



**BRACKEN VOLUNTEER FIRE DEPARTMENT**  
**23600 FM3009, San Antonio TX 78266**  
**(210) 651-5762**

**Draft Minutes – Bracken VFD Board of Directors Meeting**  
**Monday, Nov 14<sup>th</sup>, 2022**

**Board Members**

Charles Flink, President	- Present	Skip Courter, Member	- Absent
Kurtis Wilcox, Vice President	- Absent	Bob Schoeler, Member	- Absent
Colin Smith, Treasurer	- Absent	Gary Palmer, Member	- Absent
Jim Moreland, Secretary	- Present	Walter Brown, Member	- Present
Buddy Boone, Member	- Present	Jackie Mitchell, Member	-Present

**Regular Board Meeting**

President Charles Flink called the meeting to order at 7:00 p.m. In addition to the BoD members above, Chief Zipp, Asst Chief Anz, Marilyn Winters, Commissioner Walter Brown, ESD 6 and Ms. Jackie Mitchell, BoD candidate, were in attendance.

President Flink addressed the fact that Walter Brown has been appointed as an ESD 6 Commissioner, and this would be his last meeting with the BVFD BoD. To maintain a quorum, President Flink moved two items out of the agenda for immediate consideration.

- 1. Accept the resignation of Board Member Walter Brown.** President Flink received and accepted the resignation of Walter Brown from the Board of Directors. He thanked Walter Brown for his long and valuable service to the BVFD Board of Directors and wished him well in his new role as an ESD 6 Commissioner.
- 2. Discuss and take appropriate action on replacing the vacancy created by the resignation of Walter Brown.** President Flink introduced Jackie Mitchell, candidate to replace Walter Brown. Buddy Boone nominated Jackie Mitchell to take the vacant position on the BVFD Board of Directors. Jim Moreland seconded. The motion passed unanimously.

**Minutes Approval** – The minutes from the Oct 11, 2022 meeting were presented. Buddy Boone made a motion to approve the minutes as presented and Jackie Mitchell seconded. Motion passed unanimously.

**Treasurer's Report** – Colin Smith, Treasurer presented his Report dated 14 Nov, 2022. As of Nov 11<sup>th</sup>, 2022, cash on hand was **\$ 658,871.59**. As of Oct 31<sup>st</sup>, income was 101.5% of budget and expenses were 74.4% of budget through 83.3% of the year. Gary Palmer made a motion to approve the report and Jackie Mitchell seconded. Motion passed unanimously. A copy of the report is attached.

## Unfinished Business and General Orders

- 1. Fire Chief Report** – Chief Zipp reported that the ESD 6 Meeting concluded just prior to this meeting. A Leach Pit is being constructed at Station 2. Check Register reflects costs for testing and cleaning of bunker gear. There were a few repairs but everything passed the annual inspection. Breathing apparatus was also tested and calibrated. BVFD was at the Garden Ridge Fall Festival at the GR Elementary School. BVFD escorted the Davenport band to the intersection of 2252 to bid them farewell for a competition. There was a silent auction item for a fire truck ride which did well. It will be conducted off of public streets. Chief Zipp is setting it up for a child to ride from the City Hall to GRES. Chief is recruiting replacement firefighters but all area departments are having difficulty getting a sufficient candidate pool.
- 2. Activity Report/ Emergency Rescue Report** – Asst. Chief Anz's report for the period 1-31 Oct 2022, there were 78 total runs, 19 fire calls and 59 rescue calls. Total average emergent fire response time was 9:03 minutes and average emergent rescue response time was 6:16 minutes. Ten calls were run out of Station 2. Report attached. Burn Ban is still on.
- 3. Emergency Services District (ESD) Update** – No representatives present after Walter Brown departed. Chief Zipp reported they covered all the contract renewals and ESD 6 authorized the Chief to purchase a long-bed pickup truck for Station 2 to replace another truck approaching 100,000 miles. It will be used for Rescue calls out of Station 2.
- 4. Review, discuss and act as needed on merit pay vs. special experience pay (OPEN from September meeting: Chief Zipp).** Chief Zipp would like to meet with a subcommittee to discuss options for additional ratings. He will notify members when he is ready to do so. (Open: No Change. Chief Zipp)
- 5. Receive and act as needed on formal signing of the BSA Troop/Pack 828 Sponsorship Document.** The Board approved sponsoring Troop/Pack 828 at the last meeting, but the formal documentation must still be completed, preferably by the end of CY2022. The Boy Scout Troop is proposing a signing ceremony on December 12<sup>th</sup>, 2022 at Bracken United Methodist Church. President Flink will sign the document tonight and Asst Chief Anz can deliver the document to the Troop. Chief Zipp reported that he checked with the liability insurance and we are covered.

## New Business

- 3. Discuss and take appropriate action on the 2023 contract with the ESD.** President Flink presented the new contract copy to Board Members prior to the meeting via EMAIL and stated it was identical to last year's contract with the exception of dates. It is a very lengthy document, but as noted, nothing of substance has changed. Jim Moreland made a motion to accept the contract as written, and Buddy Boone seconded. Motion was passed unanimously. President and Secretary will sign the contract.
- 4. Discuss and take appropriate action on annual incentive pay for BVFD paid full-time and other personnel.** President Flink related that one week's pay plus \$20 per years of service and one week's pay plus \$25 per years of service for shift leaders, Asst Chief one week's pay + \$30 per years of service and Chief one week's pay plus \$35 per years of service. Buddy Boone made a motion to use the same formula and Gary seconded. Motion passed unanimously. Chief Zipp related that part time personnel are provided HEB gift cards in lieu of a cash bonus.
- 5. Consider and take action, if necessary, on a VFIS Family Assistance Insurance Program.** Chief Zipp reported the existing program is for firefighters or families experiencing stressful situations. VFIS is a supplemental Insurance Program that firefighters or their families have a list of numbers to

call outside the normal chain of command. Cost is just \$12 per employee for a variety of services. This is part of our accident and sickness policy. Jackie Mitchell made a motion to include this coverage and Gary Smith seconded. Passed unanimously..

6. **EXECUTIVE SESSION: as authorized by Government Code Section 551.074 to review salary/incentive pay for Fire Chief and Bookkeeper.** President Flink initiated the Executive Session at 7:58 pm. The session was closed by President Flink at 8:10 pm.
7. **If necessary, take appropriate action on items/ matters discussed in Executive Session.** Public session was resumed at 8:11pm. Discussion during the Executive Session resulted in a motion by Jackie Mitchell and seconded by Jim Moreland to raise the Fire Chief 's annual salary by 10%. Buddy Boone made a motion for the Bookkeeper salary to be increased by 10% and an incentive bonus of \$1,000, seconded by Gary.
8. **Election of Board Officers for 2023 (Flink, Wilcox, Smith, Moreland).** Gary Palmer made the motion and Jackie Mitchell seconded to re-elect Charles Flink as President, Kurtis Wilcox as Vice-President, Colin Smith as Treasurer, and Jim Moreland as Secretary for CY 2023. Motion passed unanimously.
9. **Discuss and take appropriate action on using non-ESD funds for extra Christmas celebrations for the firefighters.** Chief Zipp related that the last year's \$2,000 was used for a bowling alley party. Jim Moreland made the motion to allocate \$2,500 in non-ESD funds for additional holiday celebrations. Buddy Boone seconded and the motion was passed unanimously.

**Round Table – Additional comments/questions from Board Members.** None.

**Adjourn**

The next regular board meeting is scheduled for Monday, Jan 23<sup>rd</sup> at 7:00 p.m. Jackie Mitchell made a motion for the meeting to be adjourned, which was seconded by Gary Palmer. Motion carried unanimously, and the meeting was adjourned at 8:20 p.m. There will be no scheduled meeting in December other than the Pro Forma meeting (if needed) before the Christmas Party on December 3<sup>rd</sup> at the Community Center.

Respectfully submitted,

*Jim Moreland*

Secretary, BVFD BoD

**Treasurer's Report  
For November 14, 2022**

- **Budget Recap Jan 1, 2022 – October 31, 2022**

Through 83.3% of the year

Income	101.5% of budget
Expenses	74.4% of budget

- **Cash on Hand as of 11/11/22:      \$ 658,871.59**

First United Bank Checking	\$ 115,210.37
First United Bank Christmas Fund	\$ 1,682.53
Schertz Bank Checking	\$ 89,841.55
Schertz Bank Payroll	\$ 117,812.77
Schertz Money Market	\$ 334,324.37

- **Other Business**

No other business to report at this time.

Respectfully Submitted, Colin Smith  
Treasurer

## October 2022

78 total runs, 19 fire calls and 59 rescue calls.

TOTAL Average emergent fire response was 9:03 minutes and average emergent rescue response was 6:16 minutes.

Station 1 average emergent fire response time 9:01  
Station 1 average emergent rescue response time 6:12

Station 2 average emergent fire response time 9:25  
Station 2 average emergent rescue response time 6:20

68 calls were run out of Station 1.

10 calls were run out of Station 2.

STATE OF TEXAS           §  
  §  
COUNTY OF COMAL       §

**COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 6 VOLUNTEER FIRE  
DEPARTMENT SERVICE PROVIDER AGREEMENT**

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 6 (HEREINAFTER REFERRED TO AS THE “DISTRICT”) ACTING THROUGH THE DISTRICT’S BOARD OF EMERGENCY SERVICES COMMISSIONERS AND BRACKEN VOLUNTEER FIRE DEPARTMENT, A TEXAS NON-PROFIT CORPORATION, (HEREINAFTER REFERRED TO AS THE “SERVICE PROVIDER”) ACTING THROUGH THE SERVICE PROVIDER’S DULY ELECTED GOVERNING BODY.

The mailing address for the District is 23600 FM 3009, San Antonio, Texas 78266. The mailing address for the Service Provider is 23600 FM 3009, San Antonio, Texas 78266. If either party’s address changes, that party shall notify the other in writing within 10 days following the change in address.

**Whereas**, the District’s commitment is to provide protection of life and property from fire, hazardous materials incidents, accidents, disasters, and other emergencies, and for the conservation of natural resources; and

**Whereas**, the District is responsible for the provision of emergency services in its territorial limits, and may do so either directly or through contracts with third parties with adequate controls to ensure the public good; and

**Whereas**, the Service Provider has available personnel and equipment to provide fire protection and suppression services, hazardous materials, emergency rescue services, and emergency medical first responder services.

**NOW, THEREFORE, BE IT RESOLVED THAT** the parties hereto agree as follows:

**1. CONSIDERATION**

1.1 In consideration for the District fund and/or equipment to be appropriated for the use of the Service Provider under the District’s budget and the terms of this Agreement, the Service Provider will provide the following services (collectively referred to below as “Fire Services”) within the District’s legal boundaries on a 24-hour basis:

- Fire Protection and Suppression;
- Fire Prevention;
- Hazardous Materials response to the level currently trained;
- First Responder Emergency Medical Services;
- Emergency Rescue; and,
- Other assistance to the public as necessary.

1.2 The Service Provider may provide, at the District’s discretion, Emergency Medical First Responder Services, and such services are as backup and support to the Emergency Medical Services Provider of Comal County, Texas, or other appropriate entity, and the Service Provider shall operate its First Responder Emergency Medical Services in accordance with the medical and other protocols provided by the appropriate medical director and/or other appropriate agency or entity under the District’s supervision. Any Service Provider providing such services shall be qualified and designated as a First Responder Organization as provided for by applicable statute, law, rule, or regulation, have entered into appropriate agreements to provide such services, and shall have appropriate insurance for the provision of such services.

1.3 The Service Provider shall provide Fire Services and other services in the District in conjunction with any other contracted Service Provider of the District. The Service Provider has the authority to request other agencies to provide mutual aid or other assistance in providing the services listed above through mutual aid or automatic aid agreements, state law, or on a call-by-call basis. Any such agreements shall be provided to the District for approval prior to execution.

**2. TERMS**

2.1 In consideration for the terms of this Agreement, the District, being a duly created political subdivision of the State of Texas located in Comal County, Texas, agrees to provide the Service Provider with District funds, as available and as approved and appropriated by the District’s Commissioners, from the District’s tax revenues or from other sources legally available to the

District. The amount and method of appropriation of these funds will be approved by the District's Commissioners for the life of this contract, prior to the close of the fiscal year preceding the term for which the appropriations are made. Title to funds so disbursed shall remain in the District at all times. No funds provided by the District may be used by the Service Provider for legal representation, costs, or expenses of any kind or nature whatsoever of the Service Provider for issues or disputes related to or arising from this Agreement or otherwise, without the previous written permission of the District. Any District funds appropriated to the Service Provider by the District for any budget period that are not expended at the end of the budget period shall be returned in full to the District within 30 days of the end of that budget period for appropriation in the next budget cycle of the District. The Service Provider agrees and shall maintain all District funds in a separate account from all other accounts of the Service Provider at all times, and the District may suspend or withhold any appropriations hereunder if the Service Provider is in breach of this Agreement or any provision thereof.

2.2 The funds for the term of this Contract shall be made available to the Service Provider upon request to the District and with supporting justification complying with the approved budget process of the District beginning in January, and the next three, or any other payments hereunder shall be in an amount determined by the District. When appropriating funds for use by the Service Provider, the District will consider the citizens' needs for the services provided by the Service Provider, other sources of such services, the Service Provider's annual budget and request for funds, reports by the Service Provider of how previous District funds have been spent, the tax revenues received from the area served by the Service Provider, the results of the previous year's financial audit/financial review, and past compliance by the Service Provider with the terms of agreements between the Service Provider and the District, and any other issue deemed relevant by the District. Any appropriation by the District shall be subject to the District's right of non-appropriation and shall be from current revenues of the District.

2.3 Nothing in this Agreement shall obligate the District to appropriate to the Service Provider the full amount of funds, or any funds, requested by the Service Provider.

### **3. PAYMENTS**

3.1 The funds appropriated for the Service Provider shall be transferred to the Service Provider upon request to the District and with supporting justification complying with the approved budget of the District. If the tax revenues collected and other funds held by the District are not sufficient to cover all of the District's obligations under this and similar agreements with other entities providing emergency services to the District, the parties agree that the District shall transfer to the Service Provider a lesser amount to be determined by the District's Commissioners after considering the amount of funds available, the District's obligations under this and similar agreements, and the District's financial obligations under applicable local, state, and federal law and administrative regulations, and any other issue deemed relevant by the District. Title to funds so disbursed shall remain in the District, and any funds provided to the Service Provider by the District for any budget period that are not expended at the end of the budget period shall be returned in full to the District within 30 days of the end of that budget period. Payments will be made as determined by the District, subject to availability of funds.

3.2 The payment of money by the District under any provision hereof is contingent upon the availability of funds appropriated by the Board of Emergency Services Commissioners of the District to cover the provisions hereof. The District may suspend payment of any funds hereunder if the Service Provider is in violation or breach of any of the terms and provisions set forth herein. Neither the District nor its officials, officers, employees, agents, attorneys, or other individuals acting on behalf of District, make any representations or warranty as to whether any appropriation will, from time to time during the term of this Agreement, be made by the District. In the event District funds for this Agreement become unavailable due to non-appropriation, the District shall have the right to terminate this Agreement without penalty.

3.3 If the Service Provider is not in compliance with the requirements of the District or this Agreement, the District shall notify the Service Provider in writing of the deficiency as set forth in Section 10.

### **4. REPORTING REQUIREMENTS**

4.1 The Service Provider agrees to submit to the District monthly financial reports, showing revenue and expenditures, run reports, monthly activity reports, or any other reports or information that may be required by the District from time-to-time. Each of these reports shall be delivered to the District by midnight of the 4<sup>th</sup>

Monday of the month prior to the District's regular monthly meeting or as otherwise decided by the District. The format of these reports will be determined solely by the District. The District may withhold one month of appropriated funds, which may be restored if Service Provider complies with the requirements and provisions herein.

4.2 The parties agree that the Service Provider shall submit to the District an annual inventory and an annual budget and appropriation request showing all estimated sources of revenue and all estimated expenses, and the format for these reports will be determined solely by the District. The annual inventory and budget and appropriation request shall be submitted no later than the first regular meeting of the District's Board of Emergency Services Commissioners ("Board") in June immediately prior to the fiscal year for which the Service Provider is seeking funds. The annual inventory shall contain a listing of all real and personal property of the Service Provider with a replacement value of \$250.00 or more. The District's fiscal year runs from January 1 through December 31. The District's Commissioners shall not consider an appropriation of funds to the Service Provider until the annual budget request and annual inventory are submitted to the District.

4.3 The Service Provider shall comply with and maintain compliance with all licensing, training, fiscal, and other requirements imposed on the Service Provider by this Agreement, and local, state, and federal law or administrative regulations applicable to the Service Provider. The Service Provider shall be in compliance with the National Incident Management System, the Texas Forest Service reporting system, and any other state, local, or federal law or administrative regulations that may from time-to-time be applicable to the Service Provider or the District.

4.4 The parties agree that the Service Provider shall submit to an annual audit or financial review by an independent auditor selected by the District, unannounced inspections of all records, property, or equipment, and any other requirement reasonably imposed by the District, or local, state, federal law, or administrative regulations. The District shall pay for the audit or financial review. The Service Provider shall promptly provide any and all financial, operational, or other information requested by the District for this audit or otherwise, and shall strictly comply with all applicable statutes, laws, rules, or regulations applicable to the Service Provider, including, but not limited to, the Texas Non-Profit Corporations Act and the Internal Revenue Code of 1986, and as amended from time-to-time.

4.5 The District may suspend payments hereunder or withhold payments as appropriate for any violation of any provision of this Agreement.

## **5. MUTUAL AID**

5.1 The parties agree that at the time of the execution of this Agreement, the Service Provider shall enter into a Mutual Aid Agreement with all other contracted service providers in the District of the services set forth in paragraph 1. These other emergency service providers shall include volunteer fire departments and other entities that provide similar services to the District. The Mutual Aid Agreement shall include, at a minimum, the following provisions:

5.1.1 A complete and detailed description of the types of services to be provided by each of the parties.

5.1.2 Protocols for determining which entity will respond to a given type of emergency call and when a contracting party may or will respond to calls emanating from an area outside its service area.

5.2 In accordance with this Agreement, the Service Provider agrees to provide, as appropriate, emergency medical first responder services to the District in accordance with District policies and the First Responder Program of the District. The Service Provider understands and agrees that it is an independent contractor to the District.

## **6. STATEMENT OF PARTICULARS**

6.1 The Service Provider agrees to use the funds appropriated by the District to provide services set forth in paragraph 1, maintain its physical facilities, educate its members, purchase equipment, repair and maintain equipment, pay operating expenses, and purchase supplies necessary to provide fire services within the Service Provider's area of responsibility under this Agreement. It is understood and agreed that for the provision of fire services by the Service Provider, the Service Provider's area of responsibility will be as shown



on the attached map, attached hereto, and incorporated herein as Exhibit A. The Service Provider shall strictly comply with any joint or cooperative purchasing resolutions or orders of the Board of Emergency Services Commissioners and shall not obtain, purchase, or otherwise accept any real or personal property or services, or grant, sell, convey, donate, or otherwise disposed of any Service Provider or ESD property without the prior approval of the Board.

6.2 Pursuant to Section 775.073(d), Texas Health & Safety Code, this Agreement, and other applicable law, all real or personal property purchased by the Service Provider with District funds may be assigned to the Service Provider and/or titled in the Service Provider's name, but shall remain the sole property of the District, regardless of how titled. Any such real or personal property will be immediately transferred to the District in the event of dissolution of the Service Provider or termination of this contract. It is understood and agreed that all personal or real property purchased, leased, or otherwise obtained by the Service Provider with District funds shall be and remain the sole property of the District, for use by the Service Provider, regardless of how encumbered, nominally owned, or otherwise titled. The Service Provider, for so long as this Agreement remains in effect, shall be authorized to use any real or personal property of the District as assigned in the provision of Fire Services hereunder, but this license shall immediately expire upon the termination of this Agreement for any reason, and the Service Provider shall immediately return possession to all real or personal property of the District as provided for herein. This license is at the sole discretion of the District, and may be terminated at any time by the District. The Service Provider shall be solely responsible for all insurance and/or expenses related to the possession, use, or operation of any such real or personal property, and may request any necessary funds and account for same in its annual budget requests to the District.

6.3 If any funds provided to the Service Provider by the District are used in a manner other than that specified in this Agreement or as approved by the Board, or in contravention of applicable local, state, or federal law, or applicable administrative regulations, in addition to the rights the District has to terminate or suspend any additional funds being distributed to the Service Provider, the Service Provider shall immediately reimburse the District for the amount of the funds improperly used. Funds provided to the Service Provider by the District shall not be used for expenses incurred while providing Fire Services outside the boundaries of the District, except while in response to a mutual aid request from any other Fire or EMS provider or as defined in the applicable mutual aid agreements presented to and approved by the District.

6.4 All audit/financial review documents will be available to the auditor of the District's choice within 60 days of the last day of the Service Provider's fiscal year for which the audit is to be conducted.

6.5 The Service Provider shall implement policies and procedures, promulgated by the District or otherwise, to ensure that individuals performing services under this Agreement behave in a lawful, safe, courteous, professional and respectful manner to the public it serves and with all other individuals or entities involved in rendering assistance under this Agreement. The Service Provider recognizes that the forms of service being provided under this Agreement involve highly dangerous and life-threatening situations and that cooperative and unified action by the individuals or entities providing services under this Agreement is imperative. The Service Provider will act promptly to impose the necessary discipline to ensure that individual members of the Service Provider providing services under this Agreement consistently comply with the standard of conduct imposed by this section of the Agreement. Nothing in this section or this Agreement changes or modifies the Service Provider's status as an independent contractor to the District.

6.6 Service Provider agrees to amend its By-Laws and other applicable documents and procedures to ensure that all current and future applicants for membership with Service Provider shall consent to a background check consisting of a minimum of criminal history, 5-year driving record, sexual offender, and social security number verification before they are accepted as members of the Service Provider. Service Provider also agrees to implement policies and procedures to preclude or restrict membership in Service Provider of individuals with unsafe driving records or criminal histories that may affect the perception of the Service Provider or the District or otherwise endanger the life, health, safety, or property of residents or visitors in the District.

6.7 Service Provider agrees to amend its By-Laws and other applicable documents and procedures to ensure that it remains qualified as an emergency services organization and governmental unit as may be required by law.

6.8 The Service Provider understands and agrees that the District requires that the policies and procedures (hereafter “Standard Operating Guidelines”) required herein, will be provided to each and every paid employee and volunteer member of any category upon the commencement of the member’s participation with the Service Provider. The Service Provider shall prepare and utilize Standard Operating Guidelines for use by all members of the Service Provider, whether paid or volunteer. The Standard Operating Guidelines shall contain not only that information required above, but also the general policies of the Service Provider outlining the proper procedures and policies for the services provided to the District by the Service Provider under this Agreement.

6.9 While the District recognizes the Service Provider and its individual members have the right to participate in an appropriate manner in any political activity, the District requests the Service Provider and its members to refrain from any campaign or other political activity by its members when they are working, volunteering, or otherwise providing services under this Agreement. As each resident of the District has a right to his or her own political decisions and opinions, the Service Provider, as a non-profit corporation under the laws of the State of Texas and a tax exempt organization under the applicable provisions of the Internal Revenue Code of 1986, agrees voluntarily not to campaign, support, or promote any candidate for public office during the duration of this Agreement. If a member of the Service Provider’s organization desires to publicly endorse a candidate verbally or in writing, he or she agrees to do so as an individual and not use the organization’s title or position in any endorsement. This provision is not inserted herein to prevent or infringe on any individual’s or organization’s rights of free speech, but rather as a reasonable and necessary compromise and agreement between the District and the Service Provider to behave in a courteous, professional and respectful manner to the residents of the District and the general public.

6.10 It is recognized that the Service Provider has other sources of income and nothing in this Agreement limits how the Service Provider can utilize these other funds. All disbursement of these funds must be accounted for as a separate item from the District funds and reported in the Monthly Budget Report and Annual Budget Estimate and Request for Funds from the District.

6.11 The Service Provider shall retain all rights in accordance with the appropriate First Responder Program as set forth by the appropriate authority. The Service Provider shall also retain the right to summon rescue, extrication, or other emergency or non-emergency services in accordance with other mutual aid or other agreements with other entities outside the territorial limits of the District.

6.12 The Treasurer for the Board of Directors of the Service Provider and all other persons having access to the funds of the Service Provider shall be bonded or insured for at least an amount agreed to by the District and proof of this coverage will be submitted to the District.

6.13 The parties to this Agreement affirm that the District and the Service Provider are separate entities and as such, the Service Provider is responsible for its actions as an emergency services organization or provider, and the District is responsible for its actions as a political subdivision of the State of Texas. Neither party shall be responsible for the actions of the other in case of any liability for damages or other relief. Neither the Service Provider, its agents, nor any other person operating under this Agreement, shall be deemed to be an agent or employee of the District and the District shall not be liable for negligence, acts or omissions, tortious or other conduct of any such person. The Service Provider is an independent contractor to the District.

6.14 The Service Provider further agrees to maintain appropriate insurance upon its real and personal property, including vehicles, whether leased, owned, or otherwise utilized by the Service Provider herein, and those of its members used in the provision of Fire Services, to cover minimum liability of the Service Provider under the Texas Tort Claims Act as it now exists and as it may be amended from time to time. The Service Provider will require its members to maintain the minimum level of financial responsibility as required by state law. In the event that liability insurance on real or personal property other than vehicles is required by the Texas Tort Claims Act, the Service Provider agrees to maintain the minimum amount required under the Texas Tort Claims Act. Proof of such insurance required under this paragraph shall be submitted to the District at the time the policies are renewed. Any insurance obtained by the Service Provider hereunder shall name the District as a loss payee.

6.15 The Service Provider also agrees to provide liability, management liability and other applicable insurance for its activities and operations hereunder, and, if requested by the District to obtain such insurance for the benefit of the District. The Service Provider also agrees to name the District as the loss payee for any real or personal property purchased by the Service Provider with District funds or as approved in any budgets presented to the District by the Service Provider. In addition to any other insurance required to be obtained by the Service Provider herein, the Service Provider shall maintain the following policies of insurance:

- 6.15.1 Workers Compensation for all paid employees and volunteer members;
- 6.15.2 Commercial General Liability Insurance providing limits of not less than \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate;
- 6.15.3 Commercial Auto Liability Insurance providing limits of not less than \$1,000,000.00 per occurrence;
- 6.15.4 Management Liability (Errors & Omissions) Insurance providing not less than \$1,000,000.00 per occurrence and \$3,000,000.00 annual aggregate;
- 6.15.5 Blanket Commercial Bond in an amount agreed to by the District;
- 6.15.6 Any property (stations, contents, portable equipment) purchased with District funds will be insured for full replacement cost; and,
- 6.15.7 Any emergency apparatus purchased with District funds will be insured for an “Agreed Value” in an amount agreed to by the District, and any other vehicle may be insured for “Actual Cash Value” or “Agreed Value,” as determined by the Service Provider.

The District shall be named as an additional insured/loss payee, as the District’s interest may be on all such insurance policies. Copies of all insurance policies or certificates of insurance evidencing such policies shall be made available to the District within 10 days of receipt by the Service Provider.

## **7. PERFORMANCE STATEMENT**

### **Service Provider shall:**

7.1 Join and participate in the Texas Commission on Fire Protection and for Volunteers, the State Firemen’s and Fire Marshals’ Association of Texas (SFFMA), and conduct all training in accordance with the appropriate agency policies and criteria.

7.2 Assure all fire prevention, firefighting, and other personnel providing emergency services hereunder, including, but not limited to, emergency medical services personnel, are appropriately trained and certified for the levels of service provided, and any such personnel responding to any emergency or non-emergency response provided for hereunder shall have and wear as appropriate all personal protective equipment required for the type of emergency, such as structural or wildland personal protective equipment.

7.3 Assure, to the extent reasonably possible for a volunteer organization, that qualified personnel are available to respond to each emergency call on which the Service Provider is dispatched.

7.4 Provide adequately equipped and operational emergency vehicles, equipment, and personnel to respond to each emergency call that requires a Code 3 (emergency lights and sirens response) with the goal of an average response time for an emergency vehicle owned or used by the Service Provider of not more than 15 minutes, and such average response times shall be measured from the time of initial dispatch until the first appropriate unit marks arrival on scene. The average response time is calculated over a period of one month by dividing the sum of incident response times by the total number of incidents.

7.5 Provide educational programs for any schools in the Service Provider’s service area, and fire prevention workshops for the general public as requested within BVFD capabilities and resources.

7.6 Provide for training of its members at an approved or qualified school or under approved training curricula.

7.7 Submit at least one (1) F.E.M.A., Fire Act or similar grant application or one (1) Texas Forest Service grant application each fiscal year as approved by the District.

7.8 Prepare and promptly submit such financial, administrative, or other reports or information as required by the District or its representatives in its sole discretion and without objection by the Service Provider. All reports shall be provided in the format prescribed by the District.

7.9 Consist of at least 8 members with a minimum of 6 personnel trained to operate the vehicles and equipment utilized by the Service Provider in the provision of Fire Services hereunder.

7.10 Conduct at least 1 training drill per month of at least 2 hours in duration for a combined total of 6 training hours per quarter. At least 6 members of the Service provider must be present at such training to receive credit for the training required hereunder. All training drills shall be taught or supervised by a qualified training instructor or coordinator, and business meetings of the Service Provider do not meet the requirements set forth herein for training drills.

7.11 Maintain permanent records of all training drills, including attendees, subject and duration.

7.12 Maintain a permanent record of yearly pump tests for all applicable apparatus.

7.13 Maintain a permanent record of all yearly hose testing in accordance with NFPA.

7.14 Operate under the National Incident Management System.

7.15 Require the President or Fire Chief or designated representative of the Service Provider, if approved by the District, to attend the District's monthly Regular Meeting.

## **8. DISSOLUTION OR TERMINATION**

Although equipment purchased with funds from the District may be used by the Service Provider and/or titled in the Service Provider's name, for the consideration mentioned above, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed for all purposes by the Service Provider, and regardless of any language to the contrary herein, the Service Provider agrees to immediately transfer to the District all assets of the Service Provider, whether real or personal, tangible or intangible, upon the dissolution of the Service Provider, or the termination of this Agreement. The Service Provider shall amend its articles of incorporation, by-laws, or any other applicable documents or instruments to allow for the execution of this section and the agreements contained herein. This provision shall survive the termination of this Agreement, and the District shall be entitled to all attorney's fees, costs, and expenses related to the enforcement of this provision against the Service Provider, whether outside litigation, and whether at law or in equity. Title to funds disbursed to the Service Provider by the District shall remain in the District and to any real or personal property purchased therewith. The Service Provider hereby grants and designates the District and its officers or representatives as its attorney-in-fact to execute any documents or take any actions necessary to provide for the execution of this section. This is a right coupled with an interest, and is irrevocable. This section shall survive termination of this Agreement.

## **9. INDEMNIFICATION**

The Service Provider shall fully indemnify and hold the District harmless, as well as its officials, agents, representatives, and employees, from any and all claims of any type, including negligence, and all attorney's fees and related costs, made on account of any loss through personal injuries, deaths, or property damages, arising directly or indirectly out of the sole or concurrent negligence, or the sole or concurrent intentional acts or omissions of the Service Provider or its contractors, officials, agents, volunteers, representatives, employees, subcontractors, or consultants, in performing the services required under this Agreement. The preceding indemnity clause shall be construed to also mean that the Service Provider shall indemnify the District for personal injuries, deaths, or property damages arising solely or partly from negligence or intentional acts or omissions of the Service Provider, its contractors, officials, agents, employees, volunteers, subcontractors, or consultants but shall not indemnify the District for the District's sole or partial negligence, or sole or concurrent intentional tortious acts or omissions. By entering into this Agreement, the District does not waive, and shall not be deemed to have waived, any right, immunity, or defense it may have.

## **10. BREACH AND TERMINATION**

10.1 In the event that the District believes the Service Provider has violated any of the terms of this Agreement, the District may notify the Service Provider of the alleged violation in writing. The Service Provider shall, within thirty (30) days following the date of notice, correct the deficiency and provide the District with written confirmation that the deficiency has been corrected. If the Service Provider contends that the alleged violation has not occurred or that any act or omission does not constitute a violation, it shall provide a written objection to the District of its contention within ten (10) calendar days following the date of the notice of violation. The parties then shall attempt to resolve their differences informally. While it is always preferable that disputes

be resolved informally, if the parties cannot reach an agreement within thirty (30) days following the Service Provider's notice of objection, the parties will submit the matter either to mediation, or if both parties agree, to binding arbitration. If arbitration is selected, the matter shall be submitted to an arbitrator with membership in the American Arbitration Association. If mediation is selected, the mediator selected will be by agreement of the parties, or if the parties cannot agree on a mediator, the Comal County Judge shall select the mediator.

10.2 Notwithstanding any other provision of this Agreement, the District may terminate this Agreement for any reason by providing the Service Provider a ninety (90) day written notice of termination, unless the Service Provider is in violation of any provision of this Agreement and the District desires to terminate this Agreement for cause or this Agreement has not been renewed and is under the month-to-month term as set forth in Section 11.4, in which event the Agreement may be terminated on a thirty (30) day notice from the District to the Service Provider.

## **11. MISCELLANEOUS PROVISIONS:**

11.1 This Agreement is executed in Comal County, Texas, and venue over any action relating to any provision of this Agreement shall be exclusively in Comal County, Texas. This Agreement shall be governed by the laws of the State of Texas.

11.2 In any action brought to enforce any provision of this Agreement, the District may recover from the Service Provider its attorney's fees, costs, and expenses. This section shall survive the termination of this Agreement.

11.3 The individuals executing this Agreement warrant that they are authorized to enter into this Agreement on behalf of the respective entities that they represent and to bind those entities to the provisions of this Agreement.

11.4 This Agreement shall become effective as of January 1, 2023 and shall remain in full force and effect from the date of execution through December 31, 2023. In the event that this Agreement is not renewed at the end of its term as stated herein, this Agreement shall remain in full force and effect after such expiration of this Agreement and shall be automatically renewed thereafter on a month-to-month basis until a new agreement is reached between the District and the Service Provider or the Agreement is otherwise terminated by either party hereto. A party desiring to terminate this Agreement will give a ninety (90) day written notice to the other party, unless one of the parties is in violation of any provisions of this Agreement and the party desiring to terminate this Agreement desires to terminate for cause, in which event the Agreement may be terminated upon a thirty (30) day written notice. If this Agreement has become a month-to-month agreement as set forth above, this Agreement may be terminated upon thirty (30) days written notice. Any written notice required herein shall be mailed to the other party's last known mailing address via U.S. certified mail, postage prepaid and return receipt requested; and the date of receipt shall be deemed the date of the postmark.

11.5 This Agreement contains the entire agreement between the parties and all prior negotiations, statements, representations, or agreements are superseded and displaced hereby. A waiver, alteration, or modification of this Agreement shall not be binding unless it is in writing and signed by both parties.

11.6 The headings of the various paragraphs of the Agreement have been inserted for convenient reference only and shall not be construed to enlarge, diminish, or otherwise change the express provisions hereof.

11.7 In the event that any one or more of the provisions contained in the Agreement shall be held to be invalid or unenforceable in any respect by a court of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision did not exist.

11.8 Any rights or obligations that the Service Provider may have under this Agreement may not be assigned without the express written permission of the District.

11.9 Pursuant to § 775.040, *et seq.*, Texas Health & Safety Code, the District and the Service Provider are specifically authorized to charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection, and such fees may be collected as set forth therein, either by the District or the Service Provider, and at the rates and under the conditions as may be agreed to from time-to-time by the parties hereto. It is agreed for the purposes of this Section that any funds received by the Service Provider or otherwise under this Section shall be and remain the property of the District for use as the District determines in its annual budget process, and, to the extent permitted by law, it is the current intent of the District to utilize these funds, if any, for the acquisition of capital items or appropriation to the District's contingency funds.

11.10 The Service Provider understands and agrees that the District has the sole discretion and authority to determine the emergency services organizations or governmental units that provide emergency services in the District, or that the District may provide such emergency services itself, and the District reserves the right to retain volunteers or employ employees to provide or coordinate on behalf of the District emergency services in the District.

11.11 All titles, categories, and/or ranks of personnel of the Service Provider and the District are recognized as they exist at the time of the execution of this Agreement and such chain of command or other structural or organizational outlines may be followed during the term of this Agreement. It is understood and agreed that personnel titles, categories, and/or ranks should be followed by the personnel acting for the Service Provider or the District regardless of whether that individual is paid or volunteer. Any desired change by the District in such titles, categories, ranks or chain of command shall be adopted by the Service Provider immediately upon written notice from the District to the Service Provider.

11.12 The District's Board of Emergency Services Commissioners, chief, administrator, or other designee shall have the sole authority as to the coordination or provision of the emergency services provided for under this Agreement, which the Service Provider herein recognizes. The District retains the sole discretion to amend, change, or reorganize said command or organizational structure, or the method or manner of providing emergency services in the District, as necessary during the term of this Agreement. The Service Provider further agrees to provide the District's representatives the same reports as may be required herein. The Service Provider further agrees that the District or its designated representative may request special reports requiring timely response from the Service Provider.

11.13 This authority provided for herein does not change the independent contractor status of the Service Provider, and by entering into this Agreement, neither party hereto waives, and shall not be deemed to waive, any immunity, right, or defense either party may have under the Texas Tort Claims Act, Chapter 775, Texas Health & Safety Code, or other applicable law, rule, doctrine, or regulation.

11.14 The District's legal representation is provided by and through Burns Anderson Jury & Brenner, L.L.P., and Burns Anderson Jury & Brenner, L.L.P. does not, has not, and will not, during the term of this Agreement, represent the Service Provider at any time and the Service Provider hereby acknowledges this fact for all purposes. While Burns Anderson Jury & Brenner, L.L.P. may communicate with the Service Provider on behalf of the District or its interests during the term of this Agreement, the Service Provider acknowledges that such communication does not and will not constitute in any way representation of the Service Provider. The District recommends the Department have an attorney of its choice review this Agreement prior to execution or for any other purposes it may determine necessary, now or in the future.

This Agreement is executed and signed on this 12<sup>th</sup> day of December 2022 to be effective as of the dates noted above.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

COMAL COUNTY EMERGENCY  
SERVICES DISTRICT NO. 6

BRACKEN VOLUNTEER FIRE  
DEPARTMENT

By: \_\_\_\_\_  
Herb Coley,  
President

By: \_\_\_\_\_  
Charlie Flink,  
President

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary