

**RESOLUTION 21-63**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH BROWN FIRE PROTECTION, INC., FOR FIRE PROTECTION SERVICES.**

**BE IT RESOLVED** by the City Council of the City of Panama City Beach that the appropriate officers of the City are authorized to deliver and execute on behalf of the City that certain Agreement between the City and Brown Fire Protection, Inc., for the provision of fire protection services, at rates set forth in the body of the agreement, 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, whose execution shall be conclusive evidence of such approval.

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

**PASSED** in regular session this 14<sup>th</sup> day January, 2021.

**CITY OF PANAMA CITY BEACH**

By:   
Mark Sheldon, Mayor

**ATTEST:**

  
Lynn Fasone, City Clerk

**CITY OF PANAMA CITY BEACH**  
**FIRE PROTECTION SERVICES AGREEMENT**

**THIS AGREEMENT**, made and entered into this 14th day of January, 2021, by and between Brown Fire Protection, Inc. hereinafter referred to as "Brown", and the City of Panama City Beach, Florida, referred to as "City".

**1. SCOPE OF FIRE PROTECTION SERVICES SERVICES.**

**1.1 Project Scope.** The City retains Brown to diligently, competently and timely perform the scope of services described in Exhibit A and incorporated herein (the "Fire Protection Services") on an as-needed basis.

**1.2 Term.** This Contract has an initial one-year term from the effective date. In addition, City has the option to extend the term for an additional two (2) one (1) year periods by providing written notice to Brown.

**2. PAYMENT TERMS.**

**2.1. Total Cost.** Brown shall be paid based upon Brown's fixed rates and costs are set forth in Exhibit "B," attached hereto and incorporated herein by reference.

**2.2.** On a monthly basis, Brown will submit invoices to the City detailing the services performed and rates applicable. Charges will be detailed by Brown with receipts or other charge detail will be provided to support proof of materials supplied.

**2.3.** City will pay Brown within thirty (30) days from receipt of any invoice. Payment shall be made to Brown for services provided as evidenced by Brown's invoice.

**2.4.** Brown shall cooperate with and provide the City or its duly authorized representative with any additional information or reports concerning its activities, expenses, and disbursements when so requested. Brown shall keep and maintain accurate books of account for this service, in keeping with

current cost accounting standards, and such books shall be available for inspection by a properly assigned representative of the City upon request at reasonable times, after reasonable notice. All work of Brown shall be subject to an in-house inspection at any time, by the City, at no cost to Brown.

**3.0 . WARRANTIES OF BROWN AND CITY.**

**3.1. Warranties of the City.**

**3.1.1.** City has the lawful authority to enter into and perform this Contract;

**3.2. Warranties of Brown.** Brown warrants that Brown has:

**3.2.1.** All necessary licenses and consents required for Brown to enter into and fully perform the Scope of Services set forth on Exhibit "A;"

**3.2.2.** No conflict of interest with any other contract with a third party that might cause a claim to arise against City by the entry into or performance of this Contract by Brown.

**3.3. Performance Warranties of Brown.** Brown warrants that Brown shall throughout the term of this Contract:

**3.3.1.** Perform all tasks required under the Scope of Services with the same degree of skill and care as members of the same profession operating in the State of Florida;

**3.3.2.** Ensure that any third party, employee, agent, or subcontractor of Brown shall comply with the terms of this Contract.

**4. OWNERSHIP OF PROJECT MATTER.** Unless otherwise agreed between City and Brown, and approved by City's attorney:

**4.1.** All materials supplied or loaned by City to Brown during the term of this Contract shall remain the property of City;

**4.3.** City shall not become the owner, assignee, or licensee of any standard routine, programs, development tools, techniques, interfaces, texts, or other work existing prior to the date of this Contract that may be used by Brown in providing the services or intellectual property subject to

this Contract, except as may be specifically agreed in writing between the parties. Any such agreement shall be an amendment to this contract.

5. **INDEMNIFICATION.** To the maximum extent permitted by Florida law, Brown shall indemnify and hold harmless the City and its officers and employees from any and all liabilities, claims, damages, penalties, demands, judgements, actions, proceedings, losses or costs, including, but not limited to, reasonable attorneys' fees and costs, and paralegals' fees, whether resulting from any claimed breach of this Agreement or any of the Contract Documents from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Brown or anyone employed or utilized by Brown in the performance of this Agreement or any of the Contract Documents.

6. **INSURANCE.** Brown shall provide and maintain in force the following insurance coverage with an insurance carrier licensed to do business in the State of Florida. All policies (except Workers Compensation and Employers Liability) shall name the city as additional insured and shall contain a clause that the Insurer will not cancel or decrease the insurance coverage without first giving the City thirty (30) days notice in writing.

Workers' Compensation Insurance Coverage

\$1,000,000.00	Limit Each Accident
\$1,000,000.00	Limit Disease Aggregate
\$1,000,000.00	Limit Disease Each Employee

If requested by City, Concessionaire shall provide to City an Affidavit stating that it meets all the requirements of Florida Statute 440.02 (15) (d).

Commercial General Liability Coverage

Bodily Injury, Property Damage & Personal Injury Liability	\$1,000,000.00 Combined Single Limit Each Occurrence, and
	\$2,000,000.00 Aggregate Limit

Business Automobile Liability Coverage

Bodily Injury & Property Damage	\$1,000,000.00 Combined Single Limit Each Accident
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7. **ASSIGNMENT.** Brown, its assigns or representative, shall not assign this Agreement, nor enter into any other agreements with third parties to delegate any or all of the responsibilities or rights herein without prior written approval of the City.

8. **INDEPENDENT CONTRACTOR.** Brown shall perform the conditions of the Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship of status. Nothing in this Agreement shall be, in any way, construed to constitute Brown or any of his agents or employees as the agent, employee or representative of the City.

9. **BANKRUPTCY OR INSOLVENCY.** If in the opinion of the City or the duly authorized representative thereof, Brown is in violation of any terms and provisions of this Agreement, written notice thereof shall be provided to Brown. Failure to correct said violation within the time specified in said notice of violation shall result in the immediate termination of this Agreement.

10. **NOTICE OF VIOLATION.** If, in the opinion of the City or the duly authorized representative thereof, Brown is in violation of any terms and provisions of this Agreement, written notice thereof shall be provided to Brown. Failure to correct said violation within the time specified in said notice of violation shall result in the immediate termination of this Agreement.

11. **TERMINATION.** This Agreement may be terminated for Convenience or Cause. In either case, all notices of termination shall be hand delivered or sent via U.S. Mail – Certified Mail – Return Receipt Requested.

11.1. **Termination for Convenience.** The City may terminate this Agreement at any time for any reason by giving at least thirty (30) days written notice of termination. The City shall pay for all

eligible work performed to the date of termination upon receipt of a valid invoice.

**11.2. Termination for Cause.** If Brown fails to comply with any of the terms and conditions of this Agreement, the City may give notice, in writing, to Brown of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period as specified in the notice, the City may, with no further notice, declare this Agreement to be terminated. Brown will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by the City by reason of Brown's failure to comply with this Agreement.

**11.2.1.** Notwithstanding the above, Brown is not relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Brown, and the City may withhold any payments to Brown for the purpose of setoff until such time as the amount of damages due the City from Brown is determined.

**11.3.** Failure of Brown to comply with these provisions shall constitute grounds for the City to immediately terminate this Agreement for cause and declare Brown to be non-responsible for bidding or proposing on future contracts for one year from the date the City notifies Brown of such non-compliance.

**12. POINT OF CONTACT.** All dealings, contacts, notices, etc., between Brown and the City shall be directed by Brown to the City Manager, City of Panama City Beach, Florida, and

By the City to Brown at:

Brown Fire Protection

124 N. Hwy 79

PCB, FL 32413

Attn: Jim Carlisle

By Brown to the City at:

City of Panama City Beach

17007 Panama City Beach Parkway

Panama City Beach, FL 32444

Attention: City Manager

**13. NOTICE.** A letter addressed and sent certified mail, return receipt requested, to either

party at its business address shall be sufficient notice whenever required for any purpose in the Agreement. Notice may also be delivered by hand and if so delivered, a receipt thereof signed by an authorized agent of the City or Brown shall be evidence of delivery.

14. **BINDING EFFECT OF SUCCESSORS AND SIGNS.** This Agreement shall be binding on the heirs, executors, successors, and assigns of the Parties.

15. **LOSS CONTROL/SAFETY.** Caution shall be exercised at all times by Browns for the protection of all persons, including employees and property. Brown shall be expected to comply with all laws, regulations, and/or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should be reasonably expected. Brown shall halt the Services if conditions exist that present immediate danger to persons or property either in its own opinion or in the opinion of the City. Brown acknowledges that such stoppage will not shift responsibility for any damages from Brown to the City.

16. **CONTRACT DOCUMENTS.** With regard to the Fire Protection Services, the City's Request for Proposals for such services and all attachments to it, along with Brown's response to the Request for Proposals, are hereby made an integrated part of this Agreement. Where a specific conflict exists between a term or condition in this Agreement, the RFP and/or Brown's response, this Agreement shall prevail first, the initial RFP and attachments are next, and Brown's proposal form and attachments are final priority.

17. **NONDISCRIMINATION PROVISION.** Brown agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability, national origin, or genetics. Said nondiscrimination policy shall apply to employment practices of Brown and the provision of services. Brown agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application

forms, and other pertinent data and records by City for the purposes of investigation to ascertain compliance with the non-discrimination provisions of this franchise.

**18. PUBLIC RECORDS:** To the extent Brown is acting on behalf of City as stated in Section 119.0701, Florida Statutes, Brown shall:

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

18.2. 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;

18.3. 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

18.4. Upon completion or termination of this Agreement, transfer to City, at no cost, all public records in possession of Brown or keep and maintain public records required by City to comply with applicable public records law. If Brown transfers the records to City, Brown shall destroy any duplicate public records that are exempt or confidential and exempt. If Brown keeps and maintains the public records, Brown 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. Brown will provide any requested records to City to enable City to respond to the public records request.



Any material submitted to City that Brown 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, Brown 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 Brown 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 Brown. Brown 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 BROWN HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119 , FLORIDA STATUTES, TO BROWN'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850.233.5100), [lfasone@pcb.gov](mailto:lfasone@pcb.gov), 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FLORIDA 32413.**

**19. ILLEGAL ALIEN LABOR.** Bidder shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States.

**20. APPROPRIATIONS CLAUSE.** If the contract extends beyond the current fiscal year,

which ends on September 30<sup>th</sup>, the contract shall be contingent upon the availability of funds appropriated for such purposes in the City's annual budget for the next succeeding fiscal year.

**21. FORCE MAJEURE.** If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the services hereunder.

**22. MODIFICATION.** This Agreement constitutes the entire contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties thereto.

**23. APPLICABLE LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Florida both as to interpretation and performance. Venue shall lie in a state or federal court of proper jurisdiction in Bay County, Florida.

**24. DISPUTE RESOLUTION.** Prior to the commencement of any litigation regarding this Agreement, the parties shall, in good faith, attempt to resolve any dispute through an independent mediator selected by the parties, with costs to be split by the parties unless another agreement on

costs is reached. In the event of litigation between the parties, attorney's fees and costs shall be awarded to the prevailing party. THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

WITNESSES:

CITY OF PANAMA CITY BEACH

Kimberly J. Skibba  
Signature

Tony O'Rourke  
Tony O'Rourke, City Manager

Kimberly J. Skibba  
Print Name of Witness above

Tony O'Rourke, City Manager  
Print Name and Title

Angel Agee  
Signature

Angel Agee

Print Name of Witness above

ATTEST:

Approve as to form:

By Amy E. Myers

Lynne Fasone  
Lynne Fasone, City Clerk

City Attorney

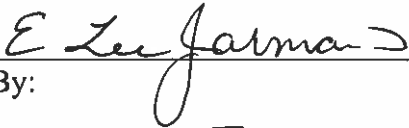
**AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND BROWN FIRE PROTECTION, INC. FOR FIRE PROTECTION SERVICES**

WITNESSES:

**BROWN FIRE PROTECTION, INC.**

  
Signature

Terr. L. Jordan  
Print Name of Witness above

  
By:

E. Lee Jarman  
Print Name and Title

day of 24 Feb, 2021

  
Signature

Joan C.B. Dennis  
Print Name of Witness above

**ATTEST:**

\_\_\_\_\_  
Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)

## **EXHIBIT A – SCOPE OF SERVICES**

### **CATEGORY 1: FIRE EXTINGUISHERS**

- A. Fire Extinguishers. The Proposer shall provide periodic testing and certification of all City fire extinguishers in accordance with NFPA standards. All inspections shall be completed by a licensed professional.
  - 1. The Contractor shall visually inspect the fire extinguisher gauge, cylinder conditions, and all tag dates. The physical weight of each cylinder should be inspected, along with all hoses and seals. The physical location and room number for each fire extinguisher should be recorded as well.
  - 2. The Contractor shall ensure that after each extinguisher is inspected, that they place an indicator uniformly on each making the testing date clearly visible. New tags should include dates of service. All replacement extinguishers must be supplied with wall brackets.
  - 3. The Contractor shall document all fire extinguishers discovered to be more than 12 years old during the periodic inspections and submit a recommended replacement list to the Fire Chief. At the City's election and its discretion, the City may modify the contract to include the purchase of new extinguishers at a negotiated price, seek competitive quotes, or pursue other contracting options to accomplish the work.

### **CATEGORY 2: FIRE ALARM AND SUPPRESSION SYSTEMS**

- A. Fire Protection Systems. The Proposer shall provide periodic testing and certification of all City fire protection systems in accordance with Florida Administrative Code Rule 69A-46.041.
- B. Following each inspection, each fire protection system shall be fitted with an inspection tag. Provider shall also provide a written report to the Fire Inspector of any areas of noncompliance or deficiencies in the inspected system.

**EXHIBIT B – SERVICE FEES**

Service Item	Unit Price
<b>ABC EXTINGUISHERS: 322</b>	
Annual Inspection/Certification	\$5.50 per
Six Year Maintenance/Refill	Same as size below
Recharge/Refill: 2.5 lb	\$15.00 per
Recharge/Refill: 5lb	\$21.00 per
Recharge/Refill: 10 lb	\$32.00 per
Recharge/Refill: 20 lb	\$40.00 per
Replacement: 2.5 lb	\$ 29.00per
Replacement: 5lb	\$48.00 per
Replacement: 10 lb	\$72.00 per
Replacement: 20 lb	\$125.00 per
12 Year Hydro Test	\$12 per
<b>K(potassium) EXTINGUISHERS: 6</b>	
Annual Maintenance Inspection	\$5.50 per
Five Year Hydrotest	\$12.00 per
Recharge/Refill	\$110.00 per
Replacement	\$200.00 per
<b>CO2 EXTINGUISHERS: 4</b>	
Annual Inspection/Certification	\$5.50 per
Five Year Hydrotest	\$25.00 per
Recharge/Refill: 5 lb	\$10.00 per
Recharge/Refill: 10 lb	\$18.00 per
Replacement: 5 lb	\$105.00 per
Relacement: 10 lb	\$160.00 per
<b>PRESSURIZED H2O: 11</b>	
Annual Inspection / Certification	\$5.50 per
Five Year Hydro Test	\$12.00per
Replacement	\$105.00 per

Service Item	Unit Price
<b>CLEAN AGENT SYSTEMS: 2</b>	
Semi-Annual Inspection	\$75.00 per
<b>KITCHEN HOODS: 4</b>	
Semi-Annual Inspection	\$75.00 per
Fusible Link	\$12.00 per
<b>FIRE SUPPRESSION SYSTEMS: 4</b>	
Annual Inspection	\$250.00 per
Quarterly Inspections:	\$150.00 per
<b>FIRE ALARMS: 9</b>	

Annual Maintenance Inspection	\$ 385.00
Annual Monitoring Service	\$45 per month