

INTERLOCAL AGREEMENT

BETWEEN THE INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS AND THE SCHOOL BOARD OF INDIAN RIVER COUNTY CONCERNING THE MAINTENANCE AND REPAIR OF THE EMERGENCY POWER GENERATOR FOR THE SPECIAL NEEDS SHELTER AT TREASURE COAST ELEMENTARY SCHOOL

This Interlocal Agreement ("Agreement") is entered into this _____ day of _____, 2019, ("Effective Date") between the Indian River County Board of County Commissioners, (hereinafter "County") and the School Board of Indian River County (the "School Board"), collectively referred to as the Parties.

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part 1 of Chapter 163, Florida Statutes permits "public agencies" as defined in Section 163.01(3)(b), to enter into interlocal agreements with each other to exercise jointly any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the Florida Legislature has found that safeguarding the life and property of its citizens by installation of a generator at special needs shelters capable of running the shelter's air conditioning system and any necessary medical devices during the times of a declared emergency is a vital part of a community's emergency preparations; and

WHEREAS, in 2006 the Parties cooperatively obtained an emergency power generator, fuel tank, generator housing structure, and such other mechanical, electrical and plumbing equipment necessary to support the generator and to provide the necessary electrical service (hereinafter "Equipment") for a special needs shelter through a State Grant managed by the Florida Division of Emergency Management; and

WHEREAS, the Equipment was placed at Treasure Coast Elementary School which is the County's special needs shelter; and

WHEREAS, the State initially was responsible for the maintenance and repair of the Equipment until February 7, 2013, at which time the County and School Board became responsible for the maintenance and repair; and

WHEREAS, the Parties wish to document their agreement for the maintenance repair of the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Recitals**

The Parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Maintenance and Repair**

The School Board shall perform or cause to be performed the reasonable and necessary preventative maintenance, periodic maintenance, and repair of the Equipment. This shall include, but is not limited to: Purchasing of Fuel to Maintain 72 Hour run time; Annual Load Bank Testing; Annual Certification of Fuel Monitoring System; Annual Fuel Cleaning and Polishing; Annual Fuel Tank Storage License Fee; Annual Fuel Storage Pollution Policy; and Cost Associated with Fuel Spill Cleanup.

3. **Reimbursement**

The County shall be responsible for reimbursing the School Board for 50% of all reasonable and necessary costs and expenses incurred by the School Board in performing preventative maintenance, periodic maintenance, and repair of the Equipment. The School Board shall submit an invoice on a quarterly basis documenting all reasonable and necessary costs and expenses incurred by the School Board to the County through its Office of Management and Budget. The County may require reasonable additional documentation of costs and expenses sufficient to document the expenditures per the County's Office of Management and Budget. Reimbursement requests will normally be paid within 30 days following the County's receipt of the invoices but in no event more than 60 days unless the County formally disputes in writing some or all of the costs and expenses as set forth therein. Notwithstanding the foregoing, the County shall reimburse all undisputed costs and expenses no later than 60 days from receipt of the invoice. If the County disputes a cost or expense, the County shall within 15 days of receipt of the invoice provide the School Board with a written explanation of the basis of the dispute with regard to the disputed cost or expense and the Parties shall attempt to resolve the dispute in accordance with paragraph 5, below. If after examination of the generator system, the School Board recommends significant maintenance or repair beyond the normal maintenance of the system, the School Board shall provide notice of those significant repairs each year by June 30 so the County may budget for the repairs accordingly. In the event of an unforeseen major mechanical failure occurs rendering the generator unfit for service unless prompt repairs are made, the School Board shall promptly advise the County of the failure. The School Board shall effect the needed repairs advising the County of the estimated cost and upon completion of the repairs submit a final bill to the County for payment within 45 days.

4. **Waiver and Delay**

No waiver or delay of any provision of this Agreement at any time will be deemed a waiver of any other provision of this Agreement at such time or will be deemed a waiver of such provision at any other time.

5. **Dispute Resolution**

As a condition precedent to a Party bringing any suit for breach of this Agreement, that party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to mediation with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

6. **Filing**

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Indian River County, Florida.

7. **Force Majeure**

No party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reasons of any other matter or condition beyond the control of any Party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of any Party be deemed Force Majeure.

8. **Survival**

Provisions contained in this Agreement that, by their sense and context, are intended to survive the expiration or termination of this Agreement, shall so survive.

9. **Waiver of Jury Trial**

EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10. **Indemnification**

Subject to the provisions and only within the limitations of Section 768.28, Florida Statutes, and without waiving sovereign immunity, the Parties recognize their

respective tort liability for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee acting within the scope of the employee's office or employment. It is expressly understood that this provision shall not be construed as; i) a waiver of any right, defense or immunity that the Parties have under Chapter 768.28, Florida Statutes, or any other statute, ii) an agreement by either Party hereto to indemnify the other; or iii) consent by either Party to be sued by third parties. Each Party covenants to maintain sufficient general liability and worker's compensation coverage, unless self-insured, regarding its respective liability, throughout the term of this Agreement.

11. Insurance

The Parties warrant that they are self-insured and agree to maintain general liability insurance as required by law. The Parties further agree to provide each other with a copy of said insurance certificates, upon request. Further, the School Board shall provide a copy of the Annual Fuel Storage Pollution Policy to the County upon request.

12. Non-Discrimination

The Parties shall not unlawfully discriminate against any individual on the basis of his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.

13. Modifications

This Agreement may be modified or amended only by mutual written consent of the Parties.

14. Execution, Term and Termination

The term of this Agreement shall commence upon the Effective Date and shall remain in effect until December 31, 2022, and shall automatically renew for 2 successive five year periods, expiring on December 31, 2032. This Agreement may be replaced or sooner by a mutually agreed upon substitute agreement.

15. Notice

Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (1) Hand delivery to the other party; or (2) Delivery by commercial overnight courier service; or (3) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

Indian River County: County Administrator

1801 27th Street, Building A
Vero Beach, FL, 32960

School Board: The School Board of Indian River County
6500 57th Street
Vero Beach, FL 32967

16. **Choice of Law and Venue**

The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, as well as any litigation between the parties, shall be Indian River County, Florida for claims brought in state court, and the Southern District of Florida for those claims justiciable in federal court.

17. **Prior Agreements**

This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18. **Construction/Interpretation of Agreement**

Each party has participated equally in the negotiation and drafting of this Agreement. In the event a court is required to interpret any provision of this agreement, the provision shall not be interpreted for or against either party upon the basis that such party was or was not the preparer of this Agreement.

19. **Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

20. **Public Record**

This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, Florida Statutes, which generally makes public all records or other writings made or received by the Parties. The Parties acknowledge their legal obligation to comply with Section 119.0701, Florida Statutes. The Parties further agree not to disclose public records that are otherwise exempt, or confidential and exempt, from public record disclosure unless specifically authorized by law. To the extent either Party has any questions regarding the application of Chapter 119, Florida Statutes, to the duties and obligations to provide public records relating to this Agreement, the Party shall discuss such questions with the other Party's custodian of records.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

**BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY**

By: _____
Susan Adams, Chairman

Approved by BCC: _____

ATTEST: Jeffrey R. Smith, Clerk of Court
and Comptroller

By: _____
Deputy Clerk

Approved:

Jason E. Brown, County Administrator

Approved as to form and legal sufficiency:

William K. DeBraul, Deputy County Attorney

THE SCHOOL BOARD OF INDIAN RIVER COUNTY

By: _____
Laura Zorc, Chairman

Date Approved: _____

Attest:

By: _____
Dr. Susan Moxley, Interim Superintendent