

**RESOLUTION NO. 24-30**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING THE PURCHASE OF A MACK GRANITE 21 YARD DUMP TRUCK FOR THE STORMWATER DEPARTMENT FROM BRUCKNER TRUCK SALES, INC. IN THE TOTAL AMOUNT OF \$198,519.00; AND AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THE HOUSTON-GALVESTON AREA COUNCIL AGREEMENT GOVERNING THAT PURCHASE.**

**BE IT RESOLVED** by the City Council of the City of Panama City Beach that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and Bruckner Truck Sales, Inc. for the purchase of a Mack granite 21 yard dump truck for the Stormwater Department in the total amount of One Hundred Ninety-Eight Thousand Five Hundred Nineteen Dollars (\$198,519.00) in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions, or omissions as may be approved by the City Manager.
2. By accepting the proposal referenced above, the City agrees to be bound to the same terms and conditions as were obtained by the Houston-Galveston Area Council through an advertised, competitive bidding process, Contract No. HT06-20, as subsequently amended, in the form **attached** as Exhibit B.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED, APPROVED AND ADOPTED** in special session this 9<sup>th</sup> day of November, 2023.

**CITY OF PANAMA CITY BEACH**

By:   
Mark Sheldon, Mayor

**ATTEST:**

  
Lynne Fasone, City Clerk



**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract No.: HT06-20

Date Prepared: 10/17/2023

*This Form must be prepared by Contractor and given to End User. The H-GAC administrative fee shall be shown in Section F. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.*

Buying Agency:	City of Panama City Beach Fl	Contractor:	Bruckner Truck Sales
Contact Person:		Prepared By:	Bob Davie
Phone:		Phone:	512-632-6622
Fax:		Fax:	210-666-7216
Email:		Email:	bob.davie@brucknertruck.com

Product Code:	I8	Description:	GR64FR
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** 42900

**B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.**  
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Rear Engine PTO	2200	Transmission Cooler	3200
Double Reduction Rear Axle	4200	46K rear axle	8800
Traction Diff	4200	Wheelbase 229	5100
Upgrade to 46K Suspension	7800	Extended Bumper Bright Finish w/stone guard	3750
CRD 151 Carrier	3250	11.811 x 3.54 x .437	3250
Torque Converter	2850	Warren Dump Bed 14'	15990
GR Vocational Package	3800	Transverse Torque Rods	3250
20K Front Axle	8800	425/80R22.5 Front Tires	1950
20K Springs	8800	Auto Neutral	2550
Anty Sway Springs	2350	Full Liner	2250
MP8 425C	6800	<b>Subtotal From Additional Sheet(s):</b>	
SS Sunvisor	1350	<b>Subtotal B:</b>	106490

**C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.**  
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
OX Body 16' and 20K Lift Axle Upgrade	21845		
TMD12AFO-HD mDrive	9500		
Parker Pump	5284		
		<b>Subtotal C:</b>	36629

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 25%

**D. Other Cost Items Not Itemized Above (e.g. Installation, Freight, Delivery, Etc.)**

Description	Cost	Description	Cost
Surcharge	11500		
		<b>Subtotal D:</b>	11500

**E. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C+D):** 197519

Quantity Ordered:	1	X Subtotal of A + B + C + D:	197519	=	Subtotal E:	197519
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**F. H-GAC Fee Calculation (From Current Fee Tables)** Subtotal F: 1000

**G. Trade-Ins / Other Allowances / Special Discounts**

Description	Cost	Description	Cost
		<b>Subtotal G:</b>	0

**Delivery Date:** **H. Total Purchase Price (E+F+G):** 198519

# H-GAC

Houston-Galveston Area Council

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

Cooperative Agreement - Assignment - Bruckner Truck Sales, Inc. - Public Services - ID 7458

## LIMITED CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT

This Limited Contract Assignment and Assumption Agreement is made by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC, Grande Ford Truck Sales, Inc. (Contractor) at 4562 IH 10 East, San Antonio, TX 78219 and Bruckner Truck Sales, Inc., (Assignee) at 9471 E. Interstate 40, Amarillo, TX 79118.

WHEREAS, Contractor entered into a cooperative purchasing Contract, identified as HT06-20, with H-GAC for the sale of Medium and Heavy Trucks & Truck Bodies to various End User governmental agencies participating in H-GAC's Cooperative Purchasing Program; and

WHEREAS, Contractor wishes to assign certain of its rights and obligations under the Parent Contract ID 4928 to Assignee and retain the remainder; and

WHEREAS, Assignee wishes to accept the limited assignment of the Contract; and

WHEREAS, H-GAC is willing to consent to the limited assignment provided that the Assignee agrees to comply with all terms of the Contract;

WHEREAS, This Agreement goes into effect on the date signed by H-GAC (the "Effective Date") and ends May 31 2022. All products or services under this Agreement must be rendered within this performance period.

NOW THEREFORE, the parties agree as follows:

**Section 1** Contractor hereby assigns to Assignee all its rights and obligations under the Contract with respect to the following:

**Right to sell products/services:** Mack Products (H-GAC Product Codes: HT0620I1-HT0620I17) and Volvo Products (H-GAC Product Codes: HT0620L1-HT0620L6) only.

**Right to sell products/services in the following geographical area:** All States

**Right to administer Purchase Orders:** N/A

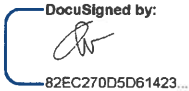
**Section 2** Assignee accepts the assignment from the Contractor and assumes the obligation to provide the products and services specified in Section 1 and to otherwise perform all applicable obligations of the Contractor under the Contract on and after the Effective Date. Contractor will continue to be responsible for all actions taken by Contractor and Purchase Orders processed under the Contract prior to the Effective Date.

**Section 3** Contractor reserves to itself the exclusive right to provide all the products and services described in the Contract, except those specifically assigned to Assignee pursuant to Section 1 hereof.

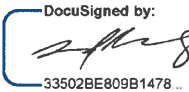
**Section 4** H-GAC hereby consents to such limited assignment and assumption.

**Unless otherwise noted, this Agreement goes into effect on the date signed by H-GAC (the "Effective Date"). All other terms and conditions of the Contract shall remain unchanged and in full force and effect.**

IN WITNESS WHEREOF, the parties have caused this Contract Limited Assignment and Assumption Agreement to be executed by their respective duly authorized representatives.

**H-GAC**  
Signature   
Name Chuck Wemple  
Title Executive Director  
Date 9/29/2021

**Grande Ford Truck Sales, Inc. (Contractor)**  
Signature   
Name David Keck  
Title CEO  
Date 9/29/2021

**Bruckner Truck Sales, Inc. (Assignee)**  
Signature   
Name James Moody  
Title CFO  
Date 9/29/2021



*Bruckner's represents the only truck manufacturers that assemble 100% of their trucks, engines and transmissions in the US*

**Bruckner's of Amarillo**  
9471 E. Interstate 40  
PO Box 31958  
Amarillo, TX 79120  
main 806.376.6273  
toll-free 800.876.6225  
fax 806.349.5192  
brucknertruck.com

August 25, 2021

Houston-Galveston Area Council  
PO Box 22777  
Houston, TX 77227

To Whom it May Concern:

Notice of Assignment, Contract Number HT06-20

This letter is to hereby certify that on May 17, 2021, Bruckner Truck Sales, Inc. dba Bruckner's Truck & Equipment acquired the Mack and Volvo franchises from Grande Truck Center. Accordingly, the undersigned request that Contract Number HT06-20 (the "HGAC Contract") between Grande and HGAC should now be assigned in relevant part to Bruckner's Truck & Equipment.

More Specifically, Bruckner's Truck & Equipment and Grande request assignment to Bruckner's Truck & Equipment of the HGAC Contract with respect to the Mack and Volvo brand equipment.

Please feel free to reach out with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to be "DK", written over a horizontal line.

David Keck, CEO  
Grande Truck Center  
[dkeck@grandetruck.com](mailto:dkeck@grandetruck.com)  
(210) 666.7103

A handwritten signature in black ink, appearing to be "JMoody", written over a horizontal line.

James Moody, CFO  
Bruckner Truck Sales, Inc.  
[jmoody@brucknertruck.com](mailto:jmoody@brucknertruck.com)  
(806) 349.5158

**AMENDMENT No. 2 to CONTRACT No. HT06-20**  
**For**  
Medium and Heavy Trucks & Truck Bodies  
**Between**  
**HOUSTON-GALVESTON AREA COUNCIL**  
**And**  
**Bruckner Truck Sales, Inc.**


THIS AMENDMENT modifies the above referenced Contract as follows:

This contract is extended through May 31, 2024 Midnight CT.

Unless otherwise noted, this amendment goes into effect on the date signed by **H-GAC**. All other terms and conditions of this Contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

Signed for **Houston-Galveston Area Council**,  
Houston, Texas

DocuSigned by:  
  
62EC270D5D61423  
\_\_\_\_\_  
Chuck Wemple, Executive Director

Date: 6/7/2023

Signed for: **Bruckner Truck Sales, Inc.**

Printed Name & Title:

DocuSigned by:  
  
33502BE809B1478  
\_\_\_\_\_  
James Moody Chief Financial Officer

Date: 6/7/2023



# H-GAC

Houston-Galveston Area Council

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

Cooperative Agreement - Grande Ford Truck Sales, Inc. - Public Services - 20-00309

20-00309

## 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 art 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

Cooperative Agreement - Grande Ford Truck Sales, Inc. - Public Services - 20-00309 - 20-00309

## 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 Grande Ford Truck Sales, Inc., hereinafter referred to as the Contractor, having its principal place of business at 4562 IH 10 East, San Antonio, TX 78219.

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 Jun 01 2020 and ends May 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, 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:

**Grande** DocuSigned by: **les, Inc.**

Signature *Keith Shoffstall*  
C5E17EED85A7444...

Name Keith Shoffstall

Title Sales

Date 4/10/2020

**H-GAC** DocuSigned by:

Signature *Chuck Wemple*  
82EC270D5D61423...

Name Chuck Wemple

Title Executive Director

Date 4/9/2020

<b>Attachment-A</b>
<b>Grande Ford Truck Sales, Inc.</b>
<b>Medium and Heavy Trucks &amp; Truck Bodies</b>
<b>Contract No. HT06-20</b>

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

<b>H-GAC Product Code</b>	<b>Brand</b>	<b>Model Description</b>	<b>Price</b>
HT0620C5	Ford	F-650, 4x2, Regular Cab (2-door), Gas, 158" WB (F6A) (2021)	\$38,816
HT0620C6	Ford	F-650, 4x2, Regular Cab (2-door), Diesel, 158" WB (F6D) (2021)	\$44,964
HT0620C7	Ford	F-750, 4x2, Regular Cab (2-door), Gas, 158" WB (F7A) (2021)	\$39,325
HT0620C9	Ford	F-750, 4x2, Regular Cab (2-door), Tractor Configuration, Diesel, 146" WB (F7T) (2021)	\$48,546
HT0620I1	Mack	Pinnacle 64R, Conventional Cab, SFFA, TRA	\$46,445
HT0620I2	Mack	Anthem 42R, Conventional Cab, SBFA, SRA	\$43,945
HT0620I3	Mack	Anthem 64R, Conventional Cab, SBFA, TRA	\$46,445
HT0620I4	Mack	Granite 42FR MHD, Conventional Cab, SFFA, SRA	\$40,100
HT0620I5	Mack	Granite 42BR MHD, Conventional Cab, SBFA, SRA	\$40,100
HT0620I6	Mack	Granite 64FR MHD, Conventional Cab, SFFA, TRA	\$42,900
HT0620I7	Mack	Granite 64BR MHD, Conventional Cab, SBFA, TRA	\$42,900
HT0620I8	Mack	Granite 64FR, Conventional Cab, SFFA, TRA	\$42,900
HT0620I9	Mack	Granite 64BR, Conventional Cab, SBFA, TRA	\$42,900
HT0620I10	Mack	TerraPro 42R, COE, SRA	\$40,150
HT0620I11	Mack	TerraPro 42R G, COE, SRA, Natural Gas	\$40,150
HT0620I12	Mack	TerraPro 64R, COE, TRA	\$44,900
HT0620I13	Mack	TerraPro 64R G, COE, TRA, Natural Gas	\$42,900
HT0620I14	Mack	LR 42R, COE, SRA	\$47,400
HT0620I15	Mack	LR 64R, COE, TRA	\$49,900
HT0620I16	Mack	LR 42R G, COE, SRA, Natural Gas	\$47,400
HT0620I17	Mack	LR 64R G, COE, TRA, Natural Gas	\$49,900
HT0620L1	Volvo	VHD42B200, Conventional Cab, SBFA, SRA	\$47,700
HT0620L2	Volvo	VHD64B200, Conventional Cab, SBFA, TRA	\$50,200
HT0620L3	Volvo	VNR42T300, Conventional Cab, SBFA, SRA, Tractor (medium hood)	\$51,000
HT0620L4	Volvo	VNR64T300, Conventional Cab, SBFA, TRA, Tractor (medium hood)	\$53,000
HT0620L5	Volvo	VNL42T300, Conventional Cab, SBFA, SRA, Tractor (longer hood)	\$51,000
HT0620L6	Volvo	VNL64T300, Conventional Cab, SBFA, TRA, Tractor (longer hood)	\$53,000
HT0620M1	Western Star	4700SF, Conventional Cab, SFFA, TRA	\$63,045
HT0620M2	Western Star	4700SB, Conventional Cab, SBFA, TRA	\$63,045
HT0620M3	Western Star	4900SF, Conventional Cab, SFFA, TRA	\$79,925
HT0620M4	Western Star	4900SB, Conventional Cab, SBFA, TRA	\$79,925
HT0620M5	Western Star	4900EX, Conventional Cab, SFFA, TRA	\$80,150