe manner, including loss or damage incurred during transport, handling or delivery.

(12) Lessor shall create, maintain, and update on a daily basis throughout the term of the Agreement a real-time, on-line database accessible to the SFMTA of the following information:

1. Names, titles, job-site location, hours worked, and telephone number of all Lessor employees assigned to this contract.
2. Daily attendance list of all Lessor employees
3. Record of all services performed, including bus number, date, time and service performed for both in-house and road call repairs.

(13) The SFMTA recognizes that turnover of skilled workers resulting from a vendor change may jeopardize the quality, efficiency and cost-effectiveness of service provided under a successor contract. The SFMTA is further aware that the employees providing tire services under the current contract have developed specialized skills and expertise. As such, the SFMTA urges the successful contractor to retain the skilled employees in order to provide continuity of service and stability of the workforce.

B. Condition of Tires

(1) All tires furnished or returned by Lessor to the SFMTA for use shall be of safe and useable condition. **If either party determines that a tire is not safe, useable, or fit for continued use, the SFMTA's determination as to the condition of the tire shall be final.**

(2) Tires to be run on the front wheels shall be only of original tread and groove, and shall be removed when tread depth reaches 4/32" minimum at any point in the tread configuration. Tires to be run on other than front wheels may be of original, retread, recapped or re-grooved tread, and shall be removed when tread depth reaches 2/32" minimum at any point in the tread configuration.

C. Location of Services; Shifts; Site Representatives; Personnel

(1) All of Lessor's services shall be performed on the SFMTA's premises at the following six locations (the "Shops"), per the schedule listed below. The Shops may be relocated within the City during the term of the Contract. The SFMTA has designated the following persons as site-specific representatives; however, the SFMTA will not sign for any deliveries. The Lessor shall be responsible for signing deliveries. The SFMTA will give Lessor two-months' notice of any relocation of facilities.

WOODS Shop, 22nd & Indiana Streets	Seven days per week
Austin Stenger, (415) 646-2677	2 shifts per day
Contract work space:	1 area ~ 4432 sq. feet
KIRKLAND Shop, Bay & Powell Streets	Six days per week
Paul McCrory, (415) 274-0206	1 shift per day
Contract work space:	1 area ~ 2544 sq. feet

FLYNN Center, 15th & Harrison Streets Six days per week
Adrian Scott, (415) 554-9358 1 shift per day
Contract work space: 1 area ~ 3002 sq. feet

POTRERO Shop, Mariposa & York Streets Six days per week
Mike Henry, (415) 554-9260 1 shift per day
Contract work space: 1 area ~ 6180 sq. feet

PRESIDIO Shop, Presidio & Sutter Streets Six days per week
David Chan, (415) 923-6151 1 shift per day
Contract work space: 1 area ~ 1350 sq. feet

ISLAIS CREEK Shop, Cesar Chavez & Minnesota Streets Six days per week
Mauro Benedetti (415) 530-3428 1 shift per day
Contract work space: 2 areas of 1000 sq. feet each

(2) Prior to award of this Lease, Lessor shall have submitted to the SFMTA a list of its service personnel and their shifts. A shift is defined as a span of eight (8) consecutive hours during which a facility is manned by at least one person. All single-shift facilities shall have an early morning start time. Two-shift locations shall have both morning and afternoon shifts. When service personnel or shifts change, Lessor shall update the list of service personnel and their shifts.

(3) In addition to the necessary number of tire service persons, Lessor shall provide the following:

a. **Manager of Tire Service Operations** - authorized representative of Lessor, either on site or located in the San Francisco Bay Area and available on call.

b. **Six Shop Supervisors** - authorized representatives of Lessor in charge of service operations and stationed at each of the Shops.

c. **Drivers** -- An adequate number of employees qualified to drive the

buses, as required, to and from the tire areas (e.g., with current California commercial driver's license, Class A or Class B).

d. A list of employee names, contact information, driver licenses and driving records, as required.

e. A minimum of fifteen (15) employees plus one (1) working supervisor to cover all the Shops.

(4) Lessor shall provide technical support and assistance to the SFMTA. As part of this requirement, Lessor must provide, by telephone, personnel with in-depth technical knowledge of the services Lessor is providing under this contract, to answer questions and offer any assistance required by SFMTA personnel during SFMTA business hours. (8:00 a.m. – 5:00 p.m., 5 days per week). SFMTA representatives will coordinate with Lessor representatives for the most efficient scheduling requirements for tires and servicing.

(5) The SFMTA will provide adequate, designated space for Lessor to accomplish work required by this contract at each of the Shops.

(6) The SFMTA will provide Lessor's personnel with the use of restrooms, water, electricity, internet connectivity, and access to compressed air at each of the Shops.

(7) The SFMTA will offer parking to Lessor at the most current SFMTA employee rate, subject to availability.

(8) The SFMTA will train Lessor's personnel the OEM standard for toe-in alignment to factory standards.

D. Road Call Services

Personnel. Lessor shall provide one **on-site** road call service person with appropriate truck seven days per week, 24 hours per day, who shall respond promptly to road calls involving tire problems and shall arrive at the scene of the road call within 60 minutes of notification ("Required Arrival Time"). The road call service person's first responsibility shall be to respond to road calls immediately. If there are no road calls made from SFMTA Central Control or the Transit Management Center of the SFMTA, the road call service person may be assigned other duties within the scope of this contract as Lessor determines is most beneficial. If a road call does come in while the road call service person is engaged in another assignment, the road call service person shall cease his or her other work and respond to the road call immediately. The road call service person shall notify SFMTA Central Control by telephone (primary number: 415-759-4398; secondary number: 415-759-4327) immediately upon arrival at the scene of the road call. The

(1) on-site road call service person shall be based at the Woods Shop, 22nd & Indiana Streets, San Francisco. Road call service shall be performed at no additional charge to

the SFMTA. Calls for service to be performed in an SFMTA yard will be made by the SFMTA Yard Superintendent.

E. Tires Belonging to Current Lessor; Title to Tires

(1) Upon commencement of this Lease, Lessor shall, if directed by City, purchase all tires involved in the City's current bus tire lease agreement from the lessor under that agreement by paying any mileage remaining on the tires at the lease rate then in effect.

(2) As the tires in the possession of the City at the commencement of the contract are rendered permanently unfit for use and are replaced, and thereafter throughout the Contract term, Lessor shall furnish and continuously maintain in inventory all tires, including enough mounted spares to ensure that tires are available at all times for the City's use.

(3) All tires furnished by the Lessor shall be **individually and/or group-branded** prior to delivery.

(4) Title to equipment and to the tires and any and all additions, repairs, replacements, or modifications thereof shall be held in the name of Lessor, and the City shall have no right, title or interest in the equipment or tires or any additions, repairs, replacements, or modifications to the equipment or tires except as expressly set forth in this Lease.

F. Assignment

Notwithstanding any other provision in this Lease, in no event shall all or any portion of this Lease be assigned without prior written approval of the City, including the Purchaser and the SFMTA. Furthermore, in no event shall Lessor effect a public offering or private placement of certificates of participation, municipal securities, or other debt instrument representing fractionalized interests in this Lease. To the extent any portion of a Lease payment constitutes interest, the City makes no representation as to the exclusion of such interest from gross income. Furthermore, the City will execute or deliver Internal Revenue Service form 8038G in connection with this Lease.

No transfer or assignment of this Lease, or interest hereunder, by either party hereto shall release the other party from its obligations hereunder.

G. Loss and Abuse of Tires

The City will only reimburse Lessor for tires that have been rendered unfit for service due to the sole negligence of the City, as determined by the City. The City will pay for any of Lessor's tires that have been damaged beyond repair by accident or fire, lost, or that have been disposed of by the City on the basis of unused mileage remaining, based on tread depth. The remaining value for new and retread tires shall be determined by multiplying the number of useable 32nds of an inch of useable tread depth remaining on each tire by the Lessor's applicable cost per useable 32nds of an inch in tread as quoted on the bid sheet under tab named

“Informational Only – Agg 4”; however, the remaining value shall not exceed 50% of the value of the tire unless Lessor can supply an auditable accounting of the tire’s mileage. When such a tire is unavailable for examination to perform the above measurements and calculations, reimbursement shall not exceed 50% of the value of an unused tire of the same size, unless Lessor can supply an auditable accounting of the tire’s accurate mileage just prior to the loss.

For example, if half the useable tread is left before being damaged, then the tire value will reflect a value of half the estimated mileage of the tire, based on useable tread depth, times the rate per mile.

Notes: * “New Original” tire term refers to Brand New Tire; “Original” tire term refers to new, retread tire. New Original tires for steer position need to be replaced when 4/32” of tread remain, and Original or retread tires for drive positions need to be replaced when 2/32” of tread remain, under regulations of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 49 C.F.R. Section 393.75(b), Subpart G.

Example: New Original tire is 50% worn or 20/32nds remaining, is \$8.55 per 1/32” (4/32” unusable tread and 16/32” usable tread)

$$16/32” \text{ remaining} \times \$8.55 \times 32 = \$136.80$$

Cost for "normal damaged or abused" tires shall be included in the rate per tire mile. The term "normal damaged or abused" is defined to be total or partial destruction of a tire during operation of the bus by means other than normal wear and tear, such as flats, irregular wear, damage for brake heat, curbing, road hazards, and misalignment.

H. Disposition of Tires at Termination of Contract (Buy-Out/Run-Out).

Upon termination of this Agreement for any reason, the SFMTA, in its sole discretion, may elect to either Buy out or Run out the remaining tread life for all new and retread tires on buses in the SFMTA's fleet in process of repair or retreading, in transit or in stock, that have been assigned to the SFMTA's fleet at least thirty (30) Days prior to contract expiration.

In the event the SFMTA elects a Buy-out, payment for new and retreaded tires shall be on the basis of the unused mileage remaining on such tires multiplied by the applicable billing rate per tire in effect at the time of contract expiration. Title to such tires shall be transferred to the City or its new tire contractor when paid in full. The City or its new tire contractor will acquire each used tire as is, and Lessor makes no warranties as to the condition or fitness for continued use of such tires.

In the event the SFMTA elects a Run-out, the Run-out period will not exceed thirty-six (36) months. During the Run-out period, the SFMTA will, to the extent practical, continuously use such tires on its highest mileage runs until they are rendered unfit for service. The rental rate shall be rate(s) in effect immediately preceding the expiration date. No additional tires, service,

supplies or equipment are to be furnished by the Lessor during such extension, unless requested by the SFMTA and agreed to by the Lessor. At the expiration of said period, the SFMTA will pay for any remaining original tread and retread tires in the manner described above. During the Run-out period, tires will remain the property of the Lessor and be disposed of by the Lessor. The new Lessor will track buses and tires and distinguish between the previous Lessor's tires and their own. The SFMTA will maintain the mileage records for the tires consistent with the methods used by the old Lessor and implementing the new Lessor's tracking system.

I. Accidents

The SFMTA shall immediately notify Lessor of any accident that may have arisen out of a malfunction or defect of the Tires, including in such report the date, time, place, and nature of the accident, the damage caused to property, the names and addresses of persons injured, witnesses, and such other information as may be pertinent to Lessor's investigation of such accident.

J. Equipping of New Buses – Purchase and/or Lease

In the event the City orders or purchases new buses during the term of this Lease, the City reserves the right to purchase outright or Lease from the Lessor all tires required for the new buses. If such tires are leased, the City will pay the rate for the tires installed on the new equipment on the basis set forth in the Bid Sheets. If purchased, the Lessor agrees to provide monthly service rates in accordance with the rate schedule set forth in the Bid Sheets. A negotiated separate rate shall apply to any new make/model bus placed in operation by the City during the term of the Lease or a bus requiring a tire with a size other than as specified under this Lease.

Upon receiving notice from the City, Lessor shall, within sixty (60) Days, make arrangements with the bus manufacturer at its factory, for the timely delivery of tires for new buses to the bus manufacturer's North American Facility, or to any overseas facility, with the City paying for all reasonable charges in excess of normal freight charges to any destination in North America, prior to their shipment to City.

K. Tires for New Buses

Upon written request of the City, the Lessor shall deliver to the manufacturer of any new buses which the City may purchase, tires of the type furnished under this Lease. The tires shall, upon delivery to the manufacturer of the buses, become subject to the terms and conditions of this Lease. Except as noted in Section 9, the City intends to purchase new hybrid buses during the nine-year term of this Lease, but vehicle models and delivery schedules are unknown at this time.

If new buses are to be driven from the manufacturer to the City for delivery, the Lessor shall receive payment for such use at the same rates specified by this Lease.

L. Removal of Buses from Service

If, during the term of this Lease, City disposes of or removes any bus from service, City shall give Lessor at least 30 Days’ written notice of such removal or disposal. Lessor shall remove the tires on said buses to be disposed of by City. If the tires are usable on other buses operated by City, Lessor shall place tires in City’s reserve. For tires not usable by City’s buses, City shall purchase and Lessor shall sell these tires on the basis set forth in Section G (Loss and Abuse of Tires), with the exception that the period for which the average mileage is determined shall be the last 12-month period prior to such disposition.

M. SFMTA’s Bus Fleet

The composition of SFMTA's fleet as of September 30, 2022, is approximately as follows:

<u>LOCATION & DESCRIPTION</u>	<u>QUANTITY</u>	<u>TIRES per BUS</u>	<u>TIRE SIZE</u>
WOODS SHOP, DIESEL FLEET			
Orion Hybrid, 30’(In process of Retirement)	25	6	305/70R 22.5
El Dorado Hybrid (Replacing Orion 3” Fleet – Estimated total fleet: 30)	5	6	275/70R 22.5
New Flyer Hybrid, 40’	224	6	305/70R 22.5
New Flyer Battery Electric, 40’	3	6	305/70R 22.5
BYD Battery Electric, 40’	3	6	305/70R 22.5
Proterra Battery Electric, 40’	3	6	315/80R 22.5
KIRKLAND SHOP, DIESEL HYBRID FLEET			
New Flyer 40’	88	6	305/70R 22.5
FLYNN SHOP, DIESELHYBRID FLEET			
New Flyer Hybrid 60’	119	10	305/70R 22.5

ISLAIS CREEK SHOP, TROLLEY FLEET

New Flyer Hybrid 40'	105	10	305/70R 22.5
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Training

Neoplan 40'	1	6	12R 22.5
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SFFD Training*

*North American Bus Industries (NABI) 40' owned by SFFD and stored at Islais Creek

2	6	305/70R 22.5
	6	

TROLLEY BUS FLEET

POTRERO SHOP, TROLLEY FLEET*

New Flyer Trolley 40'	53	6	305/70R 22.5
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New Flyer Trolley 60'	93	10	305/70R 22.5
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PRESIDIO SHOP, TROLLEY FLEET*

New Flyer Trolley 40'	132	6	305/70R 22.5
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TOTAL ESTIMATE OF SFMTA FLEET COMPOSITION: **856**

*** When new buses arrive, older buses may be taken out of service. The number of buses in each yard, number of tires, and tire size may change for the duration of the contract and any contract extension issued thereafter due to arrival of new buses and the retirement of old buses.**

N. Tire mileage records.

Lessor shall maintain an inventory of all tires, showing location (Bus Number), date installed and/or removed and other pertinent data or any approved tire tracking system.

Lessor shall have available and provide upon request, detailed **monthly reports** for the SFMTA, which shall include the following:

- The average tire mileage for each specific size of tire in the SFMTA fleet.

- A detailed summary report of all damaged or destroyed tires, to include the specific bus numbers and the date on which the damage occurred.

Failure to provide the required reports constitutes a material breach of the Contract, which may result in application of the Contractor's Default clause.

O. Disposal/Recycle of Tires

1. The Lessor is expected to dispose/recycle all unserviceable tire casings. The Lessor must bear the expense for disposal/recycling of all non-retreadable tires, including the SFMTA-OWNED unserviceable casings. The estimated number of tires scrapped annually is **4,080**.

2. As the owner of the leased tires, the Lessor shall dispose/recycle the non-retreadable tire casings in compliance with the State of California's Tire Program, as set forth in Chapter 6 of Title 14 of the California Code of Regulations. The Lessor shall be identified as the generator and use its own Tire Program Identification (TPID) numbers on the California Uniform Waste and Used Tire Manifests. A separate TPID number is required for each SFMTA location. Lessor may call the California Integrated Waste Manifest Management Board (CIWMB) Waste Tire Hauler Program at 1-866-896-0600 for further information. (website: <http://www.calrecycle.ca.gov/tires/manifest/>)

3. The SFMTA will be the designated generator and will provide California Uniform and Used Tire Manifests with corresponding SFMTA TPID numbers for each different location to the Lessor for tire disposal/recycling of SFMTA-OWNED unserviceable casings to be shipped off site. The Lessor shall submit, on the bid sheets, the name(s) of the disposal/recycle facility(ies). If the facility(ies) does/do not meet SFMTA and California requirements, the SFMTA will require an alternate facility be provided.

4. Management of unserviceable tire casings shall be made in accordance with the State of California Tire Program. For the purpose of compliance with these regulations, the Lessor shall:

(a) Obtain a separate TPID Number for each SFMTA location from which tires are shipped for disposal.

(b) Be the designated generator of the used tires for non-SFMTA-owned tires.

(c) Maintain copies of the California Uniform Waste and Used Tire Manifest at each on-site location for a period of three (3) years from the manifest shipment dates.

(d) Ensure that used tire manifests are properly filled out and signed by a Lessor representative for each used tire shipment.

P. Workforce

The SFMTA recognizes that turnover of skilled workers resulting from a vendor change may jeopardize the quality, efficiency and cost-effectiveness of service provided under a successor contract. The SFMTA is further aware that the employees providing tire services under the current contract have developed specialized skills and expertise. As such, the SFMTA urges the successful contractor to retain the skilled employees in order to provide continuity of service and stability of the workforce.

Appendix B
Calculation of Charges

Description - Tire Lease	Unit Price per Mile
12 R x 22.5H	\$0.00750
275/70 R x 22.5H	\$0.00685
305/70 R x 22.5H	\$0.00577
315/80 R x 22.5H	\$0.00587

Description - Monthly Tire Service	Unit Price per Month
Monthly Tire Service	\$151,042.00

Description - CA Tire Recycling Fee	Per Tire
CANNOT EXCEED CA MANDATE	\$1.75

Tire Size	New Original* Tire Amount of Tread (in 32nds of an inch) Tread depth Useable Tread	New Original Unit Price per Tire	New Original Unit Price per 1/32" of Usage Thread
12 R x 22.5H	Negative (-) 4/32" =	\$638.68	\$49.13
275/70 R x 22.5H	Negative (-) 4/32" =	\$810.67	\$40.53
305/70 R x 22.5H	Negative (-) 4/32" =	\$694.47	\$38.58
315/80 R x 22.5	Negative (-) 4/32" =	\$510.32	\$30.02

Tire Size	Estimated New Original Tire Mileage Performance	Estimated Original (Retread) Tire Mileage Performance
12 R x 22.5H	45000	35000
275/70 R x 22.5H	45000	35000
305/70 R x 22.5H	45000	35000
315/80 R x 22.5H	45000	35000

Tire Size	Original Tire Amount of Thread* (in 32nds of an inch) Tread dept Useable Tread	Original (Retread) Unit Price per Tire	Original (Retread) Tire per 2/32" of Usage Thread
12 R x 22.5H	Negative (-) 2/32" =	\$-	\$-
275/70 R x 22.5H	Negative (-) 2/32" =	\$394.00	\$17.91
305/70 R x 22.5H	Negative (-) 2/32" =	\$399.00	\$18.14
315/80 R x 22.5H	Negative (-) 2/32" =	\$424.00	\$19.27

Tire Size	New Original/Original (Retread) Brand
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12 R x 22.5H
275/70 R x 22.5H
305/70 R x 22.5H
315/80 R x 22.5

X InCity Z SL
X InCity Z
X InCity Z
X Line Energy Z

Appendix C

Regulatory and Compliance Requirements

1. Delivery

Contractor must comply with the following delivery requirements.

- A. **Notice of Delivery:** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department, and Lessor may not impose additional costs as a result of such a rejection.
- B. **Hours of Delivery** All deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 8:00 A.M. and 2:00 P.M.
- C. **Substitutions:** No substitutions will be allowed unless approved in advance in writing by City.
- D. **Emergency Deliveries:** Emergency deliveries shall be delivered by the best means possible. Should the emergency delivery cause City to incur additional costs not contemplated by this Agreement, Contractor shall obtain City's prior approval of such a delivery. Contractor shall notify City of the estimated time of delivery.
- E. **Back Orders:** Contractor shall notify the ordering department immediately if it is unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to the City. In the event that back-ordered items are delayed in excess of five (5) working days, the City reserves the right to reject partial shipment or cancel the item(s) ordered from the Agreement, at no additional cost to the City.
- F. **Packing Slips:** All deliveries must include a packing slip and must provide the following information:
 - 1. Complete description including manufacturer's name and part number
 - 2. Quantity ordered
 - 3. Agreement number and contract item numbers
 - 4. Back-ordered items and amount back-ordered
 - 5. Date back-ordered items will be delivered
 - 6. Purchase Order number

2. Price

Only prices that appear on Appendix B will be considered. No other pages with prices or attached price lists and/or catalog prices will be considered. Prices shall be exclusive of any Federal, State, local sales or use tax. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

3. Price Adjustment

A. When to request a Price Adjustment:

- (1) Requests for Price Adjustments must be made in writing to City.
- (2) Contractor may request Price Adjustments no sooner than twelve (12) months from the Contract Start Date of **April 1, 2023**.
- (3) Only one (1) Price Adjustment may be approved in any twelve- (12-) month period.
- (4) If approved, Price Adjustments will be implemented through an amendment to this Agreement and shall be effective upon execution of the Amendment.

B. How Price Adjustments will be Calculated:

- (1) **Commodities:** Requests for price adjustments under this Agreement must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Producer Price Index (PPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Bid Due Date. The requested rate change will be limited to 50% of the calculated price adjustment for the below-stated Commodity Series ID, Non-Preliminary:

Commodity Series ID: WPU07120105
Industry Group: Rubber and Plastic Products
Product: Truck and Bus Pneumatic Tires
Base Data: 198200
Website: www.bls.gov/data/

- (2) **CPI, U.S. Dept. of Labor:** Requests for price adjustments under this Agreement must be supported by the U.S. Department of Labor's most recently published, **non-preliminary** Consumer Price Index (CPI) available at the time of Contractor's Price Adjustment request. The requested rate change shall be calculated from the last requested Price Adjustment or, if no Price Adjustment has previously been requested, from the Bid Due Date. The requested rate change will be limited to 50% of the calculated price adjustment for the below-stated CPI, Non-Preliminary:

Series ID: CWURA422SAS, Not Seasonally Adjusted

Area: San Francisco-Oakland-San Jose, CA

Item: Services

Base Period: 1982-84=100

Website: www.bls.gov/data/

4. Additional Services.

If, in the satisfaction of governmental interests it is necessary to purchase additional Services from Contractor, additional Services may be added to this Agreement by mutual agreement of the Parties in accordance with Chapter 21 of the San Francisco Administrative Code.

5. Regulatory Requirements

- A. The Federal Transit Administration (FTA) requires drug and alcohol testing of all transit system employees, including part-time employees, certain volunteers **and contractors** who perform "safety-sensitive functions." A safety-sensitive function includes maintaining a revenue service vehicle or equipment used in revenue service. Maintenance includes both preventive maintenance and overhaul of such vehicles or equipment. See 49 CFR Parts 40 and 655 for applicable requirements.
- B. The drug and alcohol testing requirements include, but are not limited to:
- (1) Testing for alcohol by means of a breathalyzer test
 - (2) Testing for five drugs (cocaine, marijuana, amphetamines, PCP, and opiates, as required under 49 CFR Part 40), by means of a urine specimen
 - (3) Six types of testing: pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up
 - (4) Adoption of a policy explaining the various testing requirements, including procedures and the consequences for those employees who test positive. The policy must be distributed to all of the contractor's safety-sensitive employees
 - (5) Training of all safety-sensitive employees. Each safety-sensitive employee will need a minimum of one hour of training on the effects and consequences of prohibited drug use and on the signs and symptoms indicating prohibited drug use. Supervisors who may make reasonable suspicion determinations need an additional two hours of training on the indicators of probable drug use and alcohol misuse.
 - (6) Referral of employees who test positive to a Substance Abuse Professional

- (7) Record-keeping and reporting. The regulations include requirements for retention of records and annual reporting of drug and alcohol testing information by the SFMTA to FTA

C. Any contractor receiving the award of this contract will have to either:

- (1) Implement its own drug and alcohol testing program in compliance with FTA regulations, or
- (2) Use the services of a third-party administrator to fulfill these requirements, or
- (3) Participate in SFMTA's program (available only to contractors that perform work on SFMTA premises). If the Contractor elects this option, there will be fees charged by the SFMTA for various required services. See below for the schedule of fees.

Administration fees will be billed semi-annually during the months of January and July.

Administration Fee		Total			
Per employee in safety-sensitive pool at time of invoice		\$50.00			
Testing fees will be billed during the month after testing has been performed					
Testing Fees		Collection	Laboratory	Medical Review	Total
Pre-Follow-Up	Drug Test	\$20.00	\$10.50	\$3.50	\$34.00
	Drug Test	\$72.00	\$10.50	\$3.50	\$86.00
	Alcohol	\$72.00	N/A	N/A	\$72.00
Random	Drug Test	\$72.00	\$10.50	\$3.50	\$86.00
	Alcohol	\$72.00	N/A	N/A	\$72.00
Reasonable	Drug Test	\$20.00	\$10.50	\$3.50	\$34.00
	Alcohol	\$20.00	N/A	N/A	\$20.00
Return to Duty	Drug Test	\$20.00	\$10.50	\$3.50	\$34.00
	Alcohol	\$20.00	N/A	N/A	\$20.00
Post-Accident	Drug Test	\$20.00	\$10.50	\$3.50	\$34.00
	Alcohol	\$20.00	N/A	N/A	\$20.00
After-hours	Drug Test	\$65.00	\$10.50	\$3.50	\$79.00
Post-Accident &	Alcohol Test	\$65.00	N/A	N/A	\$65.00

Observed Collection	Drug Test	\$30.00	N/A	N/A	\$30.00
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NOTE: The above testing fees are the current SFMTA Drug Test Costs and are subject to change.

(4) As to any applicant who applies for a safety-sensitive position, obtaining information from employers regulated by the U.S. Department of Transportation that have employed the applicant during any period within the prior two years of the date of the application

(5) If the Contractor elects options (1) or (2) above, the SFMTA is required to monitor the Contractor's compliance with federal requirements. Contractor must cooperate fully with the SFMTA or its consultants in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that SFMTA requires of Contractor.

6. Other Requirements.

A. **Hours of Operation:** Contractor must maintain normal business hours of at least 7:00 A.M. to 5:00 P.M., Monday through Friday, throughout the term of the Agreement, and be open at all times during that period.

B. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment, and facilities, as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City's business hours.

C. **Measurements:** Contractor shall provide qualified personnel at one or more reasonable and convenient locations in San Francisco to make measurements, fit and make proper alterations, and distribute uniforms and uniform accessories. The Contractor's changing/fitting areas must not be viewed from the public portion of the retail outlet and must provide a secure environment for the officers and their equipment at no additional cost to the City or City Employees.

D. **Infectious Disease Terms:** Contractors required to perform physical activities on City property that places Contractor or its employees in

proximity to medical patients, including but not limited to San Francisco Department of Public Health facilities where patient care or counseling is performed, shall be subject to the following requirements, as applicable:

(1) Infection Control, Health and Safety:

- a. Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.
- b. Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.
- c. Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.
- d. Contractor must demonstrate personnel policies/procedures for COVID-19 exposure control consistent with CDC recommendations, Cal/OSHA regulations, SF DPH Health Orders, Directives, and Guidance. The Contractor's attention is directed to Cal/OSHA's new 8 CCR 3205 COVID-19 Prevention Emergency Temporary Standard and/or any successor regulations.
- e. Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.
- f. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
- g. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
- h. Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.
- i. Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

(2) Aerosol Transmissible Disease Program, Health and Safety:

- a. Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol

Transmissible Diseases (<http://www.dir.ca.gov/Title8/5199.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

- b. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as ATD and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
- c. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
- d. Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents, and subcontractors, including personnel protective equipment such as respirators, and providing and documenting all appropriate training.
- e. If/when Contractor determines that its employees do not fall under the requirements of 8 CCR 5199, Contractor is directed to Cal/OSHA's Emergency Temporary Standard for COVID-19, 8 CCR 3205, which applies to all employers who do not fall under 8 CCR 5199 but for those employees who have a potential for exposure to COVID-19.

**Appendix D
Reserved (BAA).**

Appendix E
Reserved (Forms P12U-C and 12U-I).



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 230207

Bid/RFP #: TC71208.A

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Gloria Gill	628-652-1611
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
OCA Office of Contract Administration	gloria.gill@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Michelin North America	TELEPHONE NUMBER 864-546-8793
STREET ADDRESS (including City, State and Zip Code) 1 Parkway South, Greenville, SC 29615	EMAIL dan.obrien@michelin.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER TC71208.A	FILE NUMBER (If applicable) 230207
DESCRIPTION OF AMOUNT OF CONTRACT \$18,900,000		
NATURE OF THE CONTRACT (Please describe) Tire lease and associated services for SFMTA Buses, including tire installation and removal, tire rotation and maintaining tire pressure.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Garcin	Alexis	Board of Directors
2	Cooney	Matthew	Board of Directors
3	Bonnett	Luc	Board of Directors
4	Garcin	Alexis	Other Principal Officer
5	Baldwin	Jennie	Other Principal Officer
6	walker	Ellen	Other Principal officer
7	Gutbrod	Brian	Other Principal Officer
8	Foster	Kitt	Other Principal Officer
9	Dunn-Brown	Debra	Other Principal Officer
10	Christ	Brock	Other Principal Officer
11	Tarbet	Stephanie	COO
12			
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
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DATE: February 27, 2023
TO: Angela Calvillo, Clerk of the Board
FROM: Sailaja Kurella, Acting Director of Office of Contract Administration (OCA) and Purchaser
SUBJECT: Resolution to approve Term Contract 71208A – Tire Lease & Associated Services for SFMTA Buses & Trolleys

Enclosed is the resolution authorizing execution of Term Contract 71208A (PeopleSoft Contract ID 1000028080) with Michelin North America, Inc. for the lease of tires and associated services for SFMTA buses and trolleys. The contract has an initial contract not to exceed amount of \$13,500,000 for five years, and \$5,400,000 for two optional extension years, for a total not to exceed amount of \$18,900,000 and total contract duration of seven years, commencing on April 1, 2023, and ending on March 31, 2030.

The Office of Contract Administration (OCA) issued a competitive solicitation on September 15, 2022 to procure the products and services, under Sourcing Event 0000004939. The solicitation resulted in no responsive bidders. As such, the contractor, Michelin North America, Inc., was selected pursuant to Section 21.6 of the San Francisco Administration Code.

Description of Services

The San Francisco Municipal Transit Authority (SFMTA) presently operates over 300 trolleybuses. In addition to furnishing leased tires for SFMTA's buses and trolleys, the contractor will provide balancing and maintenance services, and furnish all tools and equipment necessary to perform its services. The not to exceed amount for this contract is based on past usage over prior contract term.

This contract represents a vital service for SFMTA. Without this contract, the City would be in danger of not having adequate services contracted to manage its fleet of buses and trolleys to keep the transit system operational.

If you have any questions or require additional information, please contact Shawn Peeters on my team at (628) 652-1626.

Enclosures:

1. Proposed Contract 1000028080 (Michelin North America, Inc.)
2. SFETH Form 126(f)2 - Contract 1000028080 (Michelin North America, Inc.)
3. SFETH Form 126(f)4 - Contract 1000028080 (Michelin North America, Inc.)
4. Resolution - Contract 1000028080 (Michelin North America, Inc.)