



# FLAGLER BEACH CITY COMMISSION

Item No: 15

**Meeting Date:** August 19, 2021

**Issue:** Approve a purchase agreement for the purchase of a Pierce fire truck.

**From:** Summary provided by Penny Overstreet, City Clerk

**Organization:** COFB

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**RECOMMENDATION:** Motion to approve the purchase agreement between Ten-8 Fire and Safety, LLC and the City of Flagler Beach and authorize Mayor to sign same.

**BACKGROUND:** The attached purchase agreement is meant to hold the demonstration vehicle for the City at the reduced pricing level. Attorney Smith has added language to Section 6 of the agreement that does not bind the City to the agreement in the event the purchase is not approved, as part of the FY 2021/2022 budget. Staff is requesting Commission approval to proceed in order to secure special pricing quoted and save approximately \$23k by assuring the company of our intent to order.

**BUDGETARY IMPACT:** No impact on current budget FY 20-21

**LEGAL CONSIDERATIONS/SIGN-OFF:** Attorney Smith reviewed the document and added language to Section 6 of the agreement that provides the option to cancel the agreement without penalty or fees providing the City notify the Company in writing by October 8, 2021.

**PERSONNEL:** Fire Chief, Finance Director, City Manager.

**POLICY/REQUIREMENT FOR BOARD ACTION:** Motion to approve the purchase agreement and authorize the Mayor to sign same.

**IMPLEMENTATION/COORDINATION:** Clerk will obtain signatures and scan document for retention

#### Attachments

- Purchase Agreement



**Equipment Proposal**

Pierce Proposal # 726

This Equipment Proposal (the "Proposal") has been prepared by Ten-8 Fire & Safety, LLC ("Company") in response to the undersigned Customer's request for a proposal. This Proposal is comprised of the special terms set forth below, the Proposal Option List, Warranty, and Company's Purchasing Terms and Conditions. Through its signature below or other Acceptance (as defined below), Customer acknowledges having received, read and being bound by this Proposal, all attachments and Company's Purchasing Terms and Conditions.

Date: **August 4, 2021** ("Proposal Date")      Customer: **FLAGLER BEACH FIRE DEPARTMENT** ("Customer")

Customer Address: **320 SOUTH FLAGLER AVENUE, FLAGLER BEACH, FLORIDA, 32136**

Qty	Product Description & Options	Price
1	Pierce Custom Pumper per Lake County ITB #19-0707, price level 40.	\$439,049.00
	4% Mark-up on Base Model Apparatus, Custom Pumper, per Lake County contract.	\$17,562.00
	Apparatus options per Stock Unit #33396 and Flagler Beach Fire Department requirements.	\$44,821.00
	9% Mark-up on Apparatus Options, per Lake County contract.	\$4,034.00
	Apparatus Subtotal:	\$505,466.00
	Factory Concession and Stock Unit Discount.	(\$35,000.00)
	Loose equipment per quote number Q202719.	\$46,792.00
	Amkus e-draulic tool system per quote number Q214718.	\$24,607.00
	Loose equipment mounting per quote number SVQ17977.	\$6,468.00
	Trade-in of Pierce/Freightliner pumper, Job #EA347.	(\$2,000.00)
	Installation of aluminun booster reel with dual rollers and 200' of hose to be billed separately.	
	Invoice amount will be \$6,502.00.	
<b>Purchase Price:</b>		<b>\$546,333.00</b>

**Delivery Timing:** The Product described above in the Product Description and Options Section of this document will be built by and shipped from the manufacturer approximately 2 (months) after Company receives Customer's acceptance of this Proposal as defined below.

**Other:** Apparatus cab will be two-tone painted black upon arrival at our service center in Sanford, Florida. Final delivery will be on or after October 1st, 2021. Payment due upon delivery.

Unless accepted within 20 days from date of proposal, the right is reserved to withdraw this proposal.

ACCEPTANCE OF THIS PROPOSAL CREATES AN ENFORCEABLE BINDING AGREEMENT BETWEEN COMPANY AND CUSTOMER. "ACCEPTANCE" MEANS THAT CUSTOMER DELIVERS TO COMPANY: (A) A PROPOSAL SIGNED BY AN AUTHORIZED REPRESENTATIVE, OR (B) A PURCHASE ORDER INCORPORATING THIS PROPOSAL, WHICH IS DULY APPROVED, TO THE EXTENT APPLICABLE, BY CUSTOMER'S GOVERNING BOARD. ACCEPTANCE OF THIS PROPOSAL IS EXPRESSLY LIMITED TO THE TERMS CONTAINED IN THIS PROPOSAL AND COMPANY'S PURCHASING TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN CUSTOMER'S FORMS OR OTHERWISE PRESENTED BY CUSTOMER AT ANY TIME, ARE HEREBY REJECTED.

**INTENDING TO CREATE A BINDING AGREEMENT,** Customer and Company have each caused this Proposal to be executed by their duly authorized representatives as of date of the last signature below.

Customer: **Flagler Beach, Florida**

Ten-8 Fire & Safety, LLC

By: \_\_\_\_\_

By: 

Title: \_\_\_\_\_

Title: **Authorized Sales Representative**

Print: \_\_\_\_\_

Print: **Robert F. Boggus**

Date: \_\_\_\_\_

Date: **August 4, 2021**

EXHIBIT A

**PROPOSAL OPTION LIST**

EXHIBIT B

**WARRANTY**

EXHIBIT C

**PURCHASING TERMS AND CONDITIONS**

## PURCHASING TERMS AND CONDITIONS

(Florida)

These Purchasing Terms and Conditions, together with the Equipment Proposal and all attachments (collectively, the "Agreement") are entered into by and between Ten-8 Fire & Safety, LLC, a Florida company ("Company") and Customer (as defined in Ten-8 Fire & Safety LLC's Equipment Proposal document) and is effective as of the date specified in Section 3 of these Purchasing Terms and Conditions. Both Company and Customer may be referred throughout this document individually as a "party" or collectively as the "parties."

1. Definitions.
  - a. **"Acceptance"** has the same meaning set forth in Company's Equipment Proposal.
  - b. **"Company's Equipment Proposal"** means the Equipment Proposal provided by Company and prepared in response to Customer's request for proposal for a fire apparatus, associated equipment or an ambulance.
  - c. **"Cooperative Purchasing Contract"** means an Agreement between Company and a public authority, including without limitation, a department, division, agency of a municipal, county or state government ("Public Authority"), that adopts or participates in an existing agreement between Company and another non-party customer (including, but not limited to such non-party customer's equipment proposal, its applicable exhibits, attachments and purchasing terms and conditions), often referred to as a "piggyback arrangement," which is expressly agreed to, in writing, by Company. Company has sole discretion to determine whether it will agree to such a Cooperative Purchasing Contract.
  - d. **"Delivery"** means when Company delivers physical possession of the Product to Customer.
  - e. **"Manufacturer"** means the Manufacturer of any Product.
  - f. **"Prepayment Discount"** means the prepayment discounts, if any, specified in Company's Equipment Proposal.
  - g. **"Product"** means the fire apparatus and any associated equipment, or ambulance manufactured or furnished for Customer by Company pursuant to the Specifications.
  - h. **"Purchasing Terms and Conditions"** means these Purchasing Terms and Conditions; however, if the Company's Equipment Proposal or the Customer's related Purchase Order states that it is governed by a Cooperative Purchasing Agreement, "Purchasing Terms and Conditions" shall mean those terms and conditions set forth in the applicable Cooperative Purchasing Agreement.
  - i. **"Specifications"** means the general specifications, technical specifications, training, and testing requirements for the Product contained in Company's Equipment Proposal and its Exhibit A (Proposal Option List or for ambulance sales, the Quotation, or Order Form, as applicable), prepared in response to Customer's request for such a proposal.
2. Purpose. This Agreement sets forth the terms and conditions of Company's sale of the Product to Customer.
3. Term of Agreement. This Agreement will become effective on the date of Acceptance as defined in Company's Equipment Proposal ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon Delivery and payment in full of the Purchase Price.
4. Purchase and Payment. Customer agrees to pay Company the Purchase Price for the Product(s) as set forth in Company's Equipment Proposal ("Purchase Price"). The Purchase Price is in U.S. dollars. Where Customer opts for a Prepayment Discount that specifies that Customer will tender one or more prepayments to Company, Customer must provide each prepayment within the time frame specified in the Equipment Proposal in order to receive the Prepayment Discount for that prepayment installment.
5. Representations and Warranties. Customer hereby represents and warrants to Company that the purchase of the Product(s) has been approved by Customer in accordance with applicable general laws and, as applicable, Customer's charter, ordinances and other governing documents, and funding for the purchase has been duly budgeted and appropriated.
6. Cancellation/Termination.

Fire Equipment and Apparatus Sales. In the event this Agreement is cancelled or terminated by Customer before completion, Company may charge Customer a cancellation fee. The following charge schedule is based on costs incurred by Manufacturer and Company for the Product, which may be applied and charged to Customer: (a) 12% of the Purchase Price after the order for the Product(s) is accepted and entered into Manufacturer's system by Company; (b) 22% of the Purchase Price after completion of approval drawings by Customer, and; (c) 32% of the Purchase Price upon any material requisition made by the Manufacturer for the Product. The cancellation fee will increase in excess of (c) in this Section 6, accordingly, as additional costs are incurred by Manufacturer and Company as the order progresses through engineering and into the manufacturing process. Company and Customer acknowledge and agree that in the event funds for the purchase contemplated herein are not appropriated by the City Commission in Customer's 2021/2022 budget, Customer may cancel this Agreement without penalty, fee, or charge provided Customer notifies Company of such non-appropriation in writing no later than October 8, 2021 by 5:00 p.m. EDT. If funds for the purchase are appropriated by the City Commission as part of the 2021/2022 budget, Customer will issue a Purchase Order to the Company by October 2, 2021 by 5:00 p.m. EDT.

- a. Ambulance Sales. This Section 6 for Cancellation/Termination does not apply to Ambulance Sales. An order for an ambulance cannot be cancelled or terminated once Company receives and processes Customer's Acceptance of Company's Equipment Proposal.

7. Delivery. The Product is scheduled to be delivered as specified in the Delivery Timing section of the Equipment Proposal ("Delivery Timing"), which will be F.O.B. Company's facility. The Delivery Timing is an estimate, and Company is not bound to such date unless it otherwise agrees in writing. Company is not responsible for Delivery delays caused by or as the result of actions, omissions or conduct of the Manufacturer, its employees, affiliates, suppliers, contractors, and carriers. All right, title and interest in and to the Product, and risk of loss, shall pass to Customer upon Delivery of the Product(s) to Customer.

8. Standard Warranty. The manufacturer warranties applicable to this Agreement, if any, are attached to Company's Equipment Proposal as Exhibit A and are incorporated herein as part of the Agreement.

- a. Disclaimer. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, COMPANY, INCLUDING ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS PROVIDED UNDER THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING DISCLAIMER, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, IMPLIED WARRANTY AGAINST INFRINGEMENT, AND IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.

9. Limitation of Liability. COMPANY WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, ECONOMIC, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT WITHOUT REGARD TO THE NATURE OF THE CLAIM OR THE UNDERLYING THEORY OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, EQUITY OR ANY OTHER THEORY OF LAW) ON WHICH SUCH DAMAGES ARE BASED. COMPANY'S LIMIT OF LIABILITY UNDER THIS AGREEMENT SHALL BE CAPPED AT THE TOTAL AMOUNT OF THE MONIES PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT.

10. Force Majeure. Company shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Company's control which make Company's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, including transportation or delivery losses outside of Company's control, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the

scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

11. Customer's Obligations. Customer shall provide its timely and best efforts to cooperate with Company and Manufacturer during the manufacturing process to create the Product. Reasonable and timely cooperation includes, without limitation, Customer's providing timely information in response to a request from Manufacturer or Company and Customer's participation in traveling to Manufacturer's facility for inspections and approval of the Product.
12. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) Customer's failure to pay any amounts due under this Agreement or Customer's failure to perform any of its obligations under this Agreement; (b) Company's failure to perform any of its obligations under this Agreement; (c) either party becoming insolvent or becoming subject to bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement, which is false in any material respect; (e) an action by Customer to dissolve, merge, consolidate or transfer a substantial portion of its property to another entity; or (f) a default or breach by Customer under any other contract or agreement with Company.
13. Manufacturer's Statement of Origin. Company shall retain possession of the manufacturer's statement of origin ("MSO") for the Product until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, Company shall retain the MSO for each individual Product until the Purchase Price for that Product has been paid in full.
14. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Arbitration shall take place in Bradenton, Florida.
15. Miscellaneous. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture of or with the other. Neither party may assign its rights and obligations under this Agreement without the prior written approval of the other party. This Agreement and all transactions between Ten-8 Fire & Safety, LLC will be governed by and construed in accordance with the laws of the State of Florida. The delivery of signatures to this Agreement may be via facsimile transmission or other electronic means and shall be binding as original signatures. This Agreement shall constitute the entire agreement and supersede any prior agreement between the parties concerning the subject matter of this Agreement. This Agreement may only be modified by an amendment, in writing, signed by duly authorized representatives of both parties with authority to sign such amendments to this Agreement. In the event of a conflict between the Ten-8 Proposal and these Terms and Conditions, the Ten-8 Proposal shall control except in the case of a Cooperative Purchasing Contract as set forth in Section 1(c) and (h) of these Purchasing Terms and Conditions. If any term of this Agreement is determined to be invalid or unenforceable by a competent legal authority, such term will be either reformed or deleted, as the case may be, but only to the extent necessary to comply with the applicable law, regulation, order or rule, and the remaining provisions of the Agreement will remain in full force and effect.