State of New Mexico  
General Services Department  
Purchasing Division  

Statewide Price Agreement Amendment  

Awarded Vendor  
0000097294  
Bridgestone Americas Tire Operations LLC  
200 4th Avenue South  
Nashville, TN 37201  

Telephone No.  (615) 937-3794  

Price Agreement Number: 90-0001-19-00049AB  

Price Agreement Amendment No.: Two  

Term: July 2, 2019 – March 31, 2024  

Procurement Specialist: Vanessa LeBlanc  

Telephone No.: (505) 827-0266  

Email: Vanessa.LeBlanc@state.nm.us  

Ship To:  
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.  

Invoice:  
As Requested at time of order  

Title: Tires, Tubes and Services  

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.  

Add Approved Dealer and attached Dealer Agreement to the Statewide Price Agreement:  
000116027  
Broadway Motors DBA Bill Williams Tire  
4300 Rankin Lane NE  
Albuquerque, NM 87106  
(505) 345-7242  

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.  

Accepted for the State of New Mexico  

Mark Hayden, New Mexico State Purchasing Agent  

Date: 8/13/2019  

Purchasing Division, 1100 St. Francis Drive 87503, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
BRIDGESTONE INDEPENDENT DEALER AGREEMENT
FOR TIRE RELATED SERVICES – RFP1118005083
NASPO ValuePoint Master Agreement 19102

The Participating State of New Mexico ("State") has entered into a contract with BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC ("Manufacturer") to provide tires and services to the State and political subdivisions within the State resulting from the State of Iowa Request for Proposal 1118005083. Specific Affiliated Dealers and Independent Dealers within Participating States will be authorized by the Manufacturer to provide tires, tubes and tire related services related to purchasing the tires (mounting tires, rotating tires, etc.). Capitalized terms used but not defined herein will have the meanings given to those terms in the Master Agreement (as defined in Section 4 below).

This Independent Dealer Agreement identifies the responsibilities of the Independent Dealer for the services provided by the Independent Dealer. Independent Dealers will need to sign the Independent Dealer Agreement before the Independent Dealer will be authorized to provide the services to the State. This Agreement will be effective on the last signature date below.

The Independent Dealer agrees to the following:

1. PROFESSIONAL SERVICES
   Independent Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work, if applicable. Independent Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the Participating State. Independent Dealer agrees to provide Manufacturer its current delivery status and submit updates within a maximum of thirty (30) days of when its delivery status changes.

2. INSURANCE REQUIREMENTS
   The Independent Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Independent Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to affect coverage available to the State without thirty (30) days written notice to the State.

   a. Liability insurance: a certificate of insurance evidencing insurance coverage for
general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than $1,000,000 per occurrence for bodily injury, property damage and personal injury; and, $2,000,000 general aggregate.

b. **Workers' compensation and employer's liability:** a certificate of insurance evidencing Independent Dealer is complying with any applicable State Workers’ Compensation or Employers Liability Insurance requirements.

c. **Garage liability including Garage Keepers Legal Liability:** a certificate evidencing coverage with a minimum limit of $100,000 and to include loss of use of state operated vehicle(s).

3. **HOLD HARMLESS**

The Independent Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Independent Dealer, its employees or subcontractors or volunteers.

4. **CONTRACT WITH MANUFACTURER**

The Independent Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 1118005083 (the “Master Agreement”) and the State’s Participating Addendum.

5. **Taxes:** The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

6. **Retainage:** Not Applicable – The Parties agree there is no retainage.

7. **Performance Bond:** Not Applicable. The Parties agree there is no Performance Bond.
8. Termination

A. Grounds: The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency’s uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure:

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

10. Appropriations: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the
Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

11. **Status of Contractor:** The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. **Conflict of Interest; Governmental Conduct Act:**

   A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

   B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

   1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

   2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

   3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

Bridgestone Independent Dealer Agreement
4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor’s representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor’s representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor’s representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

13. Amendment.
   A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

   B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

14. Merger: This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior
Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law: The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance: The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Workers Compensation: The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

18. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. Records and Financial Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

20. Invalid Term or Condition: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
21. **Enforcement of Agreement:** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

23. **Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the parties.

24. **Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

25. **Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

26. **Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

27. **New Mexico Employees Health Coverage:**
   a. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.
b. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

c. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

28. **Indemnification:** The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

29. **Default and Force Majeure:** The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

30. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

31. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities
under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

32. **Inspection of Plant:** The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor’s regular business hours and upon prior written notice, the Contractor’s plant or place of business, or any subcontractor’s plant or place of business, which is related to the performance of this Agreement.

33. **Commercial Warranty:** The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

34. **Condition of Proposed Items:** Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

35. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

36. **Confidentiality:** Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

37. **Contractor Personnel:**

   A. **Key Personnel.** Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

   Gregg Trosper

   B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of
equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor’s personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor’s personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency’s expectations.

38. **Incorporation by Reference and Precedence:** If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor’s best and final offer; and (3) the Contractor’s response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor’s best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor’s response to the request for proposals.

39. **Inspection:** If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor’s risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

40. **Inspection of Services:** If this Agreement is for the purchase of services, the following terms shall apply.

   A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

   B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

   C. The State Purchasing Agent or other party to this Agreement has the right to inspect
and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor’s performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

1. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
2. reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

1. by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
2. terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES’ TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.**

41. **Insurance:** If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. **Workers Compensation** (including accident and disease coverage) at the statutory limit. Employers liability: $100,000.

B. **Comprehensive general liability** (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

   a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.
   b. Property damage or combined single limit coverage: $1,000,000.
   c. Automobile liability (including non-owned automobile coverage): $1,000,000.
INDEPENDENT DEALER INFORMATION

Legal Status:  Corporation ☑ Partnership ☐ Sole Proprietor ☐

Independent Dealer Name: BROADWAY MOTORS DBA BILL WILLIAMSTIRE

Address: 4300 RANKIN LN NE

City, State, Zip: ALBUQUERQUE, NM 87106

Phone: 505-345-7242  Fax: NA

Contact Name: BRIAN B LATIMORE

Email Address: blatimore@billwilliamstire.com

Federal Tax ID #: 75-0154180

**************************************************************************

☐ Delivery Status: Check this box if you cannot provide delivery services.
d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

42. Arbitration: Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq.

43. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the authorized representative of the Independent Dealer signs and agrees to the terms of this Agreement.

[Signature]

Date: [Signature]

BRIAN B. LATIMORE REGIONAL MANAGER

Name and Title of Signer
(Type or Print)
State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
0000097294
Bridgestone Americas Tire Operations LLC
200 4th Avenue South
Nashville, TN 37201
Telephone No. (615) 937-3794

Price Agreement Number: 90-000-19-00049AB
Price Agreement Amendment No.: One
Term: July 2, 2019 – March 31, 2024

Procurement Specialist: Vanessa LeBlanc
Telephone No.: (505) 827-0266
Email: Vanessa.LeBlanc@state.nm.us

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at time of order

Title: Tires, Tubes and Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

Add the attached Approved Dealers and attached Dealer Agreements to the Statewide Price Agreement.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Mark Hayden, New Mexico State Purchasing Agent

Date: 7/19/2019

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472
State of New Mexico
General Services Department
Purchasing Division
Statewide Price Agreement #: 90-000-19-00049AB

Approved Dealers:

0000050170
Premier Tire & Service
7340 San Antonio Dr. NE
Albuquerque, NM 87109
(505) 821-5771

0000051113
Quinn Tire Inc.
1005 Cordova Pl
Santa Fe, NM 87505
(505) 982-1859

0000054693
Redburn Tire Company
3801 W. Clarendon
Phoenix, AZ 85019
(602) 233-2518

0000050280
Southwest General Tire
DBA: Cox Tire & Auto
3605 Osuna Rd NE
Albuquerque, NM 87109
(505) 344-7855

Redburn Tire Company Locations:

2023 Appaloosa
Sunland Park, NM 8863
(575) 589-1100

2502 W. Main St.
Farmington, NM 87401
(505) 327-4703

2645 Baylor Dr SE
Albuquerque, NM 87106
(505) 344-2300

450 Rob Roy Street
Gallup, NM 87301
(505) 722-7529
BRIDGESTONE INDEPENDENT DEALER AGREEMENT
FOR TIRE RELATED SERVICES – RFP1118005083
NASPO ValuePoint Master Agreement 19102

The Participating State of New Mexico ("State") has entered into a contract with BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC ("Manufacturer") to provide tires and services to the State and political subdivisions within the State resulting from the State of Iowa Request for Proposal 1118005083. Specific Affiliated Dealers and Independent Dealers within Participating States will be authorized by the Manufacturer to provide tires, tubes and tire related services related to purchasing the tires (mounting tires, rotating tires, etc.). Capitalized terms used but not defined herein will have the meanings given to those terms in the Master Agreement (as defined in Section 4 below).

This Independent Dealer Agreement identifies the responsibilities of the Independent Dealer for the services provided by the Independent Dealer. Independent Dealers will need to sign the Independent Dealer Agreement before the Independent Dealer will be authorized to provide the services to the State. This Agreement will be effective on the last signature date below.

The Independent Dealer agrees to the following:

1. PROFESSIONAL SERVICES
   Independent Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work, if applicable. Independent Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the Participating State. Independent Dealer agrees to provide Manufacturer its current delivery status and submit updates within a maximum of thirty (30) days of when its delivery status changes.

2. INSURANCE REQUIREMENTS
   The Independent Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Independent Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to affect coverage available to the State without thirty (30) days written notice to the State.

   a. Liability insurance: a certificate of insurance evidencing insurance coverage for
general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than $1,000,000 per occurrence for bodily injury, property damage and personal injury; and, $2,000,000 general aggregate.

b. **Workers’ compensation and employer’s liability:** a certificate of insurance evidencing Independent Dealer is complying with any applicable State Workers’ Compensation or Employers Liability Insurance requirements.

c. **Garage liability including Garage Keepers Legal Liability:** a certificate evidencing coverage with a minimum limit of $100,000 and to include loss of use of state operated vehicle(s).

3. **HOLD HARMLESS**

The Independent Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney’s fees for any or all injuries to persons, property or claims arising from acts or omissions of the Independent Dealer, its employees or subcontractors or volunteers.

4. **CONTRACT WITH MANUFACTURER**

The Independent Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 1118005083 (the “Master Agreement”) and the State’s Participating Addendum.

5. **Taxes:** The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor’s sole responsibility and should be reported under the Contractor’s Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

6. **Retainage:** Not Applicable – The Parties agree there is no retainage.

7. **Performance Bond:** Not Applicable. The Parties agree there is no Performance Bond.

Bridgestone Independent Dealer Agreement
8. **Termination**

A. **Grounds:** The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency’s uncured, material breach of this Agreement.

B. **Notice; Procuring Agency Opportunity to Cure:**

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

10. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the
Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

11. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency’s contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency’s making this Agreement;
4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator’s family; (iii) the Contractor is not a business in which a legislator or a legislator’s family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator’s family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor’s representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor’s representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor’s representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

13. Amendment.
A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

14. Merger: This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof; and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior
Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. **Penalties for violation of law:** The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

16. **Equal Opportunity Compliance:** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. **Workers Compensation:** The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

18. **Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. **Records and Financial Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

20. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
21. **Enforcement of Agreement:** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

23. **Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the parties.

24. **Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

25. **Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

26. **Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

27. **New Mexico Employees Health Coverage:**
   a. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.
b. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

c. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

28. **Indemnification:** The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

29. **Default and Force Majeure:** The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor’s default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

30. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

31. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities.
under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

32. **Inspection of Plant:** The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor’s plant or place of business, or any subcontractor’s plant or place of business, which is related to the performance of this Agreement.

33. **Commercial Warranty:** The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

34. **Condition of Proposed Items:** Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

35. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

36. **Confidentiality:** Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

37. **Contractor Personnel:**
   
   A. **Key Personnel.** Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

   Gregg Trosper

   B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of
equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor’s personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency’s expectations.

38. Incorporation by Reference and Precedence: If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor’s best and final offer; and (3) the Contractor’s response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor’s best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor’s response to the request for proposals.

39. Inspection: If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor’s risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

40. Inspection of Services: If this Agreement is for the purchase of services, the following terms shall apply.
A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
C. The State Purchasing Agent or other party to this Agreement has the right to inspect
and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

1. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
2. reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

1. by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
2. terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

41. **Insurance:** If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

   a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.
   b. Property damage or combined single limit coverage: $1,000,000.
   c. Automobile liability (including non-owned automobile coverage): $1,000,000.
general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than $1,000,000 per occurrence for bodily injury, property damage and personal injury; and, $2,000,000 general aggregate.

b. **Workers' compensation and employer's liability**: a certificate of insurance evidencing Independent Dealer is complying with any applicable State Workers' Compensation or Employers Liability Insurance requirements.

c. **Garage Liability including Garage Keepers Legal Liability**: a certificate evidencing coverage with a minimum limit of $100,000 and to include loss of use of state operated vehicle(s).

3. **HOLD HARMLESS**

The Independent Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees, for any or all injuries to persons, property or claims arising from acts or omissions of the Independent Dealer, its employees or subcontractors or volunteers.

4. **CONTRACT WITH MANUFACTURER**

The Independent Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 11-18005083 (the "Master Agreement") and the State's Participating Addendum.

IN WITNESS WHEREOF, the authorized representative of the Independent Dealer signs and agrees to the terms of this Agreement.

Independent Dealer

[Signature]

[Date] 6/21/19

**Christopher Sorensen**

Active Owner

Name and Title of Signer

(Type or Print)

Bridgestone Independent Dealer Agreement
INDEPENDENT DEALER INFORMATION

Legal Status: Corporation ☑ Partnership ☐ Sole Proprietor ☐

Independent Dealer Name: Premier Tire & Service
Address: 7340 San Antonio Dr NE
City, State, Zip: Albuquerque, NM 87109
Phone: 505 821-5771 Fax: 505 821-7648
Contact Name: Chris Sanchez
Email Address: Premier Tire 1@msn.com
Federal Tax ID #: 850389817

☐ Delivery Status: Check this box if you cannot provide delivery services.

Bridgestone Independent Dealer Agreement
d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

42. Arbitration: Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq.

43. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the authorized representative of the Independent Dealer signs and agrees to the terms of this Agreement.

Independent Dealer

[Signature]

[Date]

[Name and Title of Signer]

(TYPE OR PRINT)
INDEPENDENT DEALER INFORMATION

Legal Status: Corporation ☑  Partnership ☐  Sole Proprietor ☐

Independent Dealer Name: Quian Tire Inc

Address: 1005 Cordova Pl

City, State, Zip: Santa Fe, NM 87505

Phone: 505 982 1859  Fax: _________________

Contact Name: Dan Kemano

Email Address: Quían Tire @ zianet.com

Federal Tax ID #: 8504163468

Bridgestone Dealer #: 793417

☐ Delivery Status: Check this box if you cannot provide delivery services.
general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than $1,000,000 per occurrence for bodily injury, property damage and personal injury; and, $2,000,000 general aggregate.

b. Workers' compensation and employer's liability: a certificate of insurance evidencing Independent Dealer is complying with any applicable State Workers' Compensation or Employers Liability Insurance requirements.

c. Garage liability including Garage Keepers Legal Liability: a certificate evidencing coverage with a minimum limit of $100,000 and to include loss of use of state operated vehicle(s).

3. HOLD HARMLESS

The Independent Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Independent Dealer, its employees or subcontractors or volunteers.

4. CONTRACT WITH MANUFACTURER

The Independent Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 1118005083 (the "Master Agreement") and the State's Participating Addendum.

IN WITNESS WHEREOF, the authorized representative of the Independent Dealer signs and agrees to the terms of this Agreement.

Independent Dealer

Signature

June 20, 2019

Date

J.D. Chastain, President

Name and Title of Signer

(Type or Print)
INDEPENDENT DEALER INFORMATION

Legal Status:  Corporation  X  Partnership  II  Sole Proprietor  II

Independent Dealer Name:  REDBURN TIRE COMPANY

Address:  3801 W. Clarendon

City, State, Zip:  Phoenix, AZ 85019

Phone:  602-272-7601  Fax: 602-233-2518

Contact Name:  Sheila Harmon

Email Address:  sheila@ttoo.net

Federal Tax ID #:  86-0360769

☐ Delivery Status: Check this box if you cannot provide delivery services.
general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than $1,000,000 per occurrence for bodily injury, property damage and personal injury; and, $2,000,000 general aggregate.

b. Workers' compensation and employer's liability: a certificate of insurance evidencing Independent Dealer is complying with any applicable State Workers' Compensation or Employers Liability Insurance requirements.

c. Garage liability including Garage Keepers Legal Liability: a certificate evidencing coverage with a minimum limit of $100,000 and to include loss of use of state operated vehicle(s).

3. HOLD HARMLESS

The Independent Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Independent Dealer, its employees or subcontractors or volunteers.

4. CONTRACT WITH MANUFACTURER

The Independent Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 1118005083 (the "Master Agreement") and the State's Participating Addendum.

IN WITNESS WHEREOF, the authorized representative of the Independent Dealer signs and agrees to the terms of this Agreement.

Independent Dealer

[Signature]

[Name and Title of Signer]

(Date)

Bridgestone Independent Dealer Agreement
INDEPENDENT DEALER INFORMATION

Legal Status: Corporation ☑ Partnership ☐ Sole Proprietor ☐

Independent Dealer Name: Southwest General Tire dba Cox Tire & Auto

Address: 3605 Osuna Rd NE

City, State, Zip: Albuquerque, NM 87107

Phone: 505-344-7855 Fax: 505-545-8558

Contact Name: Robert Cox or Michael Chavez

Email Address: RACox@CoxAce.COM

Federal Tax ID #: 85-0393368

******************************************************************************

☐ Delivery Status: Check this box if you cannot provide delivery services.
State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendor
0000097294
Bridgestone Americas Tire Operations LLC
200 4th Avenue South
Nashville, TN 37201

Telephone No. (615) 937-3794

Price Agreement Number: 90-000-19-00049AB
Payment Terms: See Contract
F.O.B.: See Contract
Delivery: See Contract

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested

Procurement Specialist: Vanessa LeBlanc
Telephone No.: (505) 827-0266
Email: Vanessa.LeBlanc@state.nm.us

Title: Tires, Tubes and Services

Term: July 2, 2019 through March 31, 2024

This Price Agreement is made subject to the “terms and conditions” as indicated in the attached Participating Addendum. Please see attached Participating Addendum and Local Dealer Agreements.
Master Agreement #: 19102

Contractor: BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Participating Entity: STATE OF NEW MEXICO

The following products or services are included in this contract portfolio:
- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

The following products or services are not included in this agreement:
- *Product modifications.*
- *Installation services.*

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the *Tires, Tubes & Services* led by the State of Iowa, for use by state agencies and other entities located in the Participating State authorized by that State’s statutes to utilize State contracts with the prior approval of the State’s Chief Procurement Official.

2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the *State of New Mexico.* Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

<table>
<thead>
<tr>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact: Bridgestone Americas Tire Operations, LLC - Gregg Trosper</td>
</tr>
<tr>
<td>Address: 200 4th Avenue South, Nashville, TN 37201</td>
</tr>
<tr>
<td>Telephone: (615) 937-3794</td>
</tr>
<tr>
<td>Email: <a href="mailto:trospergregg@bfusa.com">trospergregg@bfusa.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Participating Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: State of New Mexico – Vanessa LeBlanc</td>
</tr>
<tr>
<td>Address: 1100 St. Francis Drive, Santa Fe, NM 87505</td>
</tr>
<tr>
<td>Telephone: (505) 827-0266</td>
</tr>
<tr>
<td>Fax: (505) 827-2484</td>
</tr>
<tr>
<td>Email: <a href="mailto:Vanessa.LeBlanc@state.nm.us">Vanessa.LeBlanc@state.nm.us</a></td>
</tr>
</tbody>
</table>
4. Participating Entity Modifications or Additions to the Master Agreement
These modifications or additions apply only to actions and relationships within the Participating Entity:

Participating Entity must check one of the boxes below.

[ ] No changes to the terms and conditions of the Master Agreement are required.

[X] The following changes are modifying or supplementing the Master Agreement terms and conditions.

5. Taxes: The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE. The payment of taxes for any money received under this Agreement shall be the Contractor’s sole responsibility and should be reported under the Contractor’s Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

6. Retainage: Not Applicable – The Parties agree there is no retainage.

7. Performance Bond: Not Applicable. The Parties agree there is no Performance Bond.

8. Term: THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on March 31, 2024 unless terminated pursuant to this Agreement’s Termination Clause or Appropriations Clause. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in any case the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

9. Termination
A. Grounds: The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency’s uncured, material breach of this Agreement.
B. **Notice: Procuring Agency Opportunity to Cure:**

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCUREMENT AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.*

10. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding,
the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

11. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. Conflict of Interest: Governmental Conduct Act:
A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
   1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency’s contracting process;
   2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
   3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this
transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

13. Amendment.
A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement,
pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

14. Merger: This Agreement, the Master Agreement, and all other documents referenced herein and therein incorporate all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law: The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance: The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Workers Compensation: The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

18. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. Records and Financial Audit: The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of
final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments. Any audits or inspections conducted under this Clause 19 require reasonable prior written notice to Contractor, may be performed only during normal business hours, and will be at the cost of the Procuring Agency unless such audit or inspection reveals material invoicing errors by Contractor.

20. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. **Enforcement of Agreement:** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. **Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

23. **Notices:** Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

<table>
<thead>
<tr>
<th>Name:</th>
<th>State of New Mexico -- Vanessa LeBlanc</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>1100 St. Francis Drive, Santa Fe, NM 87505</td>
</tr>
<tr>
<td>Telephone:</td>
<td>(505) 827-0266</td>
</tr>
<tr>
<td>Fax:</td>
<td>(505) 827-2484</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Vanessa.LeBlanc@state.nm.us">Vanessa.LeBlanc@state.nm.us</a></td>
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To the Contractor:

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<tr>
<td>Address:</td>
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<td>Email:</td>
<td><a href="mailto:trospergregg@bfusa.com">trospergregg@bfusa.com</a></td>
</tr>
</tbody>
</table>
24. Succession: This Agreement shall extend to and be binding upon the successors and assigns of the parties.

25. Headings: Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

26. Default/Breach: In case of material breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs.

27. Equitable Remedies: Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

28. New Mexico Employees Health Coverage:
   a. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

   b. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state, subject to the same limitations set forth in Clause 19.

   c. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.
29. **Employee Pay Equity Reporting:** Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreement, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

30. **Indemnification:** The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail. Notwithstanding the foregoing: (a) Contractor is not responsible for the actions or omissions of Independent Dealers (as defined in the Master Agreement), which are not officers, employees, servants, subcontractors, agents, or other similar designations of Contractor, as such terms may be used in this Agreement or the other agreements governing Contractor’s provision of the tires, tubes, and services; and (b) Contractor’s obligations pursuant to this Clause shall not apply to the extent that any of the liabilities referenced above results from the negligence of the State of New Mexico or any of its officers, employees, agents, and representatives.
31. **Default and Force Majeure:** The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, raw material shortages, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

32. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

33. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency. Contractor's use of the Independent Dealers will not be deemed a violation of this Clause 33 or Clause 32.

34. **Inspection of Plant:** The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business that is related to the performance of this Agreement.

35. **Commercial Warranty:** The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by Standard Limited Warranty – see Master Agreement.

36. **Condition of Proposed Items:** Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.
37. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

38. **Confidentiality:** Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination; provided that Contractor may keep copies of such Confidential Information to the extent it is required to do so under applicable law or internal corporate recordkeeping requirements.

39. **Contractor Personnel:**  
[Intentionally Left Blank].

40. **Incorporation by Reference and Precedence:** If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor’s best and final offer; and (3) the Contractor’s response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the order of precedence indicated in Section 1(1) of the Master Agreement.

41. **Inspection:** If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor’s risk and expense (provided that such personal property will be held for Contractor’s benefit) promptly after notice of rejection and shall not be allowable as billable items for payment.

42. **Inspection of Services:** If this Agreement is for the purchase of services, the following terms shall apply.
   A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
   B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to
this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor’s performance and will be subject to the limitations described in Clause 19.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:
   (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
   (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:
   (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
   (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES’ TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

43. Insurance: If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

   A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: $100,000.
B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
   a. General Liability: $2,000,000 per occurrence.
   b. Automobile liability (including non-owned automobile coverage); $1,000,000.
   c. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured to the extent Contractor is required to provide indemnification under this Agreement and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation, each only to the extent Contractor is required to provide indemnification under this Agreement.

44. Arbitration: Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq.

45. New Mexico Administration Reporting and Fees: All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of percent (1.00 %) for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. “Gross total sales” means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows.

<table>
<thead>
<tr>
<th>Quarter:</th>
<th>Period End:</th>
<th>Report Due:</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>Second</td>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>Third</td>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>Forth</td>
<td>June 30</td>
<td>July 31</td>
</tr>
</tbody>
</table>

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the “State Purchasing Division.” This contract
number 90-000-19-00049AB must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

46. Lease Agreements: “Reserved”

47. Subcontractors: All contractors, dealers, and resellers authorized in the State of New Mexico, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor’s dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

48. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

<table>
<thead>
<tr>
<th>Participating Entity:</th>
<th>Contractor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of New Mexico</td>
<td>Bridgestone Americas Tire Operations LLC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Signature:</th>
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<tbody>
<tr>
<td>[Signature]</td>
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</table>

<table>
<thead>
<tr>
<th>Name:</th>
<th>Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark Hayden</td>
<td>Gregg Trosper</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
<th>Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Purchasing Agent</td>
<td>Manager Gov &amp; Military Sales</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-10-2019</td>
<td>06/06/2019</td>
</tr>
</tbody>
</table>

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