

**CONTRACT FOR GOODS AND SERVICES**

**BY AND BETWEEN**

**METROPOLITAN AREA PLANNING COUNCIL**

**AND**

**TRI COUNTY CONTRACTORS SUPPLY INC.**

This AGREEMENT, dated 6/17/19, 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 Tri County Contractors Supply Inc. ["**Vendor**"], with its principal office at 154 Wayside Avenue, West Springfield, MA 01089.

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 F. 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

6/7/19

Date

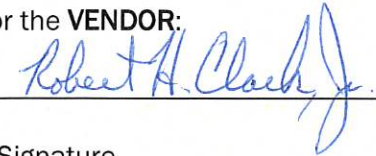
Marc Draisen

Name

Executive Director

Title

For the **VENDOR**:

x 

\* Signature

05-20-19

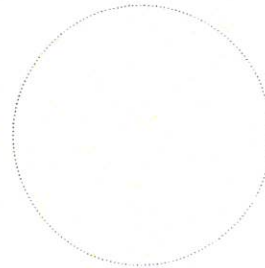
\* Date

Robert R. Clark, Jr.

\* Name

PRESIDENT

\* Title



\* 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**:

Robert A. Clark, Jr.

\* Name

PRESIDENT

\* Title

TRI-COUNTY CONTRACTORS SUPPLY, INC.

\* Organization

154 WAYSIDE AVE.

\* Street Address

WEST SPRINGFIELD, MA, 01089

\* Street Address

413-733-5189

\* Phone

413-781-2102

\* Fax

rclarkjr@tricitycontractors.com

\* email

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

\* \* \* \* \*

EXHIBIT D

Subcontractors

1.



# CERTIFICATE OF GARAGE INSURANCE

DATE (MM/DD/YYYY)  
05/22/2019

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 have ADDITIONAL INSURED provisions or 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).

PRODUCER Peter Bourn	CONTACT NAME: Sentry Customer Service
	PHONE (A/C, No, Ext): 800-473-6879 FAX (A/C, No): 800-514-7191
	EMAIL ADDRESS: businessproducts_direct@sentry.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
INSURER A : Sentry Select Insurance Company	NAIC # 21180
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

**COVERAGES**      **PROD / CUSTOMER ID:**      **CERTIFICATE #:** 1001655      **REVISION #:**

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 INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS USED IN GARAGE BUSINESS			2549264009	01/31/2019	01/31/2020	AUTO ONLY (Ea accident) \$ 1,000,000 OTHER THAN AUTO ONLY EA ACCIDENT \$ 1,000,000 AGGREGATE \$ 3,000,000
	<input type="checkbox"/> GARAGE KEEPERS LIABILITY <input type="checkbox"/> LEGAL LIABILITY <input type="checkbox"/> DIRECT BASIS <input type="checkbox"/> PRIMARY <input type="checkbox"/> EXCESS						COMP / OTC SPECIFIED PERILS LOC \$ COLLISION LOC \$ LOC \$
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		X		2549264004	01/31/2019	01/31/2020
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			2549264005	01/31/2019	01/31/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 15,000,000
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under REMARKS below	N / A					

REMARKS (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> Metropolitan Area Planning Council Greater Boston Police Council 60 Temple Pl 6th Fl 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 <i>John Heyland</i>
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Metropolitan Area Planning Council and Greater Boston Police Council	All Locations Description: Metropolitan Area Planning Council and Greater Boston Police Council
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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.]