



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.11.

10/22/2019

Subject:

Authorize the Chair to execute Agreement with Indian River Kontrol Society (IRKS) for a Temporary Fly-In Area (TFIA) at the Central Disposal Facility and related Resolution.

Fiscal Impact:

Compensation of \$22.11 per acre per year for lease of this property is comparable with other lease agreements.

Dept/Office:

Solid Waste Management Department

Requested Action:

It is requested that the Board of County Commissioners authorize the Chair to execute the agreement with the Indian River Kontrol Society for an area at the Central Disposal Facility to be utilized as a Temporary Fly-in Area. It is also requested that the Board approve the related resolution needed for lease to a non-profit organization.

Summary Explanation and Background:

In March of 2016 the Board approved an agreement with IRKS for the use of a 2-acre parcel at the Central Disposal Facility as an area for IRKS to use for their radio-controlled model aviation club. The agreement was for one year with two (2) one-year renewals that were exercised. The contract expired on March 1, 2019.

There have been no operational issues with IRKS and they have agreed to the provisions set forth in the attached Agreement mirroring the prior agreements terms and conditions. The term shall run for one year commencing on the date of execution by the Board of County Commissioners. IRKS shall have the right to request an extension of the term for two (2) additional one Year successive renewals on a year to year basis under the same terms and conditions set forth herein.

During the term of this Agreement and subsequent renewals, IRKS agrees to pay \$22.11 per acre per year cash rent for improved pastureland as published by the University of Florida. The category used in the report to define the payment is determined by the characteristics of the property.

IRKS shall maintain flight time schedules from 7:30 a.m. to 8:00 p.m. or dusk whichever occurs first in accordance with approved scheduled dates for use of the Facilities. Terms of the attached Agreement include the ability of the County to disapprove of any and all activities that might conflict with the County's administrative policies, procedures and interfere with or jeopardize the day-to-day operations at the Central Disposal Facility in accordance with its permits.

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Clerk to the Board Instructions:

Please have signed and attest three (3) copies of the Resolution and three (3) copies of the Agreement and return two (2) originals of each to the Department.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 23, 2019

M E M O R A N D U M

TO: Euripides Rodriguez, Solid Waste Management Director

RE: Item F.11., Resolution and Agreement with Indian River Kontrol Society (IRKS) for a Temporary Fly-In Area (TFIA) at the Central Disposal Facility

The Board of County Commissioners, in regular session on October 22, 2019, adopted Resolution No. 19-214, to lease of County property to a non-profit; and approved and authorized the Chair to execute Agreement with Indian River Kontrol Society for an area at the Central Disposal Facility to be utilized as a Temporary Fly-In Area. Enclosed are two fully-executed Resolutions and two fully-executed Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (4)

cc: Contracts Administration
Finance
Budget

RESOLUTION NO. 2019-214

A RESOLUTION PURSUANT TO SECTION 125.38, FLORIDA STATUTES, AUTHORIZING THE LEASE OF COUNTY PROPERTY TO INDIAN RIVER KONTROL SOCIETY, INC. AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Brevard County, a political subdivision of the State of Florida, hereafter referred to as Brevard County, owns certain real property known as the Central Disposal Facility, located at 2250 Adamson Road, Cocoa; and

WHEREAS, the Indian River Kontrol Society, Inc., hereinafter referred to as IRKS, a not-for-profit-organization dedicated to the enjoyment, promotion and education of model aviation in Brevard County, Florida, wishes to lease a portion of the Central Disposal Facility for use as a Temporary Fly-In Area.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. Brevard County hereby agrees to lease the Temporary Fly-In Area to IRKS for recreational purposes pursuant to the lease attached as Exhibit "A".
2. Brevard County has determined that the lease area is not needed for county purposes at this time.
3. This resolution shall take effect immediately.

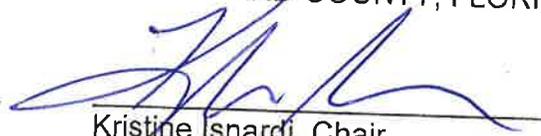
DONE, ORDERED and ADOPTED in Regular Session this 22 day of October, 2019.

ATTEST



Scott Ellis, Clerk

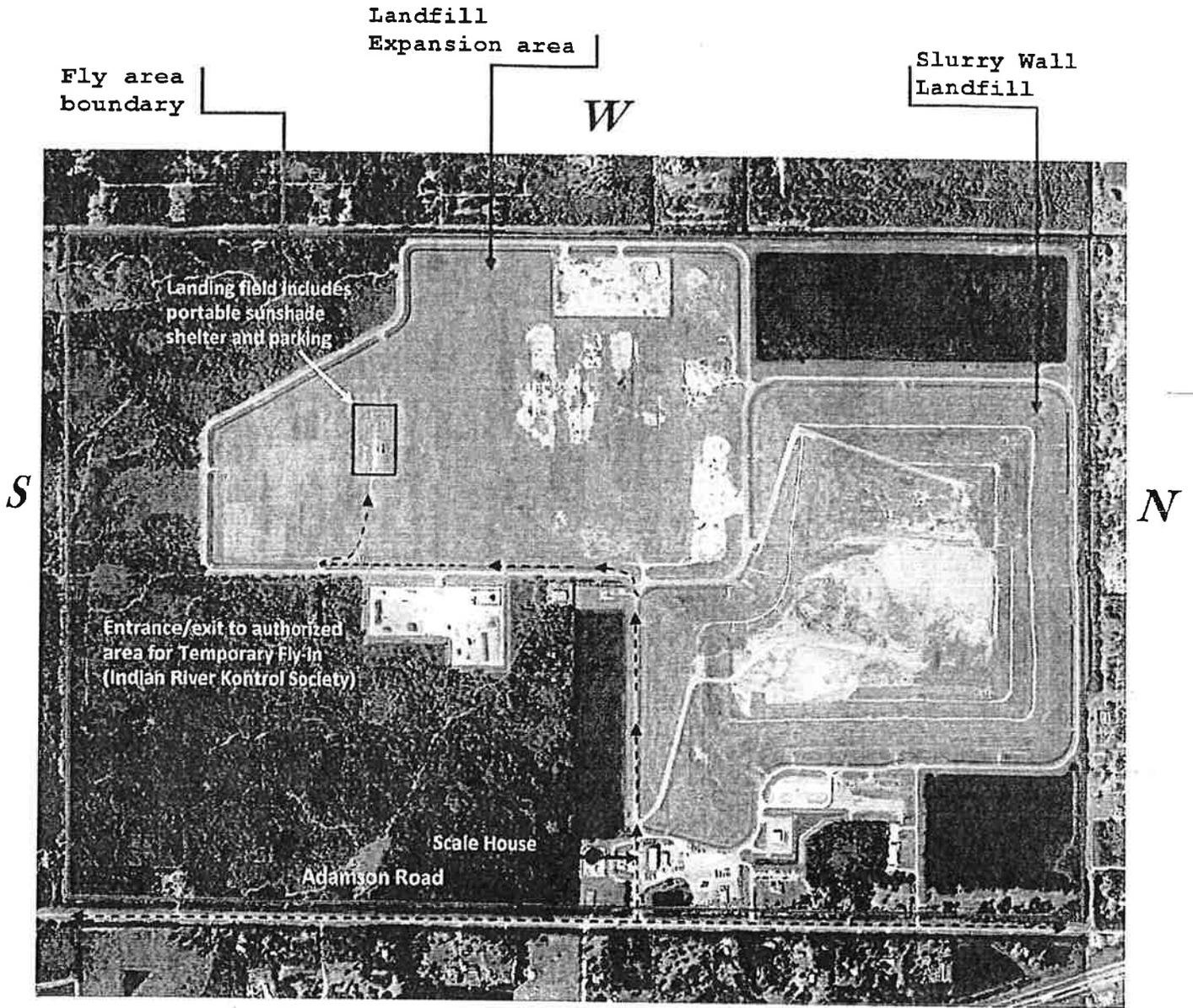
BOARD OF COUNTY
COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Kristine Isnardi, Chair

As approved by the Board on 10/22/19

CENTRAL DISPOSAL FACILITY



LICENSE AGREEMENT

THIS AGREEMENT is dated this ____ day of _____, 2019, BY and BETWEEN the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "Licensor") and Indian River Kontrol Society, Inc. (collectively referred to as "Licensee")

WHEREAS, the Licensor is the owner, lessee or authorized administrator of certain real property located in Brevard County, Florida commonly known as the SOLID WASTE MANAGEMENT DEPARTMENT, CENTRAL DISPOSAL FACILITY, 2250 Adamson Road, Cocoa, hereinafter referred to as the Temporary Fly-In Area (TFIA); and

WHEREAS, the Licensee desires to utilize the (TFIA) for the purpose hereinafter set forth; and

NOW THEREFORE, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.
2. License. The Licensor hereby grants the Licensee a non-exclusive, personal and revocable license (hereafter the "License") to use the area of the TFIA described in Exhibit "A", attached hereto and made a part hereof by this reference, hereinafter referred to as "Facilities", for the purpose of constructing a Radio Control (RC) Model Facility and development of related structures and utilization of them, subject to the following terms and conditions.
 - a. Use of the Facilities and grounds will be in accordance with this Agreement and all applicable laws, rules, regulations, policies and procedures, including but not limited to prescribed safety rules and regulations established by the Brevard County Solid Waste Management Department. The Licensor reserves the right to disapprove any and all activities held at the TFIA that may be in conflict with the Licensor's administrative policies or procedures and agrees to furnish the Licensee with a copy of such rules, regulations, policies and procedures and any amendments thereto. Furthermore, no activities shall interfere with or jeopardize the day-to-day operations at the Central Disposal Facility in accordance with its permits.
 - b. The use of the Facilities shall be limited and related to the construction and operations of an RC Model Facility that will support RC model aircraft, including meetings, clinics, demonstrations and other uses necessary and incidental thereto as agreed to by all parties.
 - c. The Licensee will provide and administer adequate personnel to supervise all activities sponsored or sanctioned by the Licensee which take place at the TFIA. The Licensee shall have access to the air space designated on Exhibit A as the "Fly Area Boundary". Ground access is limited to Landing Field area and point of access shown on Exhibit A. Within the Landfill Expansion Area, the Licensee is authorized to retrieve aircraft that inadvertently lands outside of the Landing Field. For safety reasons, the Licensee should seek assistance and obtain permission from an available County employee to retrieve aircraft that lands within the Slurry Wall Landfill.

d. The Licensee will retain title to all personal property purchased by the Licensee and placed at the TFIA, unless otherwise agreed to by the parties. All personal property belonging to the Licensee will be marked in a manner consistent with the character of the property.

e. The Licensee shall not make any unlawful, immoral, improper or offensive use of the TFIA nor allow its members of said facilities to be utilized for any purpose other than that hereinabove set forth. Failure of the Licensee to comply with this provision shall be considered a material breach of the Agreement and subject same to immediate termination by the Licensor whereupon the Licensor shall be entitled to immediately reenter and retake possession of the facilities and terminate the Agreement.

f. Flight time schedules will be from 7:30am to 8:00pm Monday – Saturday and 8:00 am to 8:00pm Sunday or dusk whichever occurs first in accordance with the approved scheduled dates for use of the Facilities. A schedule of dates for the use of the Facilities will be coordinated and agreed upon in advance by the Licensee so as to avoid conflict between the Licensor's and Licensee's use. In scheduling use of the grounds, the Licensor shall have first priority; the Licensee and related activities shall have second priority; and all others shall have third priority. Each party agrees that it will provide the other party with information concerning any schedule changes for use of the Facilities as far in advance as possible. The Licensor shall have final approval.

g. In the event of a hurricane, the Licensor shall have the right to temporarily use all or a portion of the property for dealing with hurricane debris removal and cleanup. The debris may be brought to the property, allowed to sufficiently dry, then sorted and ultimately removed offsite for disposal. This use shall be under a standard of reasonableness and comply with all permitting requirements. The Facility will then be restored to its original condition.

h. The Licensee shall perform routine maintenance and cleaning of permitted storm water improvements not less than once per month and shall bear the cost of all such maintenance. Under no circumstances shall Licensee alter the existing surface water flow through the site without proper approval by the Solid Waste Department Director or designee following appropriate permitting.

i. The Licensee agrees to keep the property free and clear of any obstruction, rubbish and litter. The Licensee agrees to maintain the property in the manner and condition as previously maintained and return same to the Licensor upon termination or expiration in such condition, reasonable wear and tear expected.

3. Fees and charges.

a. The Licensee shall pay the COUNTY a sum of \$22.11 (twenty-two dollars and eleven cents) per acre per year for the use of the Property for the initial year. For the purpose of calculation, the area in use by the Licensee is two (2) acres. The rate is determined by multiplying the dollar value under the category for cash rent for improved pastureland for the Central region in the Florida Land Survey, as published by the University of Florida, Institute of Food and Agricultural Sciences. In the event such data is no longer published, the parties shall agree on another similar publication or method of determining the adjustment in the rent.

b. No fees or charges of any kind shall be levied by the Licensee for use of the facilities except such fees and charges as are reasonable and necessary for

the operation and maintenance of the facility and approved in advance by the Solid Waste Department Director or designee.

4. Improvements. The plans, specifications and location for all improvements, structures, landscaping and facilities made by the Licensee to the grounds shall be submitted to and approved by the Licensor or its duly authorized representative thereof, prior to the construction of or installation of such improvement, structure, landscaping, or facility. The Licensee will be responsible for all renovation and construction with prior approval by the Licensor before commencement of said construction. The Licensee is responsible for securing all permits and licenses pursuant to this Agreement and to otherwise comply with all applicable laws, ordinances, rules, regulations and polices established by the Licensor and any local, state or federal government unit or authority which apply to the location of the facilities. The Licensee shall ensure that no contractor which the Licensee may hire to perform any portion of construction, renovation, or repairs to the facilities shall be entitled to file any liens, mechanics or otherwise, against the facilities involved or Licensor's property to secure the contractor's interests or payments. Any contract which the Licensee signs or executes with a contractor shall include a provision in which the contractor waives the right to file any such liens and a provision which requires the contractor to include the same waiver by any subcontractors which the contractor may hire in the contract the contractor executes with the subcontractor. The Licensee will make all improvements at the expense of the Licensee and shall obtain prior approval of the Solid Waste Department Director or designee, and if deemed necessary, any jurisdictional agency prior to proceeding with the improvements. It is hereby mutually agreed and understood that all buildings and fixtures permanently attached to the property hereto shall likewise become and remain the property of the Licensor.
5. Repairs and Maintenance. The Licensee is responsible for keeping the TFIA around the buildings clean, free of litter or rubbish, and free of any obstacles that are generated by the Licensee. The Licensee is responsible for removal of garbage and waste from the facilities to appropriate exterior disposal areas, in accordance with applicable standards for garbage collection and disposal. The Licensee will cooperate fully with County officials in all matters relating to operations at the facilities, including reasonable access to the Licensee's facilities. The Licensee is responsible for the payment of all utilities, including electricity, water, telephone and repairs associated with the facility.
6. Right of Entry by Licensor: The Licensor or its agents may at any time enter in and on the referenced facilities for the purpose of inspection of same or performing such other duties as are required by the terms of this Agreement and the rules, regulations, ordinances and laws of any governmental body.
7. Indemnification: The Licensee shall indemnify and hold harmless the Licensor and its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the use, occupation, management or control of the Facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection with the activities performed by the Licensee or its members, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Licensee, or anyone directly or indirectly employed by the Licensee, a member or invitee of the Licensee, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by in part by a party indemnified hereunder. In any and all claims against the Licensor, or any of its agents or anyone directly or indirectly employed by

the Licensee, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the Licensee, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration has been exchanged for this provision.

8. Insurance: The Licensee, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

a. General Liability Insurance: General Liability Insurance issued by responsible insurance companies and in a form acceptable to the Licensor, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence and Fire damage liability insurance in the minimum amount of \$50,000 per occurrence.

b. Workers' Compensation Coverage: Full and complete Workers' Compensation coverage, as required by State of Florida law, shall be provided.

c. Insurance Certificates: The Licensee shall provide the Licensor with Certificate(s) of insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the Licensor. The certificates will be filed with the Brevard County Solid Waste Management Department, Attention: Director, 2725 Judge Fran Jamieson Way, Building A, Room 118, Viera, Florida 32940, prior to occupancy of the facilities. Said liability policies shall provide that the Licensor be an additional insured. The Licensor shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty days (30) prior to the effective date of said action.

All insurance policies shall be issued by responsible companies acceptable to the Licensor and licensed and authorized under the laws of the State of Florida.

9. Notice: Notice under this Agreement shall be given to the COUNTY by mailing written notice postage prepaid to:

Licensor:

Solid Waste Management Department
Euripides Rodriguez, Director
2725 Judge Fran Jamieson Way, Building A, Suite 118
Viera, Florida 32940

Licensee:

Indian River Kontrol Society, Inc.
Gerry Armstrong, President
443 Consolata Avenue NW
Palm Bay, FL 32907

10. Special Provisions:

A. The Licensor agrees to:

- a. Provide the Licensee with a chart of the Solid Waste Management Department with phone numbers of applicable staff.
- b. The Licensor will notify the Licensee of any large events to be held at the Facilities during the Licensee's use that might affect the Licensee's ability to conduct activities in a normal and safe manner. The Licensee agrees to give the Licensor a schedule of events at least six months in advance so the Licensor can schedule activities accordingly.

B. The Licensee agrees to:

- a. Pay all utilities monthly, as invoiced, which are attributed to the use by the Licensee.
- b. Provide maintenance of exclusive use structures as indicated in Paragraph 4 Repairs and Maintenance.
- c. Provide the Solid Waste Management Department with current telephone numbers of Licensee contacts.
- d. Be responsible for funding of the construction projects of a RC Model Facility as approved by the Licensor.
- e. Be responsible for the safety, supervision, proper training of all participants in Licensee activities and related Licensee per established procedures. Be responsible for the training and screening of all members to ensure that they are properly trained.
- f. Will provide adequate supervision for participants and spectators of the events sponsored by the Licensee during the term of this Agreement.
- g. Provide a monthly report of attendance and volunteer hours, due the 5th working day of following month.
- h. Obtain waivers of liability and certificates of insurance from all outside Licensees or individuals utilizing the Facilities.
- i. Pick up trash after use.
- j. The Licensee agrees to provide the Licensor with a copy of their rules and regulations for review and approval.

11. Term. The term of this Agreement, and the rights granted herein, shall be effective upon the date of execution of this License by the parties and shall continue for a period of ten

(10) years thereafter ("the Term"). The term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term that the License is revoked for any of the reasons stated in paragraph 12.

12. Revocation. This License, or the rights granted to Licensee, may be revoked or terminated by the Licensor before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee if:
 - a. Licensee violates any law, rule or regulation applicable to the Property, as promulgated by the State of Florida or any of its agencies; the Licensor; or any other governmental agency with jurisdiction; or
 - b. Licensee conduct any illegal activity on the Licensor's Property; or
 - c. Licensee enters upon or conduct activity upon the Licensor's Property for uses other than use of the TFIA for an RC Model Facility as described in this Agreement; or
 - d. Licensee violates any term, provision or condition of this Agreement; or
 - e. If, in the sole discretion of the Licensor, Licensee' continued use of the Property interferes with the Licensor's management of the Property.
13. No Recording. This License shall not be recorded in the official records of Brevard County, Florida by either party.
14. No Interest in the Property. This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the Licensor's Property.
15. Assignment. This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity.
16. Acceptance. This License Agreement constitutes the entire agreement between the Licensor and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.
17. Venue and Governing Law. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.
18. Counterparts. This License Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by email and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the

original Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this Agreement.

19. Attorney's Fees: In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.
20. Federal Tax ID Number: The Licensee shall provide to the Licensor their Federal Tax ID Number and current copy of Not-For-Profit Document.
21. Audit: In the performance of this Agreement, the Grantee shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the COUNTY and shall be retained by the Licensee for a period of five years (5) after termination of this Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.
22. Governing Law: This Agreement shall be deemed to have been executed and entered into within the State of Florida and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
23. Modification: No modification of this Agreement shall be binding on the Licensor the Licensee unless reduced to writing and signed by a duly authorized representative of the Licensor and the Licensee.
24. Venue: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
25. Severability: If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or enforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
26. Construction of Agreement: The parties hereby acknowledge that they fully reviewed this Agreement, its attachments, and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals on the day and year first written above.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Kristen Isnardi, Chair
As Approved by the Board on 10/22/19

Reviewed for legal form and content:



Christine Valliere, Assistant, County Attorney

WITNESS:

INDIAN RIVER KONTROL SOCIETY, INC.



Mauda Guppenberger

Gerry Armstrong, President

CENTRAL DISPOSAL FACILITY

