



Item: Purchase of One New 2017 Rubber Tire Roller
From: Doug Alm, Vehicle Maintenance Supervisor
Initiated By: Public Works Department
Presented By: Jim Rearden, Public Works Director
Action Requested: Approve Purchase

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/reject) the purchase of one new 2017 Rubber Tire Roller for \$87,664.00 to Tractor & Equipment Company of Great Falls; through NJPA (National Joint Powers Alliance).”

2. Mayor calls for a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation: Staff recommends that the City Commission approve the purchase to Tractor & Equipment Company of Great Falls for a total of \$87,664.00.

Background:

Purpose

This vehicle will be used in the Street Division for alley maintenance, chipsealing and asphalt street overlays.

The 1984 Ingram Rubber Tire Roller, VIN # 547637-P134, Unit #863, will be declared surplus in 2017 and sold at a later date.

Evaluation and Selection Process

The City of Great Falls has a membership with NJPA to view their competitive bid contracts. As an NJPA member, the City of Great Falls can interact directly with awarded vendors to facilitate a purchase. This also allows the City of Great Falls to work with the NJPA contract manager to verify pricing, answer contract questions or any other questions that may arise.

Conclusion

The bid specifications from NJPA meet specifications for the rubber tire roller.

Fiscal Impact: Funds for this scheduled purchase from the ERS (Equipment Revolving Schedule) were identified in the FY 2016-2017 Central Garage Budget.

Alternatives: The City Commission could vote to reject the purchase of one new 2017 Rubber Tire Roller.

Attachments/Exhibits:

Acceptance & Award
T & E Invoice

Contract Award
RFP 032515 #

FORM D



Formal Offering of Proposal
(To be completed Only by Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES
In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.


Company Name: Caterpillar Inc.

Date: 18 MAR 15

Company Address: 100 NE Adams Street

City: Peoria State: IL. Zip: 61629

Contact Person: Mike Hynes Title: Governmental Account Manager

Authorized Signature (ink only):  Mike Hynes_ (Name printed or typed)



Contract Acceptance and Award

(To be completed only by NJPA)

NJPA 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

Caterpillar, Inc
Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 19th, 2015 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance (NJPA)

NJPA Authorized signature: [Signature] Dr. Chad Cooney
NJPA Executive Director (Name printed or typed)

Awarded this 19th day of May, 2015 NJPA Contract Number 032515-CAT

NJPA Authorized signature: [Signature] Scott Veronen
NJPA Board Member (Name printed or typed)

Executed this 19th day of May, 2015 NJPA Contract Number 032515-CAT

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name CATERPILLAR INC.

Vendor Authorized signature: [Signature] MIKE HYNES
(Name printed or typed)

Title: GOVERNMENTAL ACCOUNT MANAGER

Executed this 20th day of May, 2015 NJPA Contract Number 032515-CAT



Purchaser's Order

DATE Nov 09, 2016
Quote No. 178435

PURCHASER	CITY OF GREAT FALLS			
STREET ADDRESS	ATTN: FISCAL SERVICES PO BOX 5021			
CITY/STATE	GREAT FALLS, MT	COUNTY	CASCADE	
POSTAL CODE	59403-5021	PHONE NO.	406 771 1401	
CUSTOMER CONTACT:	EQUIPMENT	KENNY JORGENSEN		
	PRODUCT SUPPORT	DOUG ALM		
INDUSTRY CODE:	LOCAL GOVERNMENT (GV93)	PRINCIPAL WORK CODE	HIGHWAYS & STREETS: CONSTRUCTION (200)	
				F.O.B. AT: Seattle

CUSTOMER NUMBER 9100732	Sales Tax Exemption # (if applicable) N/A	CUSTOMER PO NUMBER
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PAYMENT TERMS: (All terms and payments are subject to Finance Company - OAC approval)					
NET PAYMENT ON RECEIPT OF INVOICE <input checked="" type="checkbox"/>	NET ON DELIVERY <input type="checkbox"/>	FINANCIAL SERVICES <input type="checkbox"/>	CSC <input type="checkbox"/>	LEASE <input type="checkbox"/>	LKE Assignment <input type="checkbox"/>
CASH WITH ORDER \$0.00	BALANCE TO FINANCE \$0.00	INTEREST RATE 0%			
PAYMENT PERIOD	PAYMENT AMOUNT \$0.00	NUMBER OF PAYMENTS 0	OPTIONAL BUY-OUT		

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED			
MAKE: CATERPILLAR	MODEL: CW16	YEAR: 2017	
STOCK NUMBER: TBA	SERIAL NUMBER: TBA	SMU: New	
CW16 PNEUMATIC COMPACTOR DCA1	495-5347	ROLL ON-ROLL OFF	0P-4507
Available to ADSD-N from the Galveston PDC			
INCLUDES:			
445-5857 CW16 PNEUMATIC COMPACTOR			
450-5016 ENGINE, TIER 4F, STAGE 4			
445-5838 OIL, HYD, FACTORY FILLED			
494-9335 BASE, OPERATOR STATION			
499-1662 SEAT, STD VINYL, BSC			
454-5454 PRODUCT LINK, CELLULAR PL641			
450-0334 INSTALLATION, PRODUCT LINK			
445-5845 TIRES, 9, 14PLY BIAS			
449-7668 INSTRUCTIONS, NORTH AMERICAN			
448-1921 ROPS			
448-1922 SUN CANOPY FOR ROPS			
LANE 1 ORDER	0P-9001		

TRADE-IN EQUIPMENT				SELL PRICE	\$87,664.00
MODEL:	YEAR:	SN.:		BALANCE	\$87,664.00
PAYOUT TO:	AMOUNT:	PAID BY:			
MODEL:	YEAR:	SN.:			
PAYOUT TO:	AMOUNT:	PAID BY:			
MODEL:	YEAR:	SN.:			
PAYOUT TO:	AMOUNT:	PAID BY:			
MODEL:	YEAR:	SN.:			
PAYOUT TO:	AMOUNT:	PAID BY:			

ALL TRADE-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.

PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.

<input checked="" type="checkbox"/> CATERPILLAR EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>The customer acknowledges that he has received a copy of the /Caterpillar Warranty and has read and understood said warranty. Warranty applicable including expiration date where necessary: 1 Yr. / Unlimited Hours</p>	<input type="checkbox"/> USED EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>All used equipment is sold as is where is and no warranty is offered or implied except as specified here: Warranty applicable:</p>
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CSA: _____
NOTES: _____

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE

ORDER RECEIVED BY	Kraig Pester	REPRESENTATIVE	APPROVED AND ACCEPTED ON	PURCHASER
			CITY OF GREAT FALLS	
				PURCHASER
		BY		SIGNATURE
				PRINT NAME AND TITLE

ADDITIONAL TERMS AND CONDITIONS

1. Terms of Payment: Purchaser agrees to pay the balance shown together with any applicable sales, use and similar taxes and governmental charges that are not included within the balance and that are payable by reason of the sale of the Equipment.

All payments shall be made to such address as Seller from time to time provides to Purchaser. If any amount of the Unpaid Balance is not paid when due, Purchaser agrees to pay Seller a charge calculated thereon at the rate of 1.25% per month from the date when the delinquent amount was due, or, at Seller's option, a charge equal to 5% of the delinquent amount, provided that the charge shall not exceed the amount the Purchaser can legally obligate itself to pay and Seller can legally collect.

2. Additional Terms and Conditions : This Order is subject to ADDITIONAL TERMS and CONDITIONS including but not limited to DISCLAIMER AND RELEASE AND EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, all of which Purchaser has read and understands and agrees to. The terms and conditions on all pages of this Order, together with any agreements entered into pursuant to Paragraph 4, constitute the entire agreement of Seller and Purchaser with respect to the subject matter of this Order. Purchaser acknowledges that all of such terms and conditions, including but not limited to such LIMITED WARRANTY AND DISCLAIMER and EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES, were freely negotiated and bargained for with Seller and that Purchaser has agreed to purchase the Equipment subject to these terms and conditions. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED ON PURCHASER'S ASSENT TO ALL OF SUCH TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS OF CONDITIONS WHICH MAY APPEAR IN ANY COMMUNICATION FROM PURCHASER, INCLUDING BUT NOT LIMITED TO ANY SEPARATE DOCUMENT SUBMITTED BY PURCHASER IN CONNECTION WITH THE PURCHASE OF THE EQUIPMENT, ARE HEREBY OBJECTED TO AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY ACCEPTED IN WRITING BY SELLER'S SALES/BRANCH MANAGER AND APPROVED IN WRITING BY SELLER'S CREDIT DEPARTMENT.

3. LKE/RENTAL SALE: YES or NO: (circle one)

4. ADDITIONAL DOCUMENTS: If any portion of the Unpaid Balance is to be paid following delivery of the Equipment. Purchaser agrees to execute and deliver to Seller such security agreements, financing statements, and other documents as Seller may request from time to time in order to permit Seller to obtain and maintain a perfected security interest in the Equipment on Terms and Conditions acceptable to Seller.

5. ACCEPTANCE; MODIFICATION: This Order shall be binding on Seller only when it has been both accepted in writing on behalf of Seller by Seller's Sales / Branch Manager and if the Seller is extending credit to the Purchaser or arranging for credit for the Purchaser, approved in writing by Seller's Credit Department. No modifications of the Terms and Conditions of this Order shall be effective or binding upon Seller unless it is in writing and executed by both Seller's Sales / Branch Manager and by Seller's Credit Department. The Terms and Conditions of this Order shall not be modified or otherwise affected by statements and actions of sales people or others unless and until there is such a written modification.

6. SECURITY INTEREST: In order to secure the payment of the Unpaid Balance. Purchaser grants to Seller a purchase money security interest in the Equipment. This security interest shall be superseded if Purchaser and Seller enter into a separate security agreement covering the Equipment.

7. DELIVERY, INSPECTION, and ACCEPTANCE: The Equipment is sold F.O.B., the F.O.B. location shown on (Page 1) of this Order. Any delivery or shipping dates indicated on (Page 1) are estimated and approximate, and Seller shall not be liable for any delay in delivery, however occasioned. Seller may deliver the Equipment in installments as the equipment becomes available. Title and risk of loss shall pass to Purchaser upon delivery. Delivery of the Equipment to Purchaser shall take place when physical possession of the Equipment is given to Purchaser or to a carrier, or when the Seller receives directions from Purchaser to place the Equipment in storage, whichever first occurs. The securing of the Equipment on board a carrier shall be deemed to occur subsequent to delivery. If the Equipment is to be shipped, Seller's authorized to execute in Purchaser's name and carrier's standard bill of lading for the Equipment. Without being required to do so, Seller may, on behalf of Purchaser, advance the cost of shipping and/or insurance for the Equipment. To the extent not separately included in calculating the Unpaid Balance, Purchaser agrees to immediately reimburse Seller on demand for such cost. Purchaser agrees to inspect each item of Equipment, at its sole expense, promptly following receipt and will be deemed to have accepted the item unless it notifies Seller within (10) days following receipt, of any claimed discrepancy between the item as described on (Page 1) and the item as received by Purchaser. Any claim for shortages, delays, or damages occurring after Seller has delivered the Equipment to a carrier shall be made directly to the carrier, and Seller shall have no liability with respect thereto.

8. PERFORMANCE EXCUSED: Seller shall not be liable for Seller's inability to perform any or all of its obligations hereunder due to causes beyond Seller's control, including but not limited to acts of God, acts of omissions of Purchaser, acts of civil or military authorities, fire, weather, strikes or other labor disturbances, civil commotion, war, delays in transportation, late delivery by Seller's suppliers, fuel or other energy shortages, or the inability to obtain necessary labor, materials, supplies, equipment, or manufacturing facilities. If any such cause results in a delay in performance by Seller, the dates of the performance shall be extended for a period equal to the time lost by reason of the delay, and such extension shall be purchaser's exclusive remedy.

9. NEW and USED EQUIPMENT: The term "New Equipment" means any items of Equipment that are registered or registerable as new equipment for the purposes of the warranty provided by the manufacturer thereof. All other items of Equipment are "Used Equipment". Seller does not represent or warrant that items of New Equipment are unused or newly manufactured or that they are the most current models available from the manufacturer thereof.

10. LIMITED WARRANTY and DISCLAIMER: Each item of New Equipment is entitled to the benefits of such warranties as are made in writing by the manufacturer thereof, as set forth on the manufacturer's warranty form in effect at the time this order is accepted by Seller. If it is expressly noted on (Page 1) of this Order that there is a separate warranty of Seller that applies to one or more specified item or items of New or Used Equipment, such item or items are entitled to the benefits of such warranty as set forth on Seller's warranty form for such warranty in effect at the time this Order is accepted by Seller, subject to any disclaimers of warranties and limitations of remedies set forth in such form, as well as to the disclaimers of warranties and limitations of remedies set forth below. Purchaser acknowledges receipt of the manufacturers' and, if applicable, Seller's current warranty forms for the items of Equipment purchased under this Order. EXCEPT FOR A WARRANTY OF TITLE BY SELLER, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ITEMS OF USED EQUIPMENT, AND PURCHASER AGREES THAT IT HAS PURCHASED ALL SUCH ITEMS "AS IS" WITH ALL FAULTS AND DEFECTS.

11. WARRANTY PROCEDURES: Purchaser shall promptly notify Seller of any claim under any special warranty (such notice to be in addition to compliance with the procedural requirements of the warranty) and to make the affected item of Equipment available for inspection by Seller. Any replacements or repairs to be made by Seller as a warranty representative of the manufacturer shall be made at a repair and service facility of Seller or its designee during regular business hours, the cost of the transportation of the Equipment to and from the service facility of Seller or its designee and the cost of the Seller's personnel traveling to and from the location of the Equipment and related cost shall be borne solely by Purchaser. The failure of any item of Equipment purchased hereunder to fulfill any applicable warranties shall not affect the liability of Purchaser to Seller for the purchase price of that item or any other obligation of Purchaser to Seller.

12. DISCLAIMER and RELEASE: THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER FOR DEFECTIVE ITEMS OF NEW EQUIPMENT SHALL BE AS PROVIDED IN THE MANUFACTURER'S WARRANTY, ANY OTHER RIGHTS PROVIDED BY LAW AGAINST THE MANUFACTURER, AND ANY APPLICABLE SELLER'S WARRANTY REFERRED TO IN PARAGRAPH 10 EXCEPT FOR ITS OBLIGATION TO DELIVER THE EQUIPMENT IN ACCORDANCE WITH THE EXPRESS TERMS AND CONDITIONS OF THIS ORDER. SELLER SHALL HAVE NO OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY ITEM PURCHASED HEREUNDER, INCLUDING BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE, OR TRADE. (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR LOSS OF OR DAMAGE TO ANY EQUIPMENT.

13. EXCLUSION OF CONSEQUENTIAL and OTHER DAMAGES: SELLER SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE) OR OTHERWISE, FOR LOSS OF USE, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, ADDITIONAL COST INCURRED BY PURCHASER AT ITS PLANT OR IN THE FIELD (WHETHER BY WAY OF CORRECTION OR OTHERWISE), CLAIMS BY PURCHASER, PURCHASER'S CUSTOMERS, OR OTHER THIRD PARTIES FOR DAMAGES RESULTING FROM PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGE WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY ITEMS PROVIDED HEREUNDER.

14. PURCHASER'S RESPONSIBILITIES: Except to the extent provided in the express warranties under paragraph 10, Purchaser agrees that, even though it may receive technical information, drawings, or advice from Seller, Purchaser will have sole responsibility (a) for the safety, operation, and performance of the Equipment, (b) for its suitability for Purchaser's intended use, and (c) where the Equipment is to be used as part of a power, propulsion, or other system, for the installation of the Equipment, the design and performance of such systems, and the adequacy of such system for the particular needs of the Purchaser or any customer of Purchaser.

15. PURCHASER'S INDEMNITY: PURCHASER SHALL INDEMNIFY, DEFEND, AND SAVE SELLER AND ITS AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, AND CIVIL PENALTIES, INCLUDING COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) INCIDENT THERETO OR INCIDENT TO SUCCESSFULLY ESTABLISHING THE RIGHT TO INDEMNIFICATION, FOR INJURY TO OR DEATH OF ANY PERSON OR PERSONS, INCLUDING EMPLOYEES OF PURCHASER, OR FOR LOSS OF, OR DAMAGE TO ANY PROPERTY, INCLUDING EQUIPMENT, OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE POSSESSION, USE, MAINTENANCE, OR OPERATION OF THIS EQUIPMENT, WHETHER OR NOT ARISING IN TORT OR CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF SELLER, WHETHER ACTIVE, PASSIVE, OR IMPUTED. TO THE EXTENT OF THIS INDEMNITY, PURCHASER HEREBY WAIVES ANY IMMUNITY PROVIDED BY TITLE 51 REVISED CODE OF WASHINGTON OR ANY OTHER INDUSTRIAL INSURANCE LAW OR WORKERS COMPENSATION STATUTE. IF THIS INDEMNITY IS LIMITED IN SCOPE BY OPERATION OF LAW THEN IT SHALL EXTEND TO THE FULL EXTENT ALLOWED BY SUCH LAW.

16. INSURANCE: Purchaser is solely responsible for any loss or damage that occurs to any item or items of Equipment after delivery to Purchaser, and to such loss or damage shall diminish any obligation of Purchaser to Seller hereunder. At all times following delivery, Purchaser agrees to maintain one or more policies insuring the Equipment, in an amount not less than the full amount of the Unpaid Balance from time to time remaining unpaid against all hazards generally covered by extended coverage hazard insurance and against any other hazards required by Seller. Each such policy shall name Seller as an additional insured and loss payee and shall provide that no cancellation or material changes to the policy will be effective as to Seller unless Seller has been given written notice at least thirty (30) days prior to the effective date thereof. Purchaser agrees, if Seller request, to deliver to Seller copies of all such policies or certificates of the insurers evidencing such coverage.

17. DEFAULT: If Purchaser fails to pay when due any amount owing to Seller, or to perform any other obligation to Seller hereunder or otherwise, or if Purchaser becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Purchaser any proceeding under any bankruptcy, insolvency, or similar law of any jurisdiction, or for the appointment of a receiver or trustee in respect of any Purchaser's property, or if the Seller reasonably believes that Purchaser is unable to meet its debts as they mature, then, in addition to any other rights and remedies that Seller may have, Seller may, upon notice to Purchaser at any time, declare the entire Unpaid Balance immediately due and payable, require progress payments for the Equipment, require payment for the Equipment in cash upon delivery, apply amounts held for Purchaser's account hereunder or otherwise to the Unpaid Balance or to any other obligations of Purchaser to Seller, or terminate all of Seller's obligations under this Order.

18. NON-WAIVER: No term or condition of this Order shall be deemed waived and no breach excused, unless such waiver or excuse is in writing signed by the party claimed to have waived or excused. Any such waiver in a particular instance shall not constitute a waiver of future compliance with such term condition.

19. NOTICES: If Purchaser fails to pay when due any amount owing to Seller, or to perform any other obligation to Seller hereunder or otherwise, or if Purchaser becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Purchaser any proceeding under any bankruptcy, insolvency, or similar law of any jurisdiction, or for the appointment of a receiver or trustee in respect of any Purchaser's property, or if the Seller reasonably believes that Purchaser is unable to meet its debts as they mature, then, in addition to any other rights and remedies that Seller may have, Seller may, upon notice to Purchaser at any time, declare the entire Unpaid Balance immediately due and payable, require progress payments for the Equipment, require payment for the Equipment in cash upon delivery, apply amounts held for Purchaser's account hereunder or otherwise to the Unpaid Balance or to any other obligations of Purchaser to Seller, or terminate all of Seller's obligations under this Order.

20. ASSIGNMENT: This Order may not be assigned or otherwise transferred by Purchaser in whole or in part without Seller's prior written consent. Subject to this limitation on assignment and transfer, the terms and condition of this Order shall bind and benefit the parties and their respective successors and assigns.

21. SEVERABILITY: Should any provision of this Order be found by a court of competent jurisdiction to be invalid, illegal, or unenforceable the remaining provisions shall not be affected or impaired thereby except to the extent reasonably necessary to preserve the intent of the parties.

22. MERGER; NO CREDIT AGREEMENT: The terms and conditions of this Order merge and supersede all prior and contemporaneous agreements and negotiations regarding the subject matter hereof, except for any agreements entered into pursuant to Paragraph 4 above. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

23. ATTORNEYS' FEES; APPLICABLE LAW: In any suit or action arising out of this Order, the losing party shall pay to the prevailing party its reasonable attorneys' fees and all other cost, fees, and expenses incurred by the prevailing party at trial and upon appeal. This Order shall be governed by and construed in accordance with the laws of the State of Washington.

24. INVALIDITY: Each provision of this shall be considered separable, and if for any reason any provision herein is determined to be invalid, such invalidity shall not impair or otherwise affect the validity of the other provisions of this agreement. If any provision is deemed to be invalid, it shall be modified, if possible to the extent necessary to remove such invalidity.

25. LKE ASSIGNMENT: PURCHASER IS HEREBY NOTIFIED THAT SELLER HAS ASSIGNED TO "HGI EXCHANGE LLC" ACTING SOLELY IN IT'S CAPACITY AS SELLER'S QUALIFIED INTERMEDIARY, RIGHTS TO ACCEPT AND RECEIVE ALL CONSIDERATION PAYABLE BY PURCHASER (INCLUDING ALL MONEY AND ANY TRADE-IN), BUT NONE OF SELLER'S OBLIGATIONS IN THIS SALE WITH RESPECT TO THE PURCHASE OF QUALIFIED LKE/RENTAL EQUIPMENT FOR THE PURPOSES OF COMPLETING A LIKE-KIND EXCHANGE UNDER SECTION 1031 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

26. Telematics Disclaimer: In the event this machine is equipped with "Product Link" or other systems for the transfer of equipment health and diagnostic information ("Telematics Systems"), Purchaser understands that data concerning this machine, its condition, and its operation is being transmitted by "Product Link" or by other, similar Telematics Systems, to Caterpillar Inc. or the manufacturer of your equipment, and/or their affiliates, subsidiaries and dealers. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. For more information about the information collected in connection with "Product Link," and how this information is used and shared, please see the Caterpillar Telematics Data Privacy Statement, available at http://www.cat.com/en_US/support/operations/fleet-management-solutions/product-link/caterpillar-telematicsdataprivacystatement.html. For more information regarding the information collected in connection with Telematics Systems used on other manufacturers' equipment, and how this information is used and shared, please see the data privacy statement issued by the manufacturer. By using any machine equipped with "Product Link" or other Telematics Systems, you consent to the collection, use and disclosure of information as described in the applicable privacy statement and to the processing, transfer and storage of information in and to the United States and other countries, where you may not have the same rights and protections as you do under local law. PURCHASER RELEASES AND FOREVER DISCHARGES SELLER FOR ALL CLAIMS OR CAUSES OF ACTION ARISING FROM THE COLLECTION, USE AND DISCLOSURE OF TELEMATICS SYSTEMS' DATA VIA PRODUCT LINK OR OTHER TELEMATICS SYSTEM.

INITIAL HERE _____