

STATE OF VERMONT PARTICIPATING ADDENDUM # 37857
FOR NASPO VALUEPOINT PURCHASING PROGRAM: TIRES, TUBES AND SERVICES

Led by the State of Iowa

Master Agreement #19101

Contractor: The Goodyear Tire & Rubber Company

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolio/tires-tubes-and-services-2019-2024/the-goodyear-tire-rubber-company/>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Tires, Tubes, and Services from Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference.
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.
5. **Contract Term.** The period of Contractor's performance shall begin on April 1, 2019 and end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. **Available Products and Services.** All products, services and accessories listed on the Contractor's NASPO ValuePoint Webpage may be purchased under this Participating Addendum. Contractor's awarded categories are:

6.1 Tires and Tubes Subcategories: Reference Section 2 Scope of Work of the Master Agreement for specific Project and Service Specifications.

- a. Pursuit and Performance Tires
- a. Automobile/Passenger Vehicles
- b. Light Duty Trucks: Radial
- c. Medium Commercial/Heavy Duty Trucks/Buses
- d. Off-the-Road (OTR): Radial and Bias

- e. Low Roll Resistance Tires
- f. Tubes

6.1.1 General Tire Specifications:

All tires will be of quality not less than the tires normally furnished in representative quantities by Original Equipment Manufacturers (OEM) as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tires supplied must be marked with Federal Department of Transportation (DOT) compliance symbol. Tires shall conform to all applicable Federal Specifications.

All tires, with the exception of tires which are not manufactured annually, must be NEW and must have been produced or manufactured within the last one (1) year prior to delivery to the Purchasing Entity. Tires which are not manufactured annually, such as low volume tires, will be accepted when produced or manufactured within the last two (2) years prior to delivery to the Purchasing Entity.

Should an Approved Distributor deliver a tire(s) with a manufacturing date exceeding the one-year limit, excluding low volume tires which are not manufactured annually, the Approved Distributor will pick up the expired tire(s) and replace them with tire(s) that meet the manufacturing date requirement for no additional fee to the Purchasing Entity.

All tires must have the size (including load range), manufacturer's name and DOT number, serial number and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. will not be acceptable.

Tires offered must have been tested to meet or exceed ASTM (American Society of Testing and Materials) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operational performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers.

6.2 Service Subcategories:

Contractor Pricing for each of the services listed below, which may be performed by their Approved Distributors, includes all parts and labor. Approved Distributors must honor the services pricing in this Contract.

The Contractor is responsible for the timeliness and quality of all services provide by the Approved Distributors.

Product installation and repairs, such as mounting, rotation, and balancing, must be in accordance with manufacturer's recommended procedures of warranted new virgin-product tires for each product subcategory. This Contract covers the following tire services. Service pricing is shown is identified under the Price File and Pricing Summary Sheets available on the website as identified above.

- a. Tire Installation and with purchase in store includes dismount of used tires and tubes

- b. Change tire, dismount and mount
 - c. Flat repair, remove, repair and mount
 - d. Flat repair, off vehicle
 - e. Rotate mounted tires (per tire)
 - f. New valve stem rubber or metal
 - g. Wheel balance – computer spin balance (per tire)
 - h. Wheel balance – computer spin balance and valve stem combination
 - i. Alignment Services – Standard two and four wheel alignments
 - j. Used tire recycle and disposal fee (per tire)
 - k. Bulk disposal of tires
 - l. Tire pressure monitoring system (TPMS)
7. **No Lease Agreements.** Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if the terms of the Master Agreement permit leasing.

8. **Requirements for Ordering.**

Orders: Any order placed by the State or an Additional Purchaser for a product or service available under this Participating Addendum (hereinafter "Purchase Order") shall be deemed to be a sale governed by the prices and other terms and conditions of this Participating Addendum, provided that the Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum. Purchase Orders may only be placed directly through Contractor or through an Approved Distributor and authorized by the State of Vermont (hereinafter "Distributor"). A Distributor shall not solicit or otherwise fulfill any Purchase Order unless the Distributor (i) is an entity approved by Contractor, in accordance with Contractor's established qualifying criteria, to provide sales and service support to participants in the NASPO ValuePoint Master Price Agreement on Contractor's behalf and (ii) has executed a separate agreement with the State that directly obligates Distributor to fulfill Purchase Orders in accordance with the terms and conditions set forth in this Participating Addendum and the Master Agreement.

Except as otherwise set forth in the Master Agreement, Contractor will not, directly or indirectly, restrict any Distributor's participation or ability to quote pricing for the State. Distributors shall not offer less favorable pricing discounts than the discounts established under the Master Agreement. However, a Distributor may offer any additional incremental discounts to the State or any Additional Purchaser, and such additional discounts, if offered, may be provided to the State or an Additional Purchaser in the discretion and at the sole legal obligation of the Distributor.

The Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.

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- a. **Method of Ordering for State Purchasers:** For any and all purchases made by State Purchasers under this Participating Addendum, a Purchase Order shall be issued when purchases are made. Written Purchase Orders must be used to order items available under this Participating Addendum. Verbal order shall not be accepted by Contractor or Contractor's Distributor unless or until a confirming Purchase Order is issued.
- b. In accordance with State of Vermont VISION Procedure #3, purchases made on contract by utilizing the State of Vermont Purchasing Card are exempt from requiring a Purchase Order.
- c. The Contractor acknowledges and agrees that any annual values or quantities included such bid solicitations are estimates only based on prior usage and that actual purchases may be higher or lower depending on Vermont's needs.

9. *Payment Provisions and Invoicing.*

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price File and Pricing Summary Sheets maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. In the discretion of the Purchasing Entity, retainage may be specified in a Purchase Order, in an amount mutually agreeable to the parties.
- e. Payment terms are Net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
- f. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
- g. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
- h. Unopened Products can be returned with no restocking fee up to 30 days from the date of receipt.
- i. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does

not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.

10. *Approved Distributors.*

- a. Distributors are available for this Participating Addendum if and to the extent approved by the State Chief Procurement Officer (each an “Distributor”). Any approved Distributor shall be issued a contract under the terms of this Participating Addendum which contract will be executed directly by and between the State and such approved Distributor.
- b. All State policies, guidelines and requirements shall apply to Distributors.
- c. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions set forth by this Participating Addendum. Contractor acknowledges that each and all of the promises it makes as “Contractor” in the Master Agreement and in this Participating Addendum will apply to all Products and Services provided hereunder, regardless of who is providing or licensing the Product or performing the work; provided however, Contractor shall not be liable for services performed hereunder by an Approved Distributor that is not owned or controlled by Contractor (“Independent Dealer”), and Contractor makes no representations or warranties for or on behalf of an Independent Dealer.
 - i. Contractor promises that Purchasing Entities will not be required to affirmatively accept additional terms and conditions to use or access any Product or Service purchased under this Participating Addendum, whether by electronic means (e.g., click-through) or otherwise.
 - ii. Contractor promises that each of the third parties whose Products and/or Services are available for purchase under this Participating Addendum understand and agree that the terms and conditions applicable to their Products and/or Services are as set forth in the Master Agreement, as amended, and are subordinate to the terms of this Participating Addendum and the NASPO ValuePoint Master Agreement Terms & Conditions and associated service model Exhibits.

11. *Reporting.* Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor’s reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

- a. The reports shall be an excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
- b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.

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12. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
13. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
14. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.
15. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:

a. **For the Contractor:**

Name: Jeff Goodenow
Phone: 330-796-4352
Email: jsgoodenow@goodyear.com

b. **For the State:**

Name: State of Vermont, Brian Berini
Address: 109 State Street, Montpelier, VT 05633-3001
Phone: 802/828-2217
Fax: 802/828-2222
Email: brian.berini@vermont.gov

16. Additional Terms and Conditions.

- a. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party.
- b. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. Contractor agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to

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its performance under this Agreement. Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

- c. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- d. **False Claims Act:** Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability.
- e. **Whistleblower Protections:** Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to Contractor or its agents prior to reporting to any governmental entity and/or the public.
- f. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Agreement.
- g. **Set Off:** The State may set off any sums which Contractor owes the State against any sums due Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.
- h. **Taxes Due to the State:** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- i. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- j. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

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- k. **Confidentiality:** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- l. **Marketing:** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- m. **Non-Appropriation:** If an order made under this Participating Addendum extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support the order, the State Purchaser may cancel the order at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. If the order is funded in whole or in part by Federal funds, and those Federal funds become unavailable or reduced, the State Purchaser may suspend or cancel the order immediately and shall have no obligation to pay from State revenues.
- n. **Continuity of Performance:** In the event of a dispute between Contractor and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- o. **State Facilities:** If the State makes space available to Contractor in any State facility during the term of this Agreement for purposes of Contractor's performance under this Agreement, Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

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By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Title: _____

By The Goodyear Tire and Rubber Company:

Date: 8/5/19

Signature: *Michael V. Dwyer*

Name: Michael V. Dwyer

Title: Chief Customer Officer, North America

