



## KEY CONTRACT TERMS

For

### Master Agreement 2023-JC-060-A

<b><u>Contract Between:</u></b>	Jackson County and Abutilon Co., Inc., DBA Abco Services
<b><u>Contract Purpose:</u></b>	Master Agreement for Municipal Vehicles and Equipment for Jackson County Department of Transportation authorized CoPro+ Members
<b><u>Contract Number:</u></b>	2023-JC-060-A
<b><u>RFQu Number:</u></b>	JC-060-031023
<b><u>Contractor Name:</u></b>	Abutilon Co., Inc., DBA Abco Services
<b><u>Contractor Address:</u></b>	6923 Summerfield Road Petersburg, MI 49270
<b><u>Contractor Telephone:</u></b>	419-708-2916
<b><u>Contract Period:</u></b>	July 1, 2023 – June 30, 2028
<b><u>Delivery/Shipment:</u></b>	Refer to Section 1.4
<b><u>Pricing:</u></b>	Refer to Section 2.1 and Attachment A
<b><u>Administrative Fee:</u></b>	2.0%
<b><u>Terms &amp; Conditions:</u></b>	Refer to Section 3
<b><u>Ordering Options:</u></b>	Phone or Email
<b><u>Payment Options:</u></b>	Purchase Order or Direct Voucher
<b><u>Miscellaneous Information:</u></b>	THIS AGREEMENT IS EXTENDED TO AUTHORIZED COPRO+ MEMBERS



Signature of Contractor's Duly Authorized Representative

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE OFFER MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually an on behalf of the Contractor that:

(1) He/she is an Authorized Representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract, if any, issued, and to execute this Contract on behalf of Contractor; (2) Contractor is bound by and will comply with all requirements, specifications, and terms and conditions contained in this Contract (including all listed attachments and Addenda, if any, issued; (3) Contractor will furnish the designated Goods in accordance with the Contract specifications and requirements, and will comply in all respects with the terms of the resulting Contract upon award; and (4) All affirmations contained in the RFP are true and correct.

CONTRACTOR:

JACKSON COUNTY DEPARTMENT  
OF TRANSPORTATION:

Abu'lou Co., Inc DBA Abco Services  
Firm Name

Angela N. Kline, Managing Director  
Name/Title

[Signature]  
Authorized Representative Signature

Angela N. Kline  
Authorized Signature

Matthew Zimmerman/VP  
Print Name/Title

5/23/2023  
Date

5/12/2023  
Date



## SECTION 1.0 – CONTRACT REQUIREMENTS

### 1.1 Contract Categories

This contract covers the following categories awarded to Abco Services:

Roll-Off Trucks

Dump Trucks

Open Aluminum Service Bodies

### 1.3 Orders

Orders can be placed by contacting the following:

Matthew Zimmerman

W: 419-536-6123

C: 419-708-2916

[matt@abco-services.com](mailto:matt@abco-services.com)

The JCDOT/CoPro+ makes no guarantee regarding the number of purchases made under this contract by JCDOT or CoPro+ members.

### 1.4 Delivery & Acceptance

Delivery will be made via drop ship from manufacturer unless installation is requested then either \$2.98 per mile delivery fee for completed vehicle or arrangements can be made for inspection/pickup at Abco Truck Equipment. (Due to volatility of shipping costs, freight will be passed through at cost, invoice from shipping company will be provided.)

### 1.5 Customer Service

Abco Customer Service representatives are as follows:

Matthew Zimmerman

W: 419-536-6123

C: 419-708-2916

[matt@abco-services.com](mailto:matt@abco-services.com)

Steven Zimmerman

W: 419-536-6123

C: 419-467-9591

[steve@abco-services.com](mailto:steve@abco-services.com)

Parts: Bob Putterbaugh W: 419-536-6123, [bp@abco-services.com](mailto:bp@abco-services.com)



#### 1.6 Primary Account Representatives

The Primary Account Representative for this contract is:

Matthew Zimmerman

W: 419-536-6123

C: 419-708-2916, [matt@abco-services.com](mailto:matt@abco-services.com)

Secondary Account Representatives:

Steven Zimmerman

W: 419-536-6123

C: 419-467-9591

[steve@abco-services.com](mailto:steve@abco-services.com)

Blake Rudolph

W: 419-536-6123

C: 419-779-0891

[rudu@abcotruckequipment.com](mailto:rudu@abcotruckequipment.com)

Devin Burns

W: 419-536-6123

C: 419-360-5150

[devin@abcotruckequipment.com](mailto:devin@abcotruckequipment.com)

## SECTION 2.0 – PRICING REQUIREMENTS & SCHEDULE

### 2.1 Pricing

#### 2.1.1 Tax Excluded from Price

(a) Sales Tax: JCDOT/CoPro+ and local units of government are exempt from sales tax for direct purchases. The contractor's prices must not include sales tax.

(b) Federal Excise Tax: Governmental entities may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the contractor's prices must not include the Federal Excise Tax.

2.1.2 The contractor agrees to provide pricing to JCDOT/COPRO+ and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The contractor agrees to promptly lower the cost of any product purchased through JCDOT/COPRO+ and its participating entities following a reduction in the manufacturer or publisher's direct cost. Price increases must be approved by JCDOT/COPRO+. However, the contractor must honor previous prices for thirty (30) days after approval and written notification from JCDOT/COPRO+ if requested. If contractor has existing cooperative contracts in place, JCDOT/CoPro+ requests equal or better than pricing to be submitted.

### 2.2 Administrative Fee

All pricing submitted to JCDOT/COPRO+ and its participating entities shall include 2.0% remittance fee to be remitted to CoPro+ by the contractor on a quarterly basis. Administrative fees will be paid against actual sales volume for each quarter. It is the contractor's responsibility to keep all pricing up to date and on file with JCDOT/CoPro+. All price changes shall be presented to JCDOT/COPRO+ for acceptance, using the same format as was accepted in the original contract.

## **SECTION 3.0 - TERMS AND CONDITIONS**

### **3.1 Contract Term & Options to Extend Contract**

#### **3.1.1 General Authority**

The Contract term begins July 1, 2023 and expires June 30, 2028. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in section 3, Termination by JCDOT/CoPro+, unless otherwise agreed to in writing by JCDOT/CoPro+ Administrator or designee. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect for the balance of the fiscal year for which they were issued.

### **3.2 Laws**

#### **3.2.1 General Authority**

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

#### **3.2.2 Compliance with Laws**

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

#### **3.2.3 Jurisdiction**

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Jackson County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or forum non-conveniens. The Contractor must appoint agents in the State of Michigan to receive service of process.

#### **3.2.4 Nondiscrimination**

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### 3.2.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., JCDOT/CoPro+ must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of JCDOT/CoPro+, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, JCDOT/CoPro+ may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

### 3.2.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. JCDOT/CoPro+ must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify JCDOT/CoPro+ in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) JCDOT/CoPro+ may issue a Stop Work Order if the material is a Hazardous Material

that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. JCDOT/CoPro+ may remove the Hazardous Material, render it harmless, or terminate the affected work for JCDOT/CoPro+'s convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws. The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

### 3.2.7 Freedom of Information

This Contract and all information submitted to JCDOT/CoPro+ by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, et seq.

### 3.2.8 Abusive Labor Practices

The Contractor may not furnish any deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude. "Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

## 3.3 General Provisions

### 3.3.1 Bankruptcy and Insolvency

JCDOT/CoPro+ may, without prejudice to any other right or remedy, fully or partially terminate this contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method JCDOT/CoPro+ deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the deliverable(s) under this contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by JCDOT/CoPro+. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating JCDOT/CoPro+ ownership.

### 3.3.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by JCDOT/CoPro+, and only in accordance with the instructions from JCDOT/CoPro+.

### 3.3.3 Antitrust Assignment

The Contractor assigns to JCDOT/CoPro+ any claim for overcharges resulting from county or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the contract.

### 3.3.4 Legal Effect

JCDOT/CoPro+ is not liable for costs incurred by the Contractor or for payment(s) under this contract until the Contractor is authorized to perform under Section 1.3, Orders.

### 3.3.5 Entire Agreement

This contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this contract are incorporated in their entirety and form part of this contract.

### 3.3.6 Order of Precedence

Any inconsistency in the terms associated with this contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (Contract Term, Legal Effect, Insurance, Indemnification, Termination, Governing Law, Limitation of Liability);
- (b) The most recent Statement of Work related to this contract;
- (c) All sections from Section 3 - Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the contract documents;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the contract; and
- (f) Bidder Responses contained in any of the RFP documents.

### 3.3.7 Headings

The captions and section headings used in this contract are for convenience only and may not be used to interpret the scope and intent of this contract.

### 3.3.8 Reformation and Severability

Each provision of the contract is severable from all other provisions of the contract. If any provision of this contract is held unenforceable, then the contract will be modified to reflect the parties' original intent. All remaining provisions of the contract remain in full force and effect.

### 3.3.9 Approval

Unless otherwise provided in this contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

### 3.3.10 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the contract.

### 3.3.11 Survival

The provisions of this contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this contract.

### 3.3.12 Electronic Payment Requirement

The Contractor must be able to receive electronic fund transfer (EFT) payments.

### 3.3.13 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with JCDOT/CoPro+ and its agents and other contractors, including JCDOT/CoPro+'s quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

### 3.3.14 Relationship of the Parties

The relationship between JCDOT/CoPro+ and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of JCDOT/CoPro+. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

### 3.3.15 Time of Performance

(a) The Contractor must immediately notify JCDOT/CoPro+ upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest JCDOT/CoPro+-approved delivery schedule and must inform JCDOT/CoPro+ of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by JCDOT/CoPro+ has caused or will cause the Contractor to be unable to perform its obligations according to specified contract time periods, the Contractor must immediately notify JCDOT/CoPro+ and, to the extent practicable, continue to perform its obligations according to the contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by JCDOT/CoPro+.

### 3.3.16 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the deliverable(s) for more than 10 days, and JCDOT/CoPro+ reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to JCDOT/CoPro+, JCDOT/CoPro+ may: (a) procure the affected deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those deliverable(s) that are terminated. JCDOT/CoPro+ must pay for all deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from JCDOT/CoPro+ as a result of any Excusable Failure or to payments for deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

### 3.3.17 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### 3.3.18 Examination of Records

JCDOT/CoPro+, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this contract. JCDOT/CoPro+ does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this contract.

### 3.3.19 Audit Resolution

If necessary, the Contractor and JCDOT/CoPro+ will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and JCDOT/CoPro+ must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### 3.3.20 Errors

(a) If an audit reveals any financial errors in the records provided to JCDOT/CoPro+, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the contract, whichever is earlier. (b) In addition to other available remedies, if the difference between JCDOT/CoPro+'s actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

### 3.3.21 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation proceeding;
- (iii) A proceeding involving the Contractor (or any Subcontractor) or any of its officers or

directors under the Sarbanes-Oxley Act; and

(iv) A civil proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to JCDOT/CoPro+ from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any proceeding that is disclosed to JCDOT/CoPro+ or of which JCDOT/CoPro+ otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about:

(i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or

(ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide JCDOT/CoPro+ all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this contract.

### 3.3.22 Other Disclosures

The Contractor must notify JCDOT/CoPro+ Administrator within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

### 3.3.23 CoPro+ Requirements

(a) The Contractor will work with CoPro+ to ensure that all purchasers are members before extending the Contract pricing.

(b) To the extent that CoPro+ Members purchase Deliverable(s) under this contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(c) The Contractor must submit invoices to and receive payment from CoPro+ Members, Participating Entities, on a direct and individual basis.

### 3.3.24 Remittance Fee

The Contractor must collect an administrative fee on all sales transacted under this contract and remit the fee after the end of each quarter. The remittance fee for this contract will be 2.0% on all sales through the use of this contract.

### 3.4 Insurance

#### 3.4.1 Liability Insurance

For the purpose of this Section, "JCDOT/CoPro+" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) JCDOT/CoPro+, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, JCDOT/CoPro+ is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without JCDOT/CoPro+'s approval, JCDOT/CoPro+ may, after giving the Contractor at least 30-days notice, pay the premium or procure similar insurance coverage from another company or companies. JCDOT/CoPro+ may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect JCDOT/CoPro+ from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(ii) waive all rights against JCDOT/CoPro+ for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by JCDOT/CoPro+.

(iv) obtain insurance, unless JCDOT/CoPro+ approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by JCDOT/CoPro+. All policies of insurance must be issued by companies that have been approved to do business in JCDOT/CoPro+.

(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(vi) pay all deductibles.

#### 3.4.2 Subcontractor Insurance Coverage

Except where JCDOT/CoPro+ has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 3.4.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

#### 3.4.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that JCDOT/CoPro+ and its agents, officers, and employees are listed as additional insured's under each commercial general liability and commercial automobile liability policy. The Contractor must provide JCDOT/CoPro+ Administrator with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 3.4.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to JCDOT/CoPro+ Administrator.

### 3.5 Indemnification

#### 3.5.1 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend, and hold JCDOT/CoPro+ harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation,

litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

### 3.5.2 Employee Indemnification

In any claims against JCDOT/CoPro+, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

### 3.5.3 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold JCDOT/CoPro+ harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against JCDOT/CoPro+ to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in JCDOT/CoPro+'s or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to JCDOT/CoPro+'s satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by JCDOT/CoPro+ with appropriate credits to JCDOT/CoPro+ against the Contractor's charges and reimburse JCDOT/CoPro+ for any losses or costs incurred as a consequence of JCDOT/CoPro+ ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend JCDOT/CoPro+ for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of JCDOT/CoPro+; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the

Contractor, including any modification of the same by JCDOT/CoPro+; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

#### 3.5.4 Continuing Obligation

The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of the contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

#### 3.5.5 Limitation of Liability

Neither the Contractor nor JCDOT/CoPro+ is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this.

#### 3.6 Warranties

##### 3.6.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this contract. The performance of all obligations under this contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this contract.

(b) The contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to JCDOT/CoPro+ by Contractor or developed by the Contractor for this contract, and Contractor has all of the rights necessary to convey to JCDOT/CoPro+ the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to JCDOT/CoPro+, nor their use by JCDOT/CoPro+, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for JCDOT/CoPro+ (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to



JCDOT/CoPro+ or its designees, or afford JCDOT/CoPro+ the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The contract signatory has the authority to enter into this contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to JCDOT/CoPro+ or otherwise create an appearance of impropriety with respect to the award or performance of this contract. The Contractor must notify JCDOT/CoPro+ about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of JCDOT/CoPro+ would be influenced. The Contractor must not attempt to influence any JCDOT/CoPro+ employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this contract to any other bidder before the award of the contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to JCDOT/CoPro+ in connection with the award of this contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to JCDOT/CoPro+ by or for the Contractor in connection with the award of this contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify JCDOT/CoPro+ Administrator if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the contract is awarded.

### 3.6.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

### 3.6.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this contract.

### 3.6.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to JCDOT/CoPro+. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which JCDOT/CoPro+, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

### 3.6.5 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 3.6, Warranties, the breach may be considered a material default.

## 3.7 Contract Administration

### 3.7.1 Issuing Office

This Contract is issued by JCDOT/CoPro+ on behalf of all counties and local units of government. JCDOT/CoPro+ Administrator or designee is the only entity authorized to modify the terms and conditions of this contract, including the prices and specifications. The Contract Administrator will be designated at the time of the contract award.

### 3.7.2 Contract Administrator

The Contract Administrator will monitor and coordinate contract activities on a day-to-day basis.

### 3.7.3 Contract Changes

(a) If JCDOT/CoPro+ requests or directs the Contractor to provide any Deliverable(s) that the

Contractor believes are outside the scope of the Contractor's responsibilities under the contract, the Contractor must notify JCDOT/CoPro+ before performing the requested activities. If the Contractor fails to notify JCDOT/CoPro+, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the contract and then ceases performing

that work, the Contractor must, at the request of JCDOT/CoPro+, retract any out-of-scope work that would adversely affect the contract.

(b) JCDOT/CoPro+ or the Contractor may propose changes to the contract. If the Contractor or JCDOT/CoPro+ requests a change to the Deliverable(s) or if JCDOT/CoPro+ requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, JCDOT/CoPro+ Administrator will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the contract (Contract Change Notice).

(c) No proposed change may be performed until JCDOT/CoPro+ issues a duly executed Contract Change Notice for the proposed change.

#### 3.7.4 Price Changes

Prices quoted for all municipal vehicles and equipment, are the maximum for a period of 365 days from the date the contract becomes effective. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) JCDOT/CoPro+ may request a review upon 30 days written notice that specifies what deliverable is being reviewed. At the review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then JCDOT/CoPro+ may elect to exercise the next one-year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then JCDOT/CoPro+ may eliminate all remaining contract renewal options.

(f) Any changes based on the review must be implemented through the issuance of a Contract Change Notice.

### 3.7.5 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the contract.

### 3.7.6 Assignments

(a) Neither party may assign this contract, or assign or delegate any of its duties or obligations under the contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. JCDOT/CoPro+ may, however, assign this contract to any other JCDOT/CoPro+, or local unit of government without the prior approval of the Contractor.

(b) If the Contractor intends to assign this contract or any of the Contractor's rights or duties under the contract, the Contractor must notify JCDOT/CoPro+ and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. JCDOT/CoPro+ may withhold approval from proposed assignments, subcontracts, or novations if JCDOT/CoPro+ determines, in its sole discretion, that the transfer of responsibility would decrease JCDOT/CoPro+'s likelihood of receiving performance on the contract or JCDOT/CoPro+'s ability to recover damages.

(c) If JCDOT/CoPro+ permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

## 3.8 Acceptance of Deliverables

### 3.8.1 Delivery Responsibilities

Unless otherwise specified by JCDOT/CoPro+, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the deliverable(s) "F.O.B. Destination, within Government Premises."

(c) JCDOT/CoPro+ will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

### 3.8.2 Process for Acceptance of Deliverable(s)

JCDOT/CoPro+'s review period for acceptance of the deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify

JCDOT/CoPro+'s review period, it is by default 30 days for a deliverable (JCDOT/CoPro+ Review Period). JCDOT/CoPro+ will notify the Contractor by the end of JCDOT/CoPro+ Review Period that either:

- (a) the deliverable is accepted in the form delivered by the Contractor;
- (b) the deliverable is accepted, but noted deficiencies must be corrected; or
- (c) the deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the deliverable. If JCDOT/CoPro+ delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the deliverable(s) with an explanation that demonstrates all corrections have been made to the original deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected deliverable from the Contractor, JCDOT/CoPro+ will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected deliverable.

### 3.8.3 Acceptance of Deliverable(s)

(a) JCDOT/CoPro+'s obligation to comply with any JCDOT/CoPro+ Review Period is conditioned on the timely delivery of the deliverable(s). JCDOT/CoPro+ Review Period will begin on the first business day following JCDOT/CoPro+'s receipt of the deliverable(s).

(b) JCDOT/CoPro+ may inspect the deliverable to confirm that all components have been delivered without material deficiencies. If JCDOT/CoPro+ determines that the deliverable or one of its components has material deficiencies, JCDOT/CoPro+ may reject the deliverable without performing any further inspection or testing.

(c) JCDOT/CoPro+ will only approve a deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. JCDOT/CoPro+ may, in its discretion, conditionally approve a deliverable that contains material deficiencies if JCDOT/CoPro+ elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct within a reasonable time at the Contractor's expense, all deficiencies in the deliverable that remain outstanding at the time of JCDOT/CoPro+ approval. (d) If, after three opportunities the Contractor is unable to correct all deficiencies, JCDOT/CoPro+ may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of JCDOT/CoPro+'s cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, JCDOT/CoPro+ cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat JCDOT/CoPro+ Review Period that could reasonably have been discovered during a prior JCDOT/CoPro+ Review Period.

(e) JCDOT/CoPro+, at any time and in its reasonable discretion, may reject the deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

### 3.9 Stop Work Order & Termination

#### 3.9.1 Stop Work Order

JCDOT/CoPro+ may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, JCDOT/CoPro+ must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order.

#### 3.9.2 Termination of Stop Work Order

The Contractor must resume work if JCDOT/CoPro+ terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to JCDOT/CoPro+; provided that, JCDOT/CoPro+ may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 3.7.3, Contract Changes.

#### 3.9.3 Allowance of the Contractor's Costs

If JCDOT/CoPro+ fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 3.9.6, Termination by JCDOT/CoPro+, and JCDOT/CoPro+ will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. JCDOT/CoPro+ is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 3.9, Stop Work.

#### 3.9.4 Notice and Right to Cure

If the Contractor breaches the Contract, and JCDOT/CoPro+, in its sole discretion, determines that the breach is curable, JCDOT/CoPro+ will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. JCDOT/CoPro+ does not need to provide notice or an opportunity to cure for successive or repeated breaches or if JCDOT/CoPro+ determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### 3.9.5 Termination for Cause

(a) JCDOT/CoPro+ may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by JCDOT/CoPro+.

(b) The Contractor must pay all reasonable costs incurred by JCDOT/CoPro+ in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs JCDOT/CoPro+ incurs to procure the deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If JCDOT/CoPro+ partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those deliverable(s) that are terminated. JCDOT/CoPro+ must pay for all deliverable(s) for which final acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If JCDOT/CoPro+ terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

### 3.9.6 Termination for Convenience

JCDOT/CoPro+ may fully or partially terminate this Contract for its convenience if JCDOT/CoPro+ determines that a termination is in JCDOT/CoPro+'s best interest. Reasons for the termination are within the sole discretion of JCDOT/CoPro+ and may include: (a) JCDOT/CoPro+ no longer needs the deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for JCDOT/CoPro+; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by JCDOT/CoPro+. JCDOT/CoPro+ may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If JCDOT/CoPro+ chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those deliverable(s) that are terminated.

### 3.9.7 Termination for Criminal Conviction

JCDOT/CoPro+ may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a JCDOT/CoPro+, public, or private Contract or subcontract.

### 3.9.8 Rights and Obligations upon Termination

(a) If JCDOT/CoPro+ terminates this Contract for any reason, the Contractor must:

- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that JCDOT/CoPro+ may direct, to preserve and protect deliverable(s) or other JCDOT/CoPro+ property in the Contractor's possession;
- (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of JCDOT/CoPro+;
- (iv) transfer title in and deliver to JCDOT/CoPro+, unless otherwise directed, all deliverable(s) intended to be transferred to JCDOT/CoPro+ at the termination of the Contract (which will be provided to JCDOT/CoPro+ on an "As-Is" basis except to the extent JCDOT/CoPro+ compensated the Contractor for warranty services related to the materials);
- (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- (vi) take all appropriate action to secure and maintain JCDOT/CoPro+ information confidentially.

(b) If JCDOT/CoPro+ terminates this Contract under Section 3.9.6, Termination for Convenience, JCDOT/CoPro+ must pay the Contractor all charges due for deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by JCDOT/CoPro+. All completed or partially completed deliverable(s) prepared by the Contractor, at the option of JCDOT/CoPro+, become JCDOT/CoPro+'s property, and the Contractor is entitled to receive equitable compensation for those deliverable(s). Regardless of the basis for the termination, JCDOT/CoPro+ is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to deliverable(s) not actually completed.

(c) If JCDOT/CoPro+ terminates this contract for any reason, JCDOT/CoPro+ may assume, at its option, any subcontracts and agreements for deliverable(s), and may pursue completion of the deliverable(s) by replacement contract or as JCDOT/CoPro+ deems expedient.

### 3.9.9 Reservation of Rights

In the event of any full or partial termination of this contract, each party reserves all rights or remedies otherwise available to the party.

### 3.9.10 Contractor Transition Responsibilities

If this Contract terminates under, Termination by JCDOT/CoPro+, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to JCDOT/CoPro+ or a third party designated by JCDOT/CoPro+ within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

### 3.9.11 Termination by Contractor

If JCDOT/CoPro+ breaches the contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will then provide JCDOT/CoPro+ with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if JCDOT/CoPro+:

- (a) materially breaches its obligation to pay the Contractor undisputed amounts due;
- (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the deliverable(s); or
- (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 3.10, Dispute Resolution, before it terminates the contract.

## 3.10 Dispute Resolution

### 3.10.1 General

- (a) The Contractor must submit any claim related to this Contract to JCDOT/CoPro+ in writing with all supporting documentation for the claim.
- (b) The representatives of the Contractor and JCDOT/CoPro+ must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.
- (c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

### 3.10.2 Informal Dispute Resolution

- (a) If, after a reasonable time following submission of a claim the parties are unable to resolve the claim, the parties must meet with JCDOT/CoPro+ Administrator Director or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.
- (b) Within 60 calendar days of the meeting with JCDOT/CoPro+ Administrator, or such other time as agreed to by the parties, JCDOT/CoPro+ Administrator will issue a written recommendation regarding settlement of the claim. The Contractor must notify County within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.
- (c) The recommendation of JCDOT/CoPro+ Administrator is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.
- (d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 3.10.3, Injunctive Relief.

### 3.10.3 Injunctive Relief

A claim between JCDOT/CoPro+ and the Contractor is not subject to the provisions of Section 3.10.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

### 3.10.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract. A claim involving payment does not preclude performance.



## **ATTACHMENT A – PRICING**

**NOTES TO POTENTIAL PROPOSERS: COMPLETE AND SUBMIT THIS FINAL PRICE SHEET**

**NAME**  
*Abutition Co., Inc., DBA Abco Services*

RFP-WR-165031017

**ATTACHMENT A - PRICING**  
**RFP JC-060-031023 - MUNICIPAL VEHICLES & EQUIPMENT**

**NOTES TO POTENTIAL PROPOSERS: COMPLETE AND SUBMIT THIS FINAL PRICE SHEET**

1. Enter Manufacturer Name and Model Number for each category being bid. Add rows under each category if needed. Complete specifications for each item being bid must be submitted with the bid response.
2. Prices are inclusive including delivery, FOB Destination (unless EXCEPTIONS are stated in ATTACHMENT A).
3. Provide product brochures or catalogs, manufacturer specification sheets (electronic) in PDF format.
4. Provide Manufacturer Warranty information AND any Additional Vendor Value-Added Warranty for each item with your proposal.
5. Add Rows (not Columns) to fit multiple product line items.
6. Leave blank or enter "N/A" for any categories not being bid.

NAME										
Audition Co., Inc. DBA Alcoa Services										
Line Item	Line Item Description	Manufacturer Name (s)	Manufacturer Model Number (s)	Unit of Measure	List Price	Percentage Off List for Product options (if a Percentage Range, Describe)	JCDDOT / CoPro+ Price	Discounts	Additional Information	High Volume Pricing Options Levels Offered (Yes or No)
G	BOX TRUCKS			Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			
				Each	\$	%	\$			