

HUMAN SERVICES SPECIFIC PERFORMANCE
AND LAND USE RESTRICTION AGREEMENT

St. Vincent De Paul Facility Hardening- Roof Replacement

This SPECIFIC PERFORMANCE AND LAND USE RESTRICTION AGREEMENT (AGREEMENT) is effective upon the date executed below, by and between **PINELLAS COUNTY**, a political subdivision of the State of Florida, hereinafter called the "**COUNTY**," and **SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC.**, a non-profit Florida corporation, whose address is 384 15th Street North, St. Petersburg, FL 33705, hereinafter called the "**AGENCY**."

WITNESSETH:

WHEREAS, pursuant to Section 212.055(2), Florida Statutes, the County has levied a local government infrastructure sales surtax of one percent (1%) throughout Pinellas County to finance, plan and construct infrastructure as defined herein; and

WHEREAS, the **COUNTY** has identified and approved projects that benefit the public or serve a public benefit for which the Board of County Commissioners intends to allocate funding from the Capital Projects Fund; and

WHEREAS, the **COUNTY** recognizes that the **AGENCY** is providing an essential service within the community; and

WHEREAS, the **AGENCY** has demonstrated a need for the capital improvements detailed in this scope of work; and

WHEREAS, the location for proposed improvements is listed in a Non-Evacuation Zone for storm surge and the project will enable sheltering in place for elevated emergency situations, which helps to ensure a safe and secure community, and will provide for continued social services for those in need.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. PROJECT DESCRIPTION

- a) **AGENCY** shall contract for design and construction of facility renovations to include the replacement and hardening of the roof at the property as further described herein; for the benefit of the population described in Section 1(e) herein; hereinafter referred to as the "PROJECT." **COUNTY** shall provide funding to **AGENCY** for the PROJECT pursuant to the terms of this AGREEMENT.
- b) The project specifications shall not be altered without written approval of the **COUNTY**.
- c) Property: The property (hereinafter the "PROPERTY") subject to this AGREEMENT is 401 15th Street North, St. Petersburg, FL 33705, which is further known as:

Legal Description: DOCTOR'S PARTIAL REPLAT BLK 1, LOT 1

- d) The **AGENCY** hereby warrants that it is the only fee simple owner of the PROPERTY and is lawfully able to enter into this AGREEMENT and restrict the use of the PROPERTY as described herein.

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- e) During the Restricted Period of this AGREEMENT, as further defined herein, **AGENCY** shall ensure that services provided on the PROPERTY benefit approximately 800 homeless individuals.
- f) **AGENCY** agrees that any equipment purchases to be reimbursed under this AGREEMENT shall be approved in advance by **COUNTY**, if expense is estimated to be \$500 or more. **AGENCY** agrees that it is **AGENCY'S** responsibility to notify **COUNTY** and provide two bids with notice of said items. Any said purchases made without prior **COUNTY** approval shall not be eligible for reimbursement.
- g) **AGENCY** shall carry out the project under this agreement in accordance with the following:
- i. **AGENCY** shall select and contract for project design services utilizing a design professional from the current **COUNTY** approved list to ensure that the roof design includes all necessary elements for structural soundness, drainage, facility hardening for storms, and other critical elements. (See Attachment 1)
 - ii. **AGENCY** will meet with **COUNTY** representatives from the Facilities and Real Property Division of the Administrative Services Department and Human Services for approval of the project design prior to construction commencement.
 - iii. Following design approval, **AGENCY** shall obtain at least two written proposals for the approved project design from construction contractors on the **COUNTY** approved job order construction (JOC) list. See Attachment 1.
 - iv. **AGENCY** will submit the bids to **COUNTY** the Facilities and Real Property Division of the Administrative Services Department and Human Services representatives with a request for approval to accept the recommended proposal as reasonable and acceptable.
 - v. Upon written approval of the proposal by **COUNTY**, **AGENCY** shall manage, supervise, oversee, pay all costs and expenses related to, and be solely responsible for completing the PROJECT including, but not limited to securing all permits and approvals required for the PROJECT, contracting or subcontracting with all third parties necessary to complete the PROJECT, and operating the PROJECT/facility.
 - vi. **AGENCY** will host monthly update meetings with the Facilities and Real Property Division of the Administrative Services Department and Human Services representatives throughout the duration of the PROJECT.
 - vii. **AGENCY** shall ensure each contractor has and maintains the appropriate license(s) to do the intended work and that necessary construction permit(s) are obtained.
 - viii. **AGENCY** is solely responsible for the successful completion of the project, including all necessary local inspections, and will provide sufficient detail and access to the Facilities and Real Property Division of the Administrative Services Department for confirmation of satisfactory completion.
 - ix. **AGENCY** shall submit documentation for reimbursement from the **COUNTY** in accordance with Section 4 herein.
 - x. **AGENCY** shall maintain a Continuity of Operations Plan (COOP) to ensure all-hazards planning for the hardened facility that specifically outlines processes for sheltering in place, methods to ensure operations during a disaster including staffing, sheltering of existing residents and any residents that may be staying in an associated outside courtyard or designated area, disaster capacity and process for sheltering of additional homeless individuals from the community during an event, maintaining sufficient food and supplies for an event, any considerations for off-site evacuation needs and how they will be addressed, and other best practice COOP considerations. This COOP will be updated annually and will be provided to the **COUNTY** (Pinellas Human Services and Pinellas Emergency

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Management) on or before June 1st each year for the duration of the Restricted Period date through **December 31, 2035** as referenced in Section 5.

- xi. **AGENCY** shall work with the **COUNTY** (Pinellas Human Services and Pinellas Emergency Management) on community disaster planning to improve preparedness and resources for sheltering vulnerable homeless populations during a disaster event. This includes acting as a community disaster shelter for homeless individuals and maximizing the available facility capacity during a disaster event.

2. MONITORING

COUNTY shall have the right to monitor the **AGENCY** to ensure funding provided by this AGREEMENT is used for authorized purposes, and that performance goals are achieved by evaluating performance against goals and standards as stated above.

Depending on the **COUNTY'S** assessment of risk of performance by **AGENCY**, additional requirements may be imposed on the **AGENCY**, including additional insurance or maintenance. Substandard performance as determined by the **COUNTY** will constitute noncompliance with this AGREEMENT.

3. TERM OF SPECIFIC PERFORMANCE AGREEMENT; EFFECTIVE DATE

This AGREEMENT shall become valid and binding upon proper execution by the parties hereto. The term of specific performance for this AGREEMENT (PROJECT completion and reimbursement) is effective upon execution, and unless terminated pursuant to the terms herein, shall continue in full force and effect until **September 30, 2021**, or until **COUNTY'S** full and complete disbursement of funding to **AGENCY**, whichever comes first. **AGENCY** shall complete PROJECT, as proposed and approved within the project design, within this term of performance.

Notwithstanding the termination of the AGREEMENT, the use restrictions referenced in Section 5. Reversion of Assets; Land Use Restrictions, shall remain in full force and effect, restricting the use of the PROPERTY to the use outlined herein, from the Effective Date of this AGREEMENT until the end of the Restricted Period referenced in Section 5. Reversion of Assets; Land Use Restrictions.

4. FUNDING

- a) **COUNTY**, through the Human Services Department, shall pay **AGENCY** an amount not to exceed **\$477,000.00** for eligible activities related to the PROJECT, distributed across fiscal years as follows:

January 1, 2020- September 30, 2020 (FY 20): **\$71,550.00**
October 1, 2020- September 30, 2021 (FY 21): **\$405,450.00**

- b) If **AGENCY** receives notification from a third-party funding source of an offer for additional funding to complete the PROJECT, **AGENCY** shall notify **COUNTY** in writing within thirty (30) days of receiving notification and submit a cost allocation plan for approval by **COUNTY** within forty-five (45) days of said notification. Should **AGENCY** collect any third-party payments for eligible activities for which **COUNTY**

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has reimbursed **AGENCY**, **AGENCY** shall reimburse **COUNTY** up to the total amount reimbursed by **COUNTY**.

- c) **COUNTY** shall pay **AGENCY** on a reimbursement basis only for allowable, agreed upon expenses to complete the PROJECT. Reimbursement will be provided only for costs that can be documented as being directly related to the PROJECT. Due to the nature and timing of the PROJECT, reimbursement for costs incurred in FY20 may be invoiced by **AGENCY** after October 1, 2020, and are reimbursable from the FY20 or FY21 allocation, at the discretion of the Human Services Department.
- f) **AGENCY** shall submit supporting documentation with each request for reimbursement of actual costs incurred by **AGENCY** in carrying out the PROJECT as described in the project design and approved construction bid. All requests must be approved by **COUNTY**, through the Human Services and the Facilities and Real Property Division of the Administrative Services Department Departments, prior to payment. Reimbursement requests shall be no more frequent than quarterly. At a minimum, the request for reimbursement shall include documentation detailing:
 - i. Invoices or applications for payment which includes a detailed list of the work completed for which **AGENCY** is seeking reimbursement;
 - ii. Proof of payment for such work;
 - iii. A letter from either the contractor, design professional, or **AGENCY** certifying that the work for which reimbursement is sought has been completed; and
 - iv. Written documentation or receipt from contractor, materialmen, subcontractors or other parties verifying payment by **AGENCY** and for which reimbursement is being sought.
- g) The **COUNTY** shall reimburse to the **AGENCY** in accordance with the Florida Prompt Payment Act upon receipt of invoice and required documentation, and approval of documentation by the Facilities and Real Property Division of the Administrative Services Department. When the required documentation and/or reports are incomplete or untimely, the **COUNTY** may withhold payment until such time as the **COUNTY** accepts the remedied documentation and/or reports.
- h) **AGENCY** shall insure recognition of the role of the **COUNTY** in providing funding through this AGREEMENT. Where possible, all media, press releases, publications and temporary construction signage, if applicable, utilized pursuant to this AGREEMENT shall be prominently labeled as to the funding source.

5. REVERSION OF ASSETS; LAND USE RESTRICTIONS

- a) **Use Restrictions:** The **AGENCY** covenants and agrees that the property described above shall be used as an emergency shelter providing services to homeless individuals.
- b) **Restricted Period:** Notwithstanding the termination of the AGREEMENT, the land use restrictions referenced herein shall remain in full force and effect, restricting the use of the property to the use outlined herein, from the Effective Date of this AGREEMENT until **December 31, 2035** (hereinafter the "Restricted Period").

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- c) **Successors and Assigns:** The covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure, to the **AGENCY**, its successors, assigns, and all subsequent owners of the PROJECT or any interest therein, during the Restricted Period. The **AGENCY** shall expressly reference the conditions and covenants of this AGREEMENT on any deed or other instrument conveying ownership interest in the PROPERTY. Notwithstanding, however, if all or any part of the PROJECT or an interest therein is sold or transferred, the **COUNTY** may, in its sole discretion, and in addition to all other remedies provided in law or equity, require **AGENCY** to reimburse to **COUNTY** funds used for the PROJECT. The amount to be reimbursed to **COUNTY** shall be in accordance with the Reversion of Assets Requirements adopted by the Planning Department of the **COUNTY** which incorporates, and depending on funding amount, may exceed the minimum federal requirements outlined in 24 CFR 570.503(b)(7).
- d) **Sale or Lease Notice Requirements:** **AGENCY** covenants that no lease, sale or title transfer to any third party shall occur prior to giving the **COUNTY** a Ninety (90) day written notice.
- e) **Recordation:** This AGREEMENT shall be properly filed and recorded by the **COUNTY** in the official public records of Pinellas County, Florida and shall constitute a restriction upon the use of the PROPERTY subject to and in accordance with the terms contained herein.

6. DEFAULT

The **AGENCY** will be in default of this AGREEMENT, if **AGENCY** materially fails to perform under or breach any of the terms of this AGREEMENT, including but not limited to:

- a) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statues, regulations, executive orders, or HUD guidelines, policies or directives as may become applicable at any time;
- b) Failure, for any reason, of the **AGENCY** to fulfill in a timely and proper manner its obligations under this AGREEMENT;
- c) Ineffective or improper use of funds provided under this AGREEMENT;
- d) Submission by the **AGENCY** to **COUNTY** of reports that are incorrect or incomplete in any material respect; or
- e) Sale or alteration of the PROJECT in a way that no longer conforms to the use or terms specified herein.

7. REMEDIES

In the event of a default, **COUNTY** shall be entitled, in addition to all other remedies provided in law or equity:

- a) To compel specific performance by **AGENCY** of its obligations under this AGREEMENT;

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- b) To require **AGENCY** to reimburse to COUNTY funds used for the PROJECT in accordance with the Reversion of Assets Requirements adopted by the **COUNTY**.
- c) If **COUNTY** determines in its sole discretion that non-compliance or non-performance of the terms of the Agreement cannot be remedied by the imposition of additional conditions, or if **COUNTY** determines that an opportunity to cure the default is unwarranted or will likely be ineffective, **COUNTY** may take one or more of the following actions upon seven (7) calendar days' notice in writing to **AGENCY**:
 - i. Temporarily withhold reimbursement requests pending correction of the identified deficiency;
 - ii. Disallow use of funds and any applicable matching credit for all, or a part of the cost of the activity or action not in compliance;
 - iii. Withhold further awards for the project or program;
 - iv. Wholly or partly suspend or terminate the AGREEMENT; or
 - v. Take any other legal or equitable action available.
- d) In the event of a default by **AGENCY**, **COUNTY** may impose additional conditions, including requiring additional information from **AGENCY** to determine reasons for, or extent of, noncompliance or lack of performance, withhold authority to proceed to the next phase, require additional project monitoring, require the **AGENCY** to obtain technical or management assistance. **COUNTY** may also give **AGENCY** a reasonable opportunity to cure the default; reasonableness shall be determined by **COUNTY** and shall be based upon the nature and extent of the default.

8. TERMINATION

Termination for cause. This AGREEMENT may be terminated by **COUNTY** for cause in accordance with Sections 6 and 7 herein.

Termination for convenience. This AGREEMENT may be terminated by **COUNTY** or **AGENCY**, in whole or in part, upon sixty (60) days written notice by the terminating party, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination initiated by **AGENCY**, the **COUNTY** determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the **COUNTY** may terminate the award in its entirety.

Effects of Termination. Costs to the **AGENCY** resulting from obligations incurred by the **AGENCY**, or during a suspension after termination of the AGREEMENT are not allowable unless the **COUNTY** otherwise expressly authorizes **AGENCY** in the notice of suspension or termination. Costs to the **AGENCY** during suspension or after termination are allowable if resulting from obligations which were properly incurred before the effective date of suspension or termination, or if the costs would be allowable if the AGREEMENT was not suspended or expired normally at the end of the AGREEMENT in which the termination takes effect.

9. HOLD HARMLESS

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AGENCY shall indemnify, save and hold **COUNTY** and all of its departments, officers and employees, harmless from and against all costs, expenses, liabilities, suits, claims, losses, damages, and demands of every kind or nature, by or on behalf of any person or persons whomsoever or whatsoever arising out of or in any manner resulting from or connected with any accident, injury, death or damage which may happen during the time period covered by this AGREEMENT for activities performed under the administration and direction of said **AGENCY**. **AGENCY** will defend any actions or suits brought against **COUNTY** by reason of **AGENCY'S** failure or neglect in complying with any of the conditions and obligations of this AGREEMENT, or any tort liability arising out of actions of **AGENCY** or any of its agents or subcontractors.

10. INSURANCE

- a) **AGENCY** shall procure, pay for and maintain insurance coverage per Attachment 2, Insurance Requirements.
- b) During the Restricted Period, **AGENCY** will carry coverage for all damage to the real property identified in Section 1 (Project Description), and will specifically list Pinellas County, a political subdivision of the State of Florida, as a loss payee on the policy (or policies).
- c) **AGENCY** shall furnish **COUNTY**, or its designee, with properly executed Certificate of Insurance which shall clearly evidence all insurance required in this section prior to commencement of PROJECT. The certificates will, at a minimum, list exclusions, limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be cancelled or allowed to expire except on thirty (30) days prior written notice to the **COUNTY**.

11. NOTICES; AGREEMENT REPRESENTATIVES

Notices required by this AGREEMENT shall be in writing and delivered via mail (postage required), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notices delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other communications under this AGREEMENT shall be addressed to the individuals in the capacities indicated below, unless otherwise identified in this AGREEMENT or modified by subsequent written notice.

14. MODIFICATIONS

- a) **COUNTY** or **AGENCY** may amend this AGREEMENT at any time to conform with Federal, state or local governmental guidelines and policies, or for other reasons provided that such amendments make specific reference to this AGREEMENT, and are executed in writing, and signed by a duly authorized representative of **COUNTY** and **AGENCY**. Such amendments will not invalidate this AGREEMENT, nor relieve or release the **COUNTY** or **AGENCY** from its obligations under this AGREEMENT.
- b) Modifications to this AGREEMENT for minor project description updates that do not change the purpose of the project and for budget line item changes that do not increase the maximum funding amount shall be submitted in the format prescribed and provided by the **COUNTY** in Attachment 3, Modification Form. Modifications may be executed on behalf of the **COUNTY** by the Director of Human Services.

15. ASSIGNABILITY

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AGENCY shall not assign any interest in this AGREEMENT or otherwise transfer interest in this AGREEMENT without the prior written approval of **COUNTY**. All requirements of this AGREEMENT shall be applicable to any subcontracts entered into under this AGREEMENT and it shall be **AGENCY'S** responsibility to ensure that all requirements are included in said subcontracts and all subcontractors abide by said requirements.

AGENCY shall not pledge, mortgage this grant award, or any interest therein or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the written approval of the **COUNTY**.

16. GOVERNING LAW

AGENCY agrees to comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the Federal, State or local governments, and any agencies thereof, which relate to or in any manner affect the performance of this AGREEMENT. The laws of the State of Florida shall otherwise govern this AGREEMENT.

17. RELATIONSHIP OF THE PARTIES

Nothing contained in this AGREEMENT is intended to, or will be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. **AGENCY** will at all times remain an independent entity with respect to performance of the PROJECT. **COUNTY** will be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the **AGENCY** is an independent entity.

18. PERFORMANCE WAIVER

COUNTY'S failure to act with respect to a breach by **AGENCY** does not waive its right to act with respect to subsequent or similar breaches. The failure of the **COUNTY** to exercise or enforce any right or provision will not constitute a waiver of such right or provision. A waiver by one party of the other party's performance shall not constitute a waiver of any subsequent performance required by such other party. No waiver shall be valid unless it is in writing and signed by authorized representatives of both parties.

19. AGREEMENT MANAGEMENT

Pinellas County Human Services designates the following person(s) as the liaison for the **COUNTY**:

Tim Burns, Division Director
Pinellas County Human Services
440 Court Street, 2nd Floor
Clearwater, Florida 33756

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AGENCY designates the following person(s) as the liaison:

Michael J. Raposa, Executive Director
Society of St. Vincent De Paul South Pinellas, Inc.
384 15th Street North
St. Petersburg, Florida 33705

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year written below:

ATTEST:
Ken Burke
Clerk of Circuit Court

PINELLAS COUNTY, FLORIDA, Acting by
and through its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

ATTEST:

Society of St. Vincent DePaul South Pinellas, Inc.

By: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

By: _____
Senior Assistant County Attorney