

**SAN DIEGO UNIFIED PORT DISTRICT  
PURCHASE AGREEMENT  
for  
ONE (1) NEW ELGIN CROSSWIND J SWEEPER**

**Purchase Order No. \_\_\_\_\_  
Purchase Agreement No. 159-2018RH**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and Haaker Equipment Company, a California Corporation (Vendor). Reference National Joint Powers Alliance (NJPA) Cooperative Purchasing Agreement Number 022017-FSC.

The parties agree:

**1. SPECIFICATIONS:**

- (a) Specifications are attached as Attachment A, Specifications, and Vendor understands the meaning, intent and requirements contained therein.
- (b) Vendor agrees to furnish the Vehicles to the District by the delivery date specified in strict conformity with the specifications therefore, for the prices quoted and in accordance with conditions herein.

**2. RECEIPT OF GOODS:**

The goods will be deemed received by District when delivered to District at 1400 Tidelands Avenue, National City, CA 91950, which shall hereinafter be referred to as the "Place of Delivery" and in conformance to Attachment B, Vehicle and Equipment Delivery Instructions.

**3. RIGHT OF INSPECTION:**

District will have the right to inspect and accept or reject the goods when received at the Place of Delivery, and the right, within ten (10) business days after receipt, to give notice to Vendor of any claim for damages on account of the condition, quality, or grade of the goods. The District retains the right to inspect and accept or reject any goods to be delivered to a bailee, as if such were delivered to the District itself, and in such instance, Vendor will tender to District a valid and adequate negotiable document of title covering the goods or written acknowledgement from the bailee of the District's right to possession of the goods. Any attempt by District to correct any of the goods delivered in a defective or non-working condition will not constitute an acceptance of such goods where such efforts are commercially reasonable in extent and cost, and District may subsequently revoke its acceptance and reject the goods where the attempt to correct such defect has proved unsuccessful.

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4. **REJECTED GOODS:**

On receipt of notification of rejection of goods, Vendor will immediately arrange to receive back the rejected goods at Vendor's expense, and [Parties to initial clause below]:

Amaker \_\_\_\_\_ Ship conforming goods within 330 <sup>days</sup> business days  
Vendor District of notice of rejection, unless District notifies Vendor to forego such shipment in its notification of rejection of goods.

5. **RISK OF LOSS:**

The risk of loss from any casualty to the goods, regardless of the cause, will be on Vendor up to the time of receipt of the goods by District at the Place of Delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk will be on District, including any goods thereafter returned to Vendor until their receipt by Vendor.

6. **TRADE NAMES:**

Certain materials may be designated in the specifications by a trade name or the name of a manufacturer. Materials which are "an equal" item of equal quality and the required characteristics for the purpose intended will be permitted.

7. **DELIVERY:**

(a) Delivery shall be made within the time set forth on the Purchase Order. Time is of the essence as to delivery.

(b) Vendor shall not be held liable for failure to make delivery because of strikes, conscription of property, governmental regulations, acts of God or any other causes beyond control of vendor, provided a written extension of time to make delivery is obtained from the Executive Director of District or authorized designee.

8. **FIRM PRICES:**

Prices of a bid shall be firm prices not subject to escalation

9. **ROYALTIES AND PATENTS:**

To the extent that District directs that the work be accomplished pursuant to certain specifications, processes, devises, designs or products ("Requirements"), District agrees to hold Vendor forever harmless from all suits or claims for infringement which arise out of the inclusion of such Requirements in the work.

10. **TAXES:**

District shall furnish Exemption Certificates for Federal Excise Tax. District shall pay the State, City and County Sales Taxes. However, sales tax is to be added by the Vendor to the net amount invoiced.

11. **ASSIGNMENT:**

No assignment by either party of any rights, including rights to moneys due or to become due under this Agreement, or delegation of any duties under this Agreement or under any

orders subject to this Agreement, will be binding upon the other party until its written consent has been obtained.

**12. CALIFORNIA LAW:**

The validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of California.

**13. PAYMENT:**

Payment for the materials shall be made for materials which shall be due and payable only upon acceptance by the District after the materials have been delivered and inspected and tested for compliance with the specifications

**14. ANTITRUST CLAIMS:**

These provisions are included in this Agreement as required by California Government Code Section 4550 et seq: Vendor offers and agrees it will assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, materials or services by the Vendor for sale to the District. Such assignment shall be made and become effective at the time the District tenders final payment to the vendor, without further acknowledgment by the parties.

**15. VENDOR'S WARRANTIES:**

In addition to any manufacturer's warranties associated or provided with the goods, copies of which shall be delivered by Vendor with the goods and their incorporation herein shall be deemed made by this reference, without attachment, as though fully set forth herein, Vendor expressly warrants that the goods are fit for the purpose to which Buyer desires the goods to be used (new and unused goods).

Furthermore, the parties intend that the provisions of Division 2 of the California Uniform Commercial Code ("CUCC") will apply to this Section, except where this Agreement may expressly provide otherwise, and thereby Vendor intends all implied warranties there under, without limitation by reference herein, to apply to this Agreement, including, but not limited to: (i) a warranty that the goods are now free, and at the time of delivery will be free, from any security interest or other lien or encumbrance, (ii) a warranty that at the time of signing the Agreement, Vendor neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Vendor in the goods, (iii) a warranty that the goods are of merchantable quality, and (iv) a warranty that the goods are fit for the purpose to which Buyer desires the goods to be used.

**16. INDEMNIFICATION:**

Vendor agrees to indemnify, defend and hold harmless District, its officers, agents, and employees, from and against any and all claims, liabilities, damages, demands, losses, costs, and expenses including reasonable attorney's fees arising directly or indirectly out of the obligations of this Agreement, except claims arising through the sole negligence or willful misconduct of the District.

**17. COMPLIANCE WITH LAWS:**

The Parties will comply with all applicable governmental laws, regulations, orders, and other rules of duly constituted authorities.

**18. TERMINATION:**

The District also reserves the right, at any time prior to delivery and acceptance of the goods and after delivery of written notice to Vendor at the above address or fax number, to terminate this Agreement, with or without cause, even though there has not been any act or omission sufficient to constitute an anticipated or actual breach of the Agreement or of any implied warranty. In the event that Vendor's work is terminated or canceled by the District for any reason, vendor will be entitled to payment for materials and/or labor approved and accepted by the District (Including materials specifically manufactured) at the date of its termination. Vendor shall also be entitled to all amounts earned and payable to the date of such termination for any unavoidable cancellation or restocking charges for material orders.

**19. NOTICES:**

All notices and other communications required or authorized under this Agreement will be given in writing by: (i) personal delivery, (ii) registered mail or overnight express delivery service or (iii) email. Each party will advise the other promptly of any change in its address. It is an express condition of this Agreement that this Agreement shall not be complete or effective until signed by the Executive Director or designee on behalf of the District.

**VENDOR:**

HAAKER EQUIPMENT COMPANY

Vendor's Legal Entity Listing (DBA, etc)

 7/12/18  
Vendor's Signature Date

Matthew Woods

Signatory's Printed Name

**SAN DIEGO UNIFIED PORT DISTRICT:**

Marcus J. Cromartie

Director, General Services

Printed Name

Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND LEGALITY:**

General Counsel

\_\_\_\_\_  
By: Assistant/Deputy

\_\_\_\_\_  
Date

## ATTACHMENT A SPECIFICATIONS AND PRICING San Diego Unified Port District

### ONE (1) NEW ELGIN CROSSWIND J SWEEPER

Equipped with Memory Sweep, Tier 4F emissions, John Deere 4045 Turbocharge Diesel Engine, 8.0 Cu. Yd. Hopper, Right and Left Side Brooms. Mounted on a 2019 Freightliner M2 chassis. Unit Painted Elgin Standard White with Elgin Gray Undercarriage.

#### Standard Equipment

- Patent-pending Shared Power system
- Alternator, 95 amp
- Auto Shutdown, Aux. Engine
- Backup Alarm, electric
- Blower, HARDOX®500 steel with linatex lined housing
- Brooms, hydraulic rotation
- Brooms, Dual
- Camera, rear mounted
- Console, w/rocker switches for all sweep functions, with full gauge package including tachometer, engine hour meter, oil pressure indicator,
- coolant temperature, voltmeter and fuel lever indicator, water level gauge and warning lights for hopper "up", hopper rear door "open" and hopper "full",
- with auxiliary engine, RPM control, side broom down pressure controls and automotive style blade fuses
- Doors, access fiberglass doors provide easy service and maintenance on auxiliary engine, hydraulic and electrical system
- Electronic Actuated Throttle, sweep resume/sweep transport/reverse pick-up
- Fuel Water Separator on Aux Engine
- Hopper rear door, hydraulically opened/closed and locked/unlocked with external manual controls.
- Hose, hydrant fill, 16'8" (5080 mm) with coupling
- LED Clearance Lights
- Lights; rear clearance and rear identification
- Manuals, operator and parts
- Mirrors, West Coast type with 8" convex inserts, one each side
- Pick-up head, hydraulically operated,
- 14" (355 mm) outside diameter pressure hose,
- 12-3/4" (324mm) inside diameter
- suction hose with quick disconnect on suctions side
- Water system; one (1) rocker switch with HI / LOW setting, with manual valves for water control
- Spray nozzles, sixteen (16), seven (7) in the pick-up head, three (3) in the suction
- nozzle, three (3) at each side broom
- Side Broom Outer Position Stop
- Trans Oil Cooler
- Vacuum enhancer, external manually operated
- Water tank, molded polyethylene, 240 gallons (907L)
- Water pre-filter, hydrant fill hose
- Sweeper Painted Standard White
- Chassis Painted Standard White
- Red Logo

#### Included Options

- Right And Left Hand Heated And Remote Controlled Mirrors
- PM-10 Complaint
- Memory Sweep
- Sidebroom Tilt Option Right Hand
- Sidebroom Tilt Option Left Hand
- Lifeline Hopper System
- Hydraulic Heavy Duty Wandering Hose
- Hopper Deluge
- In-Cab Hopper Dump
- Quick Disconnect Water Fill
- Midwest Autolube Sweeper Only
- Cab & Rear Strobe with LED Arrowstick
- Dual LED Sidebroom and Rear LED Flood Lights
- Individual Switches For Dual Sidebroom & Rear Flood Lts-Led
- Slow Moving Vehicle Sign
- Sweeper - Operator Manual
- Sweeper Parts Manual
- John Deere Operator Manual
- John Deere Parts Manual
- 5# Fire Extinguisher
- Hydrant Wrench
- Safety Triangles
- 2<sup>nd</sup> Year Parts/Labor Sweeper Warranty
- Chassis includes: Dual Air Ride Seats, AM/FM Radio with Bluetooth capability, Power windows and door locks

**ATTACHMENT B  
SAN DIEGO UNIFIED PORT DISTRICT  
VEHICLE AND EQUIPMENT DELIVERY INSTRUCTIONS**

Vehicles and equipment will be accepted by scheduled deliveries only. Deliveries may be scheduled by contacting the San Diego Unified Port District's Materiel Support & Management Center at 619-686-6337 between the hours of 7:30a.m. and 3:30 p.m. a minimum of 48 hours before proposed delivery. Monday through Thursday except on Port District Holidays.

A dealer's representative or legal agent must accompany all vehicles or equipment delivered to the San Diego Unified Port District (District). Vehicles or equipment arriving without a dealer's representative or legal agent present will not be accepted nor offloaded on District property. The dealer's representative or legal agent must be in possession of all documents required for the dealer to effect registration of the vehicle or equipment with the Department of Motor Vehicles. The District is an exempt agency identified as an "Other Political Subdivision" for the purposes of DMV registration.

Vehicles or equipment scheduled for delivery must include all equipment, components, modifications, manuals, keys, and other items specified in the specifications provided in this Agreement. A Due Bill may or may not be accepted at the discretion of the District in lieu of an item excluded during delivery.

All vehicles and equipment delivered to the District will be subject to a complete technical inspection by the District's automotive equipment mechanics prior to acceptance. The District fleet equipment manager or appointed representative will conduct an inspection for paint damage and appropriate paint application in conjunction with the technical inspection. The District will use up to ten (10) working days to complete these inspections. The inspections are to ensure compliance with the specifications provided in this Agreement, or to ensure compliance with any prescribed amendments to the original purchase agreement and/or purchase order. If any discrepancies are found, the vendor will be notified and requested to correct the discrepancies. When the vehicle or equipment has met all of the specifications, it will then be accepted and processed for payment.