

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this ___ day of _____, 2020 (and is effective as of December 19, 2020), by and between the Indian River Mosquito Control District (hereinafter referred to as the "District"), organized and existing under the laws of the State of Florida, with its offices located at 5655 41st Street, Vero Beach, Florida, 32967 and Sherry L. Burroughs (hereinafter referred to as the "Employee" or "Executive Director" or "Director").

NOW THEREFORE, in consideration for the mutual covenants contained herein, the parties agree as follows:

I. Employment and Duties

A. **Employment Duties:** The District hereby agrees to employ Employee as Executive Director and Employee agrees to accept such employment, all subject to the terms and conditions set forth in this Agreement. The Employee shall report and be directly responsible to the District Board of Commissioners (hereinafter "District Board"). Unless otherwise provided herein, the Employee shall devote her full time as Executive Director and carry out to the best of her ability all duties imposed on her by the District charter, and rules and regulations as they now exist, or from time to time may be changed by the District Board, and such other duties as the District may from time to time require of her. Employee will be in active charge of the management and operation of the District, including the hiring, supervision, evaluation and discipline of all District employees subject to the applicable laws of the United States, the State of Florida, including Chapter 2006-344, Laws of Florida, as amended, and all rules and regulations of the District now in existence or as subsequently adopted, altered or amended by the District. As Executive Director, Employee will be required to represent the District in national, regional, state and local associations and organizations which the District Board determines are necessary and

desirable for Employee's continued professional participation, growth and advancement, and for the good of the District.

B. Individual District Commissioners: Individual Commissioners of the District Board shall not involve themselves in the day-to-day management of the District, including the administration of the employment policies of the District relating to hiring, evaluation, discipline, retention and supervision, unless otherwise specifically provided herein, or as specifically provided in the District Charter or rules and regulations now in existence or as may be subsequently altered, adopted or amended; provided, however, the Executive Director, shall in a timely manner, keep the District Board advised of all disciplinary actions involving significant personnel issues and all terminations of District employees which are involuntary. The Executive Director shall also advise the District Board of any and all demands for arbitration, administrative charges or litigation and keep the District Board updated as to the status of same. The District Board shall retain the sole and exclusive right to determine whether to settle (including the terms of any settlement) or contest any and all claims, or threatened claims involving the District, and employees acting within the scope of their authority as District employees, including those claims related to the District personnel rules and regulations, except when by official action, the District Board determines otherwise, or the law otherwise provides.

II. Term

A. The term of employment under this Agreement will commence on December 19, 2020 and end on January 9, 2026, unless earlier terminated by either party as provided in Paragraph VII below (“Initial term”). Thereafter, this Agreement shall automatically renew for periods of one year (“Renewal term”) unless either party gives the other written notice, as provided in paragraph VIII, of its intention not to renew this Agreement for an additional

one-year term of not less than Ninety (90) days prior to the end of the Initial Term or any Renewal Term. As used herein, "Term" shall refer to the Initial Term and each Renewal Term, which, in each instance, is subject to termination in accordance with Paragraph VII.

- B. The first One Hundred and Eighty (180) days of the Employee's employment under this Agreement shall constitute a period of probation during which the District Board shall have the opportunity to assess the suitability of the Employee's performance and conduct (the "Probation Period"). At any time during the Probation Period, the District Board may terminate the Employee's employment under this Agreement, on the grounds of unsuitability for the position. In the event the Employee does not successfully pass the Probation Period due to unsuitability, the Employee shall be returned to her previously held position.

III. Compensation and Benefits

- A. The District will pay Employee for all services rendered and performed hereunder, and for all hours worked, a salary of One Hundred Twenty-nine Thousand, Nine Hundred Seventy-nine and 00/100 Dollars (\$129,979.00) per annum, paid in equal installments according to the District's regular pay practices at the time for all other employees, currently bi-weekly (26 pay periods per annum), except that the Employee's salary during the Probation Period shall be \$10,444.50 per month.
- B. Beginning in calendar year 2021, Employee's job performance will be reviewed and evaluated by the District Board annually, on or before October 1st of each year. Employee's review and evaluation shall be in accordance with specific criteria to be determined by the District Board prior to September 2021. Said criteria may be amended from time to time. Each Commissioner shall meet with the Employee individually to discuss his or her evaluation of the Employee.
- C. Other reviews may be conducted at the discretion of the District Board. Employee will be

considered for yearly merit increases in conjunction with Employee's yearly evaluations at the sole and absolute discretion of the District Board. The District Board will endeavor to provide merit increases to Employee in the same percentage range as other employees with similar performance review results. Any pay increases must be approved by the District Board.

IV. Fringe Benefits

- A. **Generally**: Employee shall be eligible for all fringe benefits provided to other employees of the District on the same basis and under the same conditions as provided to other employees of the District, except as otherwise provided herein, in the District Rules, Regulations or Personnel Manual, or unless the Employee and District Board mutually agree otherwise. Such benefits include, but are not limited to, health, vision, and dental insurance, life insurance, paid vacation, holidays and sick leave.
- B. **Vacation Leave**: Employee will be deemed to have 12 years of employment in accordance with the District's Vacation Leave Policy, which entitles Employee to accrue a total of 20 days of vacation leave per year and payment of accumulated vacation leave upon retirement, termination of employment other than cause, or death.
- C. **Vehicle Use**: In order to contribute to the efficiency and effectiveness of the District, Employee will be assigned a Permanent Overnight Vehicle that may be driven to and from the Employee's home and work site in accordance with the District's Vehicle Use Policy.
- D. **Equipment**: The District will furnish Employee a District cellular telephone, with email capability, which shall be promptly returned at Employee's separation from employment. Employee shall be permitted reasonable use of the District provided cellular phone for personal reasons, consistent with the cellular plan adopted by the District. The District reserves the right to inspect and search the phone at any time.

E. **Dues and Subscriptions:** Subject to presentation of proper receipts or invoices, the District agrees to budget and to pay for the professional dues per fiscal year as necessary for Employee's continuation and full participation in national, regional, state and local associations and organizations which the District Board determines are necessary and desirable for Employee's continued professional participation, growth and advancement, and for the good of the District. Additionally, the District may pay for other memberships and subscriptions on behalf of the Employee, in its exclusive discretion, if approved in advance by the district Board.

F. **Travel:**

(1) In the event Employee is required to travel out of the District for work performed for the District or performed on behalf of the District, travel and per diem expenses shall be paid in accordance with Section 112.061, *Florida Statutes*, except that mileage shall not be reimbursed.

(2) The District hereby agrees to budget and to pay the registration fees, travel and per diem expenses consistent with subparagraph 1 for meetings, seminars and short courses attended by the Employee, for the benefit of the District.

G. **Retirement Benefits:** Employee will be entitled to retirement benefits under the Florida Retirement System (FRS). Employee will be enrolled in the Senior Management Service Class of the FRS in accordance with FRS rules and regulations. Employee will also be eligible to participate in the District's Deferred Compensation 457(b) Plan.

V. **Extent of Services and Hours of Work**

A. Except during periods of paid time off ("PTO"), Employee will devote her best efforts to the performance of her duties and responsibilities under this Agreement. Nothing herein

will limit Employee's right to make passive investments; to participate in charitable service and organizations, other community activities and trade and professional organizations; or to undertake other activities which do not interfere with the performance of her duties hereunder. It is mutually agreed that Employee's participation in charitable service, other community activities, and trade and professional organization should be to the benefit of the District. Employee shall not otherwise be employed elsewhere on a full or part-time basis without the written permission of the District Board.

- B. Employee agrees to make herself available as needed for the proper direction of the District. It is recognized the Employee's duties as Executive Director require a great deal of time outside of normal office hours. It is also recognized that Employee is required to devote an unspecified amount of time and energy to carry out those duties with the highest amount of professionalism possible and that interference with her private life is to be expected.

VI. Indemnification and Cooperation

- A. The District shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's duties as Executive Director, and for which Employee was acting within the scope of her authority and employment as Executive Director, subject to applicable law.
- B. In the event of actual or threatened litigation and/or administrative proceedings involving the District which arise out of the operation or actions which occurred or are alleged to have occurred while Employee was the Executive Director of the District, Employee will cooperate with the District and its counsel in assisting the District in every legal matter to prevail in said action. The District shall pay Employee's reasonable travel expenses and subsistence expenses

incurred away from her home incurred in preparation for and actual discovery, settlement and trial of said matters.

- C. Employee further agrees that unless required by law, she will not cooperate with or assist any party, person or entity who has, had or may have, or asserts that she has or may have any claim of any nature against the District, its agents, officers, employees, without the express written permission of the District, or its designee.
- D. Employee shall not disclose any confidential information involving the business of the District to any person or entity without the written permission of the District Board, or its designee, unless required to do so by law. Nothing herein shall prohibit Employee from discussing the terms of this agreement or complying with Florida's Public Records law.
- E. Restrictions set forth in subparagraph C and D above shall not apply in instances of governmental entities with jurisdiction over a claim of a violation of law.

VII. **Termination**

- A. **Voluntary termination:** Employee may voluntarily terminate her employment at any time upon at least Ninety (90) days written notice to the Board in which case the Employee shall receive only her compensation, and employee fringe benefits accrued up to the date of her termination. Should Employee voluntarily terminate her employment:
 - (1) Employee shall not receive severance pay. However, in the event Employee provides at least Ninety (90) days written notice prior to her resignation date, the Board, in its sole discretion, may permit the Employee to use her unused accrued leave after receiving notice of her resignation, provided such use does not unduly disrupt the operations or the business of the District.
 - (2) This Agreement, except for paragraphs VI. B., VI. C, and VI. D. (which shall remain in force and effect for as long as the law allows), shall be automatically

terminated, and except as to those paragraphs that continue in effect, neither Employee nor the District shall have any further obligation one to the other under this Agreement or otherwise.

B. Involuntary Termination:

- (1) Subject to the procedures set forth below, the District Board may immediately terminate this Agreement at any time for cause subject to the approval of a super majority of District Board members. The District Board may terminate this Agreement at any time without cause upon sixty (60) days written notice to Employee subject to the unanimous approval of the District Board members.
- (2) In the event Employee is involuntarily terminated without cause during the term of this Agreement, including non-renewal of this Agreement by the District, she shall receive severance pay under the conditions set forth in subparagraphs 2(a) – (e) below. Severance, if any, will be paid in equal installments pursuant to District's normal payroll cycle. A unanimous vote of the District Board to offer the opportunity to voluntarily resign in lieu of involuntary termination, shall be considered an involuntary termination without cause under and subject to the following conditions:
 - (a) Severance shall be equal to 20 weeks of Employee's salary based on salary paid Employee as of the date of termination.
 - (b) During the severance period the Employee will be responsible for 100% of the premium payments for all benefits provided by the District, including group medical insurance. Employee may make a timely election to continue coverage under COBRA.
 - (c) Employee must comply with paragraphs VI. B. through VI. D. of the Employment Agreement (Confidentiality and Cooperation) to receive

severance pay.

- (d) Upon termination of the Agreement, neither Employee nor the District shall have any obligation one to the other except as set forth in paragraph VI. B through VI. D.
 - (e) As a condition of receiving severance pay as provided for herein, Employee shall execute a full and final release to all officers, directors, Commissioners, District, employees and representatives of any and all rights she has, had or may have arising out of her employment or the cessation thereof under this Agreement and all applicable federal, state and local laws, including, but not limited to, claims of illegal discrimination, retaliation, harassment, intentional and unintentional torts, breach of contract, and all other types of claims whether known or unknown through the date of her termination. This provision is subject to all applicable requirements of municipal, county, state and federal law. Additionally, this provision shall be deemed void to the extent it is prohibited by applicable law.
- (3) The District shall have no obligation to pay any severance as set forth in paragraph (2) hereunder, unless otherwise required by law, if Employee is terminated for cause, which shall be defined as:
- (a) Dishonesty with respect to the business and operation of the District as substantiated by appropriate documented evidence.
 - (b) Violation of the District drug-free workplace policy.
 - (c) Refusal to cooperate in an investigation involving any aspect of the business or operation of the District conducted by or at the direction of the District.
 - (d) Conviction or pleading guilty or nolo contendere to a felony or crime involving

moral turpitude.

- (e) Gross neglect or willful or intentional misconduct by Employee.
- (f) Failure or neglect to perform the Employee's duties, as set forth in Section I. A. and such failure or neglect goes uncured for a period of thirty (30) days after written notice specifying the nature of the failure is given by the District.
- (g) Failure to obey reasonable and lawful orders given by the District and such failure goes uncured for a period of 30 days after written notice specifying the nature of the failure is given by the District.
- (h) Misappropriation of District funds.
- (i) Securing or attempting to secure personal profit in connection with official District business.
- (j) Material misrepresentation to the District as substantiated by appropriate documented evidence.
- (k) Commission of an act involving moral turpitude, theft, unethical business practices, or conduct that impairs the reputation of the District.
- (l) Any other act of misconduct as listed in Fla. Stat. 443.036(29)(a) through (e).
- (m) Any other conduct that interferes with the regular operation of the District, impedes the District's ability to perform its duties efficiently, or impairs harmony among its employees.

In addition to the above items (f) and (g) that provide for an opportunity to cure, Employee may be permitted the opportunity to cure any other violations as described in (a) through (m) above as the District Board may permit in its sole discretion.

- (4) Except as may otherwise be required by law, in the event Employee is charged with a felony or crime involving moral turpitude, the District shall have no

obligation to pay Employee severance under paragraph VII. B. (2), unless and until a judgment of acquittal is entered by the Court or the matter is otherwise dismissed.

(5) If, in the opinion of the District, Employee, because of physical or mental illness or incapacity, becomes unable to perform the essential functions of her position, with or without reasonable accommodation, and after exhaustion of any available leave, the District may terminate this Agreement. A termination under this paragraph will operate as an involuntary termination without cause under Paragraph VII. B. (2).

(6) In the event of Employee's death during the term of this Agreement, Employee's salary and benefits owing to Employee through the date of Employee's death shall be paid to her estate. Employee's estate will not be entitled to any other compensation under this Agreement.

VIII. **Notice and Consent.** Any written or other notice required by this Agreement shall be deemed delivered as follows:

A. As to the District, when delivered by personal service or by Certified or Registered Mail to the Chairman of the District Board at the offices during the regular business hours of the District, said delivery to be verified by an executed Certified or Registered Mail receipt.

B. As to Employee, by personal service to her or via Certified or Registered Mail to her at the most recent mailing address set forth in the District's personnel records.

IX. **Miscellaneous**

A. The District Rules and Regulations and Personnel Manual, as they now exist or as they may be later modified by the District Board, shall apply to Employee as provided

therein, except when inconsistent with this Agreement or applicable law, in which case this Agreement and applicable law will govern and control.

- C. This Agreement shall be interpreted, construed and governed according to the laws of the State of Florida, with venue in Indian River County, Florida. In the event of litigation to enforce this Agreement, each party will pay its own attorney's fees and costs. No amendment or variation of the terms and conditions of this Agreement shall be valid unless in writing and signed by the parties.
- D. The Employee's rights and obligations under this Agreement are personal and are not assignable.
- E. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- F. This Agreement supersedes any and all other understandings or agreements, whether written or oral, with respect to its subject matter, and constitutes the complete and full agreement between the parties, and may be modified only by the written agreement of Employee and the District Board.

**INDIAN RIVER MOSQUITO
CONTROL DISTRICT**

EMPLOYEE

By: _____
Tom Lowther - Chairman

Sherry L. Burroughs - Employee

Dated: _____

Dated: _____

Attest: _____

Dated: _____

DRAFT