

**INTERLOCAL AGREEMENT BETWEEN INDIAN RIVER COUNTY
AND THE TOWN OF INDIAN RIVER SHORES FOR
ANCHORING LIMITATION AREAS IN INDIAN RIVER SHORES, FLORIDA**

This Agreement for Anchoring Limitation Areas ("Agreement") is made and entered by and between Indian River County, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach, Florida, 32960, ("County"), and the Town of Indian River Shores, Florida, a municipal corporation, whose address is 6001 Highway A1A, Indian River Shores, FL, 32963 ("Town") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. WHEREAS, in 2021, the Florida Legislature amended Section 327.4108, Florida Statutes, to allow counties to enact ordinances establishing anchoring limitation areas adjacent to urban areas that have residential docking facilities and significant recreational boating traffic; and

B. WHEREAS, Section 327.4108, Florida Statutes, also requires at least thirty (30) days' prior notice to the Fish and Wildlife Conservation Commission ("FWCC") before introducing this type of ordinance and that anchoring limitation areas be marked with signage and buoys permitted by the FWCC; and

C. WHEREAS, Additionally, Section 327.4108, Florida Statutes, requires that anchoring limitation areas be less than 100 acres in size, not include any portion of the marked channel of the Florida Intracoastal Waterway, and not exceed, in total, ten percent (10%) of a county's delineated navigable-in-fact waterways; and

D. WHEREAS, Town has requested County establish three (3) anchoring limitation areas within the Town of Indian River Shores, as further described herein; and

E. WHEREAS, The Parties desire to enter into this Agreement to provide for the necessary permits, signage, and buoys and enforcement and maintenance activities prior to County enacting an ordinance establishing the anchoring limitation areas within the Town.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Location. Town requests that County enact an ordinance designating Anchoring Limitation Areas in accordance with Section 327.4108, Florida Statutes, the areas marked in Exhibit A attached and incorporated by reference herein. Town warrants that all areas marked on Exhibit A are under the exclusive control of Town and not the State of Florida, and do not include any portion of the marked channel of the Florida Intracoastal Waterway. The enactment of an ordinance establishing the Anchoring Limitation Areas is subject to approval by the Board. Town's execution of and performance under this Agreement does not guarantee that the ordinance will be enacted.

2. FWCC and Other Permits. The County will provide staff to coordinate with a consultant retained by the County for the implementation of Anchoring Limitation Areas (ALA) within the Town. The consultant will coordinate with the County and the Town to design, permit and install the signs and buoys within the ALA. The County and the Town will work with the consultant to apply for and acquire the needed permits through FWC, USACE, FDEP and USCG for the sign and buoy deployment. The Town will be the permit holder for the necessary markers identifying the ALAs. The consultant will develop a bid package for the deployment of uniform waterway markers per the guidelines established in the FWC, USACE, USCG and FDEP permits. The County will advertise and award a piling and buoy/marker installation services contract in accordance with County purchasing guidelines encompassing the Town's required marking needs for the identified ALA areas. The consultant will work directly with the Town on piling and buoy installation by providing construction oversight of the contractor receiving the award of bid from the County.

3. Buoys and Signage. County will provide and pay all costs associated with the provision and installation of all necessary signage and buoys to mark the Anchoring Limitation Areas. County shall undertake and be solely responsible for all such provision and installation, which shall not commence until County's enactment of the relevant ordinance and receipt of all required permits, licenses, or approvals as provided in Paragraph 2 above. For all of the work cited in Paragraphs 2 and 3 herein, the Parties will split those costs equally, with each Party paying for 50% of those costs. Town will reimburse County for their 50% share of those costs within thirty (30) days following notice from County of same. Any surveys needed to establish the ALAs shall be supplied or paid for by the Town.

4. Compliance and Maintenance. Town is solely responsible for the repair and ongoing maintenance of all signage and buoys marking the Anchoring Limitation Areas, as well as continued compliance with all conditions of the required permits, licenses, and approvals from federal, state, and local agencies related to the Anchoring Limitation Areas.

5. Enforcement. Town will be responsible for enforcement of the restrictions of the Anchoring Limitation Areas authorized by Section 327.4108, Florida Statutes, and for the enactment of any regulations or other procedures necessary for such enforcement. County will not be responsible for enforcement of the restrictions of the Anchoring Limitation Areas.

6. Subcontracting/Assignment. While Town has the right to retain subcontractors to perform the obligations set forth in Paragraphs 4 and 5, Town shall remain solely liable for performance under this Agreement. Town may not, under any circumstances, assign any right or interest in this Agreement to any third party.

7. Term. The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall continue for a period of one (1) year, with automatic yearly renewals on an ongoing basis until the Agreement is terminated in accordance with Paragraph 8. below.

8. Termination. Either Party may terminate this Agreement, with or without cause, by giving written notice to the other Party at least thirty (30) days prior to the date of termination.

Notwithstanding any termination of this Agreement, Town's obligations pursuant to Paragraph 4 shall continue until such time as County repeals the ordinance establishing the Anchoring Limitation Areas or as determined by the Town not maintaining or enforcing the ALA. In addition, if County does not enact an ordinance designating the Anchoring Limitation Areas within one (1) calendar year after the Effective Date, this Agreement will automatically terminate at that time without the requirement of further action by either Party.

9. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by any Party nor shall anything included herein be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement or any other contract. Each Party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent required by applicable law.

To the greatest extent permitted under Florida law, Town shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach this Agreement by Town, or by any negligent act or omission of Town, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Town shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

10. No Partnership or Other Benefits. Nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. At no time shall Town nor its agents act as officers, employees, or agents of County. Town shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11. Contract Administrator Authority. Each of the Parties' respective Contract Administrators are authorized to coordinate and communicate with each other to manage and supervise the performance of this Agreement, including the exercise of ministerial authority in connection with the day-to-day management of this Agreement.

12. Public Records. Each of the Parties is a public entity required to comply with Florida's Public Records Act, and each shall fulfill all required obligations under Chapter 119, Florida Statutes. To the extent Town is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Town shall:

12.1. Keep and maintain public records required by County in the performance of its

obligations under this Agreement;

12.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

12.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

12.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Town or keep and maintain public records required by County relating to Town's performance of its obligations under this Agreement. If Town transfers the records to County, Town shall destroy any duplicate public records that are exempt or confidential and exempt. If Town keeps and maintains the public records, Town shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If a public records request is directed to either Party, that Party shall be responsible for responding to such public records request. If a Party receiving a public records request seeks records from the other Party to respond to the public records request, the other Party will provide any responsive public records so as to enable the Party that received the public records request to respond as required.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE FOLLOWING:

FOR TOWN INQUIRIES TO COUNTY: (772) 226-1424, publicrecords@indiabnriver.gov, Public Records Custodian, 1801 27th Street, Vero Beach, Florida, 32960.

FOR COUNTY INQUIRIES TO TOWN: [6001 Highway A1A, Indian River Shores, FL 32963](#).

13. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Town and any of its subcontractors that are related to this Agreement. Town and its subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Town or its Subcontractor shall make same available in written form at no cost to County.

Town and any of its subcontractors must preserve and make available, at reasonable times within Indian River County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Town hereby grants County the right to conduct such audit or review at Town's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

14. Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Melissa McIntyre-Meisenburg
Senior Lagoon Environmental Specialist
1801 27th Street
Vero Beach, Florida, 32960
Email address: mmeisenburg@indianriver.gov

FOR TOWN:

6001 Highway A1A
Indian River Shores, FL 32963
Email address:

15. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County'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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

16. Compliance with Laws; Equal Opportunity. Town must comply with all Applicable Law, including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

17. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

18. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Indian River County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

19. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Town.

20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

21. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

INDIAN RIVER COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Susan Adams, Chairman

Date Approved by BCC _____

ATTEST:
Ryan L. Butler, Comptroller and
Clerk of Circuit Court

Deputy Clerk

Approved:

John A. Titkanich, Jr.
County Administrator

Approved as to Form and Legal Sufficiency:

William K. DeBraal
County Attorney

TOWN

DRAFT

Exhibit A
Anchoring Limitation Areas Legal Descriptions

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