

RESOLUTION 21-129

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING THE AGREEMENT BETWEEN THE CITY AND ACENTRIA INSURANCE RELATING TO THE PROVISION OF PROPERTY AND CASUALTY BROKER SERVICES FOR THE CITY.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Acentria Insurance, relating to the provision of property and casualty broker services for the City, in accordance with the fee schedule set forth therein, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 8th day of April, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk



Broker Services Agreement

Prepared For:
City of Panama City Beach

Presented by:
**Foundation Risk Partners, Corp.,
d/b/a Acentria Public Risk**

Effective Date:
April 8, 2021



FOUNDATION RISK PARTNERS

Terms and Conditions

This Broker Services Agreement (this “Agreement”) is entered into on April 8, 2021 (“Effective Date”) by and between City of Panama City Beach at [17007 Panama City Beach Pkwy, Panama City Beach, FL 32413] (“Client”), and FOUNDATION RISK PARTNERS, CORP, a Delaware corporation, with offices at 306 East 19th Street, Panama City, FL 32404 d/b/a Acentria Public Risk (“FRP”).

WHEREAS, Client has engaged FRP to perform placement and servicing of insurance coverages, as further described on Exhibit A.; and

WHEREAS, this Agreement represents the mutual understanding of Client and FRP regarding the services that FRP will provide to Client.

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Services. During the term of this Agreement, FRP agrees to provide Client with the “Services” as described on Exhibit A attached hereto. Client shall appoint FRP as its insurance broker of record. FRP shall have the exclusive right to provide the Services to Client for the term of this Agreement. Any and all Services not contained herein fall outside the scope of this Agreement and if additional services are required, this Agreement shall be amended in writing accordingly prior to the provision of such service.

2. Payment. In consideration for the Services, Client agrees to pay FRP the amount of 10% of annualized premiums.

3. Term.

3.1 *Term.* This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years with an option to renew for one (1) annual years terms. If FRP and Client, in good faith, continue its business relationship after the above expiration date, the terms of this Agreement will control and continue to be in full force and effect until such time as a new agreement is executed by the parties or the relationship between the parties is otherwise terminated. Furthermore, in the event FRP and Client agree to renew and continue its business relationship, unless and until a new agreement is entered into by FRP and Client supplanting the terms of this Agreement in their entirety, the terms of this Agreement, as amended, supplemented or otherwise modified from the date hereof until such time, will control the matters set forth herein.

4. Warranties.

4.1 *Warranties by FRP.* FRP hereby represents and warrants to Client that:

a. The Services will be performed in a professional and workmanlike manner, consistent with all applicable laws, required guidelines and industry standards.

b. It will at all times employ current industry standard security protection, compliant with all applicable laws, to



FOUNDATION

RISK PARTNERS

prevent unauthorized access to all records, data, documents, images and other information of Client and its employees (“Employee Data Records”) and that it shall employ industry standard measures to maintain the strict confidentiality at all times of all Employee Data Records.

c. The Services do not and shall not violate or infringe the copyright, trademark, patent, trade secret, privacy, publicity or reputational rights of any third party.

4.2 Warranties by Client. Client hereby represents and warrants to FRP that:

a. All information provided to FRP by Client in connection with FRP’s performance of Services is or will be complete and accurate in all material respects;

b. Use of the information provided by Client to perform the Services will not conflict with or constitute a violation or breach of any contract or other obligation under which Client is bound or any judgment, law, rule, or governmental regulation applicable to Client.

4.3 WARRANTY DISCLAIMERS. Neither party makes any representation or warranty, express or implied, with respect to any Confidential Information. Neither party shall be responsible for any expenses, losses, or actions incurred or undertaken by the other party as a result of the receipt and use by such party of Confidential Information of the other party. Disclosing party retains all rights to its Confidential Information. No grant or license is made or given hereunder, express or implied, to any trademark, copyright, patent or similar right other than the use of the

Confidential Information for the limited Business Purpose. Confidential Information is disclosed “AS IS” under this agreement. This Agreement is not intended, nor shall it be constructed, to create or convey any right in or upon any person or entity not a party to this Agreement

5. Data and Return of Data.

5.1 Data. Client hereby represents, warrants, and covenants that: (i) Client has all rights and authorizations, in compliance with all applicable laws and regulations, to provide the Data (defined below) to FRP and (ii) Client owns all Data and has sole responsibility and liability for the Data under all applicable laws and regulations at all times during Initial Term and any renewal of this Agreement. “Data” means Client’s records or files and other related information.

5.2 Return of Data. Upon either (i) completion of the Services or (ii) termination of this Agreement, Client and FRP hereby agree that FRP shall return to the owning party or destroy all copies of the Confidential Information, provided that such destruction is not prohibited by applicable law, rule, court order or other similar process, or a governmental, regulatory or legal authority. A party may return Confidential Information, or any part thereof, to the other party at any time. Notwithstanding the foregoing, the obligation to return or destroy Confidential Information shall not cover (a) Confidential Information that is maintained on routine computer backup tapes, disks, or other backup storage devices or (b) one copy of Confidential Information that the recipient is required to maintain in accordance with applicable legal, regulatory or record-keeping requirements, provided that such retained Confidential



FOUNDATION RISK PARTNERS

Information is not used or disclosed or, in the case of back-up Confidential Information, otherwise recovered from such back-up devices. The obligation contained in this Section not to use, disclose or otherwise access such retained Confidential Information shall continue in full force and effect, notwithstanding any other termination of this Agreement.

6. Client Responsibilities. Client has sole responsibility and liability for: (a) establishment and operation of its plans; (b) construing and interpreting the provisions of its plans; (c) deciding all questions of fact arising under its plans; and (d) all fiduciary decisions relating to its plans.

7. Remedies. Without prejudice to any other remedies to which Client may be entitled at law or in equity, in the event of a breach of FRP's warranty under Section 4.1, Client shall provide FRP written notice of non-conforming services within fifteen (15) days of the non-conforming services being performed. If adequate notice was provided to FRP, FRP shall promptly re-perform the non-conforming Services at no additional cost so as to make the Services comply with its representations, warranties and covenants of Section 4.1. If FRP should fail to promptly re-perform the Services, Client shall not be obligated to pay for any such deficient Services to the extent they are not re-performed, and shall be entitled to: (i) recover any fees already paid to FRP for such deficient Services to the extent they were not re-performed, provided however, no refund shall be given for any Services which were performed or have been re-performed in compliance with FRP's representations, warranties and covenants of Section 4; and (ii) retain any deliverables resulting from such deficient Services if and only to the extent Client pays all fees for any Services in connection with such deliverables regardless of

whether the Services were performed in compliance with FRP's representations, warranties and covenants of Section 4.

8. Authority; Compliance with Laws. Each party represents, warrants and covenants to the other party that (i) it has the authority to enter into this Agreement and to perform all of its obligations hereunder; (ii) FRP and each of FRP's employees, contractors, and subcontractors who perform Services hereunder ("FRP Personnel") have not previously entered into any agreement that would restrict any of such persons in the performance of Services; and (iii) each party shall comply with all applicable foreign and United States federal, state and local laws, rules and regulations in its performance of this Agreement.

8.1 E-Verify Compliance. As a condition precedent to entering into this AGREEMENT, and in compliance with Section 448.095, Fla. Stat., FRP and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

a. FRP shall require each of its subcontractors to provide FRP with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. FRP shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.

b. The Client, FRP, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.



FOUNDATION

RISK PARTNERS

c. The Client, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but FRP otherwise complied, shall promptly notify FRP and FRP shall immediately terminate the contract with the subcontractor.

d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. FRP acknowledges that upon termination of this AGREEMENT by the Client for a violation of this section by FRP, FRP may not be awarded a public contract for at least one (1) year. FRP further acknowledges that FRP is liable for any additional costs incurred by the Client as a result of termination of any contract for a violation of this section.

e. *Subcontracts.* FRP or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. FRP shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

9. Sufficient Rights; Non-Infringement. FRP represents, warrants and covenants to Client that (i) it has sufficient rights to perform the Services on behalf of Client; and (ii) the Services, when performed and used in accordance with the terms and conditions of this Agreement, do not and shall not infringe upon or otherwise violate or misappropriate any Intellectual Property Rights of any third party. "Intellectual Property Rights" means copyrights, patents, trademarks, trade secrets, and other intellectual property rights.

10. Publicity; Use of Trademarks. Nothing herein shall be interpreted as granting either party a right or a license to use the trade name, word mark or the trademark of the other party for any reason. Any use of such information must be obtained in writing from the other party.

11. Relationship of the Parties. Client and FRP are independent contracting parties. This Agreement shall not create a relationship of principal and agent, partners, joint venturers, or employer and employee.

12. Confidentiality.

12.1 Definition. "Confidential Information" includes all trade secrets (as defined by Florida law), business information, technical data, or know-how, including, but not limited to, that which relates to a disclosing party's research, hardware, insurance information (including insurance data, premium and policy information, premium spend, broker and insurer information, insurance coverage amounts and limits, historical losses, asset related information), products and services, clients, customers, tenants and tenant financial information, software products, technology, data, data models, data processing systems and techniques, product roadmap, product platforms, solutions, technical information, trades secrets, business plans, business models and related documentation, support, and services, financial information and other confidential and proprietary information not made available to the general public by disclosing party furnished after the date of this agreement, analyses, compilations, summaries or other documents prepared by the recipient party containing or based upon any such information, copies of any of the foregoing regardless of its form or medium (oral, written, stored in computers, machine readable, electronic or other) ("Confidential Information"). Each party (the



FOUNDATION

RISK PARTNERS

“Recipient”) acknowledges that it has or may be exposed to Confidential Information of the other party (the “Disclosing Party”), whether or not the Disclosing Party expressly designates any such information to be Confidential Information. Confidential Information shall not include any information (a) that is or becomes publicly known without any breach hereof by the Recipient, (b) that was known to the Recipient prior to any disclosure to it by the Disclosing Party, as shown by the Recipient’s written records, (c) that is rightfully received by the Recipient from a third party who is not bound by a confidentiality obligation to the Disclosing Party, (d) that is independently developed by the Recipient without using any of the Confidential Information of the Disclosing Party, or (e) that is required to be disclosed by law.

12.2 Restrictions. Each party forever agrees to hold in confidence and not disclose or utilize for its own or anyone else’s benefit any Confidential Information except as necessary in connection with the Services, or as required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction. Except as expressly authorized herein or in a separate writing signed by the Disclosing Party, the Recipient shall not use, commercialize or disclose any Confidential Information to any person or entity, except to its own employees or agents having a “need to know” (and who themselves are bound by similar non-disclosure restrictions for purposes of this Agreement), and to such other recipients as the Disclosing Party may approve in writing in advance, provided that all such other recipients shall have first executed the Non-Disclosure Agreement attached hereto as Exhibit C. Each party shall also ensure that all of its officers, directors, employees and independent contractors abide by the terms of this Agreement. The Non-disclosing Party shall protect all Confidential Information of the Disclosing Party

from disclosure and unauthorized use in the same manner that it protects its own proprietary and confidential information of like nature, but in no event shall such standard of care be less than reasonable care. The Non-disclosing Party shall not copy the Disclosing Party’s Confidential Information without the Disclosing Party’s prior written consent except as necessary to perform its obligations under this agreement and to maintain a record of the Confidential Information exchanged pursuant to this agreement, and shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information. However, any Confidential Information that is required to be disclosed pursuant to a requirement of a governmental agency or law of the United States of America or a state thereof, or any governmental or political subdivision thereof, may be disclosed, but only to the extent required so long as the party required to disclose the information provides the other party with timely prior notice of such requirement and an opportunity to oppose the disclosure. The parties further agree that each party is and shall remain; the exclusive owner of all of its respective Confidential Information and no license or conveyance of any rights to any Confidential Information is granted or implied under this Agreement. Upon the termination of this Agreement, the parties shall return all Confidential Information to its respective owner.

12.3 Survival. The provisions of this Section 12 shall survive any termination of this Agreement.

12.4 PUBLIC RECORDS: To the extent FRP is acting on behalf of City as stated in Section 119.0701, Florida Statutes, FRP shall:

12.4.1. Keep and maintain public records required by City to perform the services under this Agreement;



FOUNDATION RISK PARTNERS

12.4.2. Upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.4.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to City; and

12.4.4. Upon completion or termination of this Agreement, transfer to City, at no cost, all public records in possession of FRP or keep and maintain public records required by City to comply with applicable public records law. If FRP transfers the records to City, FRP shall destroy any duplicate public records that are exempt or confidential and exempt. If FRP keeps and maintains the public records, FRP shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request in a format that is compatible with the information technology systems of City.

A request for public records regarding this Agreement must be made directly to City, who will be responsible for responding to any such public records requests. FRP will provide any requested records to City to enable City to respond to the public records request.

Any material submitted to City that FRP contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, FRP must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081,

Florida Statutes, and stating the factual basis for same. If a third party submits a request to City for records designated by FRP as Trade Secret Materials, City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by FRP. FRP shall indemnify and defend City and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF FRP HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FRP'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850.233.5100), lfasone@pcb.gov, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FLORIDA 32413.

13. Limitation of Liability.

14.1 FRP'S CUMULATIVE LIABILITY TO THE CLIENT UNDER THIS AGREEMENT FOR ALL CAUSES OF ACTION, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (INCLUDING THIRD PARTY CLAIMS), SHALL BE LIMITED TO AND NOT EXCEED PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE MAXIMUM AMOUNT SET FORTH IN TO SECTION 768.28, FLA. STAT., REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Miscellaneous.

14.1 *In General.* The parties, without further consideration of any kind, shall each execute and deliver, or cause to be executed and delivered, such other instruments, and take, or cause to be taken, such other action, as shall reasonably be requested by the other party



FOUNDATION RISK PARTNERS

hereto to more effectively carry out the terms and provisions of this Agreement.

14.2 Amendment. This Agreement may not be modified or amended except in writing and duly signed by an authorized representative of each party.

14.3 Governing Law. The construction, interpretation and performance of this Agreement, and the transactions under it, shall be governed by and construed in accordance with the laws of the State of Florida, excluding its conflict of laws and choice of law rules, and jurisdiction over any action to enforce this Agreement, or any dispute arising from or relating to this Agreement shall subsist solely in the state and/or federal courts located within Bay County, Florida.

14.4 Force Majeure. Neither FRP nor Client shall be held responsible for any delay or failure in performance under this Agreement arising out of causes beyond its control, or without its fault or negligence. Such causes may include, but are not limited to, fires, terrorist acts, strikes, embargoes, shortages or supplies of raw materials, or components or finished goods, acts of God, acts of regulatory agencies or national disasters.

14.5 Notices. All notices, requests, demands, claims and other communications hereunder ("Notices") shall be in writing. Any Notice hereunder shall be deemed duly given (i) upon receipt if delivered in person; (ii) upon the third business day after being sent if sent by registered or certified mail, return receipt requested with postage thereon prepaid; or (iii) on the next business day if sent by Federal Express or similar overnight courier service; in

each case addressed to FRP or to Client at the addresses listed below:

Address for Notices to FRP:

Thomas J. Leek, Esq.
Chief Legal Officer
Foundation Risk Partners
1540 Cornerstone Blvd, Ste. 200
Daytona Beach, FL 32117
Tleek@foundationrp.com

Address for Notices to Client:

City of Panama City Beach
Lori Philput
Human resources & Risk Management Dir.
17007 Panama City Beach Parkway
Panama City Beach, FL 32413

14.6 Attorney's Fees. In the event of a dispute concerning the terms of this Agreement, any claims arising from this Agreement, or arising out of the relationship created by this Agreement, the prevailing Party, as determined by the court or arbiter, shall be entitled to recover, in addition to any other remedy obtained, (i) all attorneys' and paralegals' fees incurred in the investigation and preparation of issues related to the dispute, including investigation and preparation for trial and in the trial and appellate proceedings, and (ii) all statutory costs. The prevailing party shall be that party which shall have prevailed on a majority, but not necessarily all, of the material issues which were adjudicated in such proceeding.

14.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the balance of the Agreement



FOUNDATION

RISK PARTNERS

or of the offending term or provision in any other situation or jurisdiction.

14.8 Waiver. The failure of either party hereto to enforce any right under this Agreement shall not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement

14.9 Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile or electronic means shall be effective as delivery of a manually executed counterpart.

15.0 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and no terms, conditions or provisions other than those expressly contained herein shall be deemed to be part of this Agreement. This Agreement supersedes any and all prior agreements, covenants, arrangements, communications, representations and/or warranties with respect to the subject matter of this Agreement.

Remainder of page intentionally left blank



Exhibit A – Services

The following outlines Services provided by Foundation Risk Partners, Corp., over the term of this Agreement.

Secure the following lines of insurance coverage on behalf of the City of Panama City Beach:

- Property, Automobile Liability, General Liability, Excess Liability, Workers' Compensation & Employer's Liability, Public Officials Liability, Employment Practices Liability, Boiler & Machinery, Excess Liability, Crime, Fiduciary Liability, Environmental Liability, Drone Hull & Liability and Accident Coverage.
- Consult with City of Panama City Beach to formulate a marketing strategy that focuses on delivering a cost-effective risk management strategy and structure based upon current market conditions.
- Work with City of Panama City Beach to produce comprehensive underwriting data and criteria for insurance carrier negotiations.
- Formally present coverage submissions to agreed upon insurance carrier(s) and negotiate terms on behalf of City of Panama City Beach.
- Summarize the results of executing the marketing strategy developed with City of Panama City Beach and communicate program recommendations.
- Provide consultation to City of Panama City Beach on exposures, existing coverage, and the desirability and/or feasibility of potential program changes when recommended by Foundation Risk Partners, Corp., or when requested by the Client.

Fees for Services: 10% of annualized premiums



FOUNDATION

RISK PARTNERS

Exhibit B - Pricing

In consideration for the Services provided herein, Client agrees to pay FRP an amount of 10% of annualized premiums for the Services rendered. This fee is not refundable.



FOUNDATION RISK PARTNERS

Client Acknowledgement

Please confirm your understanding of the letter agreement by executing two (2) original copies of this document and returning it to us at the address indicated in the letter within ten (10) business days.

CITY OF PANAMA CITY BEACH

Albert Shortt

Signature of Authorized Representative

04/09/2021
Date

Albert Shortt

Print Name of Authorized Representative

City Manager, Interim

Title of Authorized Representative

**FOUNDATION RISK PARTNERS, CORP.
d/b/a Acentria Public Risk**

Alan Florez
Signature of Authorized Representative

Alan Florez

Print Name of Authorized Representative

Executive Vice President

Title of Authorized Representative

4/8/21
Date

P034571

License No.