

**INTERLOCAL AGREEMENT BETWEEN THE INDIAN RIVER
COUNTY EMERGENCY SERVICES DISTRICT AND THE CITY OF
FELLSMERE REGARDING THE PROVISION OF FIRESAFETY
PLANS REVIEW AND INSTALLATION INSPECTION SERVICES**

THIS INTERLOCAL AGREEMENT (the “Agreement”), made and entered into this _____ day of _____, 2020, between the Indian River County Emergency Services District, a dependent special district (the “District”) and the City of Fellsmere, a municipal corporation created pursuant to the laws of the State of Florida (the “City”), provides for the City’s Fire Marshal Office to review fire safety plans and installation inspection services.

W I T N E S S E T H:

WHEREAS, on November 27, 1990, the Board of County Commissioners adopted IRC Ordinance No. 90-25, abolishing the three existing fire districts and establishing the consolidated Indian River County Emergency Services District, as a dependent special district, subsequently approved by a majority of voters of the district on March 12, 1991 and codified in Chapter 208 of the Code of Indian River County; and

WHEREAS, on October 1, 2009, the Fellsmere City Council enacted Ordinance No. 2009-17, establishing the Fellsmere Fire Marshal’s Office (the “FFM”), subsequently amended through the enactment of Ordinance No. 2010-10, for the purposes of consolidating plan review and expediting economic development; and

WHEREAS, the City and District share a common goal of addressing fire safety issues in a comprehensive manner; and

WHEREAS, the City and the District are committed to working together to address the aforementioned concerns; and

WHEREAS, in entering into this Agreement, neither the City nor the District is admitting or denying the positions they have expressed concerning their respective responsibilities as set forth in the Florida Statutes,

NOW, THEREFORE, in consideration of the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the District and City agree as follows:

SECTION 1. RECITALS INCORPORATED.

The above recitals are true and correct and are incorporated herein.

SECTION 2. DURATION, TERMINATION, AND AMENDMENT.

(a) This Agreement will remain in full force and effect unless terminated through an amendment by the parties pursuant to the procedure set forth in subsection 2(b) or through court action;

(b) This Agreement may only be amended by the mutual consent of the parties and in the same manner as its original adoption.

SECTION 3. DUTIES AND RESPONSIBILITIES OF THE CITY

- (a) **Services:** Except for those buildings owned, occupied or leased by Indian River County, the District, the Solid Waste Disposal District or any constitutional officers, the City shall perform fire safety plan review, installation inspections and annual inspections within the City of Fellsmere, including but not limited to fire sprinkler, fire alarm, hood suppression, commercial mechanical, LP gas, medical gas, and other similar reviews and inspections. Except for those buildings owned or leased by Indian River County, the District, the Solid Waste Disposal District or any constitutional officers, the City shall also be responsible for all inspections performed after the issuance of a certificate of occupancy. The City shall also be responsible for inspections for special events. The City shall annually provide a copy of all inspection reports and corrective actions taken to the District at the time set forth in Section 3(g) *infra*.
- (b) **Insurance:** Upon request by the District the City shall transmit to District a certificate of coverage naming the District as additional covered party on its general liability insurance policy with respect to the FFM plan review and installation inspection services in an amount of not less than One Million Dollars (\$1,000,000) per occurrence/aggregate.
- (c) **Certifications:** All individuals providing fire safety plan review and installation inspection services on behalf of FFM shall be licensed and/or certified in accordance with the requirements prescribed in Section 633.216 F.S., as amended and by the rules and regulations promulgated by the State Fire Marshal.
- (d) **Concurrent Jurisdiction:** Nothing in this Agreement deprives the District from limited concurrent jurisdiction to enforce the Florida Fire Prevention Code, as amended, within the City of Fellsmere; however, the District will not take enforcement action unless: (1) the District first contacts the City's Fire Marshal to confer regarding the enforcement action intended and allows a reasonable time for corrective or other action necessary to address the District's concerns; or (2) a violation is observed which puts life or property in imminent danger, in such case enforcement action may be taken by the District, with the City's Fire Marshal being contacted immediately thereafter.
- (e) **Segregation of Duties:** The individual performing the fire safety plan review and installation inspection services on behalf of the City

on new construction plans shall not be the same individual performing building plan review and inspection services on behalf of the City.

- (f) **Reports from City:** Within 60 days after October 1 of each fiscal year the City will provide a report to the Fire Chief and Director of the District of the annual fire safety inspections performed for the immediate prior fiscal year. The annual report shall include the current contact information for the City's Fire Marshal.
- (g) **Reports from District:** Within 30 days after the recording of this Interlocal Agreement in the Public Records, the District shall provide a list to the City of all fire inspections conducted in the City by the District during the prior twelve months.
- (h) **Electronic Reporting Program:** The District has purchased an internet-based program through an outside vendor, that allows third party businesses performing inspections of range hoods to electronically report their findings to the District. The District will make this reporting service available to third party businesses inspecting range hoods in the City and should an issue be flagged by the third party vendor the District will inform to the City and the City will follow up with the business until compliant. The District will not charge for this reporting service.

SECTION 4. NOTICE.

(a) Unless specified by a party in writing otherwise, all notices, demands, or other papers required to be given or made by this Agreement, or which may be given or made, by either party to the other, will be given or made in writing and addressed as follows:

City: City Manager
City of Fellsmere
22 S. Orange Street
Fellsmere, FL 32948
with a copy to the City Attorney

County: County Administrator
1801 27th Street
Vero Beach, Florida 32960-3365
with a copy to the County Attorney

The parties will consider notice to be properly given if (1) personally delivered; (2) sent by certified U.S. Mail, return receipt requested; or (3) sent by an overnight letter delivery company; and

(b) The parties will consider the effective date of notice to be the date personally delivered; or, if sent by U.S. Mail, the date of postmark; or, if sent by an overnight letter delivery company, the date the notice was picked up by the overnight letter delivery company from the party giving notice.

SECTION 5. INDEMNIFICATION, HOLD HARMLESS

To the extent allowed by law, each party shall indemnify and hold the other harmless from all claims brought during the term of this Agreement by third parties, including reasonable attorneys' fees, court costs and expenses, which may arise out of or be attributed to the negligence of the indemnitor's employees or agent in the performance of any of the covenants, agreements, terms, or conditions to be performed or complied with under this Agreement. Neither party's liability to the other shall include punitive damages or interest for the period before judgment. Nothing contained herein shall be construed as a waiver or attempted waiver of any immunity from, or limitation of, liability either party has under the Doctrine of Sovereign Immunity of Section 768.28 Florida Statutes and the Florida Constitution. Additionally, neither party shall be liable pursuant to this indemnity to pay a claim or a judgment by any one person or any claim or judgment, or portions thereof, which when totaled with all other claims or judgments paid arising out of the same incident or occurrence, which exceeds the limits of liability as set forth in Section 768.28(5) Florida Statutes, provided, that the payment of said claim(s) shall be further limited to the actual amount of insurance proceeds paid for such claim(s) covered by this indemnification. This indemnity specifically excludes any requirement for one party to indemnify the other party for the other party's negligence or to assume any liability for the other party's negligence as provided in Section 768.28 (19) Florida Statutes. This Agreement does not provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

SECTION 6. BUSINESS RELATIONSHIP.

The City and the District are not partners or joint ventures or agents of each other for any activities pursuant to this Agreement, and no such relationship between them shall be deemed to exist by virtue of this Agreement.

SECTION 7. CONSTRUCTION.

The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

SECTION 8. MERGER; MODIFICATION.

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

SECTION 9. DISPUTES, GOVERNING LAW, VENUE.

The parties shall negotiate in good faith to resolve any dispute arising under this Agreement or under any instrument made to carry out the terms of this Agreement. Failing resolution, the affected parties shall attempt to resolve the dispute by use of the Florida Governmental Conflict Resolution Act, section 164.101, Florida Statutes, et. seq. (the "Act"). Failing to resolve the issue through the process under the Act, either party may seek redress in a court of competent jurisdiction with each party bearing their own attorneys' fees and costs in any resolution of any dispute. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

SECTION 10. CONFLICT.

To the extent of any conflict between this Agreement and any existing City or District agreement, this Agreement will be deemed to be controlling. This Agreement is not intended to amend or repeal any existing City or Indian River County ordinance.

SECTION 11. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

SECTION 12. RECORDATION.

This Agreement shall be recorded in the Office of the Circuit Court in Indian River County. The City and the District shall share evenly in the costs of recordation of this Agreement.

SECTION 13. EFFECTIVE DATE.

This Agreement will become effective upon its filing with the Clerk of the Circuit Court of Indian River County, Florida, as required by Section 163.01(11), Florida Statutes.

APPROVED this ____ day of _____, 2020.

INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT, a dependent special district.

By: _____
Susan Adams, Chairman

CITY OF FELLSMERE, a municipal corporation and political subdivision of the State of Florida

By: _____
Joel Tyson, Mayor

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

By: _____
Deputy Clerk

ATTEST: Deborah C. Krages
City Clerk

By: _____

APPROVED:

By: _____
Jason E. Brown, County Administrator

APPROVED:

By: _____
Mark D. Mathes, City Manager

Approved as to form and legal sufficiency.

By: _____
Dylan Reingold, County Attorney

Approved as to form and legal sufficiency.

By: _____
Warren W. Dill, City Attorney

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