

AN ORDINANCE

2015-09-10-0767

**ACCEPTING THE OFFER FROM DEERE & COMPANY TO PROVIDE TEN
REPLACEMENT TRACTORS FOR A TOTAL COST OF \$661,649.40, FUNDED
FROM THE EQUIPMENT RENEWAL AND REPLACEMENT FUND.**

* * * * *

WHEREAS, an offer was submitted by Deere & Company to provide the City of San Antonio Transportation & Capital Improvements and Solid Waste Management Departments with ten tractors for a total cost of \$661,649.40, using the Houston-Galveston Area Council contract #GR01-15; and

WHEREAS, this purchase meets the requirements under the terms of the Houston/Galveston Area Council of Governments Cooperative Purchasing Agreement adopted by the City of San Antonio on October 10, 1996 through Resolution No. 96-41-48; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The offer from Deere & Company to provide the City of San Antonio Transportation & Capital Improvements and Solid Waste Management Departments with ten tractors for a cost of \$661,649.40 is hereby accepted, subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates and endorsements. A copy of the bid tabulation sheet and contract are attached hereto and incorporated herein for all purposes as **Exhibit I**.

SECTION 2. Funding in the amount of \$661,649.40 for this ordinance is available in Fund 72001000, Cost Center 3503200001 and General Ledger 5501055, as part of the Fiscal Year 2015 Budget. Payment not to exceed the budgeted amount is authorized to Deere & Company and should be encumbered with a purchase order.

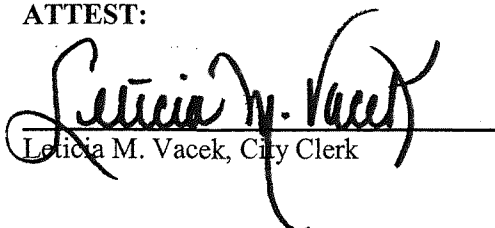
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

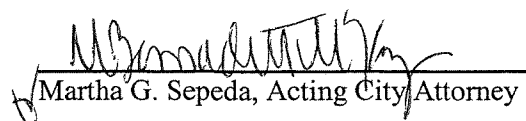
PASSED AND APPROVED this 10th day of September, 2015.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Martha G. Sepeda, Acting City Attorney

Agenda Item:	10 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16A, 16B, 18, 19, 20)						
Date:	09/10/2015						
Time:	11:25:20 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance accepting the offer from Deere & Company to provide ten replacement tractors for a total cost of \$661,649.40, funded from the Equipment Renewal and Replacement Fund. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

City of San Antonio Bid Tabulation

EXHIBIT I

Opened: August 7, 2015 For: Purchase Of Tractors 6100006460			LD	HGAC Deere & Company 2000 John Deere Run Cary, NC 27513 919-804-2000
Item	Description	Quantity		
1	Tractor without Mowers or Mower Attachments Price Each: Total: Year, Make & Model of Tractor: Tractor Warranty: Specific Make & Model of Engine Offered (Include SAE Net HP): Engine Warranty: Tractor Warranty Service Provider Name: Tractor Warranty Facility Address: Production Cut-off Date: Last day order can be placed without missing cut-off date: Can bidder provide bid items after cut-off date:	10		\$66,164.94 \$661,649.40 2015 John Deere 5115M 2 years or 2000 hours John Deere PWL Power Tech 115 HP 2 years or 2000 hours Ap-Pro Texas 3030 N. Austin St., Seguin, TX 78155 Aug, 30 Not Provided Not Provided
2	HGAC/Cooperative Fee Price Each: Total: Payment Terms Total:	1		\$0.00 \$0.00 Net 30 \$661,649.40
Total Award:				\$661,649.40

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
DEERE & COMPANY
Cary, North Carolina

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Deere & Company**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 2000 John Deere Run, Cary, North Carolina 27513.

ARTICLE 1:

SCOPE OF SERVICES

The parties have entered into a **Grounds & Turf Equipment Contract** to become effective as of January 1, 2015, and to continue through December 31, 2017 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Grounds & Turf Equipment** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Grounds & Turf Equipment** through the **H-GAC Contract** to **END USERS**.

ARTICLE 2:

THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: **GR01-15**, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No: **GR01-15**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3:

LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4:

APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5:

INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6:

END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC Contract**. However this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC contract**. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

ARTICLE 7:**SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

ARTICLE 8:**EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9:**REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10:**MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.

ARTICLE 11:**SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12:**DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

ARTICLE 20:**LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21:**PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

ARTICLE 22:**CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23:**LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]**


CONTRACTOR will, for the duration of this Contract, maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston
Area Council, Houston, Texas:


Jack Steele, Executive Director

Attest for Houston-Galveston
Area Council, Houston, Texas:


Deidre Vick, Director of Public Services

Date: Dec 9, 2014

Signed for Deere & Company
Cary, North Carolina:


Printed Name & Title: Tamara Hebert, Contract Administrator

Date: 12-8, 2014

Attest for Deere & Company
Cary, North Carolina:


Printed Name & Title: Shawn Parker, Mgr. Contract Admin.

Date: 12-8, 2014

Attachment A
Deere & Company
Grounds & Turf Equipment
Contract No.: GR01-15

H-GAC Product Code	Item Description	Offered Price Discount
43D	John Deere Lawn Tractors except 100 Series Tractors L25 Effective September 8, 2014	17.5%
43E	John Deere Garden Tractors L30 Effective September 8, 2014	17.5%
43F	John Deere Equipment for Lawn and Garden Tractors L30 Effective September 8, 2014	17.5%
43G	John Deere Compact Utility Vehicles and Equipment L40 Effective September 8, 2014	\$5,849 to \$5,899
43H	John Deere Commercial Walk-Behind Mowers Excluding GS18 C10 Effective September 8, 2014	12.5%
43I	John Deere Commercial Zero-Turn Mowers and Equipment C13 Effective September 8, 2014	22.5%
43J	John Deere Commercial Front Mowers C15 Effective September 8, 2014	22.5%
43K	John Deere Commercial Front Mowers MCS for 1400 and 1500 Series C15 Effective September 8, 2014	22.5%
43L	John Deere Commercial Wide Area Mowers C18 Effective September 8, 2014	22.5%
43M	John Deere Advantage Compact Utility Tractors C19 Effective September 8, 2014	\$11,748-\$19,339
43N	John Deere Compact Utility Tractors C20 Effective September 8, 2014	16.5%
43O	John Deere Equipment for Compact Utility Tractors C25 Effective September 8, 2014	16.5%
43Q	John Deere Utility Vehicles C40 Effective September 8, 2014	15.5%
43R	John Deere High Performance Utility Vehicles C41 Effective September 8, 2014	15.5%
43T	John Deere Reel Mowers G10 Effective September 8, 2014	21.5%
43U	John Deere Special Application Mowers G15 Effective September 8, 2014	21.5%
43V	John Deere Special Application Vehicles G20 Effective September 8, 2014	21.5%
43W	John Deere Aeration G25 Effective September 8, 2014 Effective September 8, 2014	21.5%
43X	John Deere Debris Maintenance G30 Effective September 8, 2014	21.5%
43Y	John Deere AG Tractors A2 Effective September 8, 2014	5000s - 17.5%; 6000s & up - 22.5%
43Z1	John Deere AG Combines A3 Effective September 8, 2014	22.5%
43Z2	John Deere AG Cotton A4 Effective September 8, 2014	22.5%
43Z3	John Deere Hay & Forage A5 Effective September 8, 2014	22.5%
43Z4	John Deere Tillage A6 Effective September 8, 2014	22.5%
43Z5	John Deere Seeding/Planter/Drills A7 Effective September 8, 2014	22.5%
43Z6	John Deere Sprayers A8 Effective September 8, 2014	22.5%
43Z7	John Deere Material Handling: Loaders, Cutters, Scrapers, Shredders, Backhoes A9 Effective September 8, 2014	22.5%
43Z8	John Deere Ag Mananagement Solutions (AMS) A10 Effective September 8, 2014	3.5%