

**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 \_\_\_\_\_, 2014, between the Indian River County Emergency Services District, a dependant special taxing 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 firesafety 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. 2012-10, 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 creation of the FFM has raised District concerns regarding liability, certification, and segregation of duties; and

**WHEREAS**, the City and the District are committed to working together to address the aforementioned concerns without resorting to litigation; 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 MODIFICATION.

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

(b) This Agreement may be terminated by the City or District upon ninety (90) days notice to the other party. Written notice of termination shall be provided in accordance with Section 4 below. If the City terminates this Agreement, the City is no longer permitted to perform the functions described herein.

(c) This Agreement may be modified at any time 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:** The City shall perform firesafety plan review and installation inspection services within the City of Fellsmere, including fire sprinkler, fire alarm, hood suppression, commercial mechanical, LP gas, medical gas, and other similar reviews and inspections. The City has no jurisdiction or authority with respect to any inspections performed after the issuance of a certificate of occupancy.
- (b) **Application Notice:** As part of the firesafety plan review and installation inspection service, the City shall provide notice on any and all applications that the District may perform future inspections, which may result in additional firesafety compliance requirements. Such notice shall state that it is recommended, but not required, that the applicant contact the District concerning the application.
- (c) **Insurance:** On or before October 1 of each fiscal year 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 City Fire Marshal's Office plan review and installation inspection services in an amount of not less than One Million Dollars (\$1,000,000) per occurrence/aggregate.
- (d) **Certifications:** All individuals providing firesafety 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.
- (e) **Experience:** All individuals providing firesafety plan review and installation inspection services on behalf of FFM shall have at least five

years of experience in performing firesafety plan review and installation inspection services.

- (f) **Segregation of Duties:** The individual performing the firesafety plan review and installation inspection services on behalf of FFM shall not be the same individual providing Building Official plan review and inspection services on behalf of the City.

#### **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: Mayor  
City of Fellsmere  
22 S. Orange Street  
Fellsmere, Florida 32948  
with a copy to the City Attorney

County: County Administrator  
1801 27<sup>th</sup> 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 permitted by law and subject to the limitations of Section 768.28, Florida Statutes and any subsequent revisions thereto, the City agrees to indemnify, defend and hold harmless the District and respective elected officials, officers, and employees against any claim, action, loss, damage, injury, liability, cost or expense, including, but not by way of limitation, reasonable attorneys' fees and court costs, arising out of injury to persons, including but not limited to death, or damage to property caused by, directly or indirectly, in whole or in part, the negligence of the City, in connection with this Agreement. This Agreement does not provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

#### **SECTION 6. IMMUNITY.**

Nothing contained herein or in any instruments executed pursuant to this Agreement shall be construed as a waiver or attempted waiver by the District or the City of their sovereign immunity as it presently exists under the Florida Constitution and the laws of the State of Florida.

#### **SECTION 7. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, which may be facsimile or electronic copies, each of which, when so executed and delivered, shall be deemed to be an original and all of which, together, shall constitute one and the same document.

#### **SECTION 8. BUSINESS RELATIONSHIP.**

The City and the District are not partners or joint venturers 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 9. 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 draftsperson shall be inapplicable to this Agreement.

#### **SECTION 10. 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.

#### **SECTION 11. GOVERNING LAW, VENUE.**

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 12. 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 13. 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 14. 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 15. 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 \_\_\_\_\_, 2014.

**ATTEST:** Jeffrey R. Smith, Clerk of

Court and Comptroller  
**INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT, a dependant special taxing district (“District”)**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Peter D. O’Bryan, Chairman

Approved:

Approved as to form and legal sufficiency.

\_\_\_\_\_  
Joseph A. Baird, County Administrator

\_\_\_\_\_  
Dylan Reingold, County Attorney

**CITY OF FELLSMERE, a municipal**

**Corporation created pursuant to the laws  
of the State of Florida (“City”)**

By: \_\_\_\_\_  
Susan P. Adams, Mayor

**ATTEST:**

\_\_\_\_\_  
Deborah Krages, City Clerk

\_\_\_\_\_  
Date

Reviewed and approved as to form:

\_\_\_\_\_  
Warren W. Dill, City Attorney

\_\_\_\_\_  
Date

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