

**CONTRACT TO OWN AND MAINTAIN
AN EMERGENCY SERVICES STATION
BY AND BETWEEN
CITY OF BARTOW, FLORIDA AND POLK COUNTY, FLORIDA**

This Contract ("Contract") is entered into on the date that the final authorizing signature is affixed hereto by and between City of Bartow, a municipal corporation of the State of Florida ("Bartow") and Polk County, Florida ("County"), a political subdivision of the State of Florida (together, the "Parties").

WHEREAS, Bartow and County find that the provisioning of emergency services to the persons that live and work in the North Bartow and Highland City/Unincorporated Polk area is a benefit to the general public; and,

WHEREAS, a joint emergency services station ("Station") would serve to provide such services; and,

WHEREAS, construction of such a joint station would avoid duplication of costs; and,

WHEREAS, County owns property identified in Exhibit "A" in Warranty Deed dated August 25, 2023 and recorded in Polk County Official Records Book 12814, Pages 873-875 ("Property"); and

WHEREAS, Bartow and County may enter into this Contract pursuant to Florida Statutes, Chapter 163

NOW, THEREFORE, Bartow and County agree as follows:

1. Construction of Joint Station

- a. The Station contemplated herein shall be constructed by County.
- b. County shall present the construction plans for review, approval and comment at the following stages:
 - i. Conceptual/ Schematic
 - ii. 100% Design and Development
 - iii. 100% Construction Drawings
 - iv. Bidding
 - v. Construction Administration
- c. At each stage, within thirty (30) business days of such presentation by the County, Bartow shall, at its option, provide (1) written acceptance of the presented plans, or (2) written proposal of changes or (3) written rejection explaining why the plans are unacceptable. In the event Bartow's proposed changes are unacceptable to County, or in the event Bartow rejects the plans, then this Contract will be deemed terminated effectively immediately. In the event this Contract is terminated

pursuant to the terms of this paragraph, then the fees and expenses paid to third parties to the date of rejection shall be paid by both Parties according to the formula specified in Section 2, Financial Responsibility for Construction.

- d. Within 120 days of execution of this Contract, County shall present Bartow with the following items:
 - i. Conceptual/Schematic Design
 - ii. Proposed Design and Development

Collectively, these will be referred to as "Proposal."

- e. Bartow shall accept or reject the Proposal in writing within thirty (30) days. If the Proposal is rejected by Bartow or no response is received within thirty (30) days, then this Contract will be deemed terminated effective immediately.
- f. It is understood between the Parties that County will oversee construction of the Station. Bartow will designate a representative who has the authority to make financial or construction related decisions to act on behalf of the City of Bartow. The designated person is: _____.
- g. Property to be used for the contemplated construction is currently owned by County. Property and the deed to the Station will be held by County.
- h. County shall present to Bartow, the proposed Construction Drawings and Budget with all supporting documents for the construction of the Station prior to entering such contract.
- i. Within thirty (30) business days of receipt of County's proposed Construction Drawings and Budget, Bartow shall, at its option: (1) accept the proposed Construction Drawings and Budget; or (2) present a written explanation of (a) those changes necessary or (b) why the Construction Drawing and Budget are unacceptable. In the event Bartow's proposed changes are unacceptable to County, or in the event Bartow rejects the Construction Drawings and Budget, then this Contract will be deemed terminated. In the event this Contract is terminated pursuant to the terms of this paragraph, then the fees and expenses paid to third parties to the date of rejection shall be paid by both Parties according to the formula specified in Section 2, Financial Responsibility for Construction.

The County, in its sole discretion, may choose to (1) review and accept the proposed changes submitted by the City of Bartow or (2) review and reject the proposed changes submitted by the City of Bartow. If the County chooses to review and accept the proposed changes, the County shall update the proposed Construction Drawings and Budgets and present it to the City of Bartow for review. Within 10 days, Bartow shall either (1) accept or (2) reject the updated Construction Drawings and Budgets. In the event Bartow rejects the updated Construction Drawings and Budgets, then this Contract will be deemed terminated effective immediately. If

the County chooses to review and reject the proposed changes, then this Contract will be deemed terminated effective immediately. In the event this Contract is terminated pursuant to the terms of this paragraph, then the fees and expenses paid to third parties to the date of rejection shall be paid by both Parties according to the formula specified in Section 2, Financial Responsibility for Construction.

- j. County will require a payment and performance bond and will require the consent of the surety once the contract is complete.
- k. Within ninety (90) days of issuance of a certificate of occupancy for the Station, County shall provide to Bartow a complete set of as-built drawings.
- l. In performing hereunder, County shall coordinate with Bartow to comply with all federal, state and local purchasing laws, statutes, rules, regulations and guidelines.
- m. All contractors to be retained for the construction contemplated hereunder shall be licensed in accordance with Chapter 489, Fla. Stat. Contractors shall provide appropriate payment and performance bonds consistent with Section 255.05, Fla. Stat.

2. Financial Responsibility for Construction

County and Bartow's estimated total financial responsibility for the construction of total living and office area ("L&O") of Fire Services and bay area of the Station is estimated to be \$5,220,000.00 for Bartow and \$6,780,000.00 for County. The parties agree that County shall bid this project in such a manner that the total estimated cost for construction of the Total Office and Station will be \$12,000,000.00. The parties agree and understand the costs could be higher. The costs referenced in this section is based on County's knowledge and experience with building Fire Stations and does not reflect the actual cost of building the Station. The County and Bartow agree to split with the County paying sixty percent (60%) of any additional cost for construction and Bartow paying forty percent (40%) of any additional cost for construction.

When other sections of this Contract refer to this section for the percentage to be applied for any given cost/invoice/bill, then Bartow is responsible forty percent (40%) and County is responsible for sixty percent (60%).

3. Term

This Contract shall be effective on the date that the last authorizing signature is affixed hereto and shall continue until terminated as provided for herein.

4. Termination

- a. If this Agreement is terminated by either party prior to the effective date of a construction contract for the Station, neither party shall have a claim for damages against the other party.
- b. If County terminates this Agreement after the effective date of a construction contract for the Station and prior to the certificate of occupancy being issued, the County shall return any funds paid by Bartow to the County. The County shall have no further obligations to Bartow. If the County terminates this Agreement after the certificate of occupancy being issued, the County shall pay Bartow in accordance with the following:
 - i. If County terminates prior to January 1, 2030, the County shall pay Bartow the full amount paid by Bartow for the costs of construction.
 - ii. If the County terminates on or after January 1, 2030, and prior to January 1, 2040, the County shall pay Bartow forty-five percent (45%) of the amount paid by Bartow for the costs of construction.
 - iii. If the County terminates on or after January 1, 2040, and prior to January 1, 2045, the County shall pay Bartow thirty-five percent (35%) of the amount paid by Bartow for the costs of construction.
 - iv. If the County terminates on or after January 1, 2045, and prior to January 1, 2050, the County shall pay Bartow twenty-five percent (25%) of the amount paid by Bartow for the costs of construction.
 - v. If the County terminates on or after January 1, 2050, and prior to January 1, 2055, the County shall pay Bartow fifteen percent (15%) of the amount paid by Bartow for the costs of construction.
 - vi. No payment shall be due to Bartow from the County, if the County terminates on or after January 1, 2055.
- c. If Bartow terminates this Agreement on or after the effective date of the construction contract, it shall be responsible for all remaining debt including, without limitation, any outstanding cost for construction, operating and maintenance, which will be due to the County within ninety (90) days of termination. In addition, Bartow shall pay an annual amount equal to forty percent (40%) of the operating and maintenance costs for the Station until 2055 or such time the Bartow portion of the Station is no longer vacant.

5. Furniture, Fixtures and Equipment

The estimated costs associated with Conceptual/Schematic, Design and Development, Construction Drawings, Bidding and Construction Administration do not include the costs for furniture, fixtures, or equipment needed for use inside the station by County or Bartow. The City of Bartow and County are individually responsible for all costs associated for their own furniture, fixtures, and equipment needed for their respective entities.

6. Maintenance and Utilities

Within sixty (60) days of the execution of this Contract, County shall provide a proposed annual maintenance and utilities budget for the Station. Such budget shall provide a good faith estimate of the entire cost of maintenance and utilities for the Station for the first twelve (12) months following occupation of the facility. Within thirty (30) days Bartow shall review and approve or provide written comment as to this estimate. Payment for utilities on the building as a whole shall be split by the Parties with Bartow being responsible for forty percent (40%) of utilities and County being responsible for sixty percent (60%) of utilities. The respective percentages born by the Parties for utilities shall be renegotiated within three hundred and sixty-five (365) days of the issuance of a certificate of occupancy for the Station. In the event at the end of the three hundred and sixty-five (365) day period neither Bartow nor County shall make it known that they desire to renegotiate the utility percentages, then the percentage set forth in this paragraph shall govern for the life of this Contract.

The Parties each shall pay fifty percent (50%) for maintenance of common areas. Each Party shall solely be responsible for maintenance of its respective living areas. County EMS's L&O is all considered to be 'living area' for the purpose of payment for maintenance. County shall be responsible for three (3) bay areas or sixty percent (60%) of the maintenance of the Bay Area. Bartow shall be responsible for two (2) bay areas or forty percent (40%) of the maintenance of the Bay Area.

In the event maintenance becomes necessary for events other than normal wear and tear, then the Party whose personnel caused the need for such maintenance shall be responsible for paying for such repair. Should repairs become necessary for events unrelated to the acts of the personnel of either Party, then such repairs shall be referred to the appropriate insurer, or shall be paid as described in section 2, above, to the extent such repairs are not covered by insurance. County shall be solely responsible for effecting repairs and maintenance.

County shall bear the primary responsibility for coordinating, effecting and timely paying all maintenance and utilities invoices. County shall present to Bartow within forty-five (45) days of the end of a quarter (with the year beginning October 1 of every calendar year) an invoice for maintenance and utilities incurred during the foregoing quarter along with appropriate back-up documents calculated as described above. So long as such documents are in good order, Bartow shall pay the invoice within thirty calendar days of presentment. For the fourth quarter (the months of July, August and September), County shall present an invoice to Bartow no later than the second Friday in September, as previously described, for the months of July and August only. Bartow shall pay this fourth quarter invoice by the last day of September so long as such invoice is in good order. County shall invoice Bartow for September during the first quarter.

"Good Order" shall mean the provisioning of those documents necessary to comply with generally accepted accounting principles.

7. Building Modification

Bartow and County may mutually agree in writing to modify the Station. Nothing in this section shall affect routine maintenance activities.

8. Payments

Bartow shall pay to County \$5,220,000 within sixty (60) days of County executed in the construction contract for the Station. In the event, the City of Bartow terminates this Contract at any time after the Construction Drawings and Budgets have been submitted and approved, the City of Bartow understands and agrees that it is still financially obligated for their portion of Construction Drawings and Budgets according to the provisions specified in Section 2. Financial Responsibility for Construction.

County shall be responsible for making all payments in a timely fashion according to all contract documents. Prior to making such payments, County shall transmit copies of the back-up for payments and Bartow shall respond in writing thereto within ten (10) days of receipt.

County shall return to Bartow upon completion of an audit, which will occur within forty-five days (45) of the issuance of a certificate of occupancy for the Station, any unused funds.

9. Insurance

County shall maintain property insurance with respect to the Facility in an amount sufficient to repair or replace the Facility in the event of damage or destruction. Moreover, County shall maintain General Liability insurance with respect to the Facility in an amount agreed to from time to time by the Risk Managers of County and Bartow. Bartow shall be named as an additional insured and joint loss payee on all policies related to the activities carried out under the terms of this Agreement. County shall invoice Bartow for a percentage of the premium according to the formula set forth in Section 2 hereof. Bartow shall remit payment to County within forty-five days of presentment of such invoice, assuming it is in good order (as "good order" is defined in section 6, hereof). In the event a claim is made, then County and Bartow shall split the deductible according to the formula set forth in Section 2 hereof.

County and Bartow shall continue to provide (as they see fit) insurance-of all types-for their own fire service activities (other than those described in the previous paragraph), including, but not limited to, providing their own: general liability; workers compensation; and vehicle insurance.

Bartow represents and warrants that it is not relying on County with respect to advice related to its insurance needs as they relate either to the Facility or generally. Moreover, Bartow waives and releases any and all claims related to the provisioning of insurance as it relates to this Contract, and this section, against County. Bartow warrants and represents that it employs its own Risk Manager on whose advice it solely relies.

County and Bartow, for themselves and for their insurers, each hereby waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint ventures, employees and agents of the other party and agree to release same from liability for any

loss or damage to such waiving party arising from any cause. In furtherance of the foregoing, County and Bartow will each cause their respective insurers to issue the appropriate waiver of subrogation rights endorsement to such insurance policies, to the extent such rights are not waived in the policies themselves. Evidence of the existence of such waiver will be furnished by either party to the other party in writing.

10. Sovereign Immunity/No Consent to Third Party Suits

Neither County nor Bartow by entering into this Contract waives sovereign immunity nor do they consent to suit by a third-party.

11. Duty to Provide Notice of Suit

Bartow and County agree, in the event any suit, action or claim is filed or lodged against either one regarding matters related to this Contract, to immediately notify the other party. Similarly, Bartow and County agree to give immediate notice to the other in the event it learns that such a suit, action or claim is likely to be filed or lodged against either party regarding matters related to this Contract.

12. Independent Status

This Contract does not create an employee/employer relationship or a joint employer relationship between the Parties. It is the Parties intention that each will be independent of the other for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida state revenue and taxation laws, Florida state workers' compensation law and Florida state unemployment insurance law and the like. Each Party shall retain sole and absolute discretion in the judgment of the manner and means of carrying out its activities and responsibilities hereunder and elsewhere. Neither Party shall be liable for any obligation incurred by the other, including but not limited to, unpaid minimum wages and/or overtime premiums. Furthermore, nothing herein shall be construed as creating a partnership or joint venture.

13. Incorporation

The recitals set forth above are hereby incorporated into and become a material part of this Contract.

14. Breach/Cure

If during the duration of this Contract, either party determines that this Contract has been materially breached then the aggrieved party shall notify the breaching party of such breach and request that the breaching party cure within thirty (30) days. Should a breach remain longer than thirty (30) days, then the parties shall proceed pursuant to Florida Statutes, Chapter 164. The non-breaching party may choose to forego the option of cure and declare the Contract breached without delay.

15. Notice

Any notices or communications required or permitted under this Contract shall be provided as follows:

For County:

Polk County Manager
P.O. Box 9005, Drawer BC01
Bartow, Florida 33831
Telephone: 863-534-6444
Facsimile: 863-534-0355

Polk County Attorney's Office
P.O. Box 9005, Drawer AT01
Bartow, Florida 33831
Telephone: 863-534-6439
Facsimile: 863-534-7654

For City of Bartow:

Fire Chief
110 E Church St.
Bartow, FL 33830
Telephone: 863-534-5044
Facsimile:

Office of the City of Bartow Manager
Attn: City Manager
City of Bartow
Telephone: 863-534-0100
Facsimile:

All notices and/or communications required and/or permitted by this Contract shall be deemed effective: 1) five (5) days from the date of mailing via U.S. Mail, first class, return receipt requested, postage prepaid; or, 2) one (1) day from the date of delivery to an overnight parcel delivery service for delivery via overnight delivery; or, 3) on the same day as transmission via facsimile device (with original to follow by U.S. Mail, first class, postage prepaid).

16. Entire Contract

This Contract constitutes the sole and entire Contract by and between the Parties and supersedes any prior or contemporaneous oral or written representations whatsoever with respect to the subject matter but shall not affect obligations arising from other contracts between them.

17. Modification

This Contract may be modified or rescinded only in writing by the parties or their duly authorized representative. Oral agreements to waive this provision or other provisions hereof are invalid and void.

18. Waiver

No waiver by the Parties with respect to any breach, or default of, or with respect to any provision or condition of this Contract, and no course of dealings, shall be deemed to constitute a continuing waiver of any other breach, or default of, or with respect to the same or any other provision or condition of this Contract. No claim or right arising out of breach of this

Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver is in writing and signed by the aggrieved party or its authorized representative.

19. Severability

If any provision or portion hereof shall be held to be invalid under any applicable statute or law or held illegal or void for any reason whatsoever by any court of competent jurisdiction, such provision shall be treated as void without affecting the remainder of this Contract.

20. Assignment

Except as otherwise provided herein, this Contract may not be assigned in whole or in part by either party without prior written approval of the other party.

21. Governing Law/Jurisdiction/Venue/Waiver of Trial by Jury

The laws of the State of Florida shall control and govern—without reference to the State of Florida’s conflict of laws, statutes, rules, regulations and/or principles—this Contract, and any disputes arising hereunder. In the event litigation ensues, such litigation shall be filed in a court in Polk County, Florida, as appropriate, or in the Middle District of Florida, Tampa Division, as appropriate. Bartow and County consent to jurisdiction in said courts as do their respective employees, officers, directors, personnel and officials to the extent permitted by law. The Parties hereby waive jury trial with respect to any litigation related to this Contract.

22. Non-Discrimination

The Parties agree not to discriminate on the basis of gender, age, race, veteran status, country of origin, creed, or sexual orientation. The Parties agree to comply with all applicable rules, regulations, and promulgations pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. The Parties agree to maintain a work environment free of discrimination or unwelcome action of a personal nature. The Parties agree to abide by all federal, state and local discrimination laws. The Parties agree to comply with all new State and Federal EEO regulations as applicable

23. Right to Audit Records

Bartow and County shall have the right to audit the books and records of each other to the extent that such books and records relate to the performance of this Contract. Such books and records shall be maintained by the Parties for a period of no less than three (3) years or as required by Florida public records law and schedule of destruction of records, whichever is longer, from the date of final payment for construction or each individual payment required under this Contract. In the event litigation arises related to this Contract, each party will retain records for a period of not less than five (5) years or until the completion of such litigation (including all appeals), whichever is later.

24. Captions

Captions of the paragraphs as stated herein are for convenience only and shall have no interpretive or substantive effect.

25. Public Records Law

The Parties agree to abide by the Public Records laws of the State of Florida, as amended from time-to-time. County agrees to cooperate with Bartow and Bartow agrees to cooperate with County to facilitate their compliance with said Public Records Laws.

26. Mutual Negotiations

This Contract is the product of mutual negotiations.

[INTENTIONALLY LEFT BLANK. SIGNATURES ON NEXT PAGE]



[CITY SEAL]

**BOARD OF CITY COMMISSIONERS
BARTOW, FLORIDA**

[Handwritten Signature]

By: Chairman/Vice Chairman of the
Commission

This 3rd day of February, 2024⁵

Attest:

[Handwritten Signature]

Bartow City Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA**

[COUNTY SEAL]

By: Chairman/Vice Chairman of the
Commission

This ___ day of _____, 2024.

Attest:

Polk County Clerk of the Board

Reviewed as to form:
[Handwritten Signature]

Polk County Attorney's Office