

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *adad*

BOARD AGENDA # *C-2

Urgent Routine

AGENDA DATE November 2, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Purchase of One (1) TYMCO Model 500x Regenerative Air Sweeper Mounted on an International Cab Chassis

STAFF RECOMMENDATIONS:

- 1) Authorize the purchase of One (1) TYMCO Model 500x Regenerative Air Sweeper mounted on an International Cab Chassis in the amount of \$249,354.62.
- 2) Authorize the Purchasing Agent/General Services Agency Director to purchase the equipment through the Houston-Galveston Area Council (HGAC) contract.

FISCAL IMPACT:

The cost of the Regenerative Air Sweeper will be 100% funded by Congestion Mitigation and Air Quality (CMAQ) grant funds awarded to the Department of Public Works for the purchase of alternative fueled vehicles. This vehicle will be fueled by bio-diesel, which falls under the CMAQ definition of alternative fuel. The Public Works Morgan Shop Fiscal Year 2010-2011 budget reflects the CMAQ grant and purchase of this alternative fueled vehicle. Therefore, sufficient funds are available in the Public Works Morgan Shop budget to cover the cost of the Regenerative Air Sweeper.

BOARD ACTION AS FOLLOWS:

No. 2010-685

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Purchase of One TYMCO Model 500x Regenerative Air Sweeper Mounted on an International Cab Chassis

DISCUSSION:

On June 15, 2008, the California Air Resource Board's adopted Fleet Rule, Title 13, Article 4, Section 2022, 2022.1, California Code of Regulations, to reduce diesel particulate matter and criteria emissions from in-use on-road diesel-fueled vehicles. Target dates to meet compliance of this rule are predetermined by the percentage of trucks replaced or retrofitted. There are annual reduction compliance targets through the year 2012, and the purchase of this Regenerative Air Sweeper help the Department meet the target date of July 1, 2012.

The Department of Public Works Morgan Shop Division provides and maintains equipment for the Road and Bridge Operations and Maintenance Division. The Fiscal Year 2010-2011 budget approved the purchase of in-use-on-road alternative fueled equipment to fulfill the Roads and Bridges Division's need for a new Sweeper. The Department currently has one Sweeper that will not meet the new regulations starting July 2012. The proposed purchase of a new vehicle will replace the existing truck with a cleaner burning vehicle, reducing emissions, and enabling the Department to be in compliance with California Air Resource Board's adopted Fleet Rule, Title 13, Article 4, Section 2022 and 2022.1, California Code of Regulations.

The Regenerative Air Sweeper plays an important role in County road and storm drain maintenance. This equipment cleans roads and removes debris and garbage that may wash into and clog storm drain systems. Street sweeping is essential for safe driving, health of County residents, health of the excess water draining into our storm drain, and overall cleanliness of Stanislaus County.

The Houston-Galveston Area Council (HGAC) has gone through a competitive bidding process. The Stanislaus County General Services Agency Purchasing Division executed a contract with HGAC in December 2004 for a cooperative purchasing program under which the eligible entities such as Stanislaus County can take advantage of a successful bidding process (see copy of interlocal contract attached). Since the competitive bidding process has already been completed by the HGAC, the timeline for purchase of the vehicle is shortened considerably. In addition, the Department contacted other vehicle suppliers to ensure that the HGAC contract provides the best value.

The TYMCO Model 500x Regenerative Air Sweeper is currently in stock at TYMCO, Inc. waiting to be mounted on a new 33,000 gross vehicle weight International cab-chassis. TYMCO, Inc. is a nationwide manufacturer of street sweepers. The equipment is manufactured in Waco, Texas and will be shipped to GCS Environmental Equipment Services, Inc. in Sacramento, California, the local authorized dealer. TYMCO is responsible for loss during shipping and for the Regenerative Air Sweeper until it is received by the Department of Public Works. The shipping costs are included in the purchase price of \$249,354.62. Payment to TYMCO, Inc. will be made once the vehicle is in Public Works' possession. The Department anticipates delivery of the vehicle in February of 2011.

Approval to Authorize the Purchase of One TYMCO Model 500x Regenerative Air Sweeper Mounted on an International Cab Chassis

POLICY ISSUES:

This action is consistent with the Board's priorities of providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by adequately maintaining the County's road maintenance fleet while assisting to meet compliance with the State's diesel emission standards.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Mel Eslinger, Public Works Manager III. Telephone: (209) 525-4130.

MM:lc

M:\Morgan Shop\Morgan\Board Items\Board Item_Sweeper_10-10

THIS INTERLOCAL CONTRACT ("Contract"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the Houston-Galveston Area Council, hereinafter referred to as "H-GAC," having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and The County of Stanislaus, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "End User," having its principal place of business at 1010 Tenth Street, Modesto, California

WITNESSETH

WHEREAS, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

WHEREAS, End User has represented that it is an eligible entity under the Act, and desires to contract with H-GAC on the terms set forth below;

NOW, THEREFORE, H-GAC and the End User do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state, or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

ARTICLE 2: APPLICABLE LAWS

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, ordinances and laws in effect or promulgated during the term of this Contract.

ARTICLE 3: WHOLE AGREEMENT

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

The period of this Contract shall be for the balance of the fiscal year of the End User, which began July 1, 2004 and ends June 30, 2005. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H-GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

ARTICLE 5: SCOPE OF SERVICES

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H-GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with (1) Texas statutes and procedures governing competitive bids and competitive proposals, (2) in accordance with specifications and contract terms established by H-GAC, and (3) at published prices listed on H-GAC's web site. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

(over)

ARTICLE 6: PAYMENTS

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC's contractor the full amount of the invoice plus the assessed H-GAC administrative fee. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H-GAC contractor.

ARTICLE 7: CHANGES AND AMENDMENTS

This Contract may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

ARTICLE 8: TERMINATION PROCEDURES

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC's contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

ARTICLE 9: 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 10: FORCE MAJEURE

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 11: VENUE

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 procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:

County of Stanislaus
Name of End User (local government, agency, or non-profit corporation)

Houston-Galveston Area Council
3555 Timmons Lane, Suite 120, Houston, TX 77027

1010 Tenth Street, Suite 5400
Mailing Address

By: [Signature]
Executive Director

Modesto CA 95354
City State ZIP Code

Date: 1/6/05

By: [Signature]
Signature of chief elected or appointed official

Attest: [Signature]
Date: Dec 29, 2004

James Nelson, Asst. Purchasing Agent
Typed Name & Title of Signatory Date

APPROVED AS TO FORMS Facsimile copies of this document shall not be acceptable as ORIGINALS.
STANISLAUS COUNTY COUNSEL

rev. 11/03

BY [Signature]
Deputy County Counsel

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
TYMCO, INC.
Waco, Texas

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, Tymco, Inc. hereinafter referred to as the CONTRACTOR, having its principal place of business at 225 East Industrial Boulevard, Waco, Texas 76705

ARTICLE 1: **SCOPE OF SERVICES**

The parties have entered into a Sweepers-Street, Runway & Commercial/Industrial Contract to become effective as of April 1, 2010, and to continue through March 31, 2012 (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 Sweepers-Street, Runway & Commercial/Industrial offered by the CONTRACTOR. The CONTRACTOR agrees to sell Sweepers-Street, Runway & Commercial/Industrial 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: SW04-10, including any relevant suffixes
4. CONTRACTOR's Response to Bid No: SW04-10, 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 to, 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 original 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, action 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 chooses to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final resolution 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

unify 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

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 BONDS FOR INDIVIDUAL ORDERS

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

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

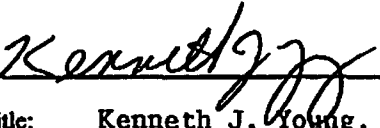
Attest for Houston-Galveston
Area Council, Houston, Texas:



Deidre Vick, Director of Public Services

Date: March 25, 2010

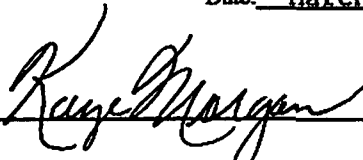
Signed for Tymco, Inc.
Waco, Texas:



Printed Name & Title: Kenneth J. Young, President

Date: March 22, 2010

Attest for Tymco, Inc.
Waco, Texas:



Printed Name & Title: Kaye Morgan, Sales/Production Coordinator

Date: March 22, 2010

Attachment-A
Tymco, Inc.
Sweepers-Street, Runway & Commercial/Industrial
Contract No. SW04-10

Applicable items are the base unit (Form-D) items listed in the table below, as well any options priced in offeror's Form-E submittal.

HGAC Product Code	Brand	Base Unit Model & Description	Offeror's Price
B: Street Sweepers: Commercial Cab-Chassis Mounted Designs			
BH01	Tymco	210-D: regenerative air sweeper; auxiliary engine: Kubota V2003 diesel, 39 hp; hopper: 2.4 cu.yds.; standard sweep path, max: 98"	\$39,900
BH03	Tymco	435: mid-sized regenerative air sweeper; auxiliary engine: Kubota V2003T diesel, 56 hp; hopper: 4 cu. yds.; water tank: 150 gallons; standard sweep path, max: 130"	\$58,300
BH04	Tymco	DST-4: mid-sized regenerative air dustless sweeper; auxiliary engine: Kubota V2003T diesel, 56 hp; hopper: 4 cu. yds.; water tank: 76 gallons; standard sweep path, max: 130"	\$111,649
BH05	Tymco	DST-6: full size regenerative air dustless sweeper; auxiliary engine: Deere 4045T diesel, 99 hp; dual steering, hopper: 6 cu. yds.; water tank: 220 gallons; standard sweep path, max: 142"	\$159,900
BH06	Tymco	Model 600: regenerative air sweeper; auxiliary engine: John Deere 4045T diesel, 99 hp; hopper: 7.3 cu.yds.; water tank: 220 gallons; standard sweep path, max: 142"	\$87,200
BH07	Tymco	Model 500-X: high side dump regenerative sweeper; auxiliary engine: 115-hp John Deere 4045T diesel; hopper: 5.7 cu. yds., stainless steel; water tank: 250-gallons; dump height: 2-11'; standard sweep path, max: 142"	\$134,490
C: Airport Runway Sweepers			
CD01	Tymco	600 HSP: regenerative air runway sweeper; auxiliary engine: Deere 4045T diesel, 99 hp; hopper: 7.3 cu.yds.; water tank: 220 gallons; standard sweep path, max: 120"	\$93,950



STANISLAUS COUNTY

Purchasing Division

1010 TENTH ST, SUITE 5400
 MODESTO, CALIFORNIA 95353
 TEL: (209) 525-6319
 FAX: (209) 525-7787

VENDOR: TYMCO INC
 TYMCO INC
 PO BOX 2368
 WACO, TX 76703-2368

SHIP TO

PUBLIC WORKS-MORGAN SHOP
 OLIVIA TANNER (209) 525-4193
 1716 MORGAN ROAD
 MODESTO, CA 95358

BILL TO

PUBLIC WORKS-MORGAN SHOP
 OLIVIA TANNER (209) 525-4193
 1716 MORGAN ROAD
 MODESTO, CA 95358

Purchase Order

PURCHASE ORDER NO. REVISION PAGE

97566 1 1

THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CARTONS AND CORRESPONDENCE RELATED TO THIS ORDER.

DATE OF ORDER BUYER
 03-NOV-10 C Blair

DATE OF REVISION BUYER
 14-DEC-10 C Blair

CUSTOMER ACCT NO	VENDOR NO.	PAYMENT TERMS	FREIGHT TERMS	FOB.	SHIP VIA
	72762	30 NET	PREPAID	DESTINATION	COMMON CARRIER

CONFIRM TO/TELEPHONE REQUESTOR / DELIVER TO
 Tanner, Olivia

line	PART NUMBER / DESCRIPTION	DELIVERY DATE	QUANTITY	UNIT	UNIT PRICE	EXTENSION	TAX
1	All prices and amounts on this order are expressed in: US dollar CONFIRMED PURCHASE ORDER FY 2010-2011 ONE (1) NEW, UNUSED 2010 EMISSION CERTIFIED TYMCO MODEL 500x REGENERATIVE AIR SWEEPER 5121-42100-84750 HGAC CONTRACT NUMBER SW04-10 (BOS Item #C-2 dated 11/2/10) o SHIP TO:	NEEDED: 27-OCT-10	249,354.62	DOLL	1	249,354.62	N

BOARD OF SUPERVISORS
 2011 OCT 12 A 8:11

Total Continued

By accepting this purchase order you agree to the County's terms and conditions found at: <http://www.stancounty.com/purchasing/>

Tom [Signature]
 AUTHORIZED SIGNATURE

Board item C-2 (11/2/10)



STANISLAUS COUNTY

Purchasing Division

1010 TENTH ST, SUITE 5400
MODESTO, CALIFORNIA 95353
TEL: (209) 525-6319
FAX: (209) 525-7787

VENDOR: TYMCO INC
TYMCO INC
PO BOX 2368
WACO, TX 76703-2368

PUBLIC WORKS-MORGAN SHOP
OLIVIA TANNER (209) 525-4193
1716 MORGAN ROAD
MODESTO, CA 95358

BILL TO

PUBLIC WORKS-MORGAN SHOP
OLIVIA TANNER (209) 525-4193
1716 MORGAN ROAD
MODESTO, CA 95358

Purchase Order

PURCHASE ORDER NO. REVISION PAGE

97566 1 2

THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CARTONS AND CORRESPONDENCE RELATED TO THIS ORDER.

DATE OF ORDER BUYER
03-NOV-10 C Blair

DATE OF REVISION BUYER
14-DEC-10 C Blair

CUSTOMER ACCT NO. VENDOR NO. PAYMENT TERMS FREIGHT TERMS F.O.B. SHIP VIA
72762 30 NET PREPAID DESTINATION COMMON CARRIER
ONFIRM TO/TELEPHONE REQUESTOR / DELIVER TO
Tanner, Olivia

Table with 8 columns: line, PART NUMBER / DESCRIPTION, DELIVERY DATE, QUANTITY, UNIT, UNIT PRICE, EXTENSION, TAX. Row 2: Address at top of page, 11,010.03 DOLL, 1, 11,010.03 N. Includes text: PLEASE INCREASE PO 97566 FOR TYMCO VENDOR #72762 BY \$11,010.03.

Total

Continued

By accepting this purchase order you agree to the County's terms and conditions found at: http://www.stancounty.com/purchasing/

AUTHORIZED SIGNATURE
[Signature]



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Purchasing Division

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SHIP TO

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MODESTO, CA 95358

Purchase Order

PURCHASE ORDER NO. REVISION PAGE

97566 1 3

THIS PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CARTONS AND CORRESPONDENCE RELATED TO THIS ORDER.

DATE OF ORDER BUYER
03-NOV-10 C Blair

DATE OF REVISION BUYER
14-DEC-10 C Blair

VENDOR: TYMCO INC
TYMCO INC
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WACO, TX 76703-2368

BILL TO

PUBLIC WORKS-MORGAN SHOP
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CUSTOMER ACCT NO. VENDOR NO. PAYMENT TERMS FREIGHT TERMS F.O.B. SHIP VIA
72762 30 NET PREPAID DESTINATION COMMON CARRIER

CONFIRM TO/TELEPHONE REQUESTOR / DELIVER TO
Tanner, Olivia

line	PART NUMBER / DESCRIPTION	DELIVERY DATE	QUANTITY	UNIT	UNIT PRICE	EXTENSION	TAX
	Address at top of page						

Total 260,364.65

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AUTHORIZED SIGNATURE