

FIRE STATION 19 FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2020, between the Lealman Special Fire Control District, an independent special fire control district, ("District"), and Pinellas County, a political subdivision of the State of Florida, ("County") (collectively "Parties").

WITNESSETH:

WHEREAS, District provides fire and emergency medical services ("EMS") under contract with the County for the District's area of unincorporated Pinellas County; and

WHEREAS, District has presented to the County a need for a new fire station to replace the existing Fire Station 19 which is past its serviceable and safe useful life; and

WHEREAS, the County has reviewed District's request and confirms the need for a new fire station to replace the existing Fire Station 19 serving the West Lealman area; and

WHEREAS, the County has local option infrastructure sales tax funds ("Penny for Pinellas"), which are being made available to provide funding assistance for the construction of the new fire station; and

WHEREAS, County has agreed to enter into this Agreement to provide funding to assist the District in their construction of a new fire station; and

WHEREAS, this Agreement is entered between the Parties pursuant to Section 163.01, Florida Statutes.

NOW THEREFORE, in consideration of one dollar, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and the promises and covenants contained herein, the Parties agree as follows:

1. **Recitations**. The above recitations are true and correct and are incorporated herein by reference.
2. **Project**. The District shall be responsible for all aspects of land acquisition, design, construction, operation and future maintenance of its Fire Station facility. The County is solely providing funding support for the project. The new fire station facility will be located at 6785 46th Avenue North, St. Petersburg, Florida 33709.
3. **Term**. The term of this Agreement ("Term") shall commence on date approved and signed by the County and shall end on September 30, 2024.

4. Funding.

- A. The County shall provide up to \$3,600,000.00 ("County Funds") to pay for the Project in accordance with this Agreement. County Funds may be used by District for the following to include, but not limited to, land acquisition, engineering, site preparation, design, construction, and associated costs directly related to the Project.
- B. The actual cost to the County shall not exceed the Project cap of \$3,600,000.00 without an amendment to this Agreement subject to the approval of the Board of County Commissioners.
- C. District shall provide documentation to include purchase orders, invoices and proof of payment for reimbursement of actual expenses incurred during the design and construction of the Project. Such request for reimbursement shall include a cover letter/invoice from the District recapping the expenses. District shall remit documented expenses to the County periodically during each fiscal year up to the cap for each fiscal year and subject to the Project cap.
- D. The County shall make payments to District for invoiced work within forty-five (45) days in accordance with 218.70, *et seq.*, the Florida Prompt Payment Act.
- E. All invoices shall be sent to the County per Section 14.
- F. County funds are budgeted to the following cap each fiscal year for disbursement as follows:

FY19-20	\$ 300,000.00
FY20-21	\$2,300,000.00
FY21-22	\$1,000,000.00
FY22-23	Contingency (any remaining balance re-budgeted up to the Project cap).

- 5. **Use of Funds.** The County Funds shall be used solely and exclusively for the Project as approved by the County, and any funds not so utilized at the end of the Project shall be returned to the County. Should the District fail to construct and operate the fire station facility by September 30, 2024, the District shall return the original funding amount to the County. Should the District cease continuous operation of the fire station or a successor facility before January 1, 2034, the District shall return the original funding amount to the County. The terms of this paragraph shall survive termination of this Agreement.
- 6. **Compliance with Federal, State, County, and Local Laws.** The Parties shall comply with all federal, state, county, and local laws, regulations, and ordinances at all times.
- 7. **Termination of Agreement.**
 - A. This Agreement may be terminated by either party upon fifteen (15) days written notice if conditions arise that, in the sole discretion of the party terminating, require such termination in the public interest.

- B. Notice of any termination shall be given in accordance with Section 14 of this Agreement.

8. Parties' Liabilities.

- A. The County's liability and obligations to District or any person having a claim pursuant to this Agreement shall be limited solely to the amount of the County Funds committed herein and the terms and conditions of this Agreement.
- B. District's liability and obligations to the County shall be to deliver a completed Project and refund any unused portion of the funds received from the County, to the County, or in the event of termination of this Agreement.

- 9. Indemnification.** To the greatest extent of applicable law, District agrees to indemnify and defend County, its officers, and employees, against all claims of any nature whatsoever arising out of the Project. Nothing herein is intended to serve as a waiver of sovereign immunity by either the County or the District. Nothing herein shall be construed as consent by the County or District to be sued by third parties in any matter arising out of this Agreement.

- 10. Discrimination.** District and the County shall not discriminate against any person in violation of federal, state, or local law and ordinances.

- 11. Assignment.** This Agreement may not be assigned by District without the written consent of the County.

- 12. Severability.** Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this contract.

- 13. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties, and no change will be valid unless made by supplemental written agreement executed by both Parties.

- 14. Notices.** All notices, requests, demands, or other communications required by law or this Agreement shall be in writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail or the actual date of delivery. The primary contact for each of the Parties is:

Fire Chief
Lealman Fire District
4360 55th Avenue North
St. Petersburg, Florida 33714.

EMS & Fire Administration Director
Pinellas County EMS & Fire Administration
12490 Ulmerton Road – Suite 134
Largo, Florida 33774.

15. **Waiver.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be affected only through a written modification to this Agreement.
16. **Governing Law and Venue.** This Agreement is to be construed in accordance with the laws of the State of Florida. Venue for any cause of action or claim asserted by either party hereto brought in state courts shall be in Pinellas County, Florida. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in District or Pinellas County, in which case action shall be brought in that division.
17. **Due Authority.** Each party to this Agreement represents and warrants to the other party that (i) they are duly organized, qualified, and existing entities under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the party on whose behalf they are executing.
18. **Headings.** The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
19. **Approval.** This Agreement is subject to approval of the District Special Fire Control District Board of Commissioners and the Pinellas County Board of County Commissioners.
20. **Fiscal Non-Funding.** In the event that sufficient budgeted funds are not available for a new fiscal period, the County shall notify District of such occurrence, and the contract shall terminate on the last day of the then-current fiscal period without penalty or expense to the County.
21. **Only Agreement of the Parties.** This Agreement replaces and supersedes and replaces all prior Agreements of the Parties governing the construction of a Fire Station in District. The Parties agree that this document extends the agreement of the Parties regarding this construction but allocates no additional funds beyond the prior agreements.
22. **Force Majeure.** The District shall be excused from the performance of the obligations under paragraph 5. Use of Funds, to the extent that such performance is prevented by force majeure. Force Majeure shall be defined as fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of government bodies, voluntary or involuntary compliance with any regulation, law or order of the government, failure or default of public utilities, pandemic, epidemic, riot, strikes, labor or supply disruptions or similar causes beyond the control of the District.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto, by and through their undersigned authorized officers have caused this Agreement to be executed on this ____ day of _____, 2020.

ATTEST:
KENNETH BURKE, CLERK

PINELLAS COUNTY, FLORIDA
By and through its
Board of County Commissioners

by: _____
Deputy Clerk

by: _____
Chairman

APPROVED AS TO FORM

By: Matthew Tolnay
Office of the County Attorney

Countersigned:

LEALMAN SPECIAL FIRE CONTROL DISTRICT

by: Ronald Kemmer
Chairperson, Board of Commissioners

Approved as to Form:

by: [Signature]
Attorney for Fire District