

Meeting Date
02/03/15



AGENDA	
Section	New Business
Item No.	VI F 2

10:00 AM Time Certain

## AGENDA REPORT

## BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Indian River Lagoon National Estuary Program Interlocal Agreement						
DEPT/OFFICE:	District 4 Commission Office						
Requested Action:	A decision whether or not to approve the Indian River Lagoon National Estuary Program Interlocal Agreement.						
Summary Explanation & Background:	<p>The Indian River Lagoon National Estuary Program is a part of a national network of twenty-eight (28) estuary programs established under the Federal Clean Water Act and administered by the United States Environmental Protection Agency. It was designated in 1990 and formally established in 1991 to assist the Indian River Lagoon region of Florida in developing and implementing a Comprehensive Conservation Management Plan (CCMP) to restore and protect the Indian River Lagoon.</p> <p>Each National Estuary Program has a local sponsor who administers the program. Currently, the local sponsor for the IRLNEP is (and has been) the St. Johns River Water Management District (SJRWMD). As local sponsor of the IRLNEP, SJRWMD has provided services including: employing personnel, providing office space and operating equipment, purchasing goods and services, and managing advisory committees.</p> <p>The structure, function, policies and procedures of SJRWMD has limited the ability of IRLNEP to accept gifts, aid, or bequests and to advocate for the lagoon. There has also been growing concern regarding what entities should control funding priorities of Lagoon projects: the State, or the five impacted counties. Due to these limitations and concerns, alternative local sponsorship was explored. As a direct result, the attached proposed interlocal agreement (Agreement) which sets to create a new, independent organization responsible for the IRLNEP, was drafted. This draft was approved by the IRLNEP Advisory Board on December 15th. During that approval process, the Advisory Board went through the Agreement section by section and approved each section unanimously, with the exception of continued opposition by Indian River County's representative.</p> <p>Continued on attached page.</p>						
Clerk to the Board Instructions:							
Exhibits Attached:	Agreements						
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott			Curt Smith, County Commissioner, District 4 x52044			
Stockton Whitten	Assistant County Manager, Venetta Valdengo						

The new “Indian River Lagoon Council” (IRLC) created by the Agreement would serve as the local sponsor for the IRLNEP. It would be run by a Board consisting of one appointee to represent the Florida Department of Environmental Protection (FDEP), SJRWMD, and the South Florida Water Management (SFWM), and one elected official from each of the following political subdivisions, to the extent these governments wish to participate: Volusia County, Brevard County, Indian River County, St. Lucie County, and Martin County. If established, this Board would be responsible for crafting bylaws, a budget, soliciting further funding for Indian River Lagoon projects, and administering funding for projects throughout the five-county region.

There is a \$50,000 annual contribution, per county, mandated for membership on the new board, with contributions of \$500,000 from both SJRWMD and SFWM, as well as \$250,000 from FDEP. The EPA has also traditionally funded the NEP at about \$500,000 annually and was present at the December 15th Advisory Board meeting, expressing interest in further supporting this endeavor.

To date, Martin County, FDEP, SJRWMD, and SFWM have approved the Agreement and Indian River County has rejected it. Volusia County is scheduled to decide upon the Agreement on February 8, 2015. St. Lucie County is scheduled to on February 17, 2015.

Due to Indian River County’s rejection of the Agreement, a February 11, 2015 IRLNEP Advisory Board meeting will be held where options on how to handle Indian River’s rejection will be discussed. There is talk of simply removing Indian River County as a party and continuing forward with the Agreement, or permitting a municipality within Indian River County to sit on the new entity’s Board in its place.

Indian River County’s objections to the Agreement appear to come from a different mindset as to what the intention of this ILA should be. They object to the state agencies being voting members on the new entity’s Board – despite them being in the clear minority in terms of voting power – and they want the Agreement to fully detail the IRLC budget and overall structure, as opposed to a future set of bylaws, while the other entities involved felt that putting that level of detail into an Agreement--which is challenging to amend once registered in all five counties--would create an inflexible entity. Moreover, it was felt that the current political climate in Tallahassee is favorable for promptly soliciting funding for the Indian River Lagoon. Accordingly, the idea of “establishing the entity as soon as possible” was on the minds of the Advisory Board, which is composed of the same entities that would later draft its bylaws, budget and general structure (past the initial structure provided in the Agreement).

The Board of County Commissioners now has the Agreement before it. The options are as followed:

- Option 1:** The Board can wait until the February 11, 2015 Advisory Board is held to make a decision. This option would provide the Board with the general direction that SJRWMD – the current sponsor for the NEP – and the other entities engaged in this process wish to head in now that Indian River County has decided to reject the Agreement.
- Option 2:** The Board can join Martin County in approving this Agreement. This action can include advance approval of any changes to the Agreement that directly seek to resolve Indian River’s rejection of the Agreement. This option would demonstrate Brevard’s support for the IRLC going forward into the February 11, 2015 Advisory Board meeting, whether or not Indian River County decides to continue its opposition to the agreement.
- Option 3:** The Board can join Indian River County in rejecting this Agreement and provide staff with direction on how to further proceed.

The financial impact of this Agreement is \$50,000 annually, which can be taken out of the Stormwater assessment fees retroactively, pending a minor modification to the County’s stormwater ordinance.



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

February 4, 2015

MEMORANDUM

TO: Curt Smith, Commissioner District 4

RE: Item VI.F.2., Indian River Lagoon National Estuary Program Interlocal Agreement

The Board of County Commissioners, in regular session on February 3, 2015, approved Option 2, to join Martin County in approving the Interlocal Agreement; this action may include advance approval of any changes to the Interlocal Agreement that directly seeks to resolve Indian River County's rejection of the Interlocal Agreement; Option 2 demonstrates Brevard County's support for the Indian River Lagoon Council going forward into the February 11, 2015, Advisory Board meeting, whether or not Indian River County has decided to continue its opposition to the Interlocal Agreement; authorized the County Attorney to amend the Stormwater Ordinance, in order to allow for funding of the membership fee; and authorized the County Manager to figure where else the membership fee funding is to come from, pending the tweaking of the Stormwater Ordinance. Enclosed is executed and seven certified copies of the Interlocal Agreements for you action.

**Upon execution by all parties, please return the fully-executed Interlocal Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encls. (8)

cc: County Attorney  
County Manager  
Natural Resources Management Director  
Contracts Administration  
Budget  
Finance

**INDIAN RIVER LAGOON NATIONAL ESTUARY PROGRAM  
INTERLOCAL AGREEMENT**

This Indian River Lagoon National Estuary Program Interlocal Agreement (the “**Agreement**”) is made and entered into this 3<sup>rd</sup> day of February, 2015, by and between the following governmental entities: 1) Volusia County, a Florida political subdivision, 2) Brevard County, a Florida political subdivision, 3) Indian River County, a Florida political subdivision, 4) St. Lucie County, a Florida political subdivision, 5) Martin County, a Florida political subdivision, 6) Florida Department of Environmental Protection, 7) St. Johns River Water Management District, 8) South Florida Water Management District (collectively the “**Parties**” and each singularly a “**Party**”).

The following recitation of facts are provided in support of this Agreement:

(A) The Indian River Lagoon National Estuary Program was designated in 1990 and formally established in 1991 to assist the Indian River Lagoon region located along the east-central and south-eastern coastal area of Florida in developing a comprehensive plan to restore and protect the Indian River Lagoon. The Indian River Lagoon National Estuary Program is part of a national network of twenty-eight (28) estuary programs established under the Federal Clean Water Act and administered nationally by the United States Environmental Protection Agency.

(B) Local and state government participants in the Indian River Lagoon National Estuary Program consisting of the Parties described above, as well as the United States Environmental Protection Agency, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Florida Marine Research Institute and the United States Army Corps of Engineers, developed a Comprehensive Conservation and Management Plan for Indian River Lagoon (the “**CCMP**”), as required by the Federal Clean Water Act. The Parties are committed to successful implementation of the CCMP, as it may be amended from time to time.

(C) The Parties to this Agreement will sponsor and be responsible for the Indian River Lagoon National Estuary Program.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

## ARTICLE 1 – INTRODUCTORY PROVISIONS

1.1 **Recitals.** The statements contained in the recitation of facts set forth above (collectively the "Recitation of Facts") are true and correct, and are made a part of this Agreement by this reference.

1.2 **Exhibits.** The exhibits, which are attached to this Agreement, are by this reference made a part of this Agreement.

1.3 **Abbreviations and Definitions.** The following abbreviations and definitions, in addition to those contained in the Preamble and Recitals, will be used for purposes of this Agreement, and will not constitute separate agreements unless otherwise stated below:

- (a) **"Act"** means Section 163.01, Fla. Stat., known as the "Florida Interlocal Cooperation Act of 1969."
- (b) **"Agreement"** means this Interlocal Agreement between the Parties as it is presently constituted or as it may be amended from time to time.
- (c) **"Board of Directors"** means the new policy board of the IRL Council, all as set forth in Article Five, below.
- (d) **"Brevard"** means Brevard County, a Florida political subdivision.
- (e) **"CCMP"** means the Comprehensive Conservation and Management Plan approved by the Parties, as amended from time to time.
- (f) **"Counties"** means collectively Volusia County, Brevard County, Indian River County, St. Lucie County and Martin County.
- (g) **"Effective Date"** means the date that all Parties have duly executed this Agreement and filing has occurred pursuant to Section 13.15 below.
- (h) **"EPA"** means the United States Environmental Protection Agency, a federal agency.
- (i) **"FDEP"** means the Florida Department of Environmental Protection, a Florida state agency.
- (j) **"Indian River"** means Indian River County, a Florida political subdivision.

- (k) **“IRL Council”** means the interlocal entity formed pursuant to this Agreement and Section 163.01, Fla. Stat., which will carry out the Indian River Lagoon National Estuary Program.
- (l) **“Martin”** means Martin County, a Florida political subdivision.
- (m) **“NEP”** means the Indian River Lagoon National Estuary Program.
- (n) **“Regulatory Agencies”** means the governmental agencies with regulatory authority over the activities of some of the other Parties, including the Florida Department of Environmental Protection (FDEP), St. Johns River Water Management District and South Florida Water Management District.
- (o) **“SFWMD”** means the South Florida Water Management District, an agency of the Florida Legislature.
- (p) **“SJRWMD”** means the St. Johns River Water Management District, an agency of the Florida Legislature.
- (q) **“St. Lucie”** means St. Lucie County, a Florida political subdivision.
- (r) **“Volusia”** means Volusia County, a Florida political subdivision.

## ARTICLE 2 – CREATION

**2.1 Interlocal Agreement.** This Agreement is an interlocal agreement, as contemplated by the Act and other applicable law. All of the Parties qualify to enter into this Agreement under such Act. The Parties provide for and create this new, independent organization, known as the IRL Council, which shall be responsible for the Indian River Lagoon National Estuary Program. The purpose of the IRL Council is to carry out the goals of the Indian River Lagoon National Estuary Program as set forth below.

**2.2 Immunity.** Pursuant to subsection (9) of the Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agent or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies will apply to the same degree and extent to the performance of such actions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

**2.3 Territory.** The geographic territory of the NEP, as operated by this IRL Council, and as it may be amended from time to time, is situated within the Counties of Volusia, Brevard, Indian River, St. Lucie and Martin.

### **ARTICLE 3 – TERM**

**3.1 Term.** The term of this Agreement commences on the Effective Date and continues until terminated. The last day of the Agreement will be the termination date more fully described in Article 12 below.

**3.2 Sunset Review.** This Agreement will be reviewed by the Board of Directors approximately five (5) years from the Effective Date of this Agreement and on or about each five (5) year period thereafter. The Board of Directors shall pass a resolution on whether to terminate this Agreement, amend this Agreement or continue this Agreement for another (5) five year period. Notwithstanding the voting requirements contained in Article 12 below, a vote to terminate conducted as a part of this sunset review will be effective upon a majority vote of the Parties provided such vote occurs thirty (30) days before or after the expiration of the five (5) year period and provided a vote under this provision is specifically referenced with the meeting notice and appears on the meeting agenda. Should no action occur, this Agreement will continue for another (5) year period.

### **ARTICLE 4 – GOALS**

The goals of the Parties are those goals set forth in the CCMP, as may be amended from time to time pursuant to revisions to the CCMP. The goals contained in the CCMP as of the date of this Agreement are set forth in Exhibit A to this Agreement. All goals are intended to be achieved through reasonable and cost-effective restoration and pollution reduction projects. The Board of Directors shall consider whether projects are financially and technologically feasible and cost effective in returning the Indian River Lagoon to health.

### **ARTICLE 5 – STRUCTURE OF THE IRL COUNCIL**

**5.1 IRL Council.** The Parties agree to the formation of the IRL Council to carry out the Indian River Lagoon National Estuary Program.

**5.2 IRL Council Authority & Powers.** The IRL Council will have the following powers:

- (a) To employ personnel to carry out the functions of the IRL Council and to determine, adopt and implement a personnel policy for the recruitment, retention, supervision, discipline and evaluation of employees;
- (b) To make purchases and enter into contracts in the name of the IRL Council, which will not constitute obligations of the Parties individually;
- (c) To purchase, lease, receive or otherwise acquire, own, hold, sell, convey, dispose, divert or distribute real or personal property;
- (d) To accept gifts, aid, grants, assistance funds or bequests, from any source, public or private;
- (e) To sue and be sued, complain and defend in its own name in all forums, notwithstanding the immunity protections provided by law;
- (f) To adopt policies and procedures pertaining to any of its operations;
- (g) To exercise all privileges, immunities and exemptions accorded to Parties individually under law;
- (h) To appoint advisory, administrative or operating committees to assist the IRL Council in the exercise and performance of the powers and duties provided for under this Agreement;
- (i) To appear on its own behalf before boards, commissions, departments or other agencies of municipal, county, state or federal government;
- (j) To exercise all other powers as may reasonably be implied under this Agreement and/or necessary to carry out the purposes of the IRL Council.

The IRL Council will not have the power to promulgate, issue or make rules or regulations, issue bonds, levy taxes, charge rates, fees or rents, condemn or assume any additional governmental powers by the other Parties except as specifically allowed by this Agreement.

**5.3 Transition.** Once the IRL Council is fully operational, as described in this section, all tangible personal property, assets, field equipment, funds and copies of all records of the SJRWMD used specifically by or for the NEP and the IRL Council employee(s) will be offered by SJRWMD, after consultation with EPA, to the IRL Council. The IRL Council will have the opportunity, after due diligence and review, to accept the offer of SJRWMD, in whole

or in part. In order to become fully operational, the Board of Directors must first (i) approve an Operating Procedures Manual establishing procedures the IRL Council will follow in its operations, including hiring/termination, pay/compensation benefits, procurement of services and general policies and (ii) enter into agreements with third parties to provide administrative support to the IRL Council and the Board of Directors. After affirmative acceptance by and effective transfer to the IRL Council, responsibility for any grants, contracts, and other legal documents in the name of SJRWMD on behalf of the NEP will be transferred to the IRL Council and the IRL Council shall be bound to the terms and conditions contained therein.

**5.4 Board of Directors.** All powers, privileges and duties vested in or imposed upon the IRL Council will be exercised and performed by and through a Board of Directors; provided, however, that the exercise of any and all executive, administrative and ministerial powers may be delegated to committees and/or an Executive Director. The Board of Directors will be comprised of one Director from each of the Parties to this Agreement and each Director will be entitled to one vote. EPA will be requested to provide a representative to attend meetings of the Board of Directors to provide technical assistance and present the position of EPA on issues to be considered by the Board of Directors. Each Party shall appoint its Director and an alternate to serve as their representative immediately upon adoption of this Agreement. Directors and alternates representing the Counties will be elected officials serving on the commissions or council of the Counties. Directors representing SFWMD or SJRWMD will be members of the Governing Boards and alternates representing SFWMD or SJRWMD will be staff of SFWMD or SJRWMD. The Director and alternate representing FDEP shall be at least a Deputy Director or equivalent position. In the event the Director or alternate will no longer serve the Party as an employee or elected official, the Party shall appoint a new Director or alternate. Each Party may change the initial or alternative director from time to time, but must provide to the IRL Council a minimum of two (2) business day's prior written notice before any meeting. The Board of Directors will have policy-making powers for the IRL Council, in addition to those powers explicitly set forth in this Agreement. The Board of Directors will serve without compensation.

**5.5 Committees.** The Board of Directors may appoint committees such as management, technical, administrative, operating or other committees to assist the IRL Council in the exercise and performance of the powers and duties provided for under this Agreement. In the absence of express delegated authority, any committees created by the Board of Directors shall not have decision-making authority. As necessary, EPA will be requested to provide a representative to attend meetings of such committees to provide technical assistance and present the position of EPA on issues to be considered by the committees. Each of the Parties may change either their initial or alternate representatives on any committees from time to time, but must provide to the IRL Council a minimum of two (2) days prior written notice before any meeting. Except as otherwise specifically set forth herein, all votes of any committee will be by

a simple majority of the committee members. Members of all committees will serve without compensation.

**5.6 Officers.** At its first organizational meeting and in January each year thereafter, the Board of Directors will elect the following officers:

- (a) A chairperson of the Board of Directors who shall serve for a period of one year, or until a successor has been selected, whichever is later. The chairperson shall preside at all meetings of the Board of Directors and carry out any other duties assigned by the Board of Directors.
- (b) A vice-chairperson who shall serve for a period of one year, or until a successor has been selected, whichever is later. In the event of absence or disability of the chairperson, the vice-chairperson shall assume the duties of the chairperson and carry out any other duties assigned by the Board of Directors.
- (c) A secretary who shall serve for a period of one year, or until a successor has been selected, whichever is later. In the event of absence or disability of the vice-chairperson, the secretary shall assume the duties of the vice-chairperson and carry out any other duties assigned by the Board of Directors.

In the event of a vacancy in any office, the Board of Directors shall elect a replacement to serve the balance of the unexpired term.

**5.7 Additional Board Members.** Should other governmental entities or Regulatory Agencies desire to become a party to this Agreement and have a Director on the Board of Directors, the representation must be unanimously approved by the Board of Directors in its sole and absolute discretion. Such new party must execute and comply with all of the provisions of this Agreement and be willing and able to contribute funding as determined by the Board of Directors. The funding contributions in Article Eight below will be amended accordingly to reflect any new party obligations, as of the first day of the next fiscal year of the IRL Council. Once a new party is approved it will become a member of the IRL Council and appoint a Director on the Board of Directors with voting rights consistent with the other Parties.

**5.8 Bylaws.** The Board of Directors by 2/3's vote may create and adopt Bylaws or appropriate rules of procedure that incorporate by reference the Operating Procedures Manual describe in Section 5.3 above, for the IRL Council to use in its governance and which will remain in effect unless modified by the Board of Directors. The Bylaws may be initially created and adopted at the same time or before execution of the administrative support agreement described in Section 5.3 above.

## ARTICLE 6 – MEETINGS, QUORUM AND VOTING

**6.1 Board Meetings.** The Board shall meet on a regular basis at such times and at such places as determined by the Board; provided, however, special meetings may be called by the chairperson and in his or her absence by the vice-chairperson. All meetings will be conducted in accordance with Section 286.011, Florida Statutes.

**6.2 Quorum.** A quorum for the transaction of business at any regular or special meeting of the Board of Directors or any committees will consist of a majority of the members of the Board of Directors or committee. Notwithstanding the foregoing, a majority of the members of the Board of Directors or any committee delegated decision-making authority present at a meeting may act to continue the meeting to any date or time specified in the action.

**6.3 Voting.** Each Director or member of any committee will be entitled to one vote. Voting by proxy is not allowed. All Board action will require a majority vote of the Board of Directors present at the meeting, with the exception of the following:

- (a) Amendments to this Agreement, including the addition of any additional parties to the Agreement, will require unanimous approval by all Parties.
- (b) Approval of Bylaws or appropriate rules of procedure will require a vote of 2/3rds of the Board of Directors present at the meeting.
- (c) Termination of this Agreement will require a vote of 2/3rds of the Parties, unless made in conjunction with the Sunset Review described in Section 3.2.
- (d) Approval of the final budget will require a vote of 2/3rds of the Board of Directors present at the meeting.
- (e) Removal of a member from the Agreement due to default will require a 2/3rds vote of all non-defaulting Parties
- (f) Purchases of real property will require a vote of 2/3rds of the Board of Directors present at the meeting.

**ARTICLE 7 – RESPONSIBILITIES OF THE PARTIES**

By entering into this Agreement, the intent of the Parties is to assure effective and timely implementation of recommended actions and to adjust strategies as needed in the future to keep the Indian River Lagoon’s recovery on track. The Regulatory Agencies agree to expeditiously review permit applications and to provide the IRL Council information and procedural direction on permitting matters.

**ARTICLE 8 – BUDGETING AND FUNDING**

**8.1 IRL Council Budgets.** The IRL Council will have a fiscal year ending September 30 of each year. Prior to March 1 of each year, a tentative budget outlining the proposed operating and other financial requirements for the upcoming fiscal year will be presented and considered by the Board of Directors for approval. The IRL Council will provide copies of the tentative budget to the Parties and EPA. Prior to June 1 of each year, a final budget will be presented and considered by the Board of Directors for approval and a copy of the final budget will be provided to each Party. The final budget will require approval by two-thirds (2/3rds) of all members of the Board of Directors present. The IRL Council shall comply with all notice requirements under Florida law in creating and approving the tentative and final budgets.

**8.2 Budget Amendments.** The adopted budget will be balanced and will be the operating and fiscal guide for the IRL Council for the upcoming fiscal year. The Board of Directors may from time to time amend the budget at any regular or special meeting.

**8.3 Funding.** Each Party will provide annual funding contributions to the IRL Council to assist in covering the expenses outlined in the final budget and any amendments to the final budget. Except for the first fiscal year beginning on October 1, 2015, the Parties shall tender the annual contributions on or before September 15<sup>th</sup> of each fiscal year. The annual contributions due for the first fiscal year of this Agreement will be made on or before October 15, 2015. The minimum annual contributions for each Party will be as follows:

SJRWMD	\$500,000
SFWMD	\$500,000
FDEP	\$250,000
Volusia County	\$50,000
Brevard County	\$50,000
Indian River County	\$50,000
St. Lucie County	\$50,000
Martin County	\$50,000

**8.4 Additional Funding.** Any gifts, grants, assistance funds or bequests from any source, public or private, will be in addition to the minimum funding contributions set forth above.

**8.5 Annual Approval.** Each member of the Board of Directors agrees to use its best efforts in securing the funding levels specified above through appropriate approvals from appropriate legislative or governing body each fiscal year. The Parties, however, acknowledge that any funding decisions remain within the sole discretion of each Party. Securing funding approval by the Party will be considered a condition precedent to the funding obligations of the Party each year.

#### **ARTICLE 9 – DEFAULT**

In the event any Party is determined to be in willful and significant noncompliance with the terms of this Agreement, the Board of Directors may, by a 2/3rds vote of all Parties except the Party charged with being in default, remove the non-complying Party from this Agreement. Prior to any such vote by the Board of Directors, the non-complying Party will be given a notice of its non-compliance and an opportunity to remedy the problem within a reasonable period or through a public meeting before the Board of Directors if there is a dispute whether a default exists. If a Party is found to be in noncompliance with permits by the applicable Regulatory Agency(ies), the permitting agencies may take actions to enforce the permits against non-complying Party under the agency's laws and regulations. If any Party is removed under this Article, (i) any monies previously paid hereunder will be conclusively deemed earned and not subject to return to such Party, (ii) any future funding responsibility of such Party will terminate, and (iii) this Agreement will continue as to the remaining Parties. Provided, however, any funds paid before removal not expended, will only be used by the IRL Council in accordance with the approved budget for which such contribution was made.

#### **ARTICLE 10 – NOTICE**

Any and all notices required or permitted to be given hereunder will be in writing, and will be considered delivered if the notice is either personally delivered to each Party at the address set forth in Exhibit B, transmitted by electronic facsimile machine to the fax numbers listed, or sent by U.S. certified or registered mail, postage prepaid, return receipt requested, to such addresses, all such notices being effective upon delivery to and receipt by the Parties, unless the respective Party or Parties notify(ies) all other Parties in writing in accordance herewith of a change of address and/or representative at such address authorized to receive any and all such notices, in which case any and all such notices will be delivered and/or mailed as aforesaid to

said Party or Parties at such new address with respect to such Party. In addition to the designated methods for delivery of notice set forth above, a copy of any and all notices may also be delivered by electronic mail.

## **ARTICLE 11 – WITHDRAWAL OF A PARTY**

Notwithstanding anything contained in this Agreement to the contrary, any Party has the right to withdraw as a Party to this Agreement. Counties shall provide ninety (90) days prior written notice of withdrawal and the remaining Parties shall provide one hundred eighty (180) days prior written notice of withdrawal. In the event all other Parties receive written notice of such withdrawal from the withdrawing Party, on the day following the conclusion of the notice period, the withdrawing Party will no longer be considered a Party to this Agreement. Provided however, even though such withdrawing Party will have withdrawn as a Party to this Agreement, the withdrawing Party will continue to be subject to all obligations and responsibilities of a Party with respect to required compliance with all applicable laws and regulations, without the benefit of being considered a Party to this Agreement. If a Party withdraws under this Article, (i) all monies previously paid hereunder will be conclusively deemed earned and not subject to return to such Party; (ii) the funding responsibility of such party will extend an additional one hundred eighty (180) days or until the next fiscal year whichever is longer, and (iii) this Agreement will continue as to the remaining Parties.

## **ARTICLE 12 – TERMINATION**

**12.1 Termination Vote.** This Agreement may be terminated by an affirmative vote of two-thirds of the Parties, unless made in conjunction with the Sunset Review described in Section 3.2.

**12.2 Termination Requirements.** Termination of this Agreement and dissolution of the IRL Council will be effective on the date the following requirements have all been met:

- (a) Upon the affirmative vote of not less than two-thirds of the Parties, the IRL Council shall provide written termination notices to each Party and EPA.
- (b) The IRL Council will pay or cause to be paid all outstanding obligations, debts or other liabilities and all known obligations, debts or other liabilities which may arise against the IRL Council in the future. All contracts will be terminated or assigned to another entity willing to assume the contract, should one exist.
- (c) Once all obligations, debts or other liabilities are satisfied, all remaining property, funds and other assets of the IRL Council will be distributed as determined by the Board of Directors with notice to EPA.

- (d) The IRL Council will comply with all other dissolution requirements under Florida law.

## ARTICLE 13 – GENERAL PROVISIONS

**13.1 No Third Party Beneficiaries.** This Agreement will inure to the benefit of the Parties. This Agreement is for the exclusive benefit of the Parties and will not be deemed to be made for the benefit of any other persons not so specified.

**13.2 Modification.** This Agreement may be modified, altered or amended only by a written instrument subsequently executed by the Parties as more fully described above.

**13.3 Complete Agreement.** This Agreement constitutes the full, complete and wholly independent agreement among the Parties. This Agreement also supersedes all prior agreements, understandings, representations, and statements among the Parties with respect to the matters addressed in this Agreement, either written or oral.

**13.4 Severability Clause.** If any clause, provision or section of this Agreement is found to be illegal or invalid by any court, the invalidity of such clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement.

**13.5 Governing Law.** Existing and future laws, rules and regulations of the United States and its agencies, the State of Florida and its agencies and the other Parties to this Agreement will take precedence over the terms and provisions of this Agreement in case of conflict or inconsistencies between them. The laws of the State of Florida as applicable will govern the validity, performance and enforcement of this Agreement.

**13.6 Sovereign Immunity.** The Parties intend to avail themselves of the benefits of Section 768.28 and 163.01(9), Florida Statutes, and of other statutes and the common law governing sovereign immunity to the fullest extent possible. In accordance with Section 163.01(5)(o), Florida Statutes, the Parties are not jointly liable for the torts of the officers or employees of the IRL Council, or any other tort attributable to the IRL Council, and that only the IRL Council shall be liable for torts attributable to it or for torts of its officers or employees, and then only to the extent of the waiver of sovereign immunity or limitation of liability specified in Section 768.28, Florida Statutes.

**13.7 Public Purpose.** This Agreement satisfies, fulfills and is pursuant to and for a public purpose, is in the public interest, and is a proper exercise of each Party's power and authority under each Party's individual governmental authority.

**13.8 Performance Standards.** None of the provisions in this Agreement will be deemed in any manner to amend, modify or otherwise change any of the provisions, regulations or ordinances of any governmental agency which is a Party to this Agreement and does not allow a performance standard less than is otherwise required under the terms of those provisions or regulations or ordinances, except as specifically provided herein.

**13.9 Survival.** All of the representations and warranties set forth in this Agreement will survive the consummation of any and all of the transactions described in the Agreement and the termination of this Agreement, and will not be deemed to be merged in the Agreement or any other instrument, which may be executed and delivered pursuant to this Agreement.

**13.10 Authority.** None of the Parties has any authority to bind or make any oral or written representations on behalf of the other Parties, and nothing contained in this Agreement will be construed to imply that any one or more of the Parties has formed a partnership or become an agent for any one or more of the other Parties.

**13.11 Heading.** The headings contained in this Agreement are solely for convenience of reference, do not constitute a part of this Agreement and will not affect its meaning, construction or effect.

**13.12 Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be executed by less than all of the Parties but all of which will be construed together as a single instrument.

**13.13 Binding Effect.** This Agreement will bind the successors and assigns of the Parties.

**13.14 Waiver.** No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any provision of this Agreement.

**13.15 Execution.** This Agreement will not be effective nor will it have any force and effect until all of the Parties have duly executed this Agreement and it is filed with the Clerk of the Circuit Court of each county where each Party is located.

**IN WITNESS WHEREOF** the Parties caused this Agreement to be executed, under seal, and will be deemed to have executed such, on the day and year designated.

**VOLUSIA COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, County Council

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**BREVARD COUNTY, FLORIDA**

By: 

\_\_\_\_\_  
Robin Fisher, Chair  
Board of County Commissioners

ATTEST: 

\_\_\_\_\_  
Laurie Rice, Chief Deputy Clerk

DATE: 2-3-2015

APPROVED AS TO FORM:

\_\_\_\_\_

INDIAN RIVER COUNTY, FLORIDA

By: \_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**ST. LUCIE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**MARTIN COUNTY, FLORIDA**

By: \_\_\_\_\_  
Ed Fielding, Chair, Board of County  
Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Durham  
County Attorney

**FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

By: \_\_\_\_\_  
Jonathan P. Steverson, Secretary

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**ST. JOHNS RIVER WATER MANAGEMENT  
DISTRICT**

By: \_\_\_\_\_  
Hans G. Tanzler III, Executive Director  
(per 9-9-14 delegation)

ATTEST: \_\_\_\_\_  
William Congdon, General Counsel

DATE: \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
William Abrams  
Assistant General Counsel

**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT**

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

## EXHIBIT A

### Goals of the Indian River Lagoon National Estuary Program<sup>1</sup>

1. To attain and maintain water and sediment of sufficient quality to support a healthy estuarine lagoon ecosystem;
2. To attain and maintain a functioning, healthy ecosystem which supports endangered and threatened species, fisheries, commerce and recreation;
3. To achieve heightened public awareness and coordinated interagency management of the Indian River Lagoon ecosystem; and
4. To identify and develop long-term funding sources for prioritized projects and programs to preserve, protect, restore and enhance the Indian River Lagoon.

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<sup>1</sup> The goals set forth above are contained within the CCMP in effect upon the date of this Agreement. In the event the goals in the CCMP are modified in the future, the new goals will replace those contained within this Exhibit A.

**EXHIBIT B**

**Address List**

If to Volusia County:

County of Volusia  
County Manager  
123 W. Indiana Avenue, Room 301  
DeLand, Florida 32720  
(386) 736-5920 (telephone)  
(386) 736-5707 (facsimile)  
[JDinneen@volusia.org](mailto:JDinneen@volusia.org)

**Copy to:**  
County of Volusia  
County Attorney  
123 W. Indiana Avenue, Room 301  
DeLand, Florida 32720  
(386)736-5950 (telephone)  
(386)736-5990 (facsimile)  
[DEckert@volusia.org](mailto:DEckert@volusia.org)

If to Brevard County:

Natural Resources Management Department  
Attn: Natural Resources Management Office Director  
Viera Government Center  
2725 Judge Fran Jamieson Way, Bldg. A  
Viera, Florida 32940

**Copy to:**  
Stockton Whitten, County Manager  
[Stockton.whitten@brevardcounty.us](mailto:Stockton.whitten@brevardcounty.us)

If to Indian River County:

Indian River County  
County Administrator  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960-3388

**Copy to:**  
County Attorney's Office  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960-3388

If to St. Lucie County:

St. Lucie County  
County Administrator  
2300 Virginia Avenue  
Fort Pierce, Florida 34982

**Copy to:**

St. Lucie County  
County Attorney's Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34982  
[mcintyred@stlucieco.org](mailto:mcintyred@stlucieco.org)

If to Martin County:

County Administrator  
Martin County Administrative Center  
2401 SE Monterey Road  
Stuart, Florida 34996

**Copy to:**

County Attorney's Office  
Martin County Administrative Center  
2401 SE Monterey Road  
Stuart, Florida 34996

If to Florida Department of Environmental Protection:

Agency Clerk  
Office of General Counsel  
3900 Commonwealth Blvd., MS 35  
Tallahassee, Florida 32399-3000  
(850) 245-2212 (telephone)  
(850) 245-2298 (facsimile)  
[Agency.Clerk@dep.state.fl.us](mailto:Agency.Clerk@dep.state.fl.us)

If to St. Johns River Water Management District:

Executive Director  
St. Johns River Water Management District  
P.O. Box 1429  
Palatka, Florida 32178-1429  
(386) 329-4125 (facsimile)  
[HTanzler@sjrwmd.com](mailto:HTanzler@sjrwmd.com)

Ground Deliveries:  
4049 Reid Street  
Palatka, Florida 32177

If to South Florida Water Management District:

South Florida Water Management District  
Attn: District Clerk  
3301 Gun Club Road, MSC 3110  
West Palm Beach, Florida 33406  
(561) 682-6200 (facsimile)  
[districtclerk@sfwmd.gov](mailto:districtclerk@sfwmd.gov)

**Copy to:**  
South Florida Water Management District  
Attn: Daniel DeLisi, Chief of Staff  
3301 Gun Club Road, MSC 3110  
West Palm Beach, Florida 33406  
[ddelisi@sfwmd.gov](mailto:ddelisi@sfwmd.gov)

**INDIAN RIVER LAGOON NATIONAL ESTUARY PROGRAM  
INTERLOCAL AGREEMENT**

This Indian River Lagoon National Estuary Program Interlocal Agreement (the “**Agreement**”) is made and entered into this 3rd day of February, 2015, by and between the following governmental entities: 1) Volusia County, a Florida political subdivision, 2) Brevard County, a Florida political subdivision, 3) Indian River County, a Florida political subdivision, 4) St. Lucie County, a Florida political subdivision, 5) Martin County, a Florida political subdivision, 6) Florida Department of Environmental Protection, 7) St. Johns River Water Management District, 8) South Florida Water Management District (collectively the “**Parties**” and each singularly a “**Party**”).

The following recitation of facts are provided in support of this Agreement:

(A) The Indian River Lagoon National Estuary Program was designated in 1990 and formally established in 1991 to assist the Indian River Lagoon region located along the east-central and south-eastern coastal area of Florida in developing a comprehensive plan to restore and protect the Indian River Lagoon. The Indian River Lagoon National Estuary Program is part of a national network of twenty-eight (28) estuary programs established under the Federal Clean Water Act and administered nationally by the United States Environmental Protection Agency.

(B) Local and state government participants in the Indian River Lagoon National Estuary Program consisting of the Parties described above, as well as the United States Environmental Protection Agency, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Florida Marine Research Institute and the United States Army Corps of Engineers, developed a Comprehensive Conservation and Management Plan for Indian River Lagoon (the “**CCMP**”), as required by the Federal Clean Water Act. The Parties are committed to successful implementation of the CCMP, as it may be amended from time to time.

(C) The Parties to this Agreement will sponsor and be responsible for the Indian River Lagoon National Estuary Program.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

## ARTICLE 1 – INTRODUCTORY PROVISIONS

**1.1 Recitals.** The statements contained in the recitation of facts set forth above (collectively the "Recitation of Facts") are true and correct, and are made a part of this Agreement by this reference.

**1.2 Exhibits.** The exhibits, which are attached to this Agreement, are by this reference made a part of this Agreement.

**1.3 Abbreviations and Definitions.** The following abbreviations and definitions, in addition to those contained in the Preamble and Recitals, will be used for purposes of this Agreement, and will not constitute separate agreements unless otherwise stated below:

- (a) **"Act"** means Section 163.01, Fla. Stat., known as the "Florida Interlocal Cooperation Act of 1969."
- (b) **"Agreement"** means this Interlocal Agreement between the Parties as it is presently constituted or as it may be amended from time to time.
- (c) **"Board of Directors"** means the new policy board of the IRL Council, all as set forth in Article Five, below.
- (d) **"Brevard"** means Brevard County, a Florida political subdivision.
- (e) **"CCMP"** means the Comprehensive Conservation and Management Plan approved by the Parties, as amended from time to time.
- (f) **"Counties"** means collectively Volusia County, Brevard County, Indian River County, St. Lucie County and Martin County.
- (g) **"Effective Date"** means the date that all Parties have duly executed this Agreement and filing has occurred pursuant to Section 13.15 below.
- (h) **"EPA"** means the United States Environmental Protection Agency, a federal agency.
- (i) **"FDEP"** means the Florida Department of Environmental Protection, a Florida state agency.
- (j) **"Indian River"** means Indian River County, a Florida political subdivision.

- (k) **“IRL Council”** means the interlocal entity formed pursuant to this Agreement and Section 163.01, Fla. Stat., which will carry out the Indian River Lagoon National Estuary Program.
- (l) **“Martin”** means Martin County, a Florida political subdivision.
- (m) **“NEP”** means the Indian River Lagoon National Estuary Program.
- (n) **“Regulatory Agencies”** means the governmental agencies with regulatory authority over the activities of some of the other Parties, including the Florida Department of Environmental Protection (FDEP), St. Johns River Water Management District and South Florida Water Management District.
- (o) **“SFWMD”** means the South Florida Water Management District, an agency of the Florida Legislature.
- (p) **“SJRWMD”** means the St. Johns River Water Management District, an agency of the Florida Legislature.
- (q) **“St. Lucie”** means St. Lucie County, a Florida political subdivision.
- (r) **“Volusia”** means Volusia County, a Florida political subdivision.

## **ARTICLE 2 – CREATION**

**2.1 Interlocal Agreement.** This Agreement is an interlocal agreement, as contemplated by the Act and other applicable law. All of the Parties qualify to enter into this Agreement under such Act. The Parties provide for and create this new, independent organization, known as the IRL Council, which shall be responsible for the Indian River Lagoon National Estuary Program. The purpose of the IRL Council is to carry out the goals of the Indian River Lagoon National Estuary Program as set forth below.

**2.2 Immunity.** Pursuant to subsection (9) of the Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any public agent or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies will apply to the same degree and extent to the performance of such actions and duties of such officers, agents, or employees extraterritorially under the provisions of this Agreement.

**2.3 Territory.** The geographic territory of the NEP, as operated by this IRL Council, and as it may be amended from time to time, is situated within the Counties of Volusia, Brevard, Indian River, St. Lucie and Martin.

### **ARTICLE 3 – TERM**

**3.1 Term.** The term of this Agreement commences on the Effective Date and continues until terminated. The last day of the Agreement will be the termination date more fully described in Article 12 below.

**3.2 Sunset Review.** This Agreement will be reviewed by the Board of Directors approximately five (5) years from the Effective Date of this Agreement and on or about each five (5) year period thereafter. The Board of Directors shall pass a resolution on whether to terminate this Agreement, amend this Agreement or continue this Agreement for another (5) five year period. Notwithstanding the voting requirements contained in Article 12 below, a vote to terminate conducted as a part of this sunset review will be effective upon a majority vote of the Parties provided such vote occurs thirty (30) days before or after the expiration of the five (5) year period and provided a vote under this provision is specifically referenced with the meeting notice and appears on the meeting agenda. Should no action occur, this Agreement will continue for another (5) year period.

### **ARTICLE 4 – GOALS**

The goals of the Parties are those goals set forth in the CCMP, as may be amended from time to time pursuant to revisions to the CCMP. The goals contained in the CCMP as of the date of this Agreement are set forth in Exhibit A to this Agreement. All goals are intended to be achieved through reasonable and cost-effective restoration and pollution reduction projects. The Board of Directors shall consider whether projects are financially and technologically feasible and cost effective in returning the Indian River Lagoon to health.

### **ARTICLE 5 – STRUCTURE OF THE IRL COUNCIL**

**5.1 IRL Council.** The Parties agree to the formation of the IRL Council to carry out the **Indian River Lagoon National Estuary Program**.

**5.2 IRL Council Authority & Powers.** The IRL Council will have the following powers:

- (a) To employ personnel to carry out the functions of the IRL Council and to determine, adopt and implement a personnel policy for the recruitment, retention, supervision, discipline and evaluation of employees;
- (b) To make purchases and enter into contracts in the name of the IRL Council, which will not constitute obligations of the Parties individually;
- (c) To purchase, lease, receive or otherwise acquire, own, hold, sell, convey, dispose, divert or distribute real or personal property;
- (d) To accept gifts, aid, grants, assistance funds or bequests, from any source, public or private;
- (e) To sue and be sued, complain and defend in its own name in all forums, notwithstanding the immunity protections provided by law;
- (f) To adopt policies and procedures pertaining to any of its operations;
- (g) To exercise all privileges, immunities and exemptions accorded to Parties individually under law;
- (h) To appoint advisory, administrative or operating committees to assist the IRL Council in the exercise and performance of the powers and duties provided for under this Agreement;
- (i) To appear on its own behalf before boards, commissions, departments or other agencies of municipal, county, state or federal government;
- (j) To exercise all other powers as may reasonably be implied under this Agreement and/or necessary to carry out the purposes of the IRL Council.

The IRL Council will not have the power to promulgate, issue or make rules or regulations, issue bonds, levy taxes, charge rates, fees or rents, condemn or assume any additional governmental powers by the other Parties except as specifically allowed by this Agreement.

**5.3 Transition.** Once the IRL Council is fully operational, as described in this section, all tangible personal property, assets, field equipment, funds and copies of all records of the SJRWMD used specifically by or for the NEP and the IRL Council employee(s) will be offered by SJRWMD, after consultation with EPA, to the IRL Council. The IRL Council will have the opportunity, after due diligence and review, to accept the offer of SJRWMD, in whole

or in part. In order to become fully operational, the Board of Directors must first (i) approve an Operating Procedures Manual establishing procedures the IRL Council will follow in its operations, including hiring/termination, pay/compensation benefits, procurement of services and general policies and (ii) enter into agreements with third parties to provide administrative support to the IRL Council and the Board of Directors. After affirmative acceptance by and effective transfer to the IRL Council, responsibility for any grants, contracts, and other legal documents in the name of SJRWMD on behalf of the NEP will be transferred to the IRL Council and the IRL Council shall be bound to the terms and conditions contained therein.

**5.4 Board of Directors.** All powers, privileges and duties vested in or imposed upon the IRL Council will be exercised and performed by and through a Board of Directors; provided, however, that the exercise of any and all executive, administrative and ministerial powers may be delegated to committees and/or an Executive Director. The Board of Directors will be comprised of one Director from each of the Parties to this Agreement and each Director will be entitled to one vote. EPA will be requested to provide a representative to attend meetings of the Board of Directors to provide technical assistance and present the position of EPA on issues to be considered by the Board of Directors. Each Party shall appoint its Director and an alternate to serve as their representative immediately upon adoption of this Agreement. Directors and alternates representing the Counties will be elected officials serving on the commissions or council of the Counties. Directors representing SFWMD or SJRWMD will be members of the Governing Boards and alternates representing SFWMD or SJRWMD will be staff of SFWMD or SJRWMD. The Director and alternate representing FDEP shall be at least a Deputy Director or equivalent position. In the event the Director or alternate will no longer serve the Party as an employee or elected official, the Party shall appoint a new Director or alternate. Each Party may change the initial or alternative director from time to time, but must provide to the IRL Council a minimum of two (2) business day's prior written notice before any meeting. The Board of Directors will have policy-making powers for the IRL Council, in addition to those powers explicitly set forth in this Agreement. The Board of Directors will serve without compensation.

**5.5 Committees.** The Board of Directors may appoint committees such as management, technical, administrative, operating or other committees to assist the IRL Council in the exercise and performance of the powers and duties provided for under this Agreement. In the absence of express delegated authority, any committees created by the Board of Directors shall not have decision-making authority. As necessary, EPA will be requested to provide a representative to attend meetings of such committees to provide technical assistance and present the position of EPA on issues to be considered by the committees. Each of the Parties may change either their initial or alternate representatives on any committees from time to time, but must provide to the IRL Council a minimum of two (2) days prior written notice before any meeting. Except as otherwise specifically set forth herein, all votes of any committee will be by

a simple majority of the committee members. Members of all committees will serve without compensation.

**5.6 Officers.** At its first organizational meeting and in January each year thereafter, the Board of Directors will elect the following officers:

- (a) A chairperson of the Board of Directors who shall serve for a period of one year, or until a successor has been selected, whichever is later. The chairperson shall preside at all meetings of the Board of Directors and carry out any other duties assigned by the Board of Directors.
- (b) A vice-chairperson who shall serve for a period of one year, or until a successor has been selected, whichever is later. In the event of absence or disability of the chairperson, the vice-chairperson shall assume the duties of the chairperson and carry out any other duties assigned by the Board of Directors.
- (c) A secretary who shall serve for a period of one year, or until a successor has been selected, whichever is later. In the event of absence or disability of the vice-chairperson, the secretary shall assume the duties of the vice-chairperson and carry out any other duties assigned by the Board of Directors.

In the event of a vacancy in any office, the Board of Directors shall elect a replacement to serve the balance of the unexpired term.

**5.7 Additional Board Members.** Should other governmental entities or Regulatory Agencies desire to become a party to this Agreement and have a Director on the Board of Directors, the representation must be unanimously approved by the Board of Directors in its sole and absolute discretion. Such new party must execute and comply with all of the provisions of this Agreement and be willing and able to contribute funding as determined by the Board of Directors. The funding contributions in Article Eight below will be amended accordingly to reflect any new party obligations, as of the first day of the next fiscal year of the IRL Council. Once a new party is approved it will become a member of the IRL Council and appoint a Director on the Board of Directors with voting rights consistent with the other Parties.

**5.8 Bylaws.** The Board of Directors by 2/3's vote may create and adopt Bylaws or appropriate rules of procedure that incorporate by reference the Operating Procedures Manual describe in Section 5.3 above, for the IRL Council to use in its governance and which will remain in effect unless modified by the Board of Directors. The Bylaws may be initially created and adopted at the same time or before execution of the administrative support agreement described in Section 5.3 above.

## ARTICLE 6 – MEETINGS, QUORUM AND VOTING

**6.1 Board Meetings.** The Board shall meet on a regular basis at such times and at such places as determined by the Board; provided, however, special meetings may be called by the chairperson and in his or her absence by the vice-chairperson. All meetings will be conducted in accordance with Section 286.011, Florida Statutes.

**6.2 Quorum.** A quorum for the transaction of business at any regular or special meeting of the Board of Directors or any committees will consist of a majority of the members of the Board of Directors or committee. Notwithstanding the foregoing, a majority of the members of the Board of Directors or any committee delegated decision-making authority present at a meeting may act to continue the meeting to any date or time specified in the action.

**6.3 Voting.** Each Director or member of any committee will be entitled to one vote. Voting by proxy is not allowed. All Board action will require a majority vote of the Board of Directors present at the meeting, with the exception of the following:

- (a) Amendments to this Agreement, including the addition of any additional parties to the Agreement, will require unanimous approval by all Parties.
- (b) Approval of Bylaws or appropriate rules of procedure will require a vote of 2/3rds of the Board of Directors present at the meeting.
- (c) Termination of this Agreement will require a vote of 2/3rds of the Parties, unless made in conjunction with the Sunset Review described in Section 3.2.
- (d) Approval of the final budget will require a vote of 2/3rds of the Board of Directors present at the meeting.
- (e) Removal of a member from the Agreement due to default will require a 2/3rds vote of all non-defaulting Parties
- (f) Purchases of real property will require a vote of 2/3rds of the Board of Directors present at the meeting.

## ARTICLE 7 – RESPONSIBILITIES OF THE PARTIES

By entering into this Agreement, the intent of the Parties is to assure effective and timely implementation of recommended actions and to adjust strategies as needed in the future to keep the Indian River Lagoon's recovery on track. The Regulatory Agencies agree to expeditiously review permit applications and to provide the IRL Council information and procedural direction on permitting matters.

## ARTICLE 8 – BUDGETING AND FUNDING

**8.1 IRL Council Budgets.** The IRL Council will have a fiscal year ending September 30 of each year. Prior to March 1 of each year, a tentative budget outlining the proposed operating and other financial requirements for the upcoming fiscal year will be presented and considered by the Board of Directors for approval. The IRL Council will provide copies of the tentative budget to the Parties and EPA. Prior to June 1 of each year, a final budget will be presented and considered by the Board of Directors for approval and a copy of the final budget will be provided to each Party. The final budget will require approval by two-thirds (2/3rds) of all members of the Board of Directors present. The IRL Council shall comply with all notice requirements under Florida law in creating and approving the tentative and final budgets.

**8.2 Budget Amendments.** The adopted budget will be balanced and will be the operating and fiscal guide for the IRL Council for the upcoming fiscal year. The Board of Directors may from time to time amend the budget at any regular or special meeting.

**8.3 Funding.** Each Party will provide annual funding contributions to the IRL Council to assist in covering the expenses outlined in the final budget and any amendments to the final budget. Except for the first fiscal year beginning on October 1, 2015, the Parties shall tender the annual contributions on or before September 15<sup>th</sup> of each fiscal year. The annual contributions due for the first fiscal year of this Agreement will be made on or before October 15, 2015. The minimum annual contributions for each Party will be as follows:

SJRWMD	\$500,000
SFWMD	\$500,000
FDEP	\$250,000
Volusia County	\$50,000
Brevard County	\$50,000
Indian River County	\$50,000
St. Lucie County	\$50,000
Martin County	\$50,000

**8.4 Additional Funding.** Any gifts, grants, assistance funds or bequests from any source, public or private, will be in addition to the minimum funding contributions set forth above.

**8.5 Annual Approval.** Each member of the Board of Directors agrees to use its best efforts in securing the funding levels specified above through appropriate approvals from appropriate legislative or governing body each fiscal year. The Parties, however, acknowledge that any funding decisions remain within the sole discretion of each Party. Securing funding approval by the Party will be considered a condition precedent to the funding obligations of the Party each year.

#### **ARTICLE 9 – DEFAULT**

In the event any Party is determined to be in willful and significant noncompliance with the terms of this Agreement, the Board of Directors may, by a 2/3rds vote of all Parties except the Party charged with being in default, remove the non-complying Party from this Agreement. Prior to any such vote by the Board of Directors, the non-complying Party will be given a notice of its non-compliance and an opportunity to remedy the problem within a reasonable period or through a public meeting before the Board of Directors if there is a dispute whether a default exists. If a Party is found to be in noncompliance with permits by the applicable Regulatory Agency(ies), the permitting agencies may take actions to enforce the permits against non-complying Party under the agency's laws and regulations. If any Party is removed under this Article, (i) any monies previously paid hereunder will be conclusively deemed earned and not subject to return to such Party, (ii) any future funding responsibility of such Party will terminate, and (iii) this Agreement will continue as to the remaining Parties. Provided, however, any funds paid before removal not expended, will only be used by the IRL Council in accordance with the approved budget for which such contribution was made.

#### **ARTICLE 10 – NOTICE**

Any and all notices required or permitted to be given hereunder will be in writing, and will be considered delivered if the notice is either personally delivered to each Party at the address set forth in Exhibit B, transmitted by electronic facsimile machine to the fax numbers listed, or sent by U.S. certified or registered mail, postage prepaid, return receipt requested, to such addresses, all such notices being effective upon delivery to and receipt by the Parties, unless the respective Party or Parties notify(ies) all other Parties in writing in accordance herewith of a change of address and/or representative at such address authorized to receive any and all such notices, in which case any and all such notices will be delivered and/or mailed as aforesaid to

said Party or Parties at such new address with respect to such Party. In addition to the designated methods for delivery of notice set forth above, a copy of any and all notices may also be delivered by electronic mail.

#### **ARTICLE 11 – WITHDRAWAL OF A PARTY**

Notwithstanding anything contained in this Agreement to the contrary, any Party has the right to withdraw as a Party to this Agreement. Counties shall provide ninety (90) days prior written notice of withdrawal and the remaining Parties shall provide one hundred eighty (180) days prior written notice of withdrawal. In the event all other Parties receive written notice of such withdrawal from the withdrawing Party, on the day following the conclusion of the notice period, the withdrawing Party will no longer be considered a Party to this Agreement. Provided however, even though such withdrawing Party will have withdrawn as a Party to this Agreement, the withdrawing Party will continue to be subject to all obligations and responsibilities of a Party with respect to required compliance with all applicable laws and regulations, without the benefit of being considered a Party to this Agreement. If a Party withdraws under this Article, (i) all monies previously paid hereunder will be conclusively deemed earned and not subject to return to such Party; (ii) the funding responsibility of such party will extend an additional one hundred eighty (180) days or until the next fiscal year whichever is longer, and (iii) this Agreement will continue as to the remaining Parties.

#### **ARTICLE 12 – TERMINATION**

**12.1 Termination Vote.** This Agreement may be terminated by an affirmative vote of two-thirds of the Parties, unless made in conjunction with the Sunset Review described in Section 3.2.

**12.2 Termination Requirements.** Termination of this Agreement and dissolution of the IRL Council will be effective on the date the following requirements have all been met:

- (a) Upon the affirmative vote of not less than two-thirds of the Parties, the IRL Council shall provide written termination notices to each Party and EPA.
- (b) The IRL Council will pay or cause to be paid all outstanding obligations, debts or other liabilities and all known obligations, debts or other liabilities which may arise against the IRL Council in the future. All contracts will be terminated or assigned to another entity willing to assume the contract, should one exist.
- (c) Once all obligations, debts or other liabilities are satisfied, all remaining property, funds and other assets of the IRL Council will be distributed as determined by the Board of Directors with notice to EPA.

- (d) The IRL Council will comply with all other dissolution requirements under Florida law.

### ARTICLE 13 – GENERAL PROVISIONS

**13.1 No Third Party Beneficiaries.** This Agreement will inure to the benefit of the Parties. This Agreement is for the exclusive benefit of the Parties and will not be deemed to be made for the benefit of any other persons not so specified.

**13.2 Modification.** This Agreement may be modified, altered or amended only by a written instrument subsequently executed by the Parties as more fully described above.

**13.3 Complete Agreement.** This Agreement constitutes the full, complete and wholly independent agreement among the Parties. This Agreement also supersedes all prior agreements, understandings, representations, and statements among the Parties with respect to the matters addressed in this Agreement, either written or oral.

**13.4 Severability Clause.** If any clause, provision or section of this Agreement is found to be illegal or invalid by any court, the invalidity of such clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement.

**13.5 Governing Law.** Existing and future laws, rules and regulations of the United States and its agencies, the State of Florida and its agencies and the other Parties to this Agreement will take precedence over the terms and provisions of this Agreement in case of conflict or inconsistencies between them. The laws of the State of Florida as applicable will govern the validity, performance and enforcement of this Agreement.

**13.6 Sovereign Immunity.** The Parties intend to avail themselves of the benefits of Section 768.28 and 163.01(9), Florida Statutes, and of other statutes and the common law governing sovereign immunity to the fullest extent possible. In accordance with Section 163.01(5)(o), Florida Statutes, the Parties are not jointly liable for the torts of the officers or employees of the IRL Council, or any other tort attributable to the IRL Council, and that only the IRL Council shall be liable for torts attributable to it or for torts of its officers or employees, and then only to the extent of the waiver of sovereign immunity or limitation of liability specified in Section 768.28, Florida Statutes.

**13.7 Public Purpose.** This Agreement satisfies, fulfills and is pursuant to and for a public purpose, is in the public interest, and is a proper exercise of each Party's power and authority under each Party's individual governmental authority.

**13.8 Performance Standards.** None of the provisions in this Agreement will be deemed in any manner to amend, modify or otherwise change any of the provisions, regulations or ordinances of any governmental agency which is a Party to this Agreement and does not allow a performance standard less than is otherwise required under the terms of those provisions or regulations or ordinances, except as specifically provided herein.

**13.9 Survival.** All of the representations and warranties set forth in this Agreement will survive the consummation of any and all of the transactions described in the Agreement and the termination of this Agreement, and will not be deemed to be merged in the Agreement or any other instrument, which may be executed and delivered pursuant to this Agreement.

**13.10 Authority.** None of the Parties has any authority to bind or make any oral or written representations on behalf of the other Parties, and nothing contained in this Agreement will be construed to imply that any one or more of the Parties has formed a partnership or become an agent for any one or more of the other Parties.

**13.11 Heading.** The headings contained in this Agreement are solely for convenience of reference, do not constitute a part of this Agreement and will not affect its meaning, construction or effect.

**13.12 Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be executed by less than all of the Parties but all of which will be construed together as a single instrument.

**13.13 Binding Effect.** This Agreement will bind the successors and assigns of the Parties.

**13.14 Waiver.** No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any provision of this Agreement.

**13.15 Execution.** This Agreement will not be effective nor will it have any force and effect until all of the Parties have duly executed this Agreement and it is filed with the Clerk of the Circuit Court of each county where each Party is located.

**IN WITNESS WHEREOF** the Parties caused this Agreement to be executed, under seal, and will be deemed to have executed such, on the day and year designated.

**VOLUSIA COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, County Council

ATTEST: \_\_\_\_\_


DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**BREVARD COUNTY, FLORIDA**

By:

  
\_\_\_\_\_  
Robin Fisher, Chair  
Board of County Commissioners

ATTEST:

  
\_\_\_\_\_  
Laurie Rice, Chief Deputy Clerk

DATE:

2-3-2015

APPROVED AS TO FORM:

\_\_\_\_\_

**INDIAN RIVER COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**ST. LUCIE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**MARTIN COUNTY, FLORIDA**

By:

\_\_\_\_\_  
Ed Fielding, Chair, Board of County  
Commissioners

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Durham  
County Attorney

**FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

By: \_\_\_\_\_  
Jonathan P. Steverson, Secretary

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**ST. JOHNS RIVER WATER MANAGEMENT  
DISTRICT**

By: \_\_\_\_\_  
Hans G. Tanzler III, Executive Director  
(per 9-9-14 delegation)

ATTEST: \_\_\_\_\_  
William Congdon, General Counsel

DATE: \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
William Abrams  
Assistant General Counsel

**SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT**

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

## EXHIBIT A

### Goals of the Indian River Lagoon National Estuary Program<sup>1</sup>

1. To attain and maintain water and sediment of sufficient quality to support a healthy estuarine lagoon ecosystem;
2. To attain and maintain a functioning, healthy ecosystem which supports endangered and threatened species, fisheries, commerce and recreation;
3. To achieve heightened public awareness and coordinated interagency management of the Indian River Lagoon ecosystem; and
4. To identify and develop long-term funding sources for prioritized projects and programs to preserve, protect, restore and enhance the Indian River Lagoon.

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<sup>1</sup> The goals set forth above are contained within the CCMP in effect upon the date of this Agreement. In the event the goals in the CCMP are modified in the future, the new goals will replace those contained within this Exhibit A.

**EXHIBIT B**

**Address List**

If to Volusia County:

County of Volusia  
County Manager  
123 W. Indiana Avenue, Room 301  
DeLand, Florida 32720  
(386) 736-5920 (telephone)  
(386) 736-5707 (facsimile)  
[JDinneen@volusia.org](mailto:JDinneen@volusia.org)

**Copy to:**  
County of Volusia  
County Attorney  
123 W. Indiana Avenue, Room 301  
DeLand, Florida 32720  
(386)736-5950 (telephone)  
(386)736-5990 (facsimile)  
[DEckert@volusia.org](mailto:DEckert@volusia.org)

If to Brevard County:

Natural Resources Management Department  
Attn: Natural Resources Management Office Director  
Viera Government Center  
2725 Judge Fran Jamieson Way, Bldg. A  
Viera, Florida 32940

**Copy to:**  
Stockton Whitten, County Manager  
[Stockton.whitten@brevardcounty.us](mailto:Stockton.whitten@brevardcounty.us)

If to Indian River County:

Indian River County  
County Administrator  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960-3388

**Copy to:**  
County Attorney's Office  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960-3388

If to St. Lucie County:

St. Lucie County  
County Administrator  
2300 Virginia Avenue  
Fort Pierce, Florida 34982

**Copy to:**  
St. Lucie County  
County Attorney's Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34982  
[mcintyred@stlucieco.org](mailto:mcintyred@stlucieco.org)

If to Martin County:

County Administrator  
Martin County Administrative Center  
2401 SE Monterey Road  
Stuart, Florida 34996

**Copy to:**  
County Attorney's Office  
Martin County Administrative Center  
2401 SE Monterey Road  
Stuart, Florida 34996

If to Florida Department of Environmental Protection:

Agency Clerk  
Office of General Counsel  
3900 Commonwealth Blvd., MS 35  
Tallahassee, Florida 32399-3000  
(850) 245-2212 (telephone)  
(850) 245-2298 (facsimile)  
[Agency.Clerk@dep.state.fl.us](mailto:Agency.Clerk@dep.state.fl.us)

If to St. Johns River Water Management District:

Executive Director  
St. Johns River Water Management District  
P.O. Box 1429  
Palatka, Florida 32178-1429  
(386) 329-4125 (facsimile)  
[HTanzler@sjrwmd.com](mailto:HTanzler@sjrwmd.com)

Ground Deliveries:  
4049 Reid Street  
Palatka, Florida 32177

If to South Florida Water Management District:

South Florida Water Management District  
Attn: District Clerk  
3301 Gun Club Road, MSC 3110  
West Palm Beach, Florida 33406  
(561) 682-6200 (facsimile)  
[districtclerk@sfwmd.gov](mailto:districtclerk@sfwmd.gov)

**Copy to:**  
South Florida Water Management District  
Attn: Daniel DeLisi, Chief of Staff  
3301 Gun Club Road, MSC 3110  
West Palm Beach, Florida 33406  
[ddelisi@sfwmd.gov](mailto:ddelisi@sfwmd.gov)

**TORCIVIA, DONLON,  
GODDEAU & ANSAY, P.A.**

701 Northpoint Parkway, Suite 209  
West Palm Beach, Florida 33407-1950  
561-686-8700 Telephone / 561-686-8764 Facsimile  
www.torcivilaw.com

Glen J. Torcivia  
Lara Donlon  
Christy L. Goddeau\*  
Carolyn S. Ansay\*

Jennifer H.R. Hunecke  
Jonathan E. O'Connell  
Barbara Alterman  
R. Brian Shutt\*

\*FLORIDA BAR BOARD CERTIFIED  
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

January 7, 2015

Cristina Berrios, Esq.  
Assistant County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way, Suite 308  
Viera, FL 32940

Subject: Indian River Lagoon National Estuary Program Interlocal Agreement

Dear Ms. Berrios:

Enclosed is an original Interlocal Agreement and nine original signature pages to have executed after approved by your County Commission. Once executed, please return the nine original signature pages in the enclosed self-addressed, stamped envelope so that I may assemble the final executed documents for recording. I will forward a copy of the fully executed and recorded agreement to you when it is returned from the Clerk of the Court.

Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Carolyn S. Ansay

CSA:jw

Enclosures