



December 5, 2023

Madison City Police Department
100 Hughes Road
Madison, Alabama 35758

Dear Chief Gandy:

This letter agreement (this “**Agreement**”) is entered into and effective January 1, 2024 (the “**Effective Date**”) and sets forth the terms and conditions whereby Sumitomo Rubber USA, LLC (“**SRUSA**”) grants permission for the Madison Police Department (the “**Department**”) to use its tire test course and facility for driving practice.

1. PROPERTY USE

- 1.1 SRUSA’s tire test facility is located at 3255 Wall Triana Hwy SW, Huntsville, Alabama 35824 (the “**Facility**”)
- 1.2 SRUSA agrees to rent its Facility to the Department on “Open” or non-scheduled tire test days, from 8 am to 4 pm, CST (the “**Rental Period**”). SRUSA reserves the right to cancel due to last minute or urgent tire test needs. The parties agree to cooperate on scheduling, and SRUSA will call or provide e-mail notice to Department’s designated representative as soon as reasonably possible if it intends to reschedule Department activities.
- 1.3 During the Rental Period, the Department shall be the only party renting and using the Facility. The Facility shall be closed to the general public, and SRUSA shall only allow Facility employees access to the Facility during the Rental Period.

2. FEE

- 2.1 SRUSA agrees to allow The Department access to its Facility during the rental period at no charge to The Department, subject to the terms of this Agreement.

3. PROPERTY DAMAGE

The Department shall be responsible for any and all damage to the premises (including without limitation any resources, facilities, premises, or property of SRUSA or the premises) caused by the Department’s activities. Upon such occurrence, SRUSA shall provide written notice to the Department of such damage and proof that the Department’s activities caused the damage, as well as estimated costs associated with repair. Subject to applicable law, the parties will cooperate on repairs and

reimbursements. If SRUSA completes contracting repair work, then it will invoice the Department for such amount and provide contractor invoices to verify the amounts spent. The Department shall either pay or contest such amount within thirty (30) days receipt of such invoice.

No physical alteration to the premises (including without limitation installation or modification of new or existing structures, alteration of any trees or other plants, and disturbance of any ground surface or cover) may be made without SRUSA's prior written consent.

4. **RELATIONSHIP OF THE PARTIES**

This Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between SRUSA and the Department for any purpose. The Department has no authority (and shall not hold itself out as having authority) to bind the SRUSA, and the Department shall not make any agreements or representations on SRUSA's behalf without the SRUSA's prior written consent.

5. **CONFIDENTIALITY**

5.1 The Department, on behalf of its employees, representatives, agents, successors and assigns, acknowledges that it may have access to information that is treated as confidential and proprietary by SRUSA, including, without limitation, testing activities, and any trade secrets, technology, information pertaining to business operations and strategies, and the tire testing, pricing, and marketing, marketing, finances, sourcing, personnel or operations of SRUSA, its affiliates or their suppliers or subcontractors, in each case whether spoken, printed, electronic, or in any other form or medium (collectively, the "**Confidential Information**"). Department agrees to treat all Confidential Information as strictly confidential, not to disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of SRUSA in each instance, and not to use any Confidential Information for any purpose. The Department shall notify SRUSA immediately in the event it becomes aware of any loss or disclosure of any Confidential Information.

5.2 Confidential Information shall not include information that:

- (a) is or becomes generally available to the public other than through the Department's breach of this Agreement;

- (b) is communicated to the Department by a third party that had no confidentiality obligations with respect to such information; or
- (c) is required to be disclosed by law, including without limitation, pursuant to the terms of a court order; provided that the Department has given SRUSA prior notice of such disclosure and an opportunity to contest such disclosure.

5.3 The Department is prohibited from taking pictures or video of SRUSA's property or activities during the Rental Period.

6. REPRESENTATIONS AND WARRANTIES

6.1 SRUSA represents and warrants to the Department that:

- (a) SRUSA has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of SRUSA's obligations in this Agreement;
- (b) SRUSA's entry into this Agreement with the Department does not and will not conflict with or result in any breach or default under any other agreement to which SRUSA may be subject;
- (c) SRUSA shall perform under this Agreement in compliance with all applicable federal, state, and local laws and regulations.

6.2 The Department hereby represents and warrants to SRUSA that:

- (a) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder; and
- (b) the execution of this Agreement by its representative, whose signature is set forth at the end hereof, has been duly authorized by all necessary corporate action.

7. INDEMNIFICATION

7.1 To the extent allowed by law, the Department shall indemnify and hold harmless the SRUSA and its affiliates and their officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from:

- (a) bodily injury or death of any person or damage to real or tangible, personal property resulting from the Department's wilful, wanton, or negligent acts or omissions; and
- (b) The Department's breach of any representation, warranty, or obligation under this Agreement.

8. TERM & TERMINATION

- 8.1 The term of this Agreement shall commence on the Effective Date and shall continue through and until 11:59 p.m. EST on December 31, 2024, unless and until earlier terminated as provided hereunder.
- 8.2 Either party may terminate this Agreement at any time without cause, but in the event of termination shall provide the other party a thirty (30) day notice prior to termination.

9. ASSIGNMENT

The Department shall not assign any rights, or delegate or subcontract any obligations, under this Agreement without the SRUSA's prior written consent. Any assignment in violation of the foregoing shall be deemed null and void. SRUSA may freely assign its rights and obligations under this Agreement at any time. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding upon, and be enforceable against, each of the parties hereto and their respective successors and assigns.

10. MISCELLANEOUS

- 10.1 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if the party giving the Notice has complied with the requirements of this Section.
- 10.2 This Agreement, together with any other documents incorporated herein by reference and related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and

supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

- 10.3 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived, only by a written document signed by each party to this Agreement or, in the case of waiver, by the party or parties waiving compliance.
- 10.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without giving effect to any choice or conflict of law provision or rule. Each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in Madison County, Alabama, in any legal suit, action or proceeding arising out of or based upon this Agreement or the Services provided hereunder.
- 10.5 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 10.6 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

If this letter accurately sets forth our understanding, kindly execute the enclosed copy of this letter and return it to the undersigned.

SIGNATURE PAGE TO FOLLOW

Very truly yours,

SUMITOMO RUBBER USA, LLC

By: David Johansen 12/5/2023
Name: David Johansen
Title: Vice President, Technical

ACCEPTED AND AGREED:

CITY OF MADISON

By:
Name: Paul Finley
Title: Mayor

Attest: _____
Lisa D. Thomas
City Clerk-Treasurer