

CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

NORTHLAND JCB

This AGREEMENT, dated 6/5/19, is made and entered into by and between the Metropolitan Area Planning Council ["MAPC"], a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Greater Boston Police Council, Inc. ["GBPC"] and its Members ["Buyers"] pursuant to Chapter 7, Section 22B of the Massachusetts General Laws and without liability to MAPC, and Northland JCB ["Vendor"], with its principal office at 6 Jonspin Road, Wilmington, MA 01887.

Witnesseth that the parties AGREE as follows:

Article I

General Description of the Work

Pursuant to the Terms and Conditions of this AGREEMENT, including any Additional and Special Terms and Conditions listed in Exhibit C, the Request for Proposals ["RFP"] – RFP #GBPC 2019 Heavy and Medium Duty Public Works Construction Equipment.

1. RFP #GBPC 2019 Heavy and Medium Duty Public Works Construction Equipment attached in Exhibit B; and the Vendor's Price Proposal and Technical Proposal attached in Exhibit F, MAPC hereby engages the Vendor to provide the following goods and/or services to the Buyers: Heavy and Medium Duty Public Works Construction Equipment.

Article II

Services of the Vendor

2. The Vendor will provide the goods and/or services as described in the RFP cited in Article 1 (above).
3. The Vendor shall report, and be responsible, to MAPC or its designee as set forth on Exhibit A.
4. There shall be no amendment to this AGREEMENT without the written approval of MAPC. MAPC shall be under no obligation to pay for any goods provided or services performed by the Vendor.
5. The Vendor represents and warrants to MAPC as follows:

- i. That it and all its personnel (whether employees, agents or independent Vendors are qualified and duly licensed as required by law and/or local municipal code to provide services and/or goods required by this AGREEMENT.
- ii. That it further agrees to perform services, including manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
- iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.
- iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

### Article III

#### Performance of the Vendor

6. In the performance of service under this AGREEMENT, the **Vendor** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **Vendor** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent **Vendor** relationship.
7. The **Vendor** agrees to be responsible for and warrantee the work of its subcontractors listed in Exhibit D and to ensure their compliance with all legal, quality and performance requirements of the Request for Proposals ["RFP"] – RFP No. attached in Exhibit B; and the **Vendor's** Price Proposal and Technical Proposal attached in Exhibit E. The **Vendor** may not use subcontractors not named in Exhibit D without the prior written consent of **MAPC**, which will not unreasonably be withheld.

### Article IV

#### Time of Performance

8. Time shall be of the essence in relation to **Vendor's** performance under this AGREEMENT. **Vendor** shall complete performance as promised in its quote that accompanies the **Buyer's** purchase order or other document confirming its authorization to the **Vendor** to proceed. Reasonable extensions shall be granted by the **Buyer** at the written request of the **Vendor**, provided the justifying circumstances are documented by and are beyond the reasonable control of **Vendor** and without fault of **Vendor**. In the event of such an extension, all other terms and conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.
9. In the absence of such an extension, liquidated damages shall be due the **Buyer** in the amount of 0.1% (one-tenth of one percent) of the face value of the **Vendor's** quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **Vendor's** final invoice or taken by **Buyer** as a deduction to such final invoice.
10. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either **Buyer** or **Vendor** through the American Arbitration Association within 10 (ten) business days of

written notice given by the party declaring impasse. Vendor and Buyer agree to fully comply with the arbitrator's decision within a reasonable time.

#### Article V

##### Revisions in the Work to Be Performed

11. If during the Vendor's Time of Performance, Buyer requires revisions or other changes to be made in the scope or character of the work to be performed, Buyer will promptly notify Vendor in writing. For any changes to the scope of work, Vendor shall provide Buyer with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of Buyer, which shall be construed as a modification to Buyer's original purchase order.
12. Buyer will neither unreasonably request revisions nor unreasonably withhold final acceptance of delivered products.

#### Article VI

##### Term of Agreement

13. The term of this AGREEMENT shall commence upon execution and will continue until June 1, 2020, or until otherwise terminated as provided by this AGREEMENT or the RFP.
14. MAPC reserves the right at its sole discretion to extend the contract for up to two (2) additional one-year terms ending June 1, 2021 and June 1, 2022 respectively.
15. In the event new contracts have not been procured and awarded before the end of a second contract extension, MAPC reserves the right at its sole discretion to extend the contract for an additional period of time until new contracts have been procured and awarded. However, in no instance shall any contract term, including extensions, exceed three (3) years in total.
16. The Vendor agrees to perform promptly upon execution of this AGREEMENT and will diligently and faithfully perform in accordance with the provisions hereof.

#### Article VII

##### Orders, Fees, Invoices, and Payments

17. Orders, fees, invoices, and payment shall be processed and paid as specified in Section 10-Terms & Conditions of the RFP.

#### Article VIII

##### Assignment

18. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

## Article IX

### Indemnification

19. The **Vendor** agrees to indemnify and save **MAPC, GBPC**, and the **Buyers** harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by the **Vendor** (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of the **Vendor**. The **Vendor** shall reimburse **MAPC, GBPC**, and the **Buyers** for any and all costs, damages, and expenses including reasonable attorney's fees which **MAPC, GBPC**, and the **Buyers** pays, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of **MAPC, GBPC**, and the **Buyers** expressed or not expressed in the **RFP** and with respect to this AGREEMENT.

## Article X

### Insurance

20. Before performing under this AGREEMENT, the **Vendor** shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the **RFP** and provide written documentation of such in the form specified in the **RFP**.
21. The **Vendor** shall give **MAPC** twenty (20) days written notice and copies of documentation in the event of any change or cancellation of coverage.

## Article XI

### Termination of Agreement

22. Either **MAPC** or the **Vendor** may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and satisfactory manner.
23. **MAPC** shall have the right to terminate this AGREEMENT for its convenience upon fourteen (14) calendar days of written notice.
24. Following termination of this AGREEMENT, the parties shall be relieved of all further obligations hereunder except that:
25. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **Vendor** in the event of termination.
26. The **Vendor** shall remain liable for any damages, expenses or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

## Article XII

### Entirety of Agreement

27. This AGREEMENT, together with its Exhibits, the **RFP** referenced above and its Addenda, the

required supplemental documents and any additional exhibits, constitute the entire AGREEMENT between MAPC and the Vendor with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, email, fax or courier to the persons designated in Exhibit A.

28. The provisions of the RFP and the Vendor's Proposal are incorporated herein by reference. In the event of any conflict among the Contract Documents, the documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Contract (if any)
Second Priority:	Contract
Third Priority:	Addenda to the RFP (if any)
Fourth Priority:	RFP
Fifth Priority:	Vendor's Proposal

#### Article XIII

##### Severability

29. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

#### Article XIV

##### Governing Law and Jurisdiction

30. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. MAPC, Vendors, and Buyers agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

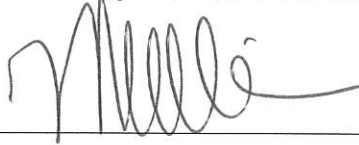
#### Article XV

##### Notice

31. Except as otherwise expressly provided in this AGREEMENT, any decision or action by MAPC relating to this AGREEMENT, its operation, or termination, shall be made only by MAPC or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For **MAPC** by or on behalf of the Greater Boston Police Council and its Members:

x  \_\_\_\_\_

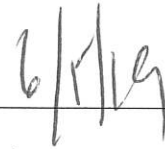
Signature

Marc Draisen \_\_\_\_\_

Name

Executive Director \_\_\_\_\_

Title

 \_\_\_\_\_

Date

For the **VENDOR**:

x  \_\_\_\_\_

\* Signature

Alan Hammersley \_\_\_\_\_

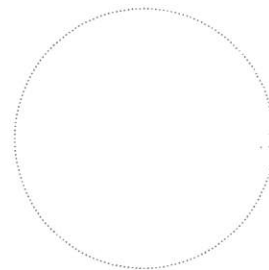
\* Name

President & Chief Executive Officer \_\_\_\_\_

\* Title

May 17, 2019 \_\_\_\_\_

\* Date



\* Affix Corporate Seal

(or mark "n/a")

EXHIBIT A

Notice Addressees

For MAPC:

Marc Draisen

Name

Executive Director

Title

MAPC

Organization

60 Temple Place

Street Address

Boston, MA 02111

City, State, ZIP

617.933.0700

Phone

617.482.7185

Fax

mdraisen@mapc.org

email

For the VENDOR:

Alan Hammersley

\* Name

President & CEO

\* Title

Alta Enterprises, LLC - dba NITCO, LLC

\* Organization (as used for tax filing)

6 Jonspin Road

\* Street Address

Wilmington, MA 01887

\* Street Address

978-658-5900

\* Phone

978-658-8837

\* Fax

mark.silva@northlandjcb.com

\* (contact) email

Mark Silva  
President – Construction Group  
Northland JCB

EXHIBIT B

Request for Proposal # GBPC 2019 Heavy and Medium Duty Public Works Construction  
Equipment

[The RFP document and all related RFP documents are incorporated by reference herein. The original documents are held at the MAPC office.]



EXHIBIT C

Special Terms & Conditions

1. **Vendor** attests to and warrants any and all representations made in **Vendor's** Complete Price and Complete Technical Proposals including, but not limited to, any and all representations and warranties made by it that exceed those of the manufacturers of products and assemblies used in its manufacture of subject apparatus and fitments.
2. **Vendor** shall indemnify **Buyer** for any and all loss of value of manufacturers' warranties incurred prior to **Vendor's** complete performance with regard to each individual **Buyer**.
3. All pricing offered under this contract shall be F.O.B. destination, freight prepaid by the by the **Vendor**, to the **Buyer's** receiving point. Responsibility until final inspection and acceptance, and liability for loss or damage for all order shall remain with the **Vendor** when all responsibility shall pass to the **Buyer**, except for the responsibility for latent defect, fraud and the warranty obligations

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EXHIBIT D

Subcontractors

1.

EXHIBIT E

Other Documents:

1. Insurance Guarantee(s)\_\_(to be provided for Contract execution)

EXHIBIT F

1. **Vendor's Complete Technical Proposal**
2. **Vendor's Complete Price Proposal**

[The **Vendor's Complete Technical Proposal** and **Vendor's Complete Price Proposal** and all related documents included within those proposals are incorporated by reference herein. The original documents are held at the MAPC office.]



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/17/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Guy Hurley, LLC 1080 Kirts Blvd., Suite 500 Troy MI 48084		<b>CONTACT NAME:</b> Holly Tabbert <b>PHONE (A/C, No, Ext):</b> (248) 519-1435 <b>FAX (A/C, No):</b> (248) 519-1401 <b>E-MAIL ADDRESS:</b> htabbert@ghbh.com	
<b>INSURED</b> NITCO, LLC 6 Jonspin Road Wilmington MA 01887		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> PHX Phoenix Insurance Company <b>INSURER B:</b> COF Charter Oak Fire Insurance Company <b>INSURER C:</b> TTL Travelers property Cas Co of Amer <b>INSURER D:</b> PHX Phoenix Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** 19-20 Master                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			6306N05089A	4/30/2019	4/30/2020	EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000	
	<input checked="" type="checkbox"/> XCU Included						MED EXP (Any one person) \$ 10,000	
	<input checked="" type="checkbox"/> Contractual Liability						PERSONAL & ADV INJURY \$ 1,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 5,000,000				
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000	
	OTHER:						\$	
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			8106N043916	4/30/2019	4/30/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO	X					BODILY INJURY (Per person) \$	
	<input type="checkbox"/> ALL OWNED AUTOS						<input type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						<input checked="" type="checkbox"/> NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident) \$
					\$			
C	<input checked="" type="checkbox"/> UMBRELLA LIAB			CUP6N120533	4/30/2019	4/30/2020	EACH OCCURRENCE \$ 15,000,000	
	<input type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR					AGGREGATE \$ 15,000,000	
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	<input type="checkbox"/> CLAIMS-MADE	X				\$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			UB6N046064	4/30/2019	4/30/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000	
C	Inland Marine			QT6603N263250	4/30/2019	4/30/2020	Leased/Rented Equipment \$2,500,000	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Metropolitan Area Planning Council and Greater Boston Police Council are Additional Insured for General Liability when required by written contract.

<b>CERTIFICATE HOLDER</b> Metropolitan Area Planning Council Greater Boston Police Council 60 Temple Place, 6th Floor Boston, MA 02111	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE R McGregor/TABBER
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