

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of May 18, 2021 for reference purposes only, pursuant to Resolution No. RES-21-0044 adopted by the City Council of the City of Long Beach at its meeting on May 11, 2021, by and between SOUTH COAST FIRE EQUIPMENT, INC., a California corporation ("Contractor"), with a place of business located at 2020 S. Baker Avenue, Ontario, California 91761, and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, Section 1802 of the Long Beach City Charter permits the City to make purchases under the purchasing contracts of other governmental agencies when authorized to do so by a resolution; and

WHEREAS, the City desires to purchase a Pierce Arrow XT Fire Ladder Truck, with related equipment and accessories; and

WHEREAS, Houston-Galveston Area Council has a contract with South Coast Fire Equipment, Inc. for the purchase of a Fire Ladder Truck ("H-GAC Contract"); and

WHEREAS, Resolution No. RES-21-0044 authorizes the City to purchase a Pierce Arrow XT Fire Ladder Truck with related equipment and accessories by virtue of the H-GAC Contract;

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, the parties agree as follows:

1. The H-GAC Contract with Contractor, attached hereto as Exhibit "A", is incorporated by this reference as if fully set forth, and the same terms and conditions contained in the H-GAC Contract shall be applicable here except as follows:

A. Wherever the H-GAC Contract refers to Houston-Galveston Area Council, it shall be deemed to refer to the City of Long Beach;

B. Contractor shall sell, furnish and deliver to the City a Pierce Arrow XT Fire Ladder Truck of substantially the same type and kind purchased

1 under the H-GAC Contract, except as modified by Exhibit "B" attached hereto and
2 incorporated by this reference, in an annual amount not to exceed One Million Five
3 Hunded Sixty-Five Thousand Two Hundred Fifty-Nine Dollars (\$1,565,259),
4 including tax and fees. To the extent that the H-GAC Contract and this Agreement
5 are inconsistent, the following priority shall govern: (1) this Agreement and (2) the
6 H-GAC Contract.

7 C. Payment for the Fire Ladder Truck purchased from Contractor
8 by the City shall be made by the City on delivery to and acceptance of the Fire ladder
9 Truck by the City and submittal of an invoice to the City. Payment is due thirty (30)
10 days after the date of the invoice.

11 D. All warranties shall accrue to the City of Long Beach.

12 E. This Agreement shall be governed by and construed
13 pursuant to the laws of the State of California, except those provisions of
14 California law pertaining to conflicts of laws. Any action involving this Agreement
15 shall be brought in the Los Angeles Superior Court, Long Beach Judicial District,
16 or the United States District Court for the State of California located in Los
17 Angeles.

18 F. Contractor shall comply with all laws, ordinances, rules and
19 regulations of and obtain all permits, licenses, and certificates required by all
20 federal, state and local governmental authorities.

21 G. In connection with performance of this Agreement and
22 federal laws, rules and regulations, Contractor shall not discriminate in
23 employment or in the performance of this Agreement on the basis of race,
24 religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS,
25 HIV status, handicap or disability.

26 H. The acceptance of any services or the payment of any
27 money by City shall not operate as a waiver of any provisions of this Agreement,
28 or of any right to damages or indemnity stated herein. The waiver of any breach

1 of this agreement shall constitute a waiver of any other or subsequent breach of
2 this Agreement.

3 I. This Agreement was created as a joint effort of both parties
4 and neither it nor any part of it shall be construed against one party as the
5 drafter.

6 J. Termination of this Agreement shall not affect rights or
7 liabilities of the parties which accrued prior to the termination and shall not
8 extinguish any warranties.

9 K. Contractor shall not use the name of City, its officials or
10 employees in any advertising or solicitation for business nor as a reference
11 without the prior written approval of City's City Manager.

12 L. This Agreement is intended by the parties to benefit
13 themselves only and is not in any way intended or designed to or entered for the
14 purpose of creating any benefit or right for any person or entity of any kind that is
15 not a party to this Agreement.

16 M. In performing hereunder, Contractor is and shall act as an
17 independent contractor and neither Contractor nor its employees, agents,
18 suppliers or subcontractors shall act as or be deemed employees,
19 representatives or agents of City.

20 N. The terms and conditions of this Agreement are severable. If
21 any term or condition is held invalid, void or unenforceable, the remaining terms
22 and conditions shall be given effect.

23 O. Neither this Agreement nor any money that becomes due to
24 Contractor under this Agreement may be assigned by Contractor without the
25 prior written consent of the City Manager or his designee.

26 P. In the event of any conflict or ambiguity between this
27 Agreement and any Exhibit, the provisions of this Agreement shall govern.

28 Q. If there is any legal proceeding between the parties to

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1 enforce or interpret this Agreement or to protect or establish any rights or
2 remedies hereunder, the prevailing party shall be entitled to its cost and
3 expenses, including reasonable attorney's fees.

4 2. Any notice given under this Agreement shall be in writing and
5 personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be
6 delivered or mailed to Contractor at the relevant address first stated above, and to the City
7 at 411 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager. Notice
8 shall be deemed given three days after deposit in the mail.

9 3. The terms appearing on the H-GAC Contract are incorporated in this
10 Agreement.

11 4. Contractor shall cooperate with the City in all matters relating to self-
12 accrual of use tax. Contractor shall contact the City Treasurer for additional information
13 regarding self-accrual.

14 5. This Agreement, Exhibits, and all documents which are incorporated
15 by reference in this Agreement constitute the entire understanding between the parties and
16 supersede all other agreements, oral or written, with respect to the subject matter of this
17 Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

SOUTH COAST FIRE EQUIPMENT, INC.,
a California corporation

May 21, 2021

By Kevin M Newell
Name Kevin M Newell
Title President

May 21, 2021

By Kevin M Newell
Name Kevin M Newell
Title President

"Contractor"

CITY OF LONG BEACH, a municipal corporation

June 1, 2021

By Sandra J. Jabrum

City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"City"

This Agreement is approved as to form on May 26, 2021.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 SOUTH COAST FIRE EQUIPMENT, INC.,
4 a California corporation

5 May 21, 2021

By KEVIN M NEWELL
6 Name Kevin M Newell
7 Title PRESIDENT

8 May 21, 2021

By KEVIN M NEWELL
9 Name Kevin M Newell
10 Title PRESIDENT

11 "Contractor"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 _____, 2021

By _____
15 City Manager

16 "City"

17 This Agreement is approved as to form on _____, 2021.

18 CHARLES PARKIN, City Attorney

19 By _____
20 Deputy

21 OFFICE OF THE CITY ATTORNEY
22 CHARLES PARKIN, City Attorney
23 411 West Ocean Boulevard, 9th Floor
24 Lona Beach, CA 90802-4664

EXHIBIT “A”

H-GAC

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

Cooperative Agreement - South Coast Fire Equipment, Inc. - Public Services --

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 South Coast Fire Equipment, Inc., hereinafter referred to as the Contractor, having its principal place of business at 2020 South Baker Avenue, Ontario, CA 91761.

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 Dec 01 2019 and ends Nov 30 2021. 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, judgements, 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:

South Coast Fire Equipment, Inc.

Signature *Kevin Newell*
FE6564A89CD04F6...

Name Kevin Newell

Title President

Date 11/14/2019

H-GAC DocuSigned by:

Signature *Chuck Wemple*
82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 11/12/2019

H-GAC

Houston-Galveston Area Council

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

Cooperative Agreement - South Coast Fire Equipment, Inc. - Public Services -

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.

Attachment A		
South Coast Fire Equipment, Inc.		
Fire Service Apparatus (All Types)		
Contract No. FS12-19		
V. Pierce		
These units can only be sold outside Texas		
A. Aerials (Booms/Platforms, Ladders, Ladder/Platforms)		
FS19VA01	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Single Axle, 75' Steal Rear-Mounted Telescoping Ladder (500#)	\$841,899.00
FS19VA02	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Axle, 75' Steal Rear-Mounted Telescoping Ladder (500#)	\$875,497.00
FS19VA03	Pierce Enforcer Chassis 4-Door 75' Aluminum Rear Mounted Telescoping Ladder, Formed Aluminum Body	\$827,652.00
FS19VA04	Pierce Arrow Chassis 4-Door 100' Aluminum Rear Mount Aerial, Aluminum Body, Tandem Axle	\$1,126,674.00
FS19VA05	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Single Axle, 107' Rear-Mounted Telescoping Ladder	\$936,103.00
FS19VA06	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Rear Axle, 107' Rear-Mounted Telescoping Ladder	\$981,819.00
FS19VA07	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Rear Axle, 110' Rear-Mounted Telescoping Platform	\$1,031,013.00
FS19VA08	Pierce Enforcer Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Axle, 105' Rear-Mounted Telescoping Ladder (500#)	\$982,626.00
FS19VA09	Pierce Arrow Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Axle, 100' Mid-Mounted Telescoping Ladder with Platform	\$1,322,460.00
FS19VA10	Pierce Arrow Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Tandem Axle, 100' Rear-Mounted Telescoping Ladder with Platform (750#)	\$1,254,844.00
FS19VA11	Pierce Arrow Chassis, 4-Door Full Tilt Aluminum Cab, Formed Aluminum Body, Single Axle, 107' Tractor Drawn - Mid-Mounted Telescoping Ladder (#500)	\$1,266,367.00
B. Wildland Fire Apparatus		
FS19VB01	Pierce Brush Fire Apparatus, Ford F450, Formed Aluminum Utility Body	\$138,870.00
FS19VB02	Pierce Brush Fire Apparatus, Ford F-550 Mini Pumper 500 gpm, 300 tank	\$215,358.00
FS19VB03	Freightliner 4-Door 4 x 4 Wildland, 500 water, 1000 gpm Pump	\$364,240.00
C. Pumper Fire Apparatus		
FS19VC01	M2 Freightliner, 2-Door, OEM Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$264,379.00
FS19VC02	IHC, 2-Door, OEM Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$273,152.00
FS19VC03	KW, 2-Door, OME Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$267,171.00
FS19VC04	Peterbilt, 2-Door, OME Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$275,936.00
FS19VC06	Pierce Saber FR, 4-Door, Full-Tilt, Aluminum Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$456,160.00
FS19VC07	Pierce Enforcer, 4-Door, Full-Tilt, Aluminum Cab, Aluminum Body, Single Axle, 1250 GPM Pump, Mid-Mounted Pumper	\$492,768.00

FS19VC08	Pierce Velocity, 4- Door Full Tilt Cab, Aluminum Long Body, 1250 gpm mid-mounted Pump	\$578,586.00
FS19VC09	Pierce Dash CF, 4-Door, Full-Tilt, Aluminum Cab, Aluminum Body, Single Axle, 1250 GPM Pump, PUC Body Pumper	\$643,725.00
D. Special Service Apparatus (Walk-In Bodies) Multi-use: Rescue, RE-Hab, Hazmat, Mobile Command Center		
FS19VD01	Ford F-550 4- Door, 12 'Non-Walk-in Formed Aluminum Body	\$154,273.00
FS19VD02	M2 Freightliner, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Non-Walk-In Body	\$208,337.00
FS19VD03	IHC, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Non-Walk-In Body	\$210,190.00
FS19VD04	Kenworth, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Non-Walk-In Body	\$204,051.00
FS19VD05	Peterbilt, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Non-Walk-In Body	\$214,955.00
FS19VD06	Pierce Saber FR, Full-Tilt, Aluminum Cab, Single Axle, Formed Aluminum Body, Non-Walk-In Encore Body 18.5'	\$396,673.00
FS19VD07	Pierce Enforcer 4-Door, Aluminum Cab, Single Axle, Formed Aluminum Body, Non Walk-in HDR Body	\$497,432.00
FS19VD08	Pierce Velocity 4-Door Aluminum Cab, Tandem Axle Non-Walk-in HDR Body	\$609,953.00
FS19VD09	M2 Freightliner, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Walk-In Body	\$300,407.00
FS19VD10	IHC, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Walk-In Body	\$302,928.00
FS19VD11	Kenworth, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Walk-In Body	\$298,047.00
FS19VD12	Peterbilt, 2-Door, OEM Cab, Single Axle, Formed Aluminum Body, Walk-In Body	\$305,177.00
FS19VD13	Pierce Enforcer 4-Door, Full Tilt, Aluminum Cab, Single Axle, Formed Aluminum Body, Walk-in HDR Body	\$598,680.00
FS19VD14	Pierce Velocity 4-Door Aluminum Cab, Tandem Axle Walk-in HDR Body	\$704,579.00
FS19VD15	Pierce Velocity 2-Door, Aluminum Cab, Tandem Axle, Combination Formed Aluminum Body	\$747,407.00
FS19VD16	Pierce Velocity 4-Door Aluminum Cab, Tandem Axle Walk-in Communications Body	\$776,914.00
E. Pumper/Tankers & Tankers		
FS19VE01	Freightliner 2 Door, Single Axle Tanker, Aluminum Body w/2000 water & 500 pump	\$276,292.00
FS19VE02	IHC 2dr Single Axle Tanker, Aluminum Body w/2000 water & 500 pump	\$279,029.00
FS19VE03	Kenworth 2dr Single Axle Tanker, Aluminum Body w/2000 water & 500 pump	\$276,490.00
FS19VE04	Peterbilt 2dr Single Axle Tanker, Aluminum w/2000 water & 500 pump	\$303,543.00
FS19VE05	Pierce Saber FR, 4-Door, Full-Tilt, Aluminum Cab, Pumper/Tanker, Aluminum Body, Single Axle, 1000 GPM Pump, Mid-Mounted	\$508,722.00
FS19VE06	Pierce Enforcer, 4-Door, Full-Tilt, Aluminum Cab, Pumper/Tanker, Aluminum Body, Tandem Axle, 1000 GPM Pump, Mid-Mounted	\$584,155.00
FS19VE07	Freightliner 2dr, Tandem Axle Tanker, Aluminum Body w/3000 water & 500 pump	\$304,897.00
FS19VE08	IHC 2dr Tandem Axle Tanker, Aluminum Body w/3000 water & 500 pump	\$317,114.00
FS19VE09	Kenworth 2dr Tandem Axle Tanker, Aluminum Body w/3000 water & 500 pump	\$294,582.00
FS19VE10	Peterbilt 2dr Tandem Axle Tanker, Aluminum w/3000 water & 500 pump	\$305,758.00
FS19VE11	Pierce Saber FR, 4-Door, Full-Tilt, Aluminum Cab, Aluminum Body, Single Axle, 1000 GPM Pump, Mid-Mounted Elliptical Tanker	\$507,029.00

FS19VE12	Pierce Enforcer, 4-Door, Full-Tilt, Aluminum Cab, Aluminum Body, Tandem Axle, 1000 GPM Pump, Mid-Mounted Elliptical Tanker	\$602,900.00
FS19VE13	Pierce Velocity, 4-Door Aluminum Cab, Tandem Axle, Aluminum Pumper/Tanker 2000 Gallon Body, 1500 GPM Pump	\$630,280.00

EXHIBIT “B”

PROPOSAL FOR FURNISHING FIRE APPARATUS

October 29, 2020

Long Beach Fire Department
 3205 Lakewood Blvd.
 Long Beach, CA 90808



The undersigned is prepared to provide for you, our customer, upon an order being placed by you, for final acceptance by South Coast Fire Equipment, Inc., at its corporate office in Ontario, California, the apparatus and equipment herein named and for the following prices:

	Each	Extension
One (1)		
Pierce Arrow XT 102' Tractor Drawn Aerial		
	\$ 1,419,723.00	\$ 1,419,723.00
Sales Tax @ 10.250%	\$ 145,521.61	\$ 145,521.61
APPARATUS COST WITH TAX	\$ 1,565,244.61	\$ 1,565,244.61
Performance Bond Not Required	-	\$ -
California Tire Fee	\$ 14.00	\$ 14.00
TOTAL PURCHASE PRICE	\$ 1,565,258.61	\$ 1,565,258.61

PLEASE NOTE THE FOLLOWING ABOUT THIS QUOTATION:

Payment options are available and are included under separate cover. One of these options may save your department a significant amount of money!

Said apparatus and equipment are to be built by the manufacturer and shipped in accordance with the specifications hereto attached, delays due to strikes, war or international conflict, failures to obtain chassis, materials, or other causes beyond our control not preventing, within about **365** calender days after receipt of this order and the acceptance thereof at our office in Ontario, California, and to be delivered to you at **the City of Long Beach**

The specifications herein contained shall form a part of the final contract and are subject to changes desired by the purchaser, provided such alterations are interlined prior to the acceptance by the company of the order to purchase, and provided such alterations do not materially affect the cost of the construction of the apparatus.

The proposal for fire apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of bid, and with all National Fire Protection Association (NFPA) guidelines for Automotive Fire Apparatus as published at time of bid, except as modified by customer specifications. Any increased costs incurred by the first party because of future changes in or additions to said DOT or NFPA standards will be passed along to the customer as an addition to the price set forth above. Unless accepted within 30 days from the specified date, the right is reserved to withdraw this proposition.

Respectfully Submitted,

South Coast Fire Equipment, Inc.

Adrian Beyer
 Sales Representative