

PROPERTY USE/REPAYMENT AGREEMENT

THIS PROPERTY USE/REPAYMENT AGREEMENT made and entered into this 27 day of January, 2004, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, herein, referred to as the "County" and the MERRITT ISLAND VOLUNTEER FIRE DEPARTMENT, herein referred to as "Volunteers".

WITNESSETH:

WHEREAS, The County recognizes and appreciates the services of the Volunteers and their need for space within a fire station; and,

WHEREAS, The Volunteers recognizes the benefit of having an area to utilize within the station located at 300 Alma Blvd., (Station 41).

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the County and the Volunteers agree as follows:

SECTION 1 - TERM:

This agreement will be effective upon execution by both the County and the Volunteers and will remain in effect for twenty (20) years subject to termination and repayment of amortized advanced paid rent as provided in Section 4 of this agreement. It is understood by the parties, as provided in Section 4 and Appendix "A" (attached and incorporated herein as a part of this Agreement) that at the time of execution of this Agreement years one (1) and two (2) have previously expired, leaving eighteen (18) years remaining.

SECTION 2 - VOLUNTEER USE CONSIDERATION:

In consideration of the payment by the Volunteers to the County of one hundred sixty-five thousand dollars (\$165,000), the Volunteers will have access to the one thousand four hundred fifty-eight square feet (1458 sq. ft.) of area herein referred to as "Volunteer Area". This area is located on the far east side of Station 41, and is made up of a general meeting room, an office, and a shower/bathroom facility.

It is understood that this area is under the primary control of the Volunteers. The Volunteers may utilize this area as a "dayroom", general meeting room, and/or training facility. This area may be used as an "overflow" bunkroom if the station bunkroom is unable to accommodate the number of volunteers who are staffing the station overnight.

It is understood that the general maintenance (i.e. cleaning) of this room is the responsibility of the Volunteers. It is also understood that being a facility which is designed to house and sleep personnel required to be present for twenty-four (24) hours, that the Volunteers must be considerate of the crews that may be attempting to sleep. Any activity that the Volunteers are conducting must not negatively impact on the operation of the Station for

answering 911 calls, and must be in accordance with all State/County/BCFR statutes, rules, regulations, ordinances and/or operating procedures.

The Volunteers will also have access and use of a single bay (west bay) sufficient to house an emergency response vehicle (Volunteer Fire Engine). Such a vehicle is defined as a fire engine, aerial, quint, squad, or other emergency service vehicle approved of by the County. For the purpose of this Agreement, a utility vehicle or public relations vehicle is not eligible for use of this space. It is understood that the vehicle is the responsibility of the Volunteers, however, as the station lieutenant is ultimately responsible for all personnel and equipment within his/her station, the Volunteers will inform the station lieutenant when they are taking the Volunteer vehicle out of the station. The Volunteers will notify the lieutenant of their destination and the mission they are performing.

SECTION 3 – ACCESS:

At no time shall the Management of Brevard County Fire Rescue (BCFR) be barred from accessing the Volunteer Area. It is understood that there is a lockable door between the general station on the Volunteer Area, and that this door may only be locked during specific special meetings. The station lieutenant will have a key to the volunteer area and shall have access to the volunteer area at all times and for any reason.

It is also understood that the County and/or BCFR may utilize this Volunteer Area for temporary activities such as, voting, special meetings, training, etc., as may be determined to be necessary in the sole discretion of the management of BCFR. The scheduling of this use must be done in advance and through the Volunteer Chief. Permission to utilize this area will not be unreasonably withheld from the County by the Volunteer Chief.

Additionally, it is understood that BCFR will attempt to limit the utilization of the Volunteer Area to no more than eight (8) days a month.

SECTION 4 – TERMINATION/REPAYMENT:

Either party may choose to terminate this agreement for any reason upon (30) thirty days notice to the other party. The agreement shall also terminate immediately if the Merritt Island Volunteer Fire Department dissolves or ceases providing emergency services to the County. In the event of termination, as provided herein, the County shall refund the Merritt Island Volunteer Fire Department a prorated amount of advanced paid rent in accordance with the applicable year as set out in the amortization chart documented by Appendix "A", which is hereby incorporated and made a part of this agreement. Merritt Island Volunteer Fire Department waives all damages for termination other than those amounts due pursuant to Appendix "A". At the time of the approval of this Agreement, years one (1) and two (2) on Appendix "A" have already passed, with eighteen (18) years remaining.

SECTION 5 - AUDITING, RECORDS AND INSPECTION:

In the performance of this Agreement, the Volunteers shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this

Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by the Volunteers for a period of three years after termination of this Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by the Volunteers in the United States or any other country.

SECTION 6 - JURISDICTION, VENUE AND CHOICE OF LAW:

All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the laws of the State of Florida. Any legal action by either party against the other concerning this Agreement shall be filed in Brevard County, Florida which shall be deemed proper jurisdiction and venue for the action.

SECTION 7 - ATTORNEYS FEES AND COSTS:

In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and costs.

SECTION 8 - SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by a Court to be unconstitutional, inoperative, or void, such holding will not affect the remainder of this Agreement.

SECTION 9 - HOLD HARMLESS:

The County will be held harmless against any claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom, arising out of this Agreement, or any services provided by the Volunteers pursuant to this Agreement.

SECTION 10. - INDEMNIFICATION:

The Merritt Island Volunteer Fire Department shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Merritt Island Volunteer Fire Department, or anyone directly or indirectly employed by the Merritt Island Volunteer Fire Department, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by or in part by a party indemnified thereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the Merritt Island Volunteer Fire Department, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial contractor, under workers' compensation acts, or other related policies of insurance. The parties acknowledge that specific consideration has been exchanged for this provision. In agreeing to the above referenced provisions, the County does not intend to waive

any defense or limit of sovereign immunity to which it may be entitled under Section 768.28, Florida Statutes or otherwise provided.

SECTION 11 - INDEPENDENT CONTRACTOR:

The Merritt Island Volunteer Fire Department shall perform its service to the public as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this agreement shall be interpreted or construed to constitute the Merritt Island Volunteer Fire Department or any of its agents or employees to be the agent, employee, or representative of the County.

SECTION 12 – ENTIRE AGREEMENT:

This Agreement, including the exhibits, riders, and/or addenda, if any, attached hereto, sets forth the entire Agreement between the parties. This Agreement shall not be modified except in writing and executed by all parties.

SECTION 13 - CONSTRUCTION OF AGREEMENT:

The parties hereby acknowledge that they fully reviewed this Agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this agreement shall not be construed against any party as if they were the drafter of this Agreement.

SECTION 14 - NOTICE:

All notices required to be provided under this agreement should be provided to the parties at:

Lew Engel, Volunteer Fire Chief
Merritt Island Volunteer Fire Department
300 Alma Boulevard
Merritt Island, FL 32953

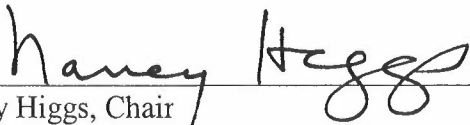
William L. Farmer, Fire Chief
Brevard County Fire Rescue
1040 S. Florida Avenue
Rockledge, FL 32955

IN WITNESS WHEREOF, the County and the Volunteers have hereunto set their hands and seals on the day and year first above written.

ATTEST:


SCOTT ELLIS, CLERK

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA ,

By: 
Nancy Higgs, Chair

As approved by the Board on 1-27-04 .

MERRITT ISLAND VOLUNTEER
FIRE DEPARTMENT

WITNESS


LEW ENGEL, VOLUNTEER CHIEF

Reviewed for legal form and content: _____
Assistant County Attorney

ATTACHMENT "A"

MERRITT ISLAND VOLUNTEERS BUDGETARY COMMITMENT
\$165,000

									Return Payment To Be Made In Accordance With Applicable Termination Year	
Year	5%	Reduction	7%	Reduction	10%	Reduction	14%	Reduction	YEAR	RETURN PAYMENT
1	\$165,000	\$0							2002	\$165,000
2	\$156,750	\$8,250							2003	\$156,750
3	\$148,913	\$16,088							2004	\$148,913
4	\$141,467	\$23,533							2005	\$141,467
5	\$134,394	\$30,606							2006	\$134,394
6			\$124,986	\$40,014					2007	\$124,986
7			\$116,237	\$48,763					2008	\$116,237
8			\$108,100	\$56,900					2009	\$108,100
9			\$100,533	\$64,467					2010	\$100,533
10			\$93,496	\$71,504					2011	\$93,496
11					\$84,146	\$80,854			2012	\$84,146
12					\$75,732	\$89,268			2013	\$75,732
13					\$68,159	\$96,841			2014	\$68,159
14					\$61,343	\$103,657			2015	\$61,343
15					\$55,208	\$109,792			2016	\$55,208
16							\$47,479	\$117,521	2017	\$47,479
17							\$40,832	\$124,168	2018	\$40,832
18							\$35,116	\$129,884	2019	\$35,116
19							\$30,199	\$134,801	2020	\$30,199
20							\$25,972	\$139,028	2021	\$25,972
	746,523	78,477	543,353	281,647	344,588	480,412	179,598	645,402		

Note - At the time of contract approval, years 1 and 2 have expired, with 18 years remaining.