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## Sample Agreement

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THIS AGREEMENT (“Agreement”) is made and entered into by and between: INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida (hereinafter, “COUNTY,”) and Arthur J. Gallagher Risk Management Services, Inc. (hereinafter, “BROKER”).

WHEREAS, COUNTY issued a Request for Proposals and addenda, identified as RFP 2020014 (hereinafter collectively “RFP”), which is incorporated by reference herein, for the purpose of receiving submittals for Property and Casualty Insurance Broker Services; and

WHEREAS, BROKER offered a response to RFP 2020014 (hereinafter “Proposal”) and subsequent Request for Submittals for Insurance Coverages (hereinafter “RFS”), which are incorporated by reference herein; and

WHEREAS, subsequent to receipt of the Submittal and Proposal by COUNTY, COUNTY and BROKER (hereinafter “the Parties”) entered into negotiations, which were memorialized by correspondence or other documents (hereinafter collectively “Negotiations”), which are incorporated by reference herein; and

WHEREAS, BROKER desires to provide and COUNTY desires to receive Property and Casualty Insurance Broker Services as described under the terms and conditions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of mutual covenants and conditions set forth herein, the parties agree as follows:

### ARTICLE 1 – RECITALS

1.1 Recitals. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – TERM OF AGREEMENT

2.1 Term of Agreement. This Agreement is effective as of 12:01 a.m., May 1, 2020 and will continue until 12:01 a.m., May 1, 2021. The term of the AGREEMENT may, by mutual agreement by COUNTY and BROKER, be extended for up to three additional one-year periods.

### ARTICLE 3 - COMPENSATION OF BROKER

See Attachment B.

### ARTICLE 4 – GENERAL CONDITIONS

4.1 Scope of Services.

See Attachment A.

4.2 Notice of Termination or Adverse Change.

4.2.1 Notice by BROKER. BROKER shall give valid written notice to COUNTY at least one hundred and eighty (180) days prior to cancellation, non renewal, or restriction of BROKER's obligations under this Agreement. The written notice of cancellation, non renewal, or restriction of BROKER's obligations under this Agreement shall be delivered by certified mail to:

Risk Manager  
Indian River County Board of County Commissioners  
1800 27th Street  
Vero Beach, FL 32960

4.2.2 Notice by COUNTY. This Agreement may be canceled at any time at the request of COUNTY with thirty (30) days prior written notice to BROKER stating when thereafter cancellation is to be effective.

4.2.3 Refund of Fees After Termination. In the event of termination of this Agreement for whatever reason, the earned fees shall be computed on a pro rata basis without penalty and BROKER shall refund to COUNTY the excess of paid fees or other consideration that were received by BROKER within thirty (30) days from the date of termination.

4.2.4 TERMINATION IN REGARDS TO F.S. 287.135: TERMINATION IN REGARDS TO F.S. 287.135: BROKER certifies that it and those related entities of BROKER 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, BROKER certifies that it and those related entities of BROKER 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.

COUNTY may terminate this Contract if BROKER 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.

COUNTY may terminate this Contract if BROKER, 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.

4.3 Agreement – Document Priority. In the event of a conflict among the terms of this Agreement, the RFP and BROKER's responses to the RFP and RFS, this agreement shall prevail.

4.4 Hold Harmless/Indemnification.

4.4.1 BROKER agrees to indemnify, hold harmless and defend COUNTY, its agents, officers, elected officials, and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which COUNTY, their agents, officers, elected officials and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim

or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by BROKER, its agents, servants or employees; the equipment of BROKER, its agents, servants or employees while such equipment is on premises owned or controlled by COUNTY; or the negligence or other culpability of BROKER or the negligence or other culpability of BROKER's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including COUNTY's property, and injury or death of any person whether employed by BROKER, COUNTY or otherwise.

4.4.2 BROKER agrees that BROKER's obligation to hold harmless and defend an indemnitee under Section 4.4 with respect to a claim, judgment, cost, or expense resulting from bodily injury, personal injury, or damage to tangible property, caused in whole or in part by BROKER, its agents, servants or employees, shall apply whether or not the claim, judgment, cost, or expense is due to or caused in part by the negligence or other culpability of the indemnitee, excluding only the sole negligence or other sole culpability of the indemnitee.

4.4.3 Any remedy provided to an indemnitee by this Section 4.4 shall be in addition to and not in lieu of any other remedy available to the indemnitee under this Agreement or otherwise.

4.5 BROKER Insurance Requirements.

4.5.1 Evidence of Insurance.

4.5.1.1 Certificate of Insurance. BROKER shall furnish COUNTY with a fully completed satisfactory Certificate of Insurance such as a standard ACORD Certificate of Liability Insurance (ACORD Form 25) or other evidence satisfactory to COUNTY, signed by an authorized representative of the insurer(s) providing all of the coverages required herein.

4.5.1.2 Additional Insured Endorsement. In addition, as evidence of the required Additional Insured status for COUNTY on the Commercial General Liability insurance, BROKER shall furnish COUNTY with a copy of the actual additional insured endorsement as issued on the policy, signed by an authorized representative of the insurer(s), verifying inclusion of COUNTY, its agents, officers, elected officials, and employees as Additional Insureds in the Commercial General Liability coverage.

4.5.1.3 Notice of Cancellation. All policies of insurance providing the insurance required under this Section 4.5, must be endorsed to provide that COUNTY shall be given no less than thirty (30) days' prior written notice prior to any cancellation of such policies. In addition, BROKER shall furnish COUNTY with copies of the actual endorsements, as issued on the policies and signed by an authorized representative of the insurer(s), providing that the required notice of cancellation will be provided to COUNTY.

4.5.1.4 Renewal/Replacement Evidence. Until such time as the insurance is no longer required to be maintained by BROKER, BROKER shall provide COUNTY with renewal or replacement evidence of the insurance in the manner heretofore described no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

4.5.1.5 Copies of Policies. Notwithstanding the prior submission of a Certificate of Insurance, copy of endorsement, or other evidence initially acceptable to COUNTY, if requested by COUNTY, BROKER shall, within thirty (30) days after receipt of a written request from COUNTY, provide COUNTY with a certified copy or certified copies of the policy or policies providing the coverage required by this Section 4.5.

BROKER may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required by Section 4.5.

#### 4.5.2 Qualification of BROKER's Insurers.

4.5.2.1 Insurers providing the insurance required by this Agreement for BROKER must either be: (1) authorized by a subsisting certificate of authority issued by the State of Florida to transact insurance in the State of Florida, or (2) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida Statutes.

4.5.2.2 In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A. M. Best Company.

4.5.2.3 If, during the period when an insurer is providing the insurance required by this Agreement, an insurer shall fail to comply with the foregoing minimum requirements, as soon as BROKER has knowledge of any such failure, BROKER shall immediately notify COUNTY and immediately replace the insurance provided by the insurer with an insurer meeting the requirements. Until BROKER has replaced the unacceptable insurer with an insurer acceptable to COUNTY, BROKER shall be in default of this Agreement.

#### 4.5.3 Description of BROKER Required Insurance.

4.5.3.1 Workers' Compensation and Employer's Liability Insurance. Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Board on Compensation Insurance, without restrictive endorsements other than those which are required by the State of Florida. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$ 1,000,000	Each Accident
	\$ 1,000,000	Disease - Policy Limit
	\$ 1,000,000	Disease - Each Employee

4.5.3.2 Commercial General Liability Insurance. Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those required by ISO or the State of Florida those described below. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Silica, asbestos or lead
- Terrorism
- Sexual Molestation

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$ 2,000,000	General Aggregate
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\$ 2,000,000 Products/Completed Operations Aggregate  
\$ 2,000,000 Personal and Advertising Injury  
\$ 2,000,000 Each Occurrence

COUNTY and its members, officers, employees, and agents shall be included as an additional insured on a form no more restrictive than the most recent version of ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or Contractors).

4.5.3.3 Automobile Liability Insurance. Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the Contract. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 2,000,000 Each Occurrence - Bodily Injury and Property  
Damage Combined

4.5.3.4 Professional Liability Insurance. Such insurance shall be on a form acceptable to COUNTY and shall cover BROKER for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required in the Agreement including any hold harmless and/or indemnification agreement. Coverage must either be on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within four years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$ 5,000,000 Each Claim/Annual Aggregate

The Professional Liability Insurance required under this Section may be subject to a deductible not to exceed \$25,000 per claim.

4.5.3.5 Cyber and Privacy Liability Insurance. Such insurance shall be on a form acceptable to the COUNTY and shall cover, at a minimum, the following: Data Loss and System Damage Liability, Security Liability, Privacy Liability, and Privacy/Security Breach Response Coverage, including Notification Expenses.

Such Cyber Liability coverages must be provided on an occurrence form or, if on a claims made form, the retroactive date must be no later than the first date of this Contract and such claims-made coverage must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Each Claim/Annual Aggregate

4.5.4 BROKER's Insurance Primary and Non-Contributory. The insurance provided BROKER Company shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by COUNTY or its members, officers, employees, and agents. Any insurance, or

self-insurance, maintained by COUNTY shall be excess of, and shall not contribute with, the insurance provided by BROKER.

4.5.5 Self-Insurance, Deductibles or Self-Insured Retentions. Except as otherwise specifically authorized in this Agreement, or for which prior written approval has been obtained hereunder, the insurance maintained by BROKER shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, COUNTY may, at their sole discretion, permit the application of a deductible or permit BROKER to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. However, no such self-insurance, deductible or self-insured retention will be allowed unless and until BROKER has received prior written approval from COUNTY to use such self-insurance, deductible or self-insured retention. In addition, BROKER shall pay on behalf of COUNTY or COUNTY's member, officer, official or employee any self-insurance, deductible or self-insured retention applicable to a claim against COUNTY or COUNTY's member, officer, official or employee. The agreement by COUNTY to allow the use of any such self-insurance, deductible or self-insured retention shall be subject to periodic review by COUNTY. If, at any time, COUNTY deems that the continued use of the self-insurance, deductible or self-insured retention by AJG should not be permitted, COUNTY may, upon 60 days' written notice to AJG, require AJG to eliminate, replace, or modify the self-insurance, deductible or self-insured retention, at no additional cost to COUNTY, in a manner satisfactory to COUNTY.

4.5.6 BROKER's Insurance as Additional Remedy. Compliance with these insurance requirements shall not limit the liability of BROKER. Any remedy provided to COUNTY by the insurance provided by BROKER shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of BROKER) available to COUNTY under this Agreement or otherwise.

4.5.7 No Waiver by COUNTY Approval/Disapproval. Neither approval nor failure to disapprove insurance furnished by the Company shall relieve the Company from responsibility to provide insurance as required by this Agreement.

4.6 Compliance With Laws, Rules, And Regulations. BROKER is responsible for full and complete compliance with all laws, rules, and regulations, including those of the Florida Department of Financial Services, which may be applicable to it. Failure or inability on the part of BROKER to comply with such laws, rules, and regulations shall not relieve BROKER from its obligation to perform completely in accordance with this Agreement.

#### 4.7 *Public Records Compliance*

A. Indian River County is a public agency subject to Chapter 119, Florida Statutes. The BROKER shall comply with Florida's Public Records Law. Specifically, the BROKER 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 BROKER does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the BROKER or keep and maintain public records required by the County to perform the service. If the BROKER transfers all public records to the County upon completion of the contract, the BROKER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the BROKER keeps and maintains public records upon completion of the contract, the BROKER 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 THE BROKER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BROKER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@ircgov.com](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street**

**Vero Beach, FL 32960**

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

4.8 BROKER Is Independent Contractor. The Parties agree that BROKER is engaged to perform services under this Agreement as an independent contractor, and not as an agent, of COUNTY.

4.9 Entire Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in, or incorporated by reference in, this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

4.10 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each Party hereto.

4.11 Waiver. The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such

provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

4.12 Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Contract shall be in Indian River County, Florida, or, in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida. This section will survive the termination of this Agreement regardless of the cause giving rise to such termination.

4.13 No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by COUNTY or any person to which sovereign immunity may be applicable. This section will survive the termination of this Agreement regardless of the cause giving rise to such termination.

4.14 Non-Discrimination. BROKER shall not discriminate against any person in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

4.15 Successors. This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in interest of the Parties.

4.16 Assignment. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other Party.

4.17 Notice. When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U S Mail, postage prepaid, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

As to COUNTY  
Ms. Beth Martin  
Risk Manager  
Indian River County Board of County Commissioners  
1800 27th Street  
Vero Beach, FL 32960  
[bmartin@ircgov.com](mailto:bmartin@ircgov.com)

As to BROKER  
Ms. Erica Connick  
Arthur J. Gallagher Risk Management Services, Inc.  
200 South Orange Avenue, Suite 1350  
Orlando, FL 32801  
[erica\\_connick@ajg.com](mailto:erica_connick@ajg.com)



IN WITNESS WHEREOF, COUNTY and BROKER have signed this Agreement in duplicate. One counterpart each has been delivered to COUNTY and BROKER. All portions of the Contract Documents have been signed or identified by COUNTY and BROKER or on their behalf.

This Agreement was approved by the Board of County Commissioners on April 21, 2020 and will be effective on May 1, 2020.

**COUNTY:**

INDIAN RIVER COUNTY

By: \_\_\_\_\_  
Susan Adams, Chairman

By: \_\_\_\_\_  
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: \_\_\_\_\_  
Deputy Clerk

(SEAL)

Designated Representative:  
Beth Martin, Risk Manager  
1800 27<sup>th</sup> Street  
Vero Beach, FL 32960  
(772) 226-1287  
[bmartin@ircgov.com](mailto:bmartin@ircgov.com)

**BROKER:**

Arthur J. Gallagher Risk Management Services, Inc.

By: \_\_\_\_\_  
(BROKER)

(CORPORATE SEAL)

Attest \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No. \_\_\_\_\_  
(Where applicable)

Agent for service of process: \_\_\_\_\_

Designated Representative:  
Erica Connick  
Arthur J. Gallagher Risk Management Services, Inc.  
200 South Orange Avenue, Suite 1350  
Orlando, FL 32801  
[erica\\_connick@ajg.com](mailto:erica_connick@ajg.com)

(If BROKER is a corporation or a partnership, attach evidence of authority to sign.)

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## **Attachment A – Scope of Services**

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## **Attachment B – Compensation to Broker**

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