

**AMENDED AND REINSTATED
MEMORANDUM OF AGREEMENT BETWEEN
INDIAN RIVER COUNTY
AND
INDIAN RIVER LAND TRUST, INC.**

This Agreement is entered into this ____ day of _____, 2020 between Indian River County, a political subdivision of Florida, by and through its Board of County Commissioners, (hereinafter referred to as "County" or "OWNER"), and the Indian River Land Trust, Inc., a non-profit corporation registered in the State of Florida (hereinafter referred to as "IRLT").

WITNESSETH:

WHEREAS, on November 5, 2009, County and IRLT entered into a Memorandum of Agreement concerning the construction and management of the Lagoon Greenway, which expired on December 31, 2019; and

WHEREAS, the construction and public use improvements have been successfully completed and opened to the public for use and enjoyment; and

WHEREAS, the parties herein wish to ensure the continuation of the public trail system with access to the Indian River Lagoon (hereinafter referred to as the "Lagoon Greenway") an assemblage of approximately 187 acres of public and private lands situated along the Indian River Lagoon east of Indian River Boulevard in an unincorporated portion of Indian River County; and

WHEREAS, a certain parcel of land in the Lagoon Greenway (hereinafter referred to as the "Flinn Tract") was purchased by the County through its Environmental Lands Program with funding assistance from the Florida Inland Navigation District (hereinafter referred to as "FIND"), and the St. Johns River Water Management District (hereinafter referred to as "SJRWMD") both of which hold a 25% undivided interest in the parcel, depicted in Attachment A; and

WHEREAS, certain parcels of land in the Lagoon Greenway were purchased by IRLT for conservation of said parcels depicted in Attachment A; and

WHEREAS, certain parcels of land in the Lagoon Greenway are owned in fee by FIND which may use such lands to manage dredging materials to maintain the Florida Intracoastal Waterway; and

WHEREAS, FIND has agreed to provide a long-term lease for nominal consideration of a portion of its property, for limited recreational and educational use of existing trails and lagoon access points for public use of the Lagoon Greenway; and

WHEREAS, certain lands in the Lagoon Greenway are owned by River Park Association LTD Partnership, a private landowner which, as part of its mitigation plans for a condominium development approved by the County, has granted access to its existing impoundment trails for recreational and educational use by the public of said existing trails as part of the Lagoon Greenway; and

WHEREAS, certain lands in the Lagoon Greenway are currently managed by the Indian River Mosquito Control District (hereinafter referred to as "IRMCD") by agreements with the respective landowners of the Lagoon Greenway to control the levels of breeding mosquitoes on the property depicted in Attachment A; and

WHEREAS, IRLT assisted the County by completing the Lagoon Greenway Plan which identifies the goals and objectives of the Lagoon Greenway trails and related facilities for recreational and educational use; and

WHEREAS, the County has incorporated the Lagoon Greenway Plan into the management plan for the Flinn Tract; and

WHEREAS, the goal of this cooperative effort is to ensure that the parties collaborate to manage the Lagoon Greenway in a manner that is consistent with respect to the common interest of conserving and protecting the varied habitats and providing for appropriate year-round recreational and educational opportunities, therefore, this Agreement provides for the limited interchange of services, personnel, equipment, and funds to achieve this goal; and

WHEREAS, the IRLT provided funding and technical assistance in planning, designing and constructing the trails, boardwalks and facilities of the Lagoon Greenway; and

WHEREAS, the IRLT Board of Directors, by unanimous vote, committed to assisting the County with design, development and management of trails and signage and with coordination of educational programs and other technical and stewardship assistance on the Lagoon Greenway and requires an agreement between the County and IRLT to ensure its fiduciary responsibilities are met with regard to the use of cash and other resources of the organization;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually agree as follows.

I. Term - The term of this Agreement shall begin on the date first written above and shall terminate on December 31, 2029, unless amended or extended as provided herein.

II. Statement of Mutual Agreement

It is mutually understood and agreed by the parties that:

A. By working together the parties can achieve the mutual goal of successfully managing the Lagoon Greenway.

B. Management of the Lagoon Greenway lands for conservation purposes, coupled with recreational and educational purposes is a primary management goal for these lands.

C. Equipment owned and used by any cooperating agency under this agreement for which the other is responsible will normally be operated, serviced, and repaired by the owning agency. Exceptions to this practice will be agreed to, in writing, by both parties.

D. Additional funding may be needed to achieve the goals set forth in this Agreement. The parties shall work together to seek and leverage funding from private, local, state and federal sources such that it can be maximized for the use, restoration, and management of the Lagoon Greenway lands pursuant to the primary goal for these lands.

E. The obligations of all parties herein are subject to the availability of funding, and nothing contained herein shall be construed as binding any party to expend any sum in excess of available private dollars, state and federal grants or appropriations, or to involve any party in any contract or other obligation for further expenditure of money in excess of such grants, appropriations or private allocations.

III. Duties of IRLT - IRLT shall have and perform the following duties, obligations, and responsibilities to the County.

A. Assist the County where possible to accomplish the goals and objectives of the Lagoon Greenway Plan.

B. Assist the County in implementing the natural resources restoration and management of the Lagoon Greenway by:

- 1) providing consultation and availing itself as a cooperative contact by telephone and through its website for users or nearby residents with questions or concerns; maintaining ongoing records of related events and/or incidents; providing annual reports to the County on issues of management and use; and coordinating volunteer efforts to assist with trail monitoring and clean-ups, minor trail and facility repairs and other similar tasks.
- 2) providing regular maintenance mowing of the Impoundment Loop Trail in coordination with the IRMCD.

C. Assist the County with the provision of nature-based recreational and educational opportunities such as hiking, bird watching, and nature-appreciation walks by recruiting partner organizations and participants, and promoting and coordinating these opportunities within the community.

D. Provide assistance with the design of signage for recognition of IRLT, the County, agency partners and public and private funders, and to regularly cooperate and communicate with the County, FIND, IRMCD, SJRWMD and other appropriate agencies any information pertinent regarding the Lagoon Greenway.

D. Comply with Project Records requirements (Attachment C).

IV. Duties of the County - The County shall have and perform the following duties, obligations, and responsibilities to IRLT.

- A. Continue to implement the management plan for the Olso Riverfront Conservation Area (including the Flinn Tract), approved by the Board on November 3, 2009, with consideration to the long-term management of non-County parcels within the Lagoon Greenway.
- B. Maintain a long-term lease for nominal consideration with FIND for limited recreational and educational use of its existing trails and lagoon access by the public and for emergency vehicle access.
- C. Work with IRLT to submit requests to FIND, the Florida Recreational Trails Program, and other state and federal government grant programs as appropriate to maintain and/or improve the trail system within the Lagoon Greenway.
- D. Collaborate with IRLT and others to provide on-site signage that appropriately recognizes IRLT, the County, agency partners and public and private funders of the Lagoon Greenway, and to generally promote the project using currently available means (e.g. website).
- E. Provide ongoing management and maintenance of trails, parking and facilities located on the Flinn Tract.
- F. Collaborate with IRLT, FIND, IRMCD, and SJRWMD to ensure adequate management of trails and signage located outside of the Flinn Tract and to communicate with IRLT any pertinent information regarding the Lagoon Greenway.

V. Notice - Except as otherwise provided in this Agreement any notice pursuant to Section VI and VII herein from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. For purposes of all notices, the representatives of the County and IRLT are:

IRC: Asst. Director Parks & Conservation Resources
Indian River County
5500 77th Street
Vero Beach, FL 32967

IRLT: Executive Director
Indian River Land Trust
80 Royal Palm Pointe
Suite 301
Vero Beach, FL 32960

VI. Amendments - The parties may amend this Agreement only by mutual written agreement of the parties.

VII. Assignment of Interest - Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.

VIII. Insurance – County represents that it is self-funded or insured for liability insurance. IRLT will procure and maintain insurance for its responsibilities on all Lagoon Greenway properties throughout the entire term of this Agreement as described in Attachment B.

IX. Independent Contractor - In the performance of this Agreement, IRLT is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of the County. IRLT is solely responsible for the means, method, technique, sequence, and procedure utilized by IRLT in the full performance of this Agreement.

X. Project Records - The County is a public agency subject to Chapter 119, Florida Statutes. IRLT shall comply with Florida's Public Records Law. The IRLT shall comply with Public Records Law (Attachment C) with regard to activities/events relative to this MOA.

XI. Termination - The County and the IRLT shall have the right to terminate this MOA with or without cause and thereby end any and all obligations, except those set forth in X above created by the MOA upon 120 calendar days' written notice to the other party.

TERMINATION IN REGARDS TO F.S. 287.135: IRLT certifies that it and those related entities of IRLT as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, IRLT certifies that it and those related entities of IRLT as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

OWNER may terminate this Agreement if IRLT is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

OWNER may terminate this Agreement if IRLT, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

INDIAN RIVER COUNTY, FLORIDA

INDIAN RIVER LAND TRUST, INC.

By: _____
Susan Adams, Chairman
Indian River County Board of County
Commissioners

By: _____
Ken Grudens, Executive Director

Attest (by corporate officer)

BY: _____

PRINT: _____

ATTEST: Jeffrey R. Smith
Clerk of the Court and Comptroller

By: Deputy Clerk

APPROVED AS TO FORM:

Dylan Reingold, County Attorney

APPROVED:

Jason E. Brown, County Administrator

ATTACHMENT B: INSURANCE REQUIREMENTS

IRLT shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by IRLT, its agents, representatives, employees or subcontractors as follows:

COMMERCIAL GENERAL LIABILITY

Coverage shall be afforded under a per occurrence form policy for limits not less than \$1,000,000 combined single limit.

AUTOMOBILE LIABILITY

Coverage shall be afforded including coverage for all owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

Coverage to apply for all IRLT employees at STATUTORY limits in compliance with applicable state and federal laws.

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

A. Commercial General Liability and Automobile Liability Coverages

- a. The Indian River County Board of County Commissioners, its officials, employees and volunteers are to be covered as Additional Insured.

B. Worker's Compensation and Employer's Liability Coverages

The insurer shall agree to waive all rights of subrogation against the County, for losses arising from work performed by IRLT for the County.

C. All Coverages

IRLT shall provide a Certificate of Insurance to the County with a thirty (30) day notice of cancellation.

ATTACHMENT C: PUBLIC RECORDS REQUIREMENTS

A. The County is a public agency subject to Chapter 119, Florida Statutes. IRLT shall comply with Florida's Public Records Law. Specifically, the IRLT shall:

(1) Keep and maintain public records required by the County to perform the service.

(2) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the agreement, transfer, at no cost, to the County all public records in possession of IRLT or keep and maintain public records required by the County to perform the service. If the IRLT transfers all public records to the County upon completion of the agreement, the IRLT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the IRLT keeps and maintains public records upon completion of the agreement, it shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF IRLT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO IT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424
publicrecords@ircgov.com
Indian River County Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960

C. Failure of the IRLT to comply with these requirements shall be a material breach of this Agreement.