

# H-GAC

Houston-Galveston Area Council  
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Pearce Industries, Inc. - Public Services -

19-01564

## SPECIAL PROVISIONS

Incorporated by attachment, as part of the whole agreement, H-GAC and the Contractor do, hereby agree to the Special Provisions as follows:

### **ARTICLE 1: BIDS/PROPOSALS INCORPORATED**

In addition to the whole Agreement, the following documents listed in order of priority are incorporated into the Agreement by reference: Bid/Proposal Specifications and Contractor's Response to the Bid/Proposal.

### **ARTICLE 2: END USER AGREEMENTS ("EUA")**

**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement ("EUA") with the **Contractor** through this Agreement, and that the term of the EUA may exceed the term of the current **H-GAC** Agreement. **H-GAC's** acknowledgement is not an endorsement or approval of the End User Agreement's terms and conditions. **Contractor** agrees not to offer, agree to or accept from the **END USER**, any terms or conditions that conflict with those in **Contractor's** Agreement with **H-GAC**. **Contractor** affirms that termination of its Agreement with H-GAC for any reason shall not result in the termination of any underlying EUA, which shall in each instance, continue pursuant to the EUA's stated terms and duration. Pursuant to the terms of this Agreement, termination of this Agreement will disallow the **Contractor** from entering into any new EUA with **END USERS**. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any EUAs, surviving termination of this Agreement between **H-GAC** and **Contractor**.

### **ARTICLE 3: MOST FAVORED CUSTOMER CLAUSE**

**Contractor** shall provide its most favorable pricing and terms to H-GAC. If at any time during this Agreement, **Contractor** develops a regularly followed standard procedure of entering 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, and this Agreement shall be deemed to be automatically retroactively amended, to the effective date of **Contractor's** most favorable past agreement with another entity. **Contractor** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER** as provided in its most favorable past agreement. 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** claims that a more favorable price, warranty, benefit, or term that was charged or offered to another entity during the term of this Agreement, does not constitute more favorable treatment, than **Contractor** shall, within ten (10) business days, notify **H-GAC** in writing, setting forth the detailed reasons **Contractor** believes the aforesaid offer is not in fact most favored treatment. **H-GAC**, after due consideration of **Contractor's** written explanation, may decline to accept such explanation and thereupon this Agreement 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 and the END USER.

***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 4: PARTY LIABILITY**

Contractor's total liability under this Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to the price of the particular products/services sold hereunder. Contractor agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. Contractor accepts liability to repay, and shall repay upon demand to END USER, any amounts determined by H-GAC, its independent auditors, or any state or federal agency, to have been paid in violation of the terms of this Agreement.

#### **ARTICLE 5: GOVERNING LAW & VENUE**

Contractor and H-GAC agree that Contractor will make every reasonable effort to resolve disputes with the **END USER** in accord with the law and venue rules of the state of purchase. **Contractor** shall immediately notify **H-GAC** of such disputes.

#### **ARTICLE 6: SALES AND ORDER PROCESSING CHARGE**

**Contractor** shall sell its products to **END USERS** based on the pricing and terms of this Agreement. **H-GAC** will invoice **Contractor** for the applicable order processing charge when H-GAC receives notification of an END USER order. **Contractor shall remit to H-GAC** the full amount of the applicable order processing charge, after delivery of any product or service and subsequent END USER acceptance. Payment of the Order Processing Charge shall be remitted from Contractor to H-GAC, within thirty (30) calendar days or ten (10) business days after receipt of an END USER's payment, whichever comes first, notwithstanding Contractor's receipt of invoice. For sales made by **Contractor** based on this Agreement, including sales to entities without Interlocal Agreements, **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 Agreement. **H-GAC** reserves the right to take appropriate actions including, but not limited to, Agreement termination if **Contractor** fails to promptly remit the appropriate order processing charge to H-GAC. In no event shall **H-GAC** have any liability to **Contractor** for any goods or services an **END USER** procures from **Contractor**. At all times, **Contractor** shall remain liable to pay to **H-GAC** any order processing charges on any portion of the Agreement actually performed, and for which compensation was received by **Contractor**.

#### **ARTICLE 7: LIQUIDATED DAMAGES**

Contractor and H-GAC agree that Contractor shall cooperate with the END USER at the time an END USER purchase order is placed, to determine terms for any liquidated damages.

#### **ARTICLE 8: INSURANCE**

Unless otherwise stipulated in Section B of the Bid/Proposal Specifications, **Contractor** must have the following insurance and coverage minimums:

- a. **General liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General

Aggregate limit of at least two times the Single Occurrence limit.

**Product liability** insurance with a Single Occurrence limit of at least \$1,000,000.00, and a General Aggregate limit of at least two times the Single Occurrence limit for all Products except Automotive Fire Apparatus. For Automotive Fire Apparatus, see Section B of the Bid/Proposal Specifications.

**Property Damage or Destruction** insurance is required for coverage of **End User** owned equipment while in **Contractor's** possession, custody or control. The minimum Single Occurrence limit is \$500,000.00 and the General Aggregate limit must be at least two times the Single Occurrence limit. This insurance may be carried in several ways, e.g. under an Inland Marine policy, as part of Automobile coverage, or under a Garage Keepers policy. In any event, this coverage must be specifically and clearly listed on insurance certificate(s) submitted to **H-GAC**.

- b. Insurance coverage shall be in effect for the length of any contract made pursuant to the Bid/Proposal, and for any extensions thereof, plus the number of days/months required to *deliver* any outstanding order after the close of the contract period.
- c. Original Insurance Certificates must be furnished to **H-GAC** on request, showing **Contractor** as the insured and showing coverage and limits for the insurances listed above.
- d. If any Product(s) or Service(s) will be provided by parties other than **Contractor**, all such parties are required to carry the minimum insurance coverages specified herein, and if requested by **H-GAC**, a separate insurance certificate must be submitted for each such party.
- e. **H-GAC** reserves the right to contact insurance underwriters to confirm policy and certificate issuance and document accuracy.

## **ARTICLE 9: PERFORMANCE AND PAYMENT BONDS FOR INDIVIDUAL ORDERS**

**H-GAC's** contractual requirements DO NOT include a Performance & Payment Bond (PPB); therefore, Contractor shall offer pricing that reflects this cost savings. **Contractor** shall remain prepared to offer a PPB to cover any order if so requested by the **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 10: CHANGE OF STATUS**

**Contractor** shall immediately notify **H-GAC**, in writing, of **ANY** change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name. Contractor shall offer written guidance to advise H-GAC if this Agreement 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 Agreement.

## **ARTICLE 11: TEXAS MOTOR VEHICLE BOARD LICENSING**

All that deal in motor vehicles shall maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Agreement term, any required **Contractor** license is denied, revoked, or not renewed, **Contractor** shall be in default of this Agreement, unless the Texas 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.

# H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

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Cooperative Agreement - Pearce Industries, Inc. - Public Services -- 19-01564

## GENERAL PROVISIONS

This Agreement is made and entered into, 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 Pearce Industries, Inc., hereinafter referred to as the Contractor, having its principal place of business at 12320 South Main Street, Houston, TX 77235-5068.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

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

### **ARTICLE 1: LEGAL AUTHORITY**

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

### **ARTICLE 2: APPLICABLE LAWS**

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

### **ARTICLE 3: INDEPENDENT CONTRACTOR**

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

### **ARTICLE 4: WHOLE AGREEMENT**

The General Provisions, Special Provisions, and Attachments, as provided herein, constitute the complete Agreement ("Agreement") between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

### **ARTICLE 5: SCOPE OF SERVICES**

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

#### **ARTICLE 6: PERFORMANCE PERIOD**

This Agreement shall be performed during the period which begins Feb 01 2020 and ends Jan 31 2022. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 14, which shall be fully executed by both parties to this Agreement.

#### **ARTICLE 7: PAYMENT OR FUNDING**

Payment provisions under this Agreement are outlined in the Special Provisions.

#### **ARTICLE 8: REPORTING REQUIREMENTS**

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 15 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

#### **ARTICLE 9: INSURANCE**

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

#### **ARTICLE 10: SUBCONTRACTS and ASSIGNMENTS**

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

#### **ARTICLE 11: AUDIT**

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

#### **ARTICLE 12: EXAMINATION OF RECORDS**

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or

off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

#### **ARTICLE 13: RETENTION OF RECORDS**

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

#### **ARTICLE 14: CHANGES AND AMENDMENTS**

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.

#### **ARTICLE 15: TERMINATION PROCEDURES**

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default.

##### ***A. Convenience***

H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.

##### ***B. Default***

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

#### **ARTICLE 16: SEVERABILITY**

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

#### **ARTICLE 17: FORCE MAJEURE**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance 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. Determination of force majeure shall rest solely with H-GAC.

#### **ARTICLE 18: CONFLICT OF INTEREST**

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

#### **ARTICLE 19: FEDERAL COMPLIANCE**

Contractor agrees to comply with all federal statutes relating to nondiscrimination, labor standards, and environmental compliance. Additionally, for work to be performed under the Agreement or subcontract thereof, including procurement of materials or leases of equipment, Contractor shall notify each potential subcontractor or supplier of the Contractor's federal compliance obligations. These may include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Fair Labor Standards Act of 1938 (29 USC 676 et. seq.), (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (e) the Age Discrimination in Employment Act of 1967 (29 USC 621 et. seq.) and the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (h) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in any specific statute(s)



applicable to any Federal funding for this Agreement; (k) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement; (l) applicable provisions of the Clean Air Act (42 U.S.C. §7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency regulations at 40 CFR Part 15; (m) applicable provisions of the Davis- Bacon Act (40 U.S.C. 276a - 276a-7), the Copeland Act (40 U.S.C. 276c), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), as set forth in Department of Labor Regulations at 20 CFR 5.5a; (n) the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

#### **ARTICLE 20: CRIMINAL PROVISIONS AND SANCTIONS**

The Contractor agrees to perform the Agreement in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of any related state or federal agency. The Contractor agrees to promptly notify H-GAC of any actual or suspected fraud, abuse, or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof. Contractor shall notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence. Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit, in carrying out a full investigation of all such incidents.

The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the Contractor's ability to perform services under this Agreement.

#### **ARTICLE 21: INDEMNIFICATION AND RECOVERY**

H-GAC's liability under this Agreement, 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 Agreement. Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against Contractor relating to this Agreement.

#### **ARTICLE 22: 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 Agreement, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC, 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, loss of 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 Agreement.

**ARTICLE 23: TITLES NOT RESTRICTIVE**

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

**ARTICLE 24: JOINT WORK PRODUCT**

This Agreement is the joint work product of H-GAC and the Contractor. This Agreement has been negotiated by H-GAC and the Contractor and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against any party.

**ARTICLE 25: DISPUTES**

All disputes concerning questions of fact or of law arising under this Agreement, which are not addressed within the Whole Agreement as defined pursuant to Article 4 hereof, 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 the 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, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the 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. The 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, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H- GAC's final decision.

**ARTICLE 26: CHOICE OF LAW: VENUE**

This Agreement 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 the Agreement shall lie exclusively in Harris County, Texas. Disputes between END USER and Contractor are to be resolved in accordance with the law and venue rules of the state of purchase. Contractor shall immediately notify H-GAC of such disputes.

**ARTICLE 27: ORDER OF PRIORITY**

In the case of any conflict between or within this Agreement, the following order of priority shall be utilized: 1) General Provisions, 2) Special Provisions, 3) Scope of Work, and, 4) Other Attachments.

**SIGNATURES:**

H-GAC and the Contractor have read, agreed, and executed the whole Agreement as of the date first written above, as accepted by:

**Pearce Industries, Inc.**


Signature   
E6E84F77627E450...

Name Nathan Parker

Title Sales Manager

Date 1/20/2020

**H-GAC**

DocuSigned by:  
Signature   
82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 12/23/2019

**Attachment A**  
**Pearce Industries, Inc.**  
**Auxiliary Power & Backup Generators**  
**Contract No.: GE02-20**

Applicable items are the models listed in the table below, as well as any pricing documents included in the awardee's bid response.

<b>Product Code</b>	<b>Brand</b>	<b>Description</b>	<b>Pricing</b>
GE02-20AC01	Generac	SD010: Diesel; Industrial grade; Output, standby: 10 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$23,823
GE02-20AC02	Generac	SD015: Diesel; Industrial grade; Output, standby: 15 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$23,925
GE02-20AC03	Generac	SD020: Diesel; Industrial grade; Output, standby: 20 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$24,924
GE02-20AC04	Generac	SD025: Diesel; Industrial grade; Output, standby/prime: 25 kW/22 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$26,220
GE02-20AC05	Generac	SD030: Diesel; Industrial grade; Output, standby/prime: 30 kW/24 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$26,498
GE02-20AC06	Generac	SD035: Diesel; Industrial grade; Output, standby/prime: 35 kW/30 kW; 60 Hz; Engine: Generac 3.4L, 56 Hp	\$27,124
GE02-20AC07	Generac	SD040: Diesel; Industrial grade; Output, standby/prime: 40 kW/35 kW; 60 Hz; Engine: Generac 3.4L, 65 Hp	\$27,319
GE02-20AC08	Generac	SD050: Diesel; Industrial grade; Output, standby/prime: 50 kW/44 kW; 60 Hz; Engine: Generac 3.4L, 86 Hp	\$28,725
GE02-20AC09	Generac	SD060: Diesel; Industrial grade; Output, standby/prime: 60 kW/54 kW; 60 Hz; Engine: Iveco/FPT 4.5L, 93 Hp	\$30,172
GE02-20AC10	Generac	SD080: Diesel; Industrial grade; Output, standby/prime: 80 kW/72 kW; 60 Hz; Engine: Iveco/FPT 4.5L, 131 Hp	\$32,713
GE02-20AC11	Generac	SD100: Diesel; Industrial grade; Output, standby/prime: 100 kW/80 kW; 60 Hz; Engine: Iveco 6.7L, 152 Hp	\$34,851
GE02-20AC12	Generac	SD130: Diesel; Industrial grade; Output, standby/prime: 130 kW/117 kW; 60 Hz; Engine: Iveco 6.7L, 198 Hp	\$41,759
GE02-20AC13	Generac	SD150: Diesel; Industrial grade; Output, standby/prime: 150 kW/135 kW; 60 Hz; Engine: Iveco/FPT 6.7L, 240 Hp	\$44,108
GE02-20AC14	Generac	SD175: Diesel; Industrial grade; Output, standby/prime: 175 kW/158 kW; 60 Hz; Engine: Iveco/FPT 6.7L, 279 Hp	\$48,102

GE02-20AC15	Generac	SD200: Diesel; Industrial grade; Output, standby/prime: 200 kW/180 kW; 60 Hz; Engine: Iveco/FPT 8.7L, 320 Hp	\$53,070
GE02-20AC16	Generac	SD230: Diesel; Industrial grade; Output, standby/prime: 230 kW/207 kW; 60 Hz; Engine: Iveco/FPT 8.7L, 359 Hp	\$61,583
GE02-20AC17	Generac	SD250: Diesel; Industrial grade; Output, standby/prime: 250 kW/225 kW; 60 Hz; Engine: Iveco/FPT 8.7L, 389 Hp	\$64,829
GE02-20AC18	Generac	SD275: Diesel; Industrial grade; Output, standby/prime: 275 kW/248 kW; 60 Hz; Engine: Iveco/FPT 10.3L, 449 Hp	\$65,144
GE02-20AC19	Generac	SD300: Diesel; Industrial grade; Output, standby/prime: 300 kW/270 kW; 60 Hz; Engine: Iveco/FPT 10.3L, 480 Hp	\$67,643
GE02-20AC20	Generac	SD350: Diesel; Industrial grade; Output, standby/prime: 350 kW/315 kW; 60 Hz; Engine: Iveco/FPT 12.9L, 530 Hp	\$80,339
GE02-20AC21	Generac	SD400: Diesel; Industrial grade; Output, standby/prime: 400 kW/360 kW; 60 Hz; Engine: Perkins 12.5L, 619 Hp	\$89,180
GE02-20AC22	Generac	SD500: Diesel; Industrial grade; Output, standby/prime: 500 kW/450 kW; 60 Hz; Engine: Perkins 15.2L, 762 Hp	\$100,881
GE02-20AC23	Generac	SD600: Diesel; Industrial grade; Output, standby/prime: 600 kW/547 kW; 60 Hz; Engine: Perkins 18.1L, 909 Hp	\$142,867
GE02-20AC24	Generac	SD750: Diesel; Industrial grade; Output, standby; 750 kW; 60 Hz; Engine: Mitsubishi 33.9L 1207 Hp	\$209,509
GE02-20AC25	Generac	SD800: Diesel; Industrial grade; Output, standby; 800 kW; 60 Hz; Engine: Mitsubishi 33.9L 1207 Hp	\$217,827
GE02-20AC26	Generac	SD900: Diesel; Industrial grade; Output, standby; 900 kW; 60 Hz; Engine: Mitsubishi 37.1L 1528 Hp	\$243,122
GE02-20AC27	Generac	SD1000: Diesel; Industrial grade; Output, standby; 1000 kW; 60 Hz; Engine: Mitsubishi 37.1L 1528 Hp	\$257,950
GE02-20AC28	Generac	SD1250: Diesel; Industrial grade; Output, standby; 1250 KW; 60 Hz; Engine: Mitsubishi 49.0L 1881 Hp	\$347,579
GE02-20AC29	Generac	SD1500: Diesel; Industrial grade; Output, standby; 1500 kW; 60 Hz; Engine: Mitsubishi 65.4L 2346 Hp	\$411,319
GE02-20AC30	Generac	SD2000: Diesel; Industrial grade; Output, standby; 2000 kW; 60 Hz; Engine: Mitsubishi 65.4L 2923 Hp	\$555,899

GE02-20AC31	Generac	RD015: Diesel: Light Commerical grade: Output, standby 15 kW; 60 HZ; Engine: Generac 2.2L	\$15,329
GE02-20AC32	Generac	RD020: Diesel: Light Commerical grade: Output, standby 20 kW; 60 Hz; Engine: Generac 2.2L	\$16,847
GE02-20AC33	Generac	RD030: Diesel: Light Commerical grade: Output, standby 30 kW; 60 Hz; Engine: Generac 2.4L	\$19,195
GE02-20AC34	Generac	RD048: Diesel: Light Commerical grade: Output, standby 48 kW; 60 Hz; Engine: Generac 3.4L	\$22,110
GE02-20AC35	Generac	RD050: Diesel: Light Commerical grade: Output, standby 50 kW; 60 Hz; Engine: Generac 3.4L	\$22,110
GE02-20AC36	Generac	RG022: Natural gas; Light Commercial grade; Output, standby: 22 kW; 60 Hz; Engine: Generac 2.4L, 40 Hp	\$12,746
GE02-20AC37	Generac	RG025: Natural gas; Light Commercial grade; Output, standby: 25 kW; 60 Hz; Engine: Generac 1.5L, 45 Hp	\$12,780
GE02-20AC38	Generac	RG027: Natural gas; Light Commercial grade; Output, standby: 27 kW; 60 Hz; Engine: Generac 2.4L, 40 Hp	\$15,148
GE02-20AC39	Generac	RG030: Natural gas; Light Commercial grade; Output, standby: 30 kW; 60 Hz; Engine: Generac 1.5L, 48 Hp	\$15,276
GE02-20AC40	Generac	RG032: Natural Gas; Light Commerical grade; Output, standby; 32 kW; 60 Hz; Engine: Generac 2.4L, 49 Hp	\$16,244
GE02-20AC41	Generac	RG036: Natural gas; Light Commercial grade; Output, standby: 36 kW; 60 Hz; Engine: Generac 2.4L, 56 Hp	\$16,374
GE02-20AC42	Generac	RG038: Natural gas; Light Commercial grade; Output standby; 38 kW; 60 Hz; Engine; Generac 2.4L	\$17,872
GE02-20AC43	Generac	RG045: Natural gas; Light Commercial grade; Output, standby: 45 kW; 60 Hz; Engine: Generac 2.4L, 71 Hp	\$18,177
GE02-20AC44	Generac	RG048: Natural gas; Light Commercial grade; Output, standby: 48 kW; 60 Hz; Engine: Generac 4.2L, 75 Hp	\$22,461
GE02-20AC45	Generac	RG060: Natural gas; Light Commercial grade; Output, standby: 60 kW; 60 Hz; Engine: Generac 2.4L, 94 Hp	\$22,897
GE02-20AC46	Generac	QT070: Natural gas; Light Commercial grade; Output, standby: 70 kW; 60 Hz; Engine: Generac 6.8L, 110 Hp	\$27,912
GE02-20AC47	Generac	QT080: Natural gas; Light Commercial grade; Output, standby: 80 kW; 60 Hz; Engine: Generac 4.6L, 126 Hp	\$28,212
GE02-20AC48	Generac	QT100: Natural gas; Light Commercial grade; Output, standby: 100 kW; 60 Hz; Engine: Generac 6.8L, 162 Hp	\$35,416

GE02-20AC49	Generac	QT130: Natural gas; Light Commercial grade; Output, standby: 130 kW; 60 Hz; Engine: Generac 6.8L, 208 Hp	\$39,636
GE02-20AC50	Generac	QT150: Natural gas; Light Commercial grade; Output, standby: 150 kW; 60 Hz; Engine: Generac 6.8L, 254 Hp	\$42,566
GE02-20AC51	Generac	QT025A: Natural gas; Industrial grade; Output, standby: 25 kW; 60 Hz; Engine: Generac 2.4L, 40 Hp	\$18,894
GE02-20AC52	Generac	SG035: Natural gas; Industrial grade; Output, standby: 35 kW; 60 Hz; Engine: Generac 5.4L, 54 Hp	\$23,249
GE02-20AC53	Generac	SG040: Natural gas; Industrial grade; Output, standby: 40 kW; 60 Hz; Engine: Generac 5.4L, 62 Hp	\$24,069
GE02-20AC54	Generac	SG045: Natural gas; Industrial grade; Output, standby: 45 kW; 60 Hz; Engine: Generac 5.4L, 71 Hp	\$24,254
GE02-20AC55	Generac	SG050: Natural gas; Industrial grade: Output, standby: 50 kW; 60 Hz; Engine: Generac 6.8L 80 Hp	\$27,922
GE02-20AC56	Generac	SG060: Natural gas; Industrial grade: Output, standby: 60 kW; 60 Hz: Engine: Generac 6.8L 96 Hp	\$28,240
GE02-20AC57	Generac	SG070: Natural gas; Industrial grade; Output, standby: 70 kW; 60 Hz; Engine: Generac 6.8L, 107 Hp	\$31,356
GE02-20AC58	Generac	SG080: Natural gas; Industrial grade; Output, standby: 80 kW; 60 Hz; Engine: Generac 8.0L, 127 Hp	\$31,691
GE02-20AC59	Generac	SG100: Natural gas; Industrial grade; Output, standby: 100 kW; 60 Hz; Engine: Generac 9.0L, 149 Hp	\$33,466
GE02-20AC60	Generac	SG130: Natural gas; Industrial grade; Output, standby: 130 kW; 60 Hz; Engine: Generac 9.0L, 200 Hp	\$40,032
GE02-20AC61	Generac	SG150: Natural gas; Industrial grade; Output, standby: 150 kW; 60 Hz; Engine: Generac 14.2L, 238 Hp	\$77,787
GE02-20AC62	Generac	SG175: Natural gas; Industrial grade; Output, standby: 175 kW; 60 Hz; Engine: Generac 14.2L, 267 Hp	\$88,440
GE02-20AC63	Generac	SG200: Natural gas; Industrial grade; Output, standby: 200 kW; 60 Hz; Engine: Generac 14.2L, 304 Hp	\$94,503
GE02-20AC64	Generac	SG230: Natural gas; Industrial grade; Output, standby: 230 kW; 60 Hz; Engine: Generac 14.2L, 368 Hp	\$115,273

GE02-20AC65	Generac	SG250: Natural gas; Industrial grade; Output, standby: 250 kW; 60 Hz; Engine: Generac 14.2L, 374 Hp	\$117,092
GE02-20AC66	Generac	SG275: Natural gas; Industrial grade; Output, standby: 275 kW; 60 Hz; Engine: Generac 14.2L, 415 Hp	\$121,303
GE02-20AC67	Generac	SG300: Natural gas; Industrial grade; Output, standby: 300 kW; 60 Hz; Engine: Generac 14.2L, 460 Hp	\$126,295
GE02-20AC68	Generac	SG350: Natural gas; Industrial grade; Output, standby: 350 kW; 60 Hz; Engine: Generac 21.9L, 620 Hp	\$165,607
GE02-20AC69	Generac	SG400: Natural gas; Industrial grade; Output, standby: 400 kW; 60 Hz; Engine: Generac 21.9L, 636 Hp	\$180,632
GE02-20AC70	Generac	SG450: Natural gas; Industrial grade; Output standby; 450 kW; 60 Hz; Engine; Generac 21.9L, 636 Hp	\$243,143
GE02-20AC71	Generac	SG500: Natural gas; Industrial grade; Output standby; 500 kW; 60 hz; Engine; Generac 25.8L, 670 Hp	\$255,538
GE02-20AC72	Generac	SG625: Natrual gas; Industrial grade; Output standby; 625 kW; 60 Hz; Engine; Generac 33.9L, 941 Hp	\$305,218
GE02-20AC73	Generac	SG750: Natural gas; Industrial grade; Output standby; 750 kW; 60 Hz; Engine; Generac 33.9L, 1118 Hp	\$374,948
GE02-20CA01	Generac	MPS-MD300 Modular Set: Diesel; Output, standby: 300 kW; 60 Hz; Engine: Iveco/FPT 10.3L, 480 Hp	\$85,595
GE02-20CA02	Generac	MPS-MD350 Modular Set: Diesel; Output, standby; 350 kW; 60 Hz; Engine: Iveco/FPT 530 Hp	\$98,901
GE02-20CA03	Generac	MPS-MD400 Modular Set: Diesel; Output, standby: 400 kW; 60 Hz; Engine: Perkins 12.5L, 619 Hp	\$101,183
GE02-20CA04	Generac	MPS-MD500 Modular Set: Diesel; Output, standby/prime: 500 kW/400 kW; 60 Hz; Engine: Perkins 15.2L, 762 Hp	\$121,940
GE02-20CA05	Generac	MPS-MD600 Modular Set: Diesel; Output, standby: 600 kW; 60 Hz; Engine: Perkins 18.1L, 909 Hp	\$147,802
GE02-20CA06	Generac	MPS-MD1000 Modular Set: Diesel; Output, standby: 1000 kW; 60 Hz; Engine (2): Volvo 16.1L, 1514 Hp	\$273,711
GE02-20CA08	Generac	MPS-MG130 Modular Set: Natural Gas; Standby power: 130 kW; 60 Hz; Engine: Generac 6.8L, 189 Hp	\$47,711



GE02-20CA09	Generac	MPS-MG150 Modular Set: Natural Gas; Standby power: 150 kW; 60 Hz; Engine: Generac 14.2L, 238 Hp	\$84,574
GE02-20CA10	Generac	MPS-MG200 Modular Set: Natural Gas; Standby power: 200 kW; 60 Hz; Engine: Generac 14.2L, 304 Hp	\$100,551
GE02-20CA11	Generac	MPS-MG250 Modular Set: Natural Gas; Standby power: 250 kW; 60 Hz; Engine: Generac 14.2L, 400 Hp	\$124,412
GE02-20CA12	Generac	MPS-MG300 Modular Set: Natural Gas; Standby power: 300 kW; 60 Hz; Engine: Generac 14.2L, 454 Hp	\$133,631
GE02-20CA13	Generac	MPS-MG350 Modular Set: Natural Gas; Standby power: 350 kW; 60 Hz; Engine: Generac 21.9L 620 Hp	\$172,305
GE02-20CA14	Generac	MPS-MG400 Modular Set: Natural Gas; Standby power: 400 kW; 60 Hz; Engine: Generac 21.9L 636 Hp	\$187,364
GE02-20CA15	Generac	MPS-MG500 Modular Set: Natural Gas; Standby power 500 kW; 60 Hz; Engine; Generac 25.8L 670 Hp	\$206,520
GE02-20CA16	Generac	SB500 Bi-Fuel Generator; Diesel and Natural Gas; Standby power 500 kW; 60 Hz; Engine; Perkins 15.2L 835 Hp	\$183,466
GE02-20CA17	Generac	SB600 Bi-Fuel Generator; Diesel and Natural Gas; Standby power 600 kW; 60 Hz; Engine; Perkins 18.1L 905 Hp	\$206,523
GE02-20DG01	Magnum	MLG8: Diesel; Output, 1-phase: standby / prime: 9 kW / 8.1kW; 60 Hz; Engine: Kubota 1.12L, 13.5 Hp	\$18,036
GE02-20DG02	Magnum	MLG15: Diesel; Output, 1-phase: standby / prime: 14 kW / 13 kW; 60 Hz; Engine: Mitsubishi 1.8L, 22.3 Hp	\$20,882
GE02-20DG03	Magnum	MLG20: Diesel; Output, dedicated 1-phase: standby / prime: 20 kW / 19 kW; 60 Hz; Engine: Isuzu 2.2L, 36.2 Hp	\$28,204
GE02-20DG04	Magnum	MDG25: Diesel; Output, standby / prime: 25 kW / 20 kW; 60 Hz; Selectable voltage; Engine: Isuzu 2.2L, 35 Hp	\$37,333
GE02-20DG05	Magnum	MDG35: Diesel; Output, standby / prime: 31 kW / 29 kW; 60 Hz; Selectable voltage; Engine: Isuzu 2.2L, 34 Hp	\$41,245
GE02-20DG06	Magnum	MDG45: Diesel; Output, standby / prime: 40 kW / 36 kW; 60 Hz; Engine: Isuzu 2.2L, 58.9 Hp	\$44,410
GE02-20DG07	Magnum	MDG55: Diesel; Output, standby / prime: 48 kW / 44 kW; 60 Hz; Engine: John Deer 2.9L, 67 Hp	\$46,380
GE02-20DG08	Magnum	MDG75: Diesel; Output, standby / prime: 68 kW / 60 kW; 60 Hz; Engine: John Deere 4.5L, 91 Hp	\$60,323

GE02-20DG09	Magnum	MDG100: Diesel; Output, standby / prime: 85 kW / 80 kW; 60 Hz; Engine: JohnDeere 4.5L, 122 Hp	\$67,408
GE02-20DG10	Magnum	MDG150: Diesel; Output, standby / prime: 144 kW / 120 kW; 60 Hz; Engine: John Deere 6.8L, 180 Hp	\$102,928
GE02-20DG11	Magnum	MDG175: Diesel; Output, standby / prime: 173 kW / 140 kW; 60 Hz; Engine: John Deere 6.8L, 217 Hp	\$104,831
GE02-20DG12	Magnum	MDG250: Diesel; Output, standby / prime: 220 kW / 200 kW; 60 Hz; Engine: John Deere 6.8L, 389 Hp	\$115,591