



REGULAR TOWN COUNCIL MEETING

Monday, January 3, 2022 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE
2. ROLL CALL
3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES
4. CONSENT AGENDA

- a. **Approve Minutes of 12/06/2021**

Exhibit: Agenda Report Number 4a

Attachments:

- **Agenda Report Number 4a** (Agenda_Report_Number_4a.pdf)

- b. **Cancel RTCM of 01/17/2022**

Exhibit: Agenda Report Number 4b

Attachments:

- **Agenda Report Number 4b** (Agenda_Report_Number_4b.pdf)

- c. **Set American Rescue Plan Workshop on 01/24/2022 @ 7:00 PM**

Exhibit: Agenda Report Number 4c

Attachments:

- **Agenda Report Number 4c** (Agenda_Report_Number_4c.pdf)

5. **ATTORNEY REPORT**

6. **BCSO REPORT**

Exhibit: Agenda Report Number 6

Attachments:

- **Agenda Report Number 6** (Agenda_Report_Number_6.pdf)

7. **BOARD / COMMITTEE REPORTS**

- a. **T&G Committee**
- b. **Park & Recreation Board**
- c. **Planning & Zoning Board**

8. **STAFF REPORTS**

- a. **Manager Matt Stinnett**

- b. Special Projects Manager Lisa Morrell**
- c. Fire Chief**
- d. Public Works Director - Written Report**
- e. Clerk**

9. PUBLIC COMMENTS

Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS / SPECIAL ORDERS

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

- a. Presentation by Mike Knight, Project Manager of Environmentally Endangered Lands (EEL) Program regarding Restoration Project planned for Malabar Scrub Sanctuary**

Exhibit: Agenda Report Number 11a

Attachments:

- **Agenda Report Number 11a** (Agenda_Report_Number_11a.pdf)

- b. Recommendation from Parks and Recreation Board: Port-a-potty**

Exhibit: Agenda Report Number 11b

Attachments:

- **Agenda Report Number 11b** (Agenda_Report_Number_11b.pdf)

12. ACTION ITEMS

ORDINANCES:

RESOLUTIONS:

MISCELLANEOUS:

- a. Ordinance 2022-01**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REPEALING AND REPLACING ORDINANCE 2014-02 IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES PERTAINING TO THE GRANTING OF EXCLUSIVE SOLID WASTE AND RECYCLING MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO OF FLORIDA, INCORPORATED; AMENDING SECTION 2 OF CONTRACT AGREEMENT TO PROVIDE FOR THE TERM OF FRANCHISE AND FRANCHISE FEE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

- **Agenda Report Number 12a** (Agenda_Report_Number_12a.pdf)

b. Resolution 01-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR THE IMPLEMENTATION OF PERFORMANCE MEASURES FOR COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS: Waste Pro Flyer

(2) Vacancies on the Trails and Greenways Committee

Attachments:

- **Agenda Report Number 16** (Agenda_Report_Number_16.pdf)

17. ADJOURNMENT

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.
Meeting Date: January 03, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Meeting Minutes on Consent Agenda

BACKGROUND/HISTORY:

Summary of Council actions at the Town Council Regular Meeting Minutes

ATTACHMENTS:

- Draft Minutes of RTCM Minutes of 12/06/2021

ACTION OPTIONS:

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
DECEMBER 06, 2021, 7:00 PM (immediately following tree lighting)**

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:00 pm. CM Vail led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL
	DAVID SCARDINO
	MARY HOFMEISTER
TOWN MANAGER: (ITM)	LISA MORRELL, Excused
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN
DEPUTY TOWN CLERK/TREASURER:	RICHARD W. KOHLER

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: None

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 11/15/2021

4.b. 2022 Holiday Schedule

4.c. 2021 Holiday Schedule

4.d. Piggyback for Verizon

4.e. Cancel RTCM 12/20/2021

4.f. Approve re-decking bridge at MCP

MOTION: CM Vail / CM Acquaviva to approve. Vote: All Ayes. 5-0

5. ATTORNEY REPORT: None

6. BCSO REPORT: none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Committee Chair Thompson – Mayor said he was running late and would report later in the meeting.

7.b. Park & Recreation Board: Chair Eric Bienvenu – Present but no report

7.c. P&Z Board: Chair Wayne Abare - none

8. STAFF REPORTS:

8.a. Town Manager – ITM Morrell provided written report in packet.

8.b. Special Projects Manager – Ms. Morrell, SPM, provided a written report in packet.

8.c. Fire Chief: Chief Foley – Provided written report.

8.d. PW Director – Provided written report.

8.e. Clerk – Provided information about latest improvements. All three open positions for Town staffing have now been filled. MEO, Driver Engineer and Administrative Asst in Clerk's office have accepted employment offers and gone through the onboarding process.

Flags are at half-staff due to the remembrance of the attack on the Pensacola Naval Air Station two years ago. Tomorrow it will be down in remembrance of Pearl Harbor Day 80 years ago. In addition, the flags will remain at half-staff until December 9 in honor of Senator Bob Dole who died Sunday.

Deputy Clerk/Treasurer Kohler gave his report on the status of his certification as Certified Municipal Clerk – January he will have met the two-year requirement of membership into the International Institute of Municipal Clerks, and he submit his application for certification as a Certified Municipal

Clerk. He has attended conferences, seminars, and webinars for educational points toward this certification.

9. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)
Five (5) Minute Limit per Speaker.

10. PUBLIC HEARINGS: 0

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 0

12. ACTION ITEMS:
ORDINANCES for FIRST READING: 0
RESOLUTIONS: 0
MISCELLANEOUS: 0

Chair requested Attorney to stay through next item.

13. DISCUSSION / POSSIBLE ACTION:

13.a. EEL program plan to do Tree Removal / Land Clearing at Jordan and Malabar Scrub Sanctuaries

Exhibit: Agenda Report No. 13.a.

Mayor asked Clerk to do intro: Franklin said this came to our attention last week and required urgent action. We noticed the signage stating there would be work on the Malabar Scrub starting 12/1/2021. That is what put the urgency to the matter. We are happy to report that we contacted the Environmentally Endangered Lands (EEL) Program Director and held a Zoom meeting and had success in achieving the pause to the project. We are asking for no action at this time other than to pursue continued communication and coordination with the EEL program plan for management of these environmentally sensitive lands owned by the State and purchased for conservation purposes. We are satisfied with the pause in the project until public input is received. Program Director Mike Knight will be presenting to Council on January 3 on the proposed plan, and we will all have more information about the possibility of transitioning management over to the Town for at least the Malabar Scrub Sanctuary. We are asking for direction from Council to gather information and do research on the possibility of transitioning the management of the Malabar Scrub Sanctuary to Malabar from the EELs as suggested by the Brevard Cty Commission's P&Z meeting of 12/2/2021. We are asking for direction to review the legal aspects on amending our Codes to include specifically how our codes could impact conservation land within Malabar jurisdiction. That would require legal input with review on the authority having jurisdiction. We have historical documentation of coordination with the County Commission and the EEL program on requesting and issuing permits whether they were legally required or not – cooperation and coordination.

Open to Public with Speaker's cards:

Sue Hann – thanked Council for having this discussion. They bought here 28 years ago because of the trails. They were there before the EELs program and continued there after the program was approved. It is an economic driver for the Town. It is important public policy to work together; user groups, stake holders, taxpayers, and the Town government with the County. The original purpose of purchasing the conservation lands was intended for both public passive recreation use and conservation. She doesn't want those parties to be combatants – rather work as collaborative partners. Preserve the property and allow it to be used in passive recreation. Find areas where we agree and work on those areas where we

need compromise. We can do a better job. Thanked staff for being responsible stewards of the Town and bringing this to the attention of Council and achieving the pause on the project.

Murray Hann thanked Council for the opportunity to speak. The last thing the Brevard Mountain Bike Association (BMBA) wanted to be seen as is villains. We want to build and maintain boardwalks and trails. We have been down that road before of non-cooperation. Ten years ago, we reached a compromise after a similar plan was enacted. It is important to realize the purpose of the original plan approved by the voters. You used to be able to ride the trails through the original Malabar Scrub Sanctuary (original 395 acres) and remain entirely in the shade. It had more scrub jays then than now. He doesn't understand the whole transition to the focus on scrub jays. Even the County referred to the land incorrectly – it is not Malabar scrub jay sanctuary it is the Malabar Scrub Sanctuary for the scrub conservation. He sits on the Recreational Educational Advisory Committee (REAC) for the Selection and Management Committee (SMC) for the EEL program. He has missed no meetings, but the huge restoration project done on Jordon Scrub was not on a recent agenda - to say that the trail remains is true but if you must put in more signposts along it because it has been so cleared it is difficult to see the trail. That is what they are worried about – it is happening again. Is it all going to be like the Jordan Scrub? They are ready to sit at table and reach a compromise.

Brandi Julin represents the property owner at the north end of Corey Road and abuts some of this land. They are here to get more information. She learned a lot from the introduction by Franklin. She would like to see more communication with the public to get information out to the impacted neighbors.

Back to Council.

CM Rivet agreed with what the Hann's have stated. The bond referendum money was approved to support passive recreation and preserve the environment. Let's work together. He looks forward to us working together. CM Acquaviva was for the conservation land being purchased for the benefit of future generations. She does not support being combative; because it is for conservation there should be a compromise. CM Scardino said what about the other lands. He asked when staff found out about the clearing of the 700 acres of Jordan Scrub? Franklin stated last week. CM Scardino asked when the work was done – Franklin said in May.

CM Vail has known these lands since 1970's. Thought we would manage the lands in such a way, and it would be preserved to protect native habitat when it was on the ballot. He understands there is some science to the need for special habitat for the scrub jay bird. Need to gather more information. Supports the pause in the project; need to have Malabar input as it is literally in our back yards. And we are also financing its management through tax dollars to the EEL line item on all of our tax bills. Reiterated all parties need to communicate better. They are tasked with the management, but we live next to it. CM Hofmeister said we were all surprised by this occurrence.

CM Scardino said the email from ITM Lisa to Mr. Knight last February stated the concern of Council on any tree removal, and they went ahead and cleared Jordan Scrub without permitting.

CM Rivet said we have seen a way to quickly lose support in this program. He said it appears to have been a concerted effort to proceed so it would be too late to do anything about the project. He hopes we are not going backwards but watching the video and listening the audio the comment "done too good a job of providing information" stands out. CM Vail said we don't collect any property tax money on the protected land but before it was

purchased by the State it could have been developed into residential development and brought it much tax money. He is glad they have this set aside for conservation and passive recreation but what other municipality can state that 20% of their jurisdiction is set aside and off the tax bill? They are one of nine municipalities designated by the State as a Trail Town.

Mayor read the proposed motion:

MOTION: CM Rivet / CM Vail to direct staff to send a thank you letter for pausing the EEL's proposed project from the Mayor to the EEL Program Mgr. Mike Knight and a commitment to work together to get information to the public for input.

Vote: All Ayes.

MOTION: CM Vail / CM Scardino to direct staff to review the potential of Malabar managing the property. **Vote: All Ayes.**

MOTION: CM Acquaviva / CM Hofmeister to direct staff to investigate further amendments to the code for tree removal and land clearing within conservation land. **Vote: All Ayes.**

CM Scardino would like background information on what studies were done before clearing Jordan Scrub. Who was hired to log and how much did they get for the trees? That information should come from future communications with the EELs.

CM Scardino said again we are reactive instead of proactive, using the clearing of 700 acres of Jordan Scrub as an example. We need to have a part-time code compliance person driving throughout Town. CM Vail said it could be a function of T&G. Atty advised against having volunteers doing this work. Can't make anonymous complaints and need to follow protocols.

T&G Chair Drew Thompson said we could observe things that don't seem right and report.

Mayor allowed T&G Chair Drew Thompson to give a delayed presentation: he will go through Power Point at Jan 3 meeting. They are looking at this current situation as a crisis. Can't see trees for woods. We are envisioning EELs that key initiative. It is a scrub sanctuary and has native habitats. We need to hold them back to original approved plan as a conservation area to preserve native habitat and provide for passive recreation. The T&G looks at this as the essence of the Town. They are a Trail Town. If the big trees come down to make into scrub habitat. Need to look at compromise.

14. PUBLIC COMMENTS: General Items (Speaker Card Required) None:

Eric Jones: Wanted to get information about the increase in the WM bill. He spoke with Denine, and she said there was a contract change. He asked why did some get a high bill and not others? Mayor directed Franklin to respond.

Franklin gave the explanation. WM notified Malabar council of their intent to not continue the 21-year contract for services. We had 60 days left on the first 7-year cycle. We tried to piggyback on Grant Valkaria franchise with Waste Pro, but they couldn't provide the service for the same amount as G-V residents are paying. We had to go out for Request for Proposal (RFP). WM submitted a "no bid" citing insufficient time to prepare a bid; Republic submitted a proposal that offered once a week trash service and a limit of one cubic yard of yard waste which would not work in Malabar. The last proposal was from Waste Pro, and they offered the same level of service at 43.50/month. We are working on the transition plan now. Because of the short notice we had to request an extension from WM to provide service through the end of the year. Once all the details are finalized, we will get the word out to our residents on when WM will pick up their totes and when Waste Pro will be

delivering. ITM Lisa has suggested using door hangers to provide info to all residents if necessary.

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: beautiful tree lighting and good turnout. Decorations were beautiful.

CM Vail: none

CM Rivet: none

CM Hofmeister: none

CM Scardino: none

Mayor Reilly: none

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 7:50 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin, C.M.C.
Town Clerk/Treasurer

Date Approved: 01/03/2022

DRAFT

4.6.

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, JANUARY 17, 2022, 7:30 PM**

2725 MALABAR ROAD, MALABAR, FLORIDA

AGENDA

1. **CALL TO ORDER, PRAYER AND PLEDGE**
2. **ROLL CALL**
3. **ACTION:**
4. **ADJOURNMENT:**

CANCELLED

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not Provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

4.c.

**TOWN OF MALABAR
TOWN COUNCIL WORKSHOP MEETING
MONDAY, JANUARY 24, 2022, 7:00 PM**

2725 MALABAR ROAD, MALABAR, FLORIDA

AGENDA

- 1. CALL TO ORDER, PRAYER AND PLEDGE**
- 2. ROLL CALL**
- 3. WORKSHOP ITEM: Discuss Potential Projects for American Rescue Plan Funding**
- 4. ADJOURNMENT:**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not Provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

Malabar-November 2021

Agenda
Item #6

Call Type	Call Count
73	338
911 Hangup	3
911 Misdial	13
911 Open Line	3
Alarm Business	4
Alarm Residence	2
Animal Complaint	2
AOA	5
Assist Citizen	2
Assist Motorist/Disabled Vehicle	12
ATC	4
Baker Act	2
Battery	1
Burglary	1
Civil Matter	3
Crash Hit & Run	1
Disturbance	7
Fire	1
Fraud/Forgery	3
Information	2
Injured/Ill Person	1
Intoxicated Person	1
Patrol Area Ag Marine	1
Patrol Area Business	48
Patrol Area Park	11
Patrol Area Residence	113
Phone Call Obscene/Threat/Harass	1
Property Found	1
Reckless Driving	13
Search Vehicle	1
Special Detail Off Duty	2
Standby-Keep Peace/Pickup Belong	1
Suicide Threat	1
Suspicious Incident	6
Suspicious Person	4
Suspicious Vehicle	9
Theft	1
Traffic Complaint	2
Traffic Enforcement	3
Traffic Obstruction On Roadway	3
TS	41
Weapon Drawn-Taser	1
73_	1
Information	1
GRAND TOTAL	339

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.a.

Meeting Date: January 3, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Presentation by Mike Knight re: EEL Restoration Plan for Malabar Scrub Sanctuary

BACKGROUND/HISTORY:

We learned of the upcoming project plan during the Thanksgiving break when we received multiple calls regarding the new signage at the Malabar Scrub Sanctuary entrance off Briar Creek Blvd. ITM Lisa arranged a conference call between us and Mr. Knight and succeeded in getting the project paused until more public information was provided. He provided information about an upcoming Zoom webinar on Dec 9 that the public could participate in as well as the next SMC meeting would be via Zoom for public input. We were pleased with the level of cooperation we received.

On Dec 2 the Brevard County Commission sat as the Planning and Zoning Board and discussed the management of this Sanctuary after a motion was made by CC Tobia to turn over the Management of the Malabar Scrub Sanctuary East and West to the Town.

At the Malabar Council meeting of Dec 6 staff updated Council and asked for direction to investigate the current management plan, the possibility of Malabar handling the management of this State-owned land, the ability to amending the Code to specifically address how conservation land is governed. Council directed information gathering by staff and asked the Town Attorney to look at the land clearing, site plan regulations and tree removal codes to see if we could amend them to address conservation land.

Town Staff attended the informational Zoom meeting on Dec 9 and provided a summary of the discussion to Council.

Town Staff also attended the Selection and Management Committee (SMC) meeting on Dec 17 via Zoom meeting platform where the public could participate in the discussion of how to move forward in the management of this Sanctuary. ITM Lisa submitted a summary via email to Council on that meeting.

As a follow-up to the Council meeting of December 6, 2021, the EEL Program Manager, Mr. Mike Knight, offered to make a presentation to the Malabar Town Council on the clearing plans for the Malabar Scrub Sanctuary at this meeting.

ATTACHMENTS: Presentation

ACTION OPTIONS: Council Consideration on having the EEL Management provide a scope of work and site plan prior to beginning the project and the Town will issue a "no fee" permit for such work. Also consider a request to the County Commission to renew our previous commitment to collaboration and communication when the Management Plans for the State-owned conservation lands are being amended.

Malabar Scrub Nature Sanctuary Scrub Habitat Restoration Project Public Forum

January 18, 2022 – 6:30pm



A public forum to gather public input on the scrub habitat restoration plan at the Malabar Scrub Sanctuary will be held on Tuesday, January 18th at 6:30 p.m. at the EEL Program Office, 91 East Drive, Melbourne 32904.

Members of the public may also participate in the meeting through an online Zoom webinar.

[Zoom Webinar](#)

Or One tap mobile :

US: +13126266799,,85680193643# or +19292056099,,85680193643#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833
or +1 253 215 8782

Webinar ID: 856 8019 3643

[International Numbers Available](#)

The planned restoration will improve the habitat conditions within the nature sanctuary for the Florida Scrub Jay, Gopher Tortoise and other scrub species. The project will also improve conditions with the adjacent pine flatwoods ecosystem.

For more information contact Mike Knight 321-255-4466 or mike.knight@brevardfl.gov

MAP LEGEND

Shaded area = Restoration project Boundary. Restoration will include pine tree thinning to achieve approximately 1 to 2 pine trees per acre; reducing cabbage palm density and reducing scrub vegetation height to less than 6ft.

Blue line = Existing trail

Red line = Areas along trail with a greater overstory where larger oak trees and cabbage palms will be removed and pine trees will be thinned to a greater spacing. Oaks and pine trees with flagging tape will remain standing.

Yellow line = Areas along trail with less overstory and tree removal will be minimal.

*Portions of trails may be closed temporarily for safety reasons during the restoration project.

Tree Density Reduction in Florida Scrub-Jay Habitat at Malabar Scrub Sanctuary

The EEL Program will be furthering its efforts to improve the habitat conditions for the Florida Scrub-Jay at the Malabar Scrub Sanctuary. This work will involve the removal of trees where habitat conditions are not suitable to support scrub-jay populations. The Florida Scrub-Jay requires an open landscape of low scrub-oak vegetation and reasonably open adjacent pine flatwoods in order to maintain food resources and breeding success.

The Florida Fish and Wildlife Conservation Commission consider Florida scrub-jays an umbrella species because its habitat requirements benefit a large suite of scrub-dependent species. Florida scrub-jays have been declining throughout the species' range as most habitat has become too fragmented to support long-term viability and are listed as threatened under the U.S. Endangered Species Act (U.S. Fish and Wildlife Service 2007). The Brevard County Environmentally Endangered Lands (EEL) Program plans to prioritize resources and efforts to improve its largest scrub-jay populations and contiguous habitat with the highest probability of recovery success, while still dedicating resources to areas with smaller populations and a lower probability of success which will still benefit the variety of other species dependent upon scrub habitat.

According to the Florida Fish and Wildlife Conservation Commission's Scrub Management Guidelines for Peninsular Florida, optimal Florida scrub-jay habitat contains less than one tree greater than 15 feet per acre. Additionally, it is recommended to maintain a 1,000-foot non-forested (<1 tree per acre) buffer between scrub-jay territories and forest edges.

One of the concerns is the predation of scrub-jays by raptors. By thinning the trees within the scrub and adjacent 1,000ft buffer we are reducing ambush points for raptors while also providing a more open landscape to allow the scrub-jays to better detect prey. Scrub jays by nature are not agile fliers and are always at risk of predation from raptors such as the Cooper's Hawk. When scrub jay territories have high tree densities, Cooper's hawks and other raptors can easily hide and prey on the population making it difficult for families to achieve reproductive success and maintain a stable population. This is even more important now since most scrub habitat is limited to small and isolated sites within their range. Scrub jays have developed a sentinel system where individual family members carefully watch the surrounding area for predators while the rest of the family forage for food. Adequately alerting the family members to the presence of raptors and other ground dwelling predators such as snakes, bobcats, and domestic cats is much more difficult when trees are prevalent and understory

vegetation is overgrown. Under natural conditions where regular fire cycles kept the scrub maintained, the vegetation would not become overgrown like it is today.

The current tree densities in potential scrub-jay territories on Micco, Jordan, Malabar, and Valkaria Scrub Sanctuaries far exceed Florida's scrub management guidelines. Initial effort has been made to reduce tree densities through burning, but fire alone has not been effective in meeting this guideline. As adjacent Florida scrub-jay habitat is being developed, tree reduction in scrub and scrubby flatwoods is imperative to provide optimal habitat within species dispersal distances. By further reducing tree densities mechanically, and continuing ongoing burning operations, we anticipate being able to maximize our ability to maintain optimal habitat conditions and expand population size.

Utilizing decades of population census data throughout Brevard County, a Population Viability Analysis (or P.V.A.) model, developed by Dr. Robert Lacy and local experts, identified specific population goals to avoid local extinctions of the Florida scrub-jay. This modeling identified that without immigration amongst these isolated metapopulations, 70% or more of the potential habitat should be maintained in optimal condition with at least 100 potential territories available. These 100 territories can be an interconnected set of local populations allowing genetic exchange amongst them, assuming dispersal amongst them is possible. Based on this modeling, managing potential territories within these parameters ensures stable populations for 100 years. In current conditions, this P.V.A. model identifies some of our populations becoming locally extinct in as little as 20 years.

The subpopulation of Florida scrub-jays located on the Jordan, Malabar, and Valkaria Scrub Sanctuaries currently support 25-27 groups while there are 76 potential territories. Similarly, the Micco Scrub Sanctuary and neighboring conservation lands currently support a subpopulation of 9 families, while having the potential to support 23 (Breininger et al. 2006). Amongst this metapopulation of South and Central Mainland Brevard there are 242 potential scrub-jay territories with varying degrees of connectivity. In addition to this large potential core population in southern Brevard, there are many potential support populations throughout the remainder of the County. Helen & Allen Cruikshank Sanctuary, Scottsmoor Flatwoods Sanctuary, North Buck Lake Scrub Sanctuary, South Lake Conservation Area, Indian Mound Station Sanctuary, Fox Lake Sanctuary, Dicerandra Scrub Sanctuary, and their neighboring properties, can each support 10-39 breeding pairs of Florida scrub-jays (Breininger et al. 2006). Tree reduction and mechanical vegetation treatments will support the Environmentally Endangered Lands Program in reaching Florida's scrub management guideline parameters. This will allow for more aggressive fire and mechanical treatments to maintain optimal vegetation height, providing the highest potential for successful scrub-

jay population recovery in our region, as well as benefitting the variety of other scrub-dependent species.

Works Cited

Breining, D. R., B. Toland, D. M. Oddy, and M. L. Legare. 2006. Landcover characterizations and Florida Scrub-Jay (*Aphelocoma coerulescens*) population dynamics. *Biological Conservation* 128:169-181.

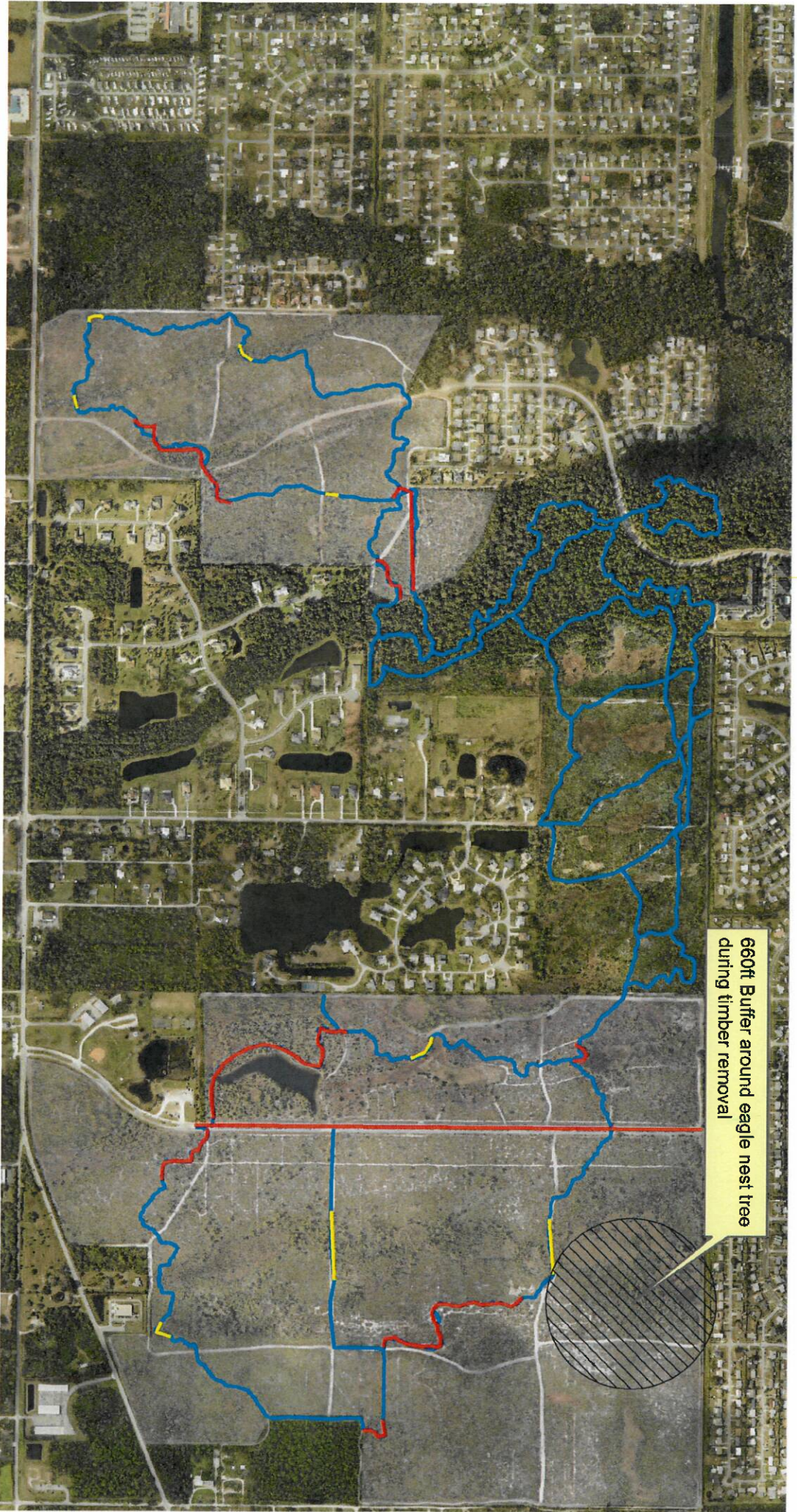
Fitzpatrick, J.W., G.E. Woolfenden, and M.T. Kopeny. 1991. Ecology and development-related habitat requirements of the Florida scrub jay (*Aphelocoma coerulescens*). Florida Game and Fresh Water Fish Commission Nongame Wildlife Program Technical Report Number 8. Tallahassee, Florida. 49 pages.

Florida Fish and Wildlife Conservation Commission. 2019. Scrub Management Guidelines for Peninsular Florida. Tallahassee, Florida, USA

U.S. Fish and Wildlife Service [Service]. 2007. Florida Scrub-Jay (*Aphelocoma coerulescens*) 5-year review: summary and evaluation. U.S. Fish and Wildlife Service; Atlanta, Woolfenden, G.E. and J.W Fitzpatrick. 1996. Florida Scrub-Jay *Aphelocoma coerulescens*. Rare and endangered biota of Florida vol. V. Birds eds. J.A. Rodgers Jr., H.W. Kale li & H.T. Smith). Univ. Press of Florida, Gainesville, FL USA. pp. 267-280

Table 1. Optimal and suitable Florida scrub-jay habitat characteristics per territory. Adapted from Breininger (2004), Breininger et al. (1998, 2014) and, Burgman et al. (2001).

Habitat variable	Optimal habitat for scrub-jays (i.e., recruitment exceeds mortality)	Suitable scrub-jay habitat (i.e., scrub-jays can persist, at least for the short-term)
Vegetation height	Sufficient amount of medium-height (4 - 5.5 ft tall) shrubs are present to provide cover and produce acorns for scrub-jays. Optimal arrangement of shrub heights within each potential territory includes conditions where: <ul style="list-style-type: none"> • at least 10% of the territory is medium height • most of the vegetation is medium height or shorter • no more than 1 acre of vegetation taller than 5.5 ft per 25 acres is present 	Shrub height averages greater than 3.5 ft but less than 8 ft tall
Open ground	10 - 50% bare sand or sparse herbaceous vegetation.	Minimum: At least some bare sand or sparse herbaceous vegetation. Maximum: No more than 75% bare ground. At least 25% of the territory contains shrubs that provide escape cover, nest sites, and acorns.
Overstory (>15 ft tall) density	0 - 1 tree per acre.	0 - 2 trees per acre (D. R. Breininger, InoMedic Health Applications, pers. comm.).
Distance to forest edge	1,000 ft non-forested buffer (0 - 2 trees/acre) between a scrub-jay territory and forest.	At least a 300 ft non-forested buffer (0 - 4 trees/acre) between a scrub-jay territory and forest.



660ft Buffer around eagle nest tree during timber removal

Malabar Scrub Restoration Project

Malabar Town Council Meeting – 1/3/22



Malabar Scrub Sanctuary

- Purchased by County between 1993 and 2010 (\$6 million)
- First scrub purchase of the program.
- Planned Malabar Woods Housing Development.
- Transferred to State in 2001 and 2005 (50% reimbursement received)
- Management Lease 4263



Voter Ballot Language

1990 - Shall Brevard County issue bonds, in a principal amount not exceeding Fifty-five Million Dollars and No Cents (\$55,000,000.00), to finance the cost of acquiring, protecting and maintaining environmentally endangered lands, and making improvements as appropriate for passive recreation and environmental education...

2004 - Shall Brevard County issue bonds to finance the acquisition, improvement and maintenance of environmentally endangered land and water areas for the protection of habitat, public open space, and water resources, and for providing passive recreational opportunities...

*"The **primary objective** of the land acquisition plan is the acquisition of environmentally endangered lands for preservation / conservation. These lands are environmentally unique and irreplaceable, and contain excellent examples of natural communities, forest resources, plants, animals, coastal and wetland resources, and geologic features."*

*"A **secondary objective** of the plan is to allow some environmentally endangered lands to be used for non-consumptive resource based outdoor enjoyment. Some lands could be developed for passive recreational uses such as hiking and nature trails, educational nature centers, and elevated boardwalks."*

EEL Policy Manual and State Management Lease

“a recreation type of use, level of use and combination of uses that do not individually, or collectively, degrade the resource values, biological diversity, and aesthetic or environmental qualities of a site.”

“Purpose: Lessee shall manage the leased premises only for the conservation and protection of natural and historical resources and for resource based public outdoor activities and education which are compatible with the conservation and protection of these public lands....”

Land Clearing Misconception – Fire Line vs Vegetation Management



Soil Erosion Misconception

Silt fencing is not required unless there would be temporary and direct impact to a waterway due to vegetation removal and root-raking. This does not apply to vegetation mowing.

Fire lines are permanent features and must be maintained in an exposed soil state. Silt fencing cannot be reinstalled each time line is plowed. Permanent silt fence would also burn up during fire operations.



Removing Old-Growth Forest Misconception

- Scrub communities are fire-dependent and do not contain old-growth trees but do contain old growth root systems. Scrub habitat is a dynamic system that depends on frequent alteration.
- Pine Flatwoods communities do contain some old-growth pine trees. Due to the limited number of these older trees, they are preserved during restoration.
- Oak hammocks and forested wetland communities could potentially contain old growth trees but those habitats are not included in this restoration plan.



Not Considering Other Species - Misconception

- The Florida Scrub Jay and Gopher Tortoise are considered umbrella species. This means that if we manage the habitat to benefit these two species, all other species that depend on that habitat will also benefit.
- Scrub Jays and Gopher Tortoises also use adjacent pine flatwoods.
- Pine Flatwoods interface with scrub systems and tree densities vary depending on slight changes in elevation.

Converting Other Habitats to Scrub - Misconception

- Habitat types are soil dependent.
- It would not be possible to convert one habitat into another.
- Scrub and pine flatwoods ecosystems also contain depression marshes.



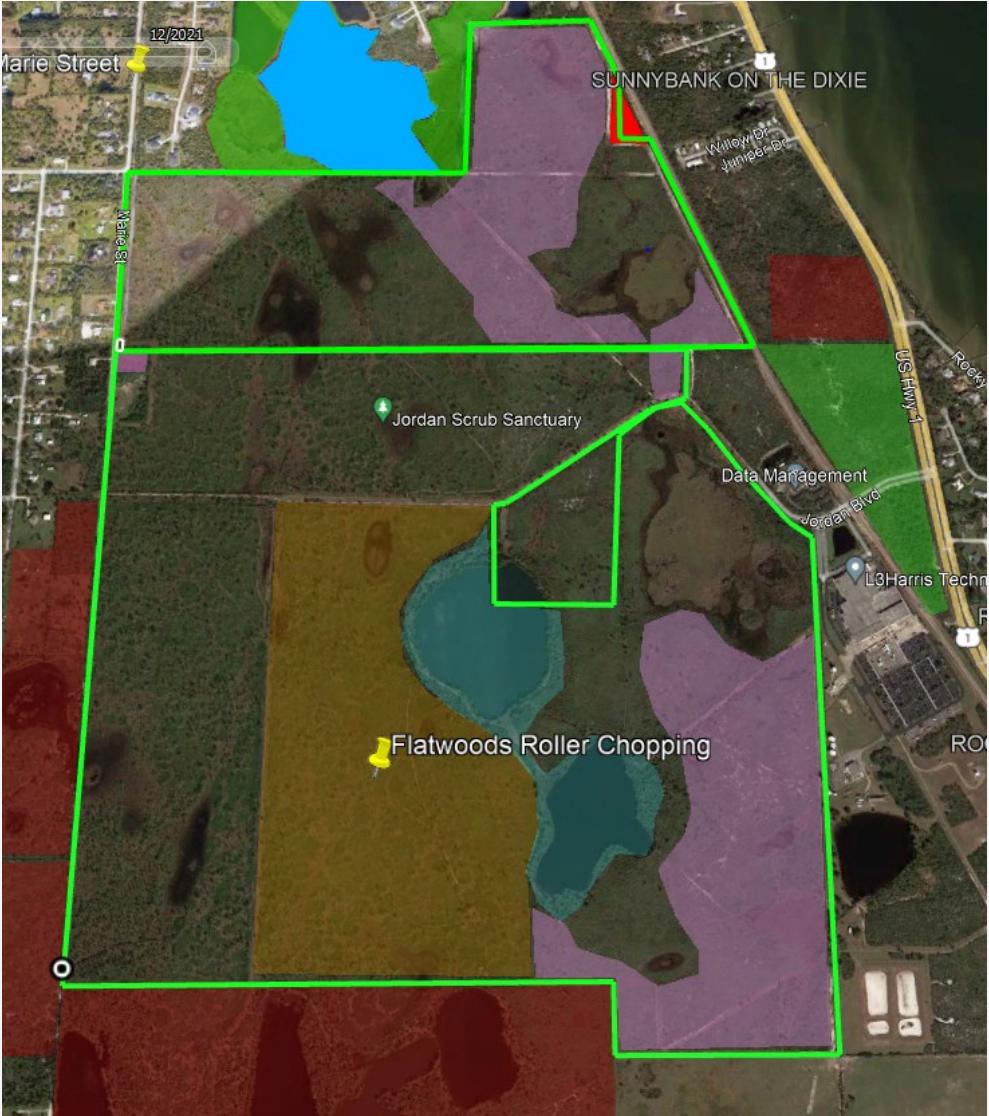
Jordan Scrub Habitat Enhancements – 2019 Prescribed Fire



Jordan Scrub Enhancements – 2021 Roller Chopping & Pine Reduction



Jordan Roller Chopping & Palm / Pine Reduction at Lakes



Saw Palmetto Density Reduction for Wiregrass Enhancement

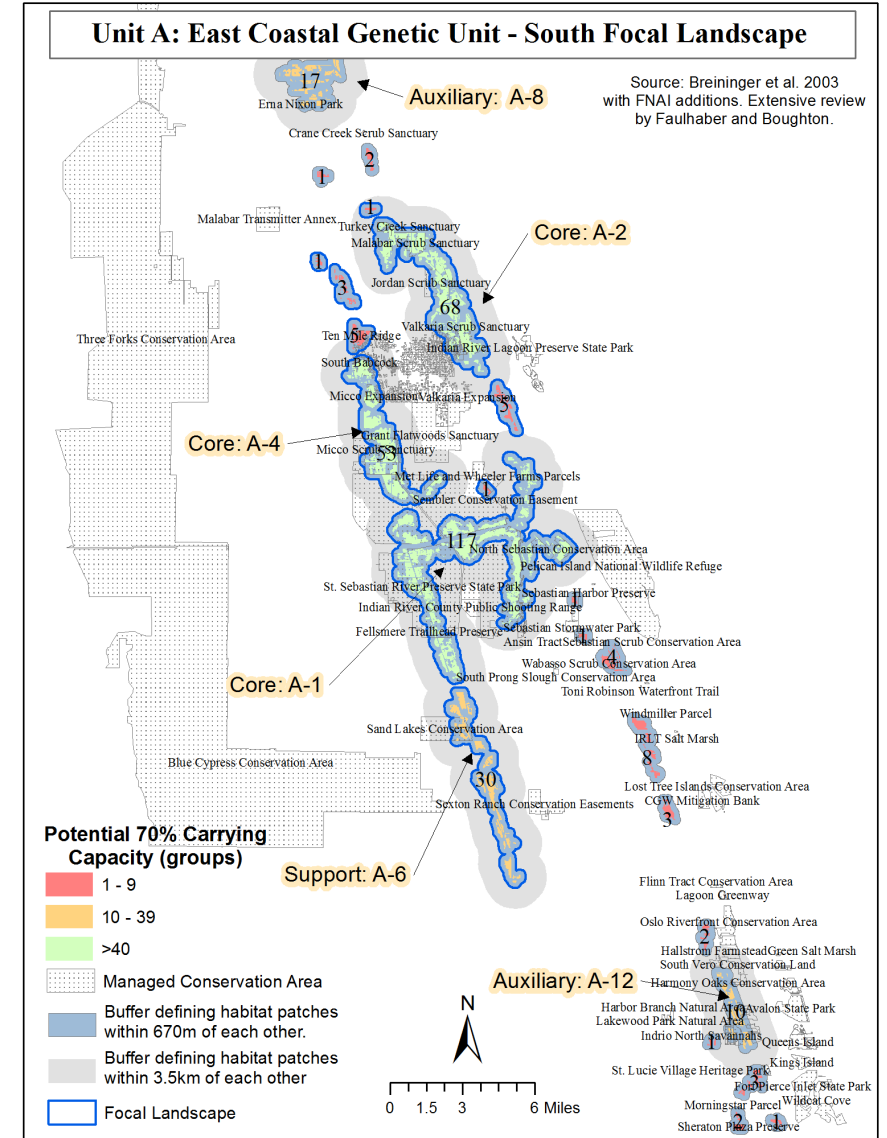
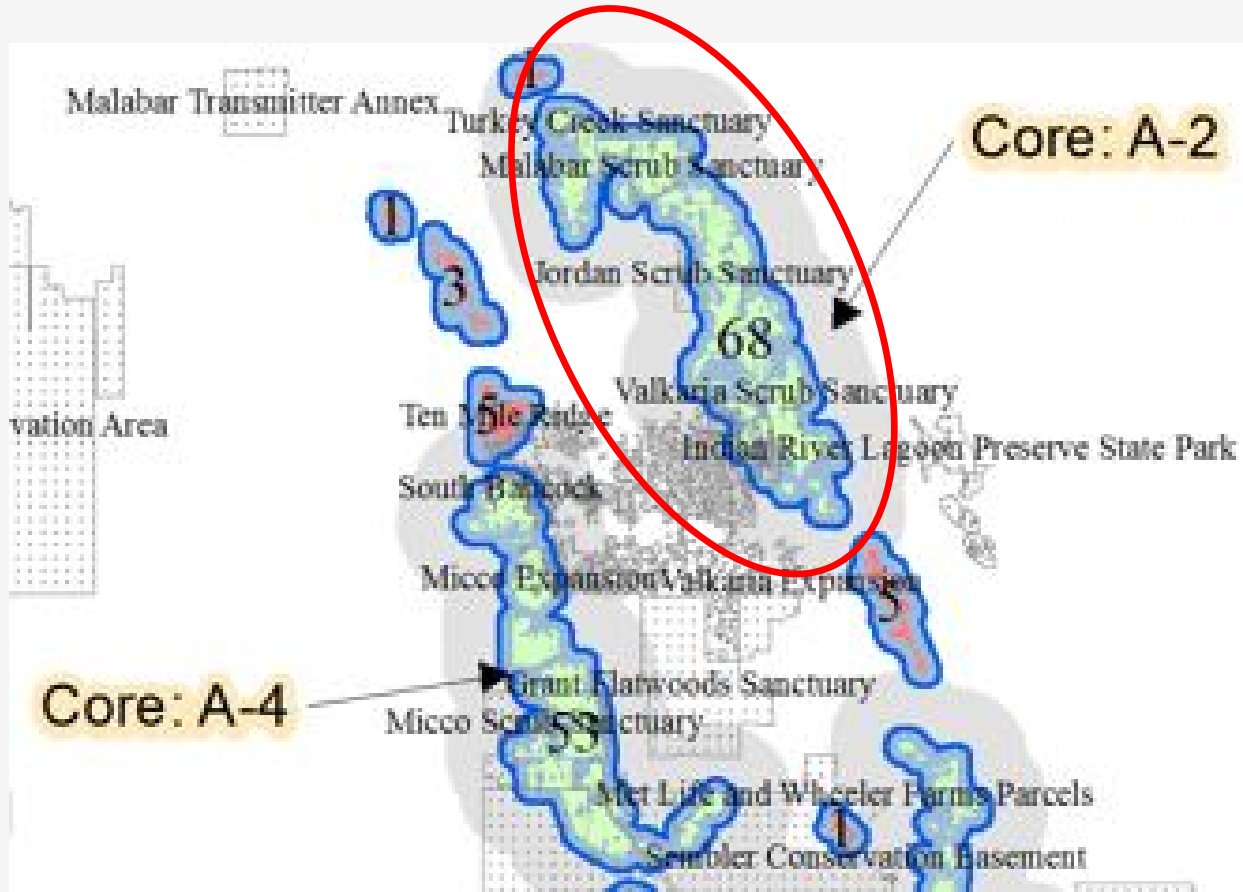


Florida Scrub Jay Population Viability Analysis

- Based on over 30 years of data and documented successful restoration projects throughout Florida and Brevard County.
- Fragmented scrub habitat quality must be maintained in optimal condition to maximize breeding success.
- South mainland Brevard has the greatest potential to protect the species long-term from further decline if existing habitat patches are managed in optimal condition.
- FSJ is an umbrella species for the scrub.
- Malabar Scrub and Jordan Scrub are critical to the survival of the south Brevard population. Without these two sites serving the population at an optimal level, extinction of the species in south Brevard is likely to be inevitable.



South Brevard Scrub Sites



Restoration Scope

Project includes multiple sites in south Brevard including:

- Malabar Scrub, Jordan Scrub, Grant Flatwoods, Micco Scrub

Jordan Scrub and Grant Flatwoods are excluded from the timber removal project.

Vegetation management through roller chopping and mulching focus on palmetto, cabbage palms, scrub oaks and non-marketable pines to achieve appropriate densities depending on habitat type. Grant funding from The Nature Conservancy.

Timber thinning focuses on removal of cut pines to achieve appropriate densities depending on habitat type. Timber will be sold to offset cost of restoration.



Restoration Project



Legend

- EEL_Trails_2017
- Low_Density
- Medium_Density
- High_Density



Before



Before

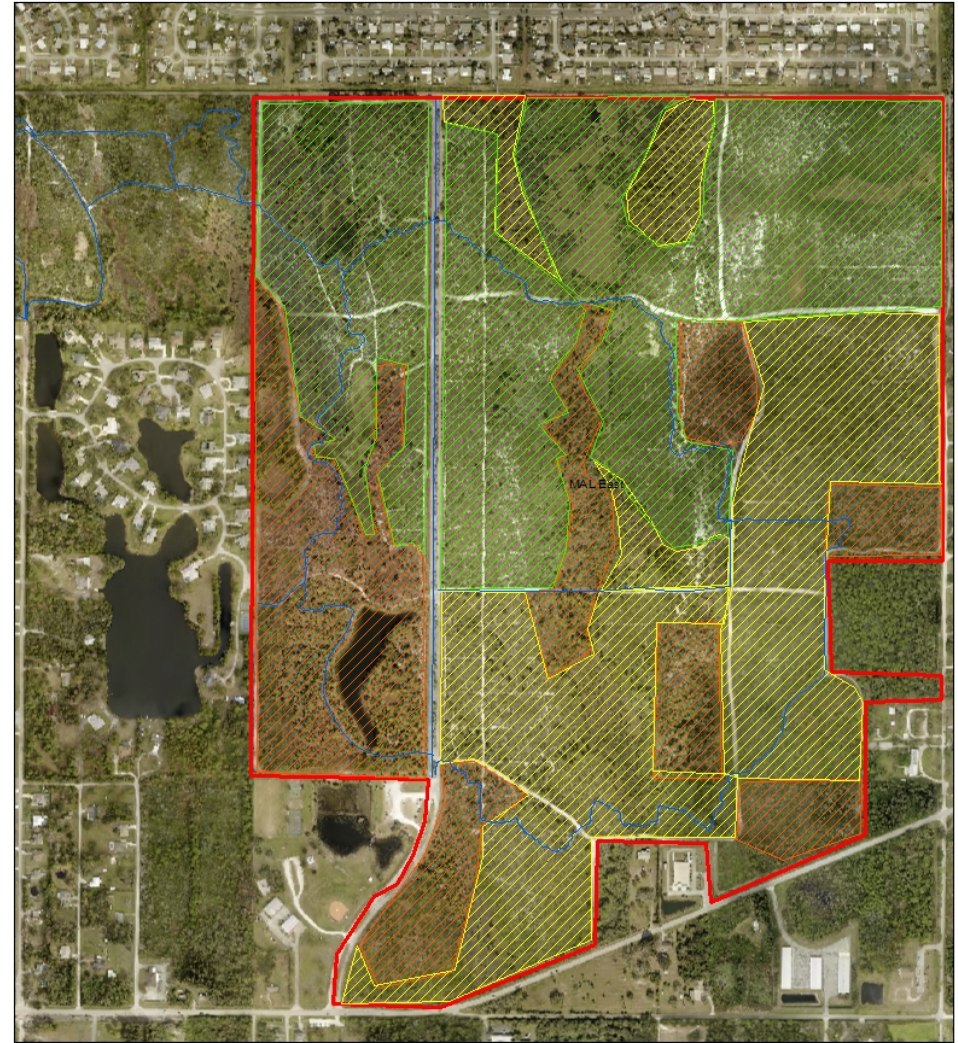


After



Legend

- EEL_Trails_2017
- Low_Density
- Medium_Density
- High_Density

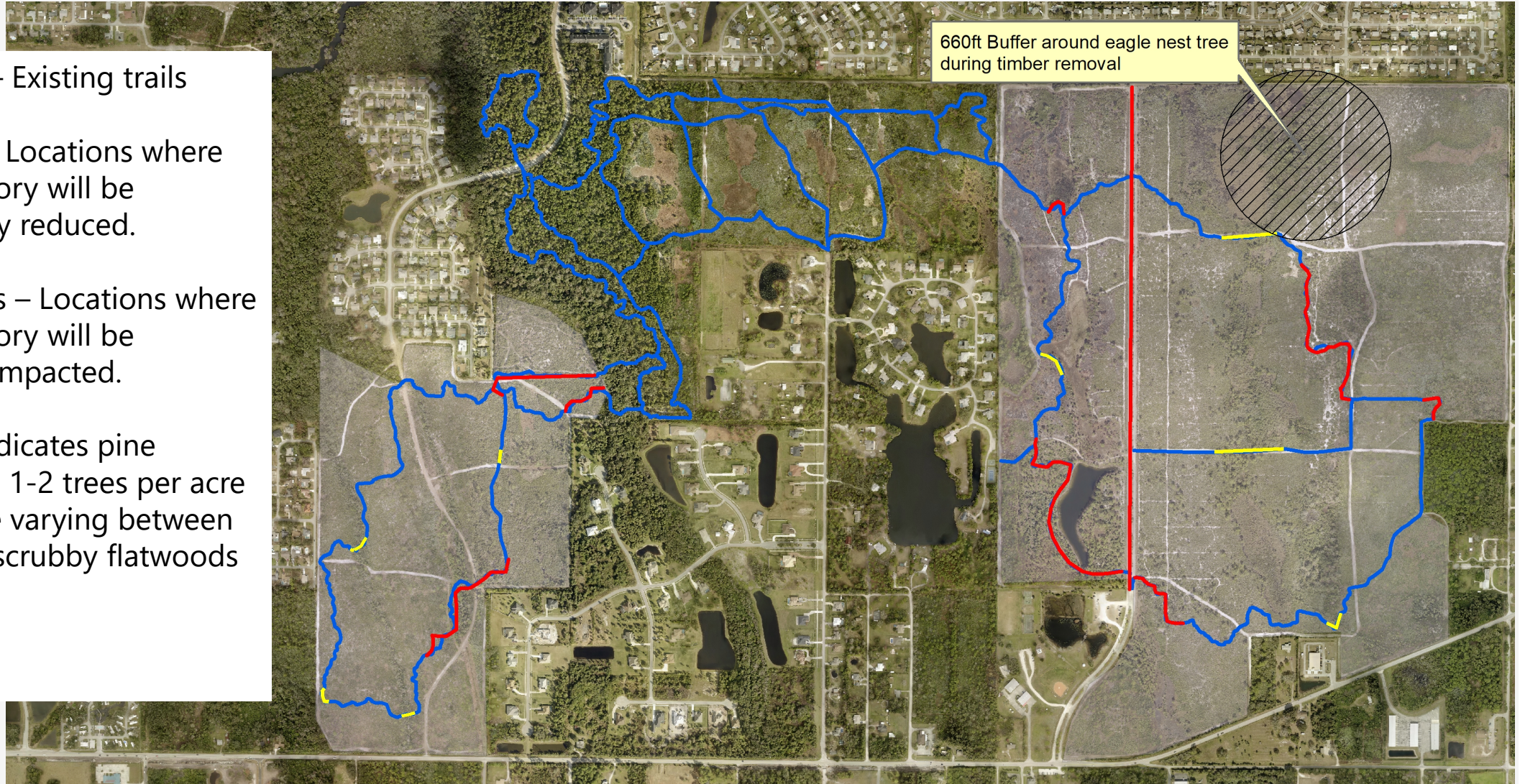


Legend

- EEL_Trails_2017
- Low_Density
- Medium_Density
- High_Density

Restoration Map

- Blue lines – Existing trails
- Red lines – Locations where trail overstory will be significantly reduced.
- Yellow lines – Locations where trail overstory will be minimally impacted.
- Shading indicates pine thinning to 1-2 trees per acre on average varying between scrub and scrubby flatwoods areas.



State of Florida Guidelines for Management of Scrub Habitat

Florida Fish and Wildlife Conservation Commission

620 South Meridian Street, Tallahassee, FL 32399

Policy, Position Statement, or Guideline (PPG)

TYPE OF PPG: [GUIDELINE](#)

ORIGIN: FWC ORIGINATED

APPROVAL AUTHORITY: DIVISION DIRECTOR ACTION

EFFECTIVE DATE: February 25, 2019

Note: This document is subject to update after further review.



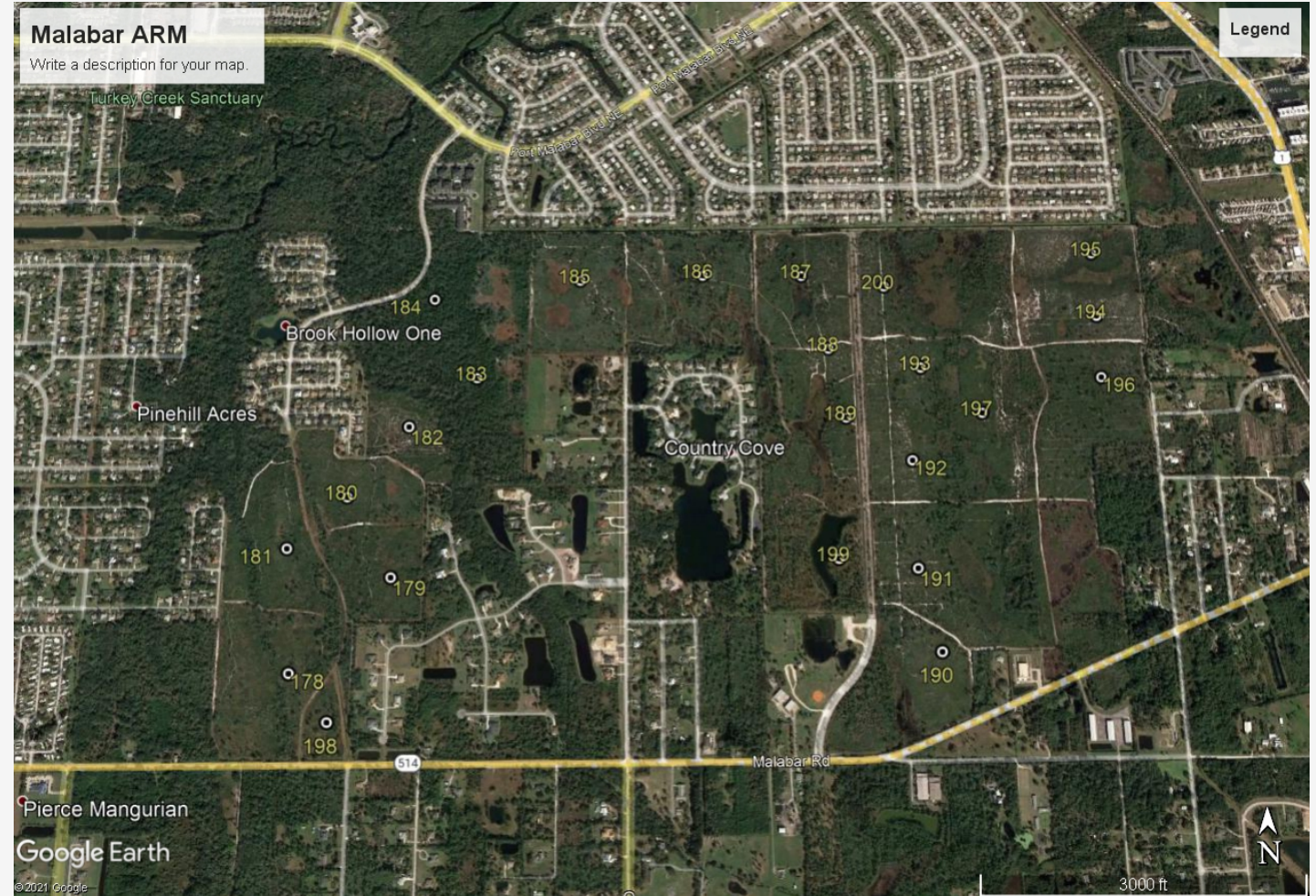
Existing and Potential Jay Territories

5 Florida Scrub Jay families currently exist at Malabar Scrub.

After restoration the site will have the capacity to support an additional 13 family territories.

Two additional potential territories exist on the Town's Cameron Preserve.

Two more potential territories exist on the norther portion of Malabar West which is outside the current restoration project footprint.



Trails



Trails



Trails

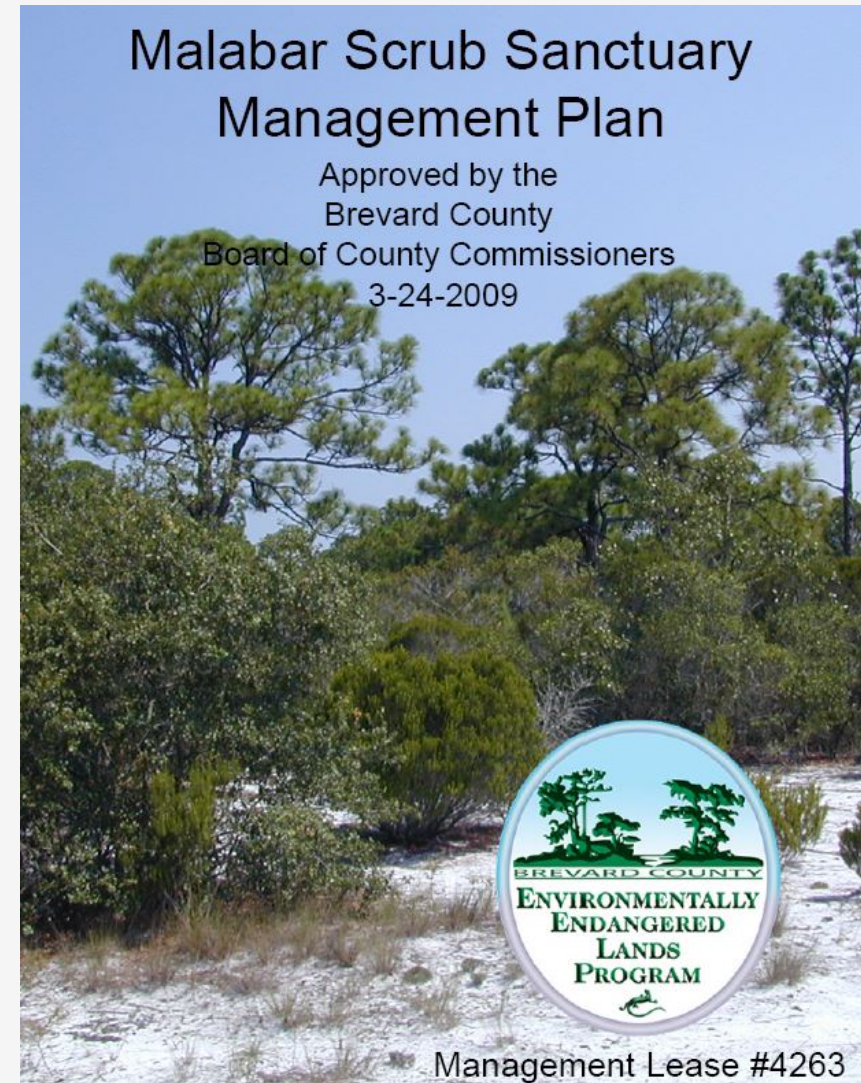


Malabar Scrub Management Plan

Current management plan approved by State in 2010

Public input process began in 2006

"Reduction of exotic species and the reintroduction of fire to the ecosystem are expected to maintain the quality of the prime habitat, as well as improve the habitat currently designated as marginal. The marginal habitat may also be improved for the management of Florida Scrub jays by the selective removal of pine canopy, thereby reducing the perching opportunities for raptors, a primary predator of adult Florida Scrub jays."



Permit

- EEL applied for and received a land clearing permit from the Town of Malabar for the timber removal project to be done under the Florida Forest Service to address any issue related to timber hauling on local roads. Permit expired due to delays.
- Land clearing permits are generally not pursued by the program for routine maintenance chopping and mulching activities.



Town Codes

Town code was revised following the issue of the permit to include any form of mowing of vegetation but is still focused on land development actions and land improvements without consideration of conservation management actions.

The Town currently has no code that applies to the management of vegetation for land conservation and habitat restoration work but it does have a limited exemption that allows for "routine landscape maintenance such as trimming or pruning of vegetation which is not intended to result in the eventual death of a plant, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement."

Timeline

December 6 – Town Council Meeting

December 9 – EEL Webinar with Public Input Opportunity

December 17 – EEL Selection and Management Committee Meeting

December 20 – Town Greenways and Trails Committee Meeting

January 3 – Town Council Meeting EEL Presentation

January 12 – Grant Valkaria Town Council Meeting EEL Presentation

January 18 – EEL Public Forum (in-person and Zoom opportunities)

January 21 – EEL Selection and Management Committee Meeting

Late January or early February ? – Board of County Commissioners

Questions?

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.b.

Meeting Date: January 3, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Recommendation from Park and Recreation Board for an additional porta-potty

BACKGROUND/HISTORY:

With the installation of the new playground, we have noticed a great increase in the number of people enjoying the park in that area. We also have the monthly Community Market that draws a good crowd. We recently have been requested to reserve both the Malabar soccer Club and a local flag football team which will also increase demand for sanitation.

We recently changed porta-potty vendors to Palm Bay Septic and they have confirmed they can provide a unit at the Malabar Community Park for the same price they charge us for the one at Disc Golf Sanctuary; \$100.00 per month with weekly cleaning.

The Park and Recreation Board suggested placement in the area near the soccer field and new playground.

FISCAL IMPACT: \$1,200 annually from the combined General Government acct: 519.4400

ATTACHMENTS: Memo from Park and Recreation Board Secretary

ACTION OPTIONS: Council direction to staff on this request.

TOWN OF MALABAR

MEMORANDUM

Date: December 16, 2021 2021-DTC/T-14
To: Town Clerk & ITM
CC: Town Council and Mayor Reilly
From: Richard W. Kohler, Deputy Town Clerk/Treasurer
Ref: Parks and Recreation Recommendation to Council

During the December 15th Parks and Recreation Board Meeting, the Board voted unanimously to recommend that the Town fund an additional Porta-Potty at the Malabar Community Park. Key points from the discussion can be found below:

- From the baseball field to the restrooms, it is approximately 1,000 ft. From Playground to restroom it is approximately 750 feet. From the event field to the restrooms is 1,200 ft.
- Since the playground has been upgraded, it has seen considerable more use.
- The Town currently rents one ADA Porta-potty from Palm Bay Septic for \$100.00 per month for the Malabar Disc Golf Sanctuary. A second can be rented for the same rate.
- Board Member Kemmler stated that Palm Bay Septic has been servicing the Porta-Potty at the Disc Golf regularly.
- Resident Annelie Harvey suggested placing the new Porta-Potty on the West side of the Baseball field, so it can service residents using the Playground, Baseball Field, and Events Field.

MOTION: Kemmler/Beinvenu to recommend to Council the rental of an ADA Porta-potty for Malabar Community Park. VOTE: All Ayes (5-0)

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.
Meeting Date: January 03, 2022

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Codification of Solid Waste Franchise Agreement (Ord 2022-01)

BACKGROUND/HISTORY:

This Summary of Council actions at the Town Council Regular Meeting Minutes

ATTACHMENTS:

- Ordinance 2022-01 directing the Agreement be added to Malabar Code Book
- Agenda Report giving Waste Pro Agreement Summary provided to Council for the 11/15/2021 meeting
- Agreement attached as Exhibit "A" to Ord 2022-01

ACTION OPTIONS:

Council Action on first reading of Ord 2022-01

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a

Meeting Date: November 15., 2021

APPROVED
5 To 0

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration executing a franchise agreement for RFP 2021-01 Residential & Commercial Franchise Agreement for Solid Waste, Recycling, Yard Waste, and Bulk Waste Collection Services to WastePro of Florida, Inc.

BACKGROUND/HISTORY:

At the September 14, 2021 Regular Town Council meeting, Town Council unanimously approved the award of RFP 2021-01 Residential & Commercial Franchise Agreement for Solid Waste, Recycling, Yard Waste, and Bulk Waste Collection Services to WastePro of Florida, Inc. Town Council provided direction to Interim Town Manager Morrell to negotiate a final contract and transition timeline for Town Council approval and execution, with citizen committee recommendation.

The attached contract and transition plan are the result of coordination of both the parties, Town Staff, Town Attorney and Waste Pro of Florida, In. for The Town Council's consideration.

Transition Plan Highlights:

- Expedited transition plan, WastePro will commence service on January 1, 2022, versus March 2022 date published in the RFP and bridge contract for Waste Management's services.
- Vehicles, cart, containers, and driver personnel onboarding complete.
- December 27, 2021 provides simultaneous activities of distribution of ordered carts, driver route training, and public awareness campaign.

Contract Highlights:

- The term of this Contract shall be for a six (6) year period beginning on the Commencement Date, not later than January 1, 2022, and terminating December 31, 2027.
- Automatically renew for up to three (3) additional three (3) year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.
- Town non-renewal option clause with RFP process....in the event a new contract has not been awarded within such time frame, the CONTRACTOR agrees to provide service to the TOWN for up to an additional one hundred and eighty (180) day period beyond the expiration of the Contract, provided the TOWN requests said services, in writing, at such time.
- Contract provides Residential and Commercial Collection Service within the TOWN. Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash.
- Solid Waste collection occurs two (2) time(s) per week, one (1) time for recycle, and up to 20 cubic yards to consisting of Yard Trash and Bulk Trash, per ordinance.
- Contractor owns, provides, and maintains 64 gallon solid waste and recycle carts
- Contractor is responsible for the billing and collection of payments for Residential and Commercial Collection Service.
- Methodology of Non-Collection Notice affixed to the Container or waste itself explaining why Collection was not made and explaining proper procedures for setting out Solid Waste, Bulk Waste, and Recyclable Materials.

- Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide Residential and/or Commercial Collection Service or to maintain office hours. For the purposes of this Contract, Holiday shall only mean New Year's Day, Memorial Day, Independence Day, Veterans Day, Thanksgiving Day and Christmas Day, and any day that the landfill closes.
- Holiday collection occurs on the next regularly scheduled day.
- Inclusion of backdoor service option for disabled/elderly: if all adult occupants residing therein are disabled and if a request for side or back door Collection has been made to, and approved by, the Contract Administrator in the manner required by TOWN. The Contract Administrator shall notify the CONTRACTOR in writing of any customers requiring side or back door Collection. No additional monies shall be due to the CONTRACTOR for the provision of side or back door Collection to disabled Residential Customers.
- The CONTRACTOR agrees to participate in public outreach events, at no charge to the Town, by providing up to twelve (12) hours per year of an outreach person's time at such public outreach events.
- The Consumer Price Index (CPI) used for adjusting rates shall be the Consumer Price Index for Series Id: CUUR0000SEHG02, Garbage and trash collection in U.S. city average, all urban consumers, not seasonally adjusted as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics.
- Liquidated damages to ensure that the CONTRACTOR provides a quality level of Residential Collection Service.

Future consideration and calculation will be provided from Waste Pro of the solid waste billing and collection method as a non-ad valorem assessment through Brevard County Property Appraiser's Office with the Brevard County Tax Collector; a public poll or non-binding referendum ballot questionnaire is required per Florida State Statute Chapter 197. The chapter also requires a resolution adopted by Town Council Prior to January 1 with public hearing procedures and notices outlined in the same chapter for guidance.

ATTACHMENTS:

- Residential & Commercial Franchise Agreement for Solid Waste, Recycling, Yard Waste, and Bulk Waste Collection Services
- Transition Timeline Malabar.PDF

FISCAL IMPACT:

Decreased monthly residential service rate, exhibit 1, page ²⁹~~34~~, Option 1a, from \$46.55 per month to \$43.88 as a result in the franchise fee reduction from 10% to 5%.

ACTION OPTIONS:

Motion to accept the transition plan and execute the contract for RFP# 2021-01, Residential & Commercial Franchise Agreement for Solid Waste, Recycling, Yard Waste, and Bulk Waste Collection Services, to WastePro of Florida, Inc. located at 2951 W. King Street, Cocoa, Florida.

MALABAR ORDINANCE 2022-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA REPEALING AND REPLACING ORDINANCE 2014-12 AND ALL OTHER SOLID WASTE AND RECYCLABLE MATERIAL FRANCHISE ORDINANCES AND AGREEMENTS IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES REPLACING SUCH RERPEALED FRANCHISE ORDINANCES AND AGREEMENTS WITH ORDINANCE 2022-01 GRANTING AN EXCLUSIVE SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE PRO of FLORIDA, INCORPORATED AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar, Florida, on November 15, 2021, awarded the service contract to Waste Pro of Florida, Inc. which granted them exclusive solid waste and recyclable collection within the Town of Malabar. The contract agreement is attached to this ordinance as Exhibit "A" and shall become part of this Ordinance replacing Ordinance 2014-12.

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Malabar, Florida:

SECTION 1: Article IV, Solid Waste, of the Franchise Section in Appendix A of Volume 1, identified as Ordinance No. 2014-12, of the Malabar Code of Ordinances is repealed in its entirety and replaced to read as follows:

"ARTICLE IV SOLID WASTE ORDINANCE 2022-01

"SECTION 1. Effective date, Commencement date, Term and Consideration

GRANTING OF FRANCHISE TERM AND CONSIDERATION

Waste Pro of Florida Inc., is granted the exclusive right, privilege and/or franchise to operate upon, over and across streets, bridges and other public thoroughfares of the Town of Malabar for the purpose of collecting, removing and disposing of solid waste, recycling, yard waste and bulk waste material from the residences and commercial businesses in the Town of Malabar beginning January 1, 2022 subject to the terms, conditions and exceptions contained in the Contract Agreement attached as Exhibit "A" which such exhibit shall and is made an integral part of this ordinance and which provides in part as follows;

- A. Effective date of this Agreement was December 6, 2021, when the Agreement was signed. The commencement date shall be January 1, 2022.
- B. Initial term shall be for six (6) years and shall automatically renew for up to three (3) additional 3-year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.
- C. The initial rate for residential services shall be \$43.88 per month for twice per week collection of solid waste & once per week collection of Recyclables & once per week unlimited yard waste and 12 cubic yards of Bulky/White goods. Construction and

Demolition or C&D Debris and Contractor generated waste is not included in this coverage.

- D. Waste Pro of Florida Inc. shall pay a Franchise Fee of five (5) percent on all services rendered to the Town on a quarterly basis due in the month following the end of the quarter. For example, the first quarter ends on March 31, the franchise payment is due to the Town in April.

SECTION 2: CONFLICTS

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: CODIFICATION

Provisions of this Ordinance and Exhibit "A" shall be incorporated into Article IV, Solid Waste, Appendix A, Franchises, Volume 1 of the Malabar Code of Ordinances as directed by this ordinance.

SECTION 4: EFFECTIVE DATE

This Ordinance shall take effect five (5) days after adoption at second reading.

This Ordinance was moved for adoption by Council Member_____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

- Council Member Marisa Acquaviva _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member David Scardino _____
- Council Member Mary Hofmeister _____

This Ordinance was then declared to be duly passed and adopted this 7th day of February 2022.

TOWN OF MALABAR

By:

(seal)

Mayor Patrick T. Reilly, Council Chair

1st Reading: 1/03/2022

2nd Reading: 2/07/2022

ATTEST:

Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney

EXHIBIT "A"

41-page Agreement Between

Town of Malabar

Waste Pro of Florida, Incorporated

Approved by Malabar Town Council 11/15/2021

Signed 12/6/2021

Commencing January 1, 2022

**RESIDENTIAL & COMMERCIAL FRANCHISE
AGREEMENT FOR SOLID WASTE, RECYCLING, YARD
WASTE, AND BULK WASTE COLLECTION SERVICES
AGREEMENT**



Agreement
Between

Town of Malabar

and

Waste Pro of Florida, Inc.

Approved by Town Council, November 15, 2021

TABLE OF CONTENTS

SECTION 1.	EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM	1
SECTION 2.	DEFINITIONS.....	1
SECTION 3.	GENERAL DESCRIPTION OF CONTRACTOR'S SERVICES	4
SECTION 4.	TRANSITION IN SERVICE.....	5
SECTION 5.	RESIDENTIAL COLLECTION SERVICE	6
SECTION 6.	RESIDENTIAL COLLECTION CONTAINERS	9
SECTION 7.	RESIDENTIAL NON-COLLECTION PROCEDURES.....	10
SECTION 8.	RESIDENTIAL BULK WASTE PROCESSING	11
SECTION 9.	DESIGNATED FACILITIES.....	11
SECTION 10.	ADDITIONAL SERVICES	11
SECTION 11.	RESIDENTIAL RATES AND BILLING	12
SECTION 12.	CHANGE IN LAW AND UNUSUAL CHANGES IN THE COST OF DOING BUSINESS	13
SECTION 13.	CONTRACTOR'S PERSONNEL.....	13
SECTION 14.	SPILLAGE AND LITTER.....	14
SECTION 15.	COLLECTION EQUIPMENT	14
SECTION 16.	OFFICE	15
SECTION 17.	SERVICE INQUIRIES, COMPLAINTS, AND PROPERTY DAMAGE	15
SECTION 18.	RECORDKEEPING AND REPORTING.....	16
SECTION 19.	LIQUIDATED DAMAGES.....	17
SECTION 20.	EMERGENCY SERVICE PROVISIONS.....	19
SECTION 21.	PERFORMANCE BOND.....	20
SECTION 22.	INSURANCE	20
SECTION 23.	INDEMNIFICATION OF TOWN	21
SECTION 24.	POINT OF CONTACT	22
SECTION 25.	NOTICE	22
SECTION 26.	TERMINATION OF CONTRACT.....	23
SECTION 27.	MODIFICATIONS TO THE CONTRACT	24
SECTION 28.	PERMITS AND LICENSES	24
SECTION 29.	INDEPENDENCE OF CONTRACT	24
SECTION 30.	FORCE MAJEURE	24

SECTION 31. EMPLOYEE STATUS..... 25

SECTION 32. EQUAL OPPORTUNITY EMPLOYMENT 25

SECTION 33. DISPUTE RESOLUTION 25

SECTION 34. SERVICE DURING DISAGREEMENT 26

SECTION 35. GOVERNING LAW 26

SECTION 36. CONSENT TO JURISDICTION 26

SECTION 37. COMPLIANCE WITH LAWS..... 26

SECTION 38. SEVERABILITY 26

SECTION 39. ASSIGNMENT AND SUBCONTRACTING 26

SECTION 40. MODIFICATIONS..... 27

SECTION 41. LEGAL REPRESENTATION 27

SECTION 42. FUND APPROPRIATION 27

SECTION 43. PUBLIC ENTITY CRIME 27

SECTION 44. FINANCIAL INTEREST 27

SECTION 45. ALL PRIOR AGREEMENTS SUPERSEDED 28

SECTION 46. EXHIBITS 28

SECTION 47. MODIFICATION OF TERMS 28

EXHIBIT 1 RESIDENTIAL COLLECTION AND DISPOSAL SERVICE RATES

EXHIBIT 2 SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENTS

EXHIBIT 3 TECHNICAL SPECIFICATIONS FOR ROLL CARTS

EXHIBIT 4 DISASTER CLEANUP AGREEMENT

**SOLID WASTE, RECYCLABLES, AND BULK WASTE COLLECTION AND DISPOSAL
AGREEMENT**

Town of Malabar, Florida

This Contract is made and entered into this 6th day of Dec., 2021, between the Town of Malabar, a municipal corporation of the State of Florida, Brevard County, Florida, hereinafter referred to as "TOWN," and Waste Pro of Florida, Inc. authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

Now, therefore, in consideration of the mutual covenants, agreements and consideration contained herein, the TOWN and CONTRACTOR hereby agree as hereinafter set forth:

SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

- A. Effective and Commencement Dates. The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that Collection services required pursuant to this Contract commence, or January 1, 2022.
- B. Initial Term. The term of this Contract shall be for a six (6) year period beginning on the Commencement Date, not later than January 1, 2022, and terminating December 31, 2027.
- C. Renewal Option. This Contract shall automatically renew for up to three (3) additional three (3) year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.

SECTION 2. DEFINITIONS

For the purpose of this RESIDENTIAL & COMMERCIAL FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLING, YARD WASTE, AND BULK WASTE COLLECTION SERVICES AGREEMENT, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated or otherwise in conflict with Florida law. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the TOWN Code shall control except where preempted by Florida law, in which case Florida law shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. Biohazardous or Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics, hospitals, and other facilities processing waste that may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves, and shall also include those waste products which are defined as biohazardous or biochemical waste under Chapter 62 and 64Eof the Florida Administrative Code and Chapter 381 of the Florida Statutes.
- B. Bulk Trash means those wastes that may require special handling and management and which by reason of bulk, shape, or weight cannot be placed in a Container. Bulk Trash includes, but is not limited to, furniture and fixtures, mattresses, White Goods, equipment, and any and all household goods that are customary to ordinary housekeeping operations of a Residential Service Unit. Bulk Trash must be generated by the customer at the Residential Service Unit at which the Bulk Trash is placed for Collection. Bulk Trash does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.
- C. Bulk Waste means the combination of Bulk Trash and Yard Trash. Bulk Waste must be generated by the customer at the Residential Service Unit at which it is placed for Collection. Bulk Trash and Yard Trash shall

be kept separate, and cannot be mixed by the customer. Bulk Waste does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.

- D. Business(es) means all retail, professional, wholesale, agricultural, industrial facility, or any other commercial enterprises offering goods or services to the public or other businesses; any church, synagogue, mosque, or other house of worship; and any schools or other institutions.
- E. Certificate of Occupancy means a document produced by the Town certifying that a newly constructed building has been constructed in compliance with Town specifications and Florida Building Code and is suitable for use.
- F. Collection means the process whereby Solid Waste, Recyclable Materials, Yard Waste or Bulk Waste is removed and transported to the facilities designated in this Contract.
- G. Commencement Date means the date Collection services pursuant to this Contract commence, prior to January 1, 2022.
- H. Compactor means any container that has a compaction mechanism, whether stationary or mobile.
- I. Construction and Demolition Debris or C&D Debris means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a homeowner generated, "do-it-yourself" construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that results from land clearing or land development operations for a construction project. All contractor related debris and yard waste must be removed by the contracted services and or property owner.
- J. Container means any container intended for Collection.
- K. Contract means this agreement, including all attachments and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as provided herein.
- L. Contract Administrator means the Town Manager or designee.
- M. Contract Year means the time from the Commencement Date through December 31, 2022, and each year thereafter during the term of the Contract.
- N. CONTRACTOR means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- O. Contractor-Generated Waste means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- P. County means Brevard County, Florida.
- Q. Designated Disposal Facility means the disposal facility designated by the TOWN.
- R. Designated Materials Recovery Facility or Designated MRF means the facility designated by the TOWN for delivery of all Residential Recyclable Materials collected pursuant to this Contract. The designated facility for collected recycling material as defined in Section 9, Designated Facilities.
- S. Dumpster means any metal container, with a capacity of two (2) or more cubic yards, designed or intended to be mechanically dumped into a loader packer type garbage truck.

- T. Effective Date means the date this Contract is executed by both the TOWN and CONTRACTOR.
- U. Exempt Waste means Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, construction and demolition waste, tree parts or that is more than four (4) feet in length in its longest dimension, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil and tires, those wastes under the control of the Nuclear Regulatory Council, Contractor-Generated Waste, and those other materials whose size and/or weight are in excess of that allowed for Bulk Waste as defined herein.
- V. Hazardous Waste means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future federal, state, or local law.
- W. Holiday means a designated holiday on which the CONTRACTOR shall not be required to provide Residential and/or Commercial Collection Service or to maintain office hours. For the purposes of this Contract, Holiday shall only mean New Year's Day, Memorial Day, Independence Day, Veterans Day, Thanksgiving Day and Christmas Day, and any day that the landfill closes, unless additional Holidays are approved by the Contract Administrator.
- X. Non-Collection Notice means a durable tag, sign, and/or sticker placed on any Container or waste that has been set out for Collection by a customer but is not collectable in accordance with the provisions of this Contract and, therefore, has not been collected by the CONTRACTOR.
- Y. Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as Residential Solid Waste. Recyclable Materials include newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-2, tin and ferrous cans, and other materials added by the TOWN.
- Z. Recycling Bin means a rigid rectangular receptacle made of plastic or other suitable substance of no less than eighteen (18) gallons for the Collection of Recyclable Materials.
- AA. Residence means any individual living unit in a single-family structure or building intended for, or capable of being utilized for, residential living. For the purposes of this Contract, the term Residence shall include a living unit that adjoins or is part of a building from which a duly licensed business is conducted or operated.
- BB. Residential Collection Service means the Collection of Residential Waste from all Residential Service Units in the Service Area and the delivery of such materials to the facilities designated in this Contract.
- CC. Residential Customer means the occupant of the Residential Service Unit that receives Collection services pursuant to this Contract.
- DD. Residential Service Unit means any Residence receiving Residential Collection Service pursuant to this Contract.
- EE. Residential Waste means Solid Waste, Bulk Waste, and Recyclable Materials generated by Residential Customers and by the Town.
- FF. Roll Cart (or Cart) means a wheeled container designed and intended to be used for automated or semi-automated Collection of Solid Waste and/or Recyclable Materials that is a type and size approved by the Town.
- GG. Roll-off Container means any open-top Container of a capacity of ten (10) cubic yards or more.

- HH. Service Area means the municipal limits of the TOWN. Town limits may be amended during the contract term by actions of Town Council or State of Florida
- II. Sludge means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances, or any other such waste having similar characteristics or effects.
- JJ. Solid Waste means garbage, rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, agricultural, or governmental operations. For the purposes of this Contract, the only things Solid Waste excludes are Recyclable Materials, Exempt Waste, and Residential Bulk Waste.
- KK. TOWN means the Town of Malabar, Florida.
- LL. Town Council or Council means the governing body of the Town of Malabar, Florida.
- MM. White Goods means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer at the Residential Service Unit at which the White Goods are placed for Collection.
- NN. Work Day means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- OO. Yard Trash means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension. Yard Trash must be generated by the customer at the Residential Service Unit at which the Yard Trash is placed for Collection. Yard Trash includes Christmas trees (with all decorations removed), but does not include Contractor-Generated Waste or Exempt Waste. Yard trash does not include vegetative or bulk material that is generated as the result of a hurricane or other declared disaster event.

SECTION 3. GENERAL DESCRIPTION OF CONTRACTOR'S SERVICES

- A. Exclusive Contract. The CONTRACTOR is herein granted an exclusive Contract to provide Residential and Commercial Collection Service within the TOWN. The CONTRACTOR is not granted the exclusive right to collect C&D Debris. The CONTRACTOR may provide C&D Debris collection services at competitive rates that shall not be controlled by this Contract.
- B. Services to be Provided. The CONTRACTOR shall provide Residential Collection Service to all Residential Service Units and to the Town within the Service Area. The CONTRACTOR shall transport and deliver all Solid Waste, Recyclable Materials, and Bulk Waste collected pursuant to this Contract to the facilities designated herein. CONTRACTOR agrees and understands that the Residential Bulk Waste is not required to be containerized in cans or plastic bags. CONTRACTOR further agrees and understands that CONTRACTOR is responsible for collecting any Residential Waste that has spilled or is no longer containerized, unless such spillage is clearly not caused by the CONTRACTOR or an employee of the CONTRACTOR.
- C. Exempt Waste. The CONTRACTOR shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such collection and disposal of Exempt Waste are not regulated under this Contract, but if provided by the CONTRACTOR shall be in strict compliance with all federal, state, and local laws and regulations.
- D. Responsibility for Billing. The CONTRACTOR shall be responsible for the billing and collection of payments for Residential and Commercial Collection Service. The CONTRACTOR shall be responsible for the billing

and collection of payments for providing and servicing extra Residential Roll Carts, special collection services requested and provided to Residential Customers as outlined in Section 5.D of this Contract.

SECTION 4. TRANSITION IN SERVICE

- A. Transition Prior to Commencement Date of Service. The CONTRACTOR is responsible for providing a smooth transition in services to minimize inconvenience to Residential Customers. To accomplish this objective, the CONTRACTOR shall submit to the Contract Administrator, prior to the TOWN's execution of this Contract, a Transition Plan that provides a detailed description of how the CONTRACTOR will plan and prepare for initiating Collection services on the Commencement Date. The Transition Plan must meet the approval of the Contract Administrator. If the Contract Administrator does not approve any part of the Transition Plan, CONTRACTOR shall provide a revised proposed Transition Plan within five (5) Work Days of notification. At a minimum, the CONTRACTOR must address the specific performance requirements listed below in the Transition Plan and accomplish them according to deadlines specified in the TOWN-approved plan. This list is not intended to identify all necessary tasks to be performed by the CONTRACTOR, but to provide a springboard for the CONTRACTOR to develop a comprehensive Transition Plan.
- (1) Contact List: List of key transition personnel including, but not limited to, service transition project manager, education and outreach coordinator, and operations director (or similarly titled positions).
 - (2) Transition Meeting and Call Schedules: Proposed meeting and call schedules including, but not limited to, meetings with the Contract Administrator, Town staff, and outgoing contractor leading up to the Commencement Date.
 - (3) Office: Schedule for setting up an office, installing local telephone number routed to the office, and training staff to begin receiving calls.
 - (4) Fleet: Schedule for ensuring that all vehicles are street legal (registered, insured, licensed, and tagged) and providing a vehicle/equipment list and route summary to the Contract Administrator. For all new purchases, CONTRACTOR shall provide a list of vehicles, manufacturer, purchase order, and documentation of anticipated delivery date.
 - (5) Staffing and Training: Schedule for obtaining necessary labor and training staff on equipment and routes.
 - (6) Routing: Schedule for developing Solid Waste, Recyclables, and Bulk Waste routes, identifying obstacles such as low trees and overhead wires, and conducting dry-runs of collection routes.
- B. Transition Prior to Expiration of this Contract.
- (1) Should the TOWN choose not to exercise the renewal option of this Contract or should no renewal options remain, the TOWN anticipates awarding a new contract at least six (6) months prior to the expiration of this Contract or any subsequent renewals. In the event a new contract has not been awarded within such time frame, the CONTRACTOR agrees to provide service to the TOWN for up to an additional one hundred and eighty (180) day period beyond the expiration of the Contract, provided the TOWN requests said services, in writing, at such time. The service rates for this additional period will be adjusted as they normally would on January 1 as specified in Sections 11 and 12 of this Contract.
 - (2) At the expiration of this Contract, the CONTRACTOR shall work with the TOWN and the newly selected hauler to ensure a smooth transition period with no interruption of service, including, but not limited to, compliance with the following performance requirements:
 - (a) Attend coordination meetings with the TOWN and newly selected hauler, as requested.

- (b) Work with the newly selected hauler to develop a mutually agreeable schedule for removal of CONTRACTOR-owned Containers and placement of newly selected hauler's containers. The schedule shall ensure no interruption in solid waste services.
- (c) Allow the newly selected hauler to purchase or rent for up to ninety (90) days, CONTRACTOR-owned Containers from the CONTRACTOR. The purchase price and/or rental shall be negotiated.
- (3) The TOWN reserves the right to withhold payment to CONTRACTOR for the final month of service until CONTRACTOR has complied with all requirements of this Section.

SECTION 5. RESIDENTIAL COLLECTION SERVICE

A. Residential Solid Waste Collection.

- (1) The CONTRACTOR shall provide Residential Solid Waste Collection to all Residential Service Units in the Service Area two (2) time(s) per week with not less than forty-eight (48) hours or more than seventy-two (72) hours between regularly scheduled pickup days, with the exception of Holidays as set forth herein. Residential Solid Waste Collection shall occur twice per week on days agreed to between the Town and Contractor, unless a modification is approved by the Contract Administrator.
- (2) All Residential Solid Waste shall be properly containerized. All Solid Waste to be placed in contractor-provided carts with a capacity of not more than ninety-six (96) gallons and weighing not more than fifty (50) pounds. CONTRACTOR is expected to pick up additional boxes, that may be placed next to Roll Carts. Residential Customers may request the CONTRACTOR to provide and service additional Solid Waste Roll Carts as specified in Section 6.B(3) of this Contract.
- (3) Hours: Residential Collection Service shall be provided commencing no earlier than 7:00 a.m. and terminating no later than 7:00 p.m. The hours and days of Collection may be extended due to extraordinary circumstances or conditions, with the prior written consent of the Contract Administrator.

B. Residential Bulk Waste Collection.

- (1) The CONTRACTOR shall provide Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash, to all Residential Service Units in the Service Area. Non-vegetative Residential Bulk Waste Collection shall occur on the solid waste collection days and vegetative bulk waste shall occur once per week, unless otherwise approved in writing by the Contract Administrator; large piles of vegetative bulk waste shall be collected within 5-7 days of solid waste route driver initiated or customer request to collector. Bulk Waste Collection is limited to twelve (12) cubic yards or as adopted by Town ordinance, per set-out.
- (2) If Bulk Waste exceeds the twelve (12) cubic yard limit, the CONTRACTOR will treat any amount above the twelve (12) cubic yard limit as a special collection service in accordance with Section 5.D(2).
- (3) The CONTRACTOR may collect Bulk Trash and Yard Trash in the same vehicle or in separate vehicles but shall collect such material in such a way that Yard Trash can be separated for recycling. Residents are asked to place non-containerized Yard Trash separate from Bulk Trash into an unobstructed pile to permit the CONTRACTOR to collect such Yard Trash with a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required. Collection of Yard Trash using a grapple or clam truck may be on the same collection day as Collection of Bulk Trash. Collection of Bulk Trash may use a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required.
- (4) The CONTRACTOR shall collect White Goods so that they can be recycled. White Goods must have refrigerant removed and be appropriately labeled prior to collection. Residents are asked to place

White Goods adjacent to other Bulk Trash but separate so as not to be obstructed. Even if residents fail to separate their White Goods, CONTRACTOR shall still utilize its best efforts to recycle comingled White Goods collected.

C. Residential Recyclables Collection.

- (1) The CONTRACTOR shall provide Residential Recyclables Collection to all Residential Service Units in the Service Area. This service shall be provided once every week on the day agreed to between the Town and Contractor, unless a modification is approved in writing by the Contract Administrator.
- (2) Residential Recyclables shall be collected in a single stream, meaning that paper and commingled containers may be placed in the same recycle cart. All Recyclables are to be placed in recycle carts. Residential Customers may request the CONTRACTOR to provide and service additional recycle carts as specified in Section 6.C(2) of this Contract.
- (3) Contractor and Town shall mutually agree on any additions or deletions of recyclable types to be collected. The addition of items shall be at no additional cost to the TOWN unless the CONTRACTOR can document that the addition of such items substantially impacts the cost of providing Residential Collection Service.

D. Residential Special Collection Service.

- (1) For an additional fee, Residential Customers may request special collection service from the CONTRACTOR that exceeds the base-level services outlined herein. CONTRACTOR shall be responsible for invoicing and collecting payment from Residential Customers for special collection services outside the scope of this contract. The TOWN is not liable for a Residential Customer's failure to remit payment to CONTRACTOR for any special collection service provided.
- (2) Bulk Waste in excess of twelve (12) cubic yard limit. If a Residential Customer places more than twelve (12) cubic yards of Bulk Waste curbside for Collection, the CONTRACTOR shall collect all Bulk Waste and shall invoice the Customer for the amount of Bulk Waste exceeding the twelve (12) cubic yard limit. This per cubic yard amount shall be as approved in the contract between the Town and the CONTRACTOR and is subject to annual CPI adjustment.
- (3) No Mixing of Residential Materials.
- (4) The CONTRACTOR shall collect Residential Solid Waste, Yard Waste, Bulk Waste, and Recyclable Materials generated in the TOWN separate from any Solid Waste, Yard Waste, Bulk Waste, or Recyclable Materials generated in another jurisdiction.
- (5) The CONTRACTOR shall not commingle Residential Recyclable Materials with other Residential Waste.

E. Side or Back Door Collection. Notwithstanding any term or definition set forth in this Contract, side or back door Collection of Residential Solid Waste and Residential Recyclable Materials from a Residential Service Unit shall be required if all adult occupants residing therein are disabled and if a request for side or back door Collection has been made to, and approved by, the Contract Administrator in the manner required by TOWN. The Contract Administrator shall notify the CONTRACTOR in writing of any customers requiring side or back door Collection. No additional monies shall be due to the CONTRACTOR for the provision of side or back door Collection to disabled Residential Customers. The CONTRACTOR will not be required to enter any buildings, garages or gated areas of the property to service a Residential Customer.

F. Hours. Residential Collection Service shall be provided Monday through Saturday, commencing no earlier than 7:00 a.m. and terminating no later than 7:00 p.m., with no service on Sunday. The hours and/or days of Collection may be extended due to extraordinary circumstances or conditions, with the prior consent of the Contract Administrator.

- G. Holidays. For collection of solid waste that occurs twice per week, in the event a Residential Customer's normal Collection Day falls on a holiday observed by the CONTRACTOR and accepted by the TOWN via this CONTRACT, Collection shall occur on the Residential Customer's next regularly scheduled Collection Day.
- H. Accessibility. All properly prepared Residential Containers, including Roll Carts, shall be placed within three (3) feet of the curb, swale, paved or unpaved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and customer, that will provide safe and efficient accessibility to the CONTRACTOR'S collection crew and vehicle. When possible, CONTRACTOR shall work to ensure that Containers, including Roll Carts, are placed in an upright position within three (3) feet of the curb, swale, roadway, or other such location agreed to by the CONTRACTOR and customer, that will help to ensure that no Container or Roll Cart impedes, alters, or prevents the vehicular traffic. In certain instances, properly prepared Residential Waste may be placed in driveway turnout areas to avoid placing it in the traveled roadway. The CONTRACTOR shall report monthly to the Contract Administrator all situations that prevent or hinder Collection on any premises.
- I. Manner of Collection.
- (1) The CONTRACTOR shall provide Residential Collection Service with as little noise and disturbance as possible.
 - (2) CONTRACTOR's employees shall completely empty any Container without obstructing alleys, roadways, driveways, sidewalks, or mailboxes. Roll Carts shall be placed in an upright position with the lid closed. Containers with unattached lids shall be placed either in an upright position with the lid set on top or in an inverted position with the lid placed underneath to help prevent the lid from flying away or if that is impractical directly behind the Container.
 - (3) CONTRACTOR'S employees shall follow the regular walk for pedestrians while on private property. No trespassing by CONTRACTOR'S employees will be permitted or crossing property to the adjoining premises unless the occupant or owner of both properties has given permission. Care shall be taken to prevent damage to property, including flowers, shrubs, and other plantings. CONTRACTOR is responsible for repairs to all damaged property, public or private, caused by CONTRACTOR.
 - (4) CONTRACTOR's Collection vehicles shall remain on the right-hand side of the road when providing Residential Collection Service on two-way streets with center stripes. At no time shall collection crews cross to the opposite side of a street with center stripes to retrieve Containers, Roll Carts, or materials that have been set out for Collection. In situations where it is impossible or difficult to turn around to serve a location from the right side of the vehicle, then left-side service is permitted, but only in a manner that ensures the safety of residents and collection workers and only when approved by the Contract Administrator. At no time shall collection workers use the riding steps when the vehicle is backing up, exceeding 10 miles per hour, or traveling more than 0.2 miles.
- J. Spillage. The CONTRACTOR shall clean up any Residential Solid Waste spilled from a Container by the CONTRACTOR, or its employees or Residential Bulk Waste spilled or scattered by the CONTRACTOR or its employees prior to proceeding to the next customer, if reasonably possible, but in no event prior to the end of that pick-up day. Care shall be taken by CONTRACTOR'S employees to prevent damage to Containers by unnecessary rough treatment.
- K. Routes and Schedules. The CONTRACTOR shall provide the Contract Administrator with schedules for all Residential Collection Service routes in accordance with the Transition Plan and shall always keep such information current. If any changes in the Collection routes occur, the Contract Administrator shall be immediately notified in writing. No permanent change in routes or schedules that will alter the days of Residential Waste Collection may be made without the prior written consent of the Contract Administrator.

In the event a permanent change in routes or schedules that will alter the days of Residential Waste Collection is approved by the Contract Administrator, the CONTRACTOR shall immediately notify the affected Residential Customers, in writing or other manner as approved by the Contract Administrator, not less than two (2) weeks prior to the change.

SECTION 6. RESIDENTIAL COLLECTION CONTAINERS

- A. Customer-Provided Containers. Within three (3) Work Days of being notified by a Residential Customer or the TOWN that CONTRACTOR or its employees destroyed the customer's container, CONTRACTOR shall provide the Residential Customer with a container of comparable size and quality. CONTRACTOR is not responsible for a replacement Container if it can satisfactorily prove to the Contract Administrator that CONTRACTOR or its employees did not damage the customer's Container. Prior to payment or replacement of the Container, the Residential Customer shall give CONTRACTOR their damaged Container for disposal.
- B. Purchase and Distribution of Solid Waste & Recycle Roll Carts.
- (1) The standard Solid Waste Roll Cart shall be sixty-four (64) gallons or similar in size. However, CONTRACTOR shall make ninety-six (96) gallon (or similar in size) Solid Waste Roll Carts available upon request by a Residential Customer. Prior to assembly and distribution of Solid Waste Roll Carts, CONTRACTOR may conduct a survey of Residential Customers to determine which size Solid Waste Roll Cart they prefer. If CONTRACTOR plans to conduct such a survey, the details of such survey shall be included in the Transition Plan and the survey and method of collection of survey data must be approved by the TOWN in advance of its distribution.
 - (2) Upon request by a Residential Customer, CONTRACTOR shall exchange a Solid Waste Roll Cart with an alternatively sized Roll Cart within five (5) Work Days of request for such exchange by the customer or TOWN. CONTRACTOR shall provide one (1) Solid Waste Roll Cart exchange per Residential Customer during the initial Contract term at no charge to the customer or the TOWN. Should a Residential Customer request additional exchanges, CONTRACTOR may charge the Residential Customer an Exchange Fee in accordance with Exhibit 1.
 - (3) Upon request by a Residential Customer, CONTRACTOR shall provide more than one (1) Solid Waste Roll Cart to accommodate extra materials. CONTRACTOR shall charge Residential Customer for each extra Solid Waste Roll Cart for an additional unit in accordance with Exhibit 1. CONTRACTOR shall provide additional Solid Waste Roll Carts within five (5) Work Days of request by a Residential Customer or the TOWN. If a Residential Customer desires the Collection of the extra Solid Waste Roll Cart(s), CONTRACTOR shall issue an annual invoice for the Collection that shall be paid directly by the Residential Customer to CONTRACTOR in accordance with the rate schedule provided in Exhibit 1. Such annual invoice shall be prorated based upon the 1st day of the month that Collection commences, and it shall be based upon a calendar year. CONTRACTOR shall send all renewal invoices to the Residential Customers in December of each calendar year. CONTRACTOR shall not be required to collect any extra Solid Waste Roll Cart(s) unless it has been paid to collect same. Residential Customer may cancel its extra Solid Waste Roll Cart(s) Collection at any time, but such cancellation shall only go into effect the next calendar year. Cancellation shall not be effective until such time Customer returns extra cart to Contractor. Residential Customers who cancel their extra Collection shall not receive a proration for services, nor shall they be able to seek a credit for failure to utilize this service. The TOWN is not liable or responsible for any payment to CONTRACTOR for the failure of payment by a Residential Customer, or for CONTRACTOR's collection of such extra waste.
 - (4) CONTRACTOR shall provide a transition plan to the Contract Administrator, which is subject to the approval of the Contract Administrator. The transition plan shall include the information specified below:

- (a) Cart Procurement: Schedule for purchase and manufacturing of CONTRACTOR-provided Roll Carts for Residential Collection Service including artwork approval by TOWN and prototype delivery. The TOWN retains the right to require acceptable documentation including, but not limited to, purchase orders, delivery schedules, and receipts of payment.
- (b) Cart Assembly and Distribution (A&D): Schedule for Roll Cart A&D including cart shipment dates, days and hours of operations, and completion of A&D. All Roll Carts shall be delivered to all customers at least one (1) week prior to the Commencement Date. An A&D plan shall also be included two (2) weeks prior to the Commencement date identifying A&D contractor, if applicable, and contact information, staging areas, A&D route schedule, and expected number of carts delivered per day.
- (c) Cart Swaps: Schedule for Roll Cart swaps, including plan for receiving swap requests and initiating exchanges.

C. Purchase and Distribution of Recycling Carts.

- (1) Prior to the Commencement Date, the CONTRACTOR shall ensure that all Residential Customers desiring Recycling Carts are provided such. Recycling Carts shall be of a similar size and quality as those currently in use, meet the technical specifications provided in Exhibit 5, and be approved by the Contract Administrator. The CONTRACTOR shall provide Recycling Carts to all new Residential Customers within five (5) Work Days of notification of a new Residential Customer.
- (2) Upon request by a Residential Customer, CONTRACTOR shall provide more than one (1) Recycling Cart to accommodate extra recyclable materials. CONTRACTOR shall provide additional Recycling Roll Carts within five (5) Work Days of request by a Residential Customer or the TOWN.

D. Repair and Replacement of Solid Waste and Recycling Carts.

- (1) CONTRACTOR shall maintain a sufficient inventory of Solid Waste Roll Carts and Recycling Carts to be able to deliver new or replacement Roll Carts of the requested size within five (5) Work Days of receiving request.
- (2) CONTRACTOR shall repair or replace a Roll Cart within five (5) Work Days of receiving notice from the TOWN or customer of the need for repair, or if identified unserviceable by CONTRACTOR.
- (3) Any Roll Carts damaged by the CONTRACTOR, including extra Roll Carts, shall be replaced by the CONTRACTOR, at the CONTRACTOR's expense, at no cost or inconvenience to the Residential Customer.
- (4) The cost of replacing Roll Carts due to loss, theft (without documented police report), or destruction through no fault of the CONTRACTOR shall be charged by the CONTRACTOR to the Residential Customer for an amount not to exceed the rate schedule set forth in Exhibit 1. This fee shall be collected from the Residential Customer by the CONTRACTOR prior to delivery of the Roll Cart.

E. Ownership of Roll Carts. Ownership of Roll Carts provided by CONTRACTOR shall rest with the CONTRACTOR.

SECTION 7. RESIDENTIAL NON-COLLECTION PROCEDURES

- A. In the event Solid Waste contains Exempt Waste, Recyclable Materials are contaminated through commingling with Solid Waste, or other occurrence that would warrant legitimate non-collection by the CONTRACTOR, the CONTRACTOR shall affix a Non-Collection Notice to the Container or waste itself explaining why Collection was not made and explaining proper procedures for setting out Solid Waste, Bulk Waste, and Recyclable Materials.

- B. The design and content of all Non-Collection Notices must be approved by the Contract Administrator and the cost of printing and delivery of said notices shall be paid for by the CONTRACTOR.

SECTION 8. RESIDENTIAL BULK WASTE PROCESSING

- A. The CONTRACTOR is responsible for the transport, processing, marketing, and final disposal of all Residential Bulk Waste collected by the CONTRACTOR. Bulk Waste must be processed or disposed at a legally permitted and licensed facility(s) to process such materials, as agreed upon by the TOWN and CONTRACTOR. The Bulk Waste processing facility shall be Brevard County, Sarno Transfer Station 3379 Sarno Road, Melbourne, FL 32934, or such other facility(s) approved in writing by the Contract Administrator.
- B. To the extent practical, the CONTRACTOR shall recycle any recyclable items collected in the Residential Bulk Trash, including White Goods, and shall mulch, compost, or otherwise recycle Yard Trash. The CONTRACTOR shall record the quantities of Bulk Trash and Yard Trash recycled and the quantities disposed and shall report such quantities to the Contract Administrator for each month and the report shall be given to the Contract Administrator within the month following the report date.

SECTION 9. DESIGNATED FACILITIES

- A. Except as set forth below, all Residential Solid Waste collected by the CONTRACTOR shall be transported to, and disposed of, at any facility selected by the Contractor and approved by the TOWN. The designated facility for collected solid waste and bulk waste will be the Brevard County, Sarno Transfer Station 3379 Sarno Road, Melbourne, FL 32934.
- B. All Residential Recyclable Materials collected by the CONTRACTOR shall be delivered to a facility selected by the Contractor and approved by the TOWN. The designated facility for collected recycling material will be the Waste Management Recycling Center, 650 Townsend Rd., Cocoa, FL 32926.
- C. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Section 19 of this Contract and may result in the CONTRACTOR being in default under this Contract.

SECTION 10. ADDITIONAL SERVICES

- A. TOWN Services. The CONTRACTOR shall provide, at no cost to the TOWN, Solid Waste and Recyclables Collection services to all Town facilities, including the provision and servicing of Containers. Provided below is a list of services provided at the time of Contract execution. Services to be provided may be adjusted during the term of the Contract based on need.

Locations	Address	Service Frequency	Garbage Carts	Recycle Carts	Dumpster Size
Malabar Town Hall	2725 Malabar Rd	Twice Weekly	(1) 64-Gallon Cart	(1) 64-Gallon Cart	N/A
Malabar Fire Department	1810 Malabar Rd	Once weekly	(1) Dumpster	-	4 yards
Malabar Public Works Facility	1435 Centre St.	Once weekly	(1) Dumpster	-	4 yards
(2) Community Events	1850 Malabar Rd	Once per Event	(12) 64 Gallon Cart/One Time Use Containers	(6) 64 Gallon Cart/One Time Use Containers	N/A

- B. Public Awareness Program. The CONTRACTOR agrees to participate in public outreach events, at no charge to the Town, by providing up to twelve (12) hours per year of an outreach person's time at such public outreach events, provided that notice of at least two weeks is given. If the TOWN'S notice for CONTRACTOR'S cooperation under this Section is less than two weeks, CONTRACTOR, at its sole discretion, may agree to provide the requested outreach person.

SECTION 11. RESIDENTIAL RATES AND BILLING

- A. Customer Billing. Except as specifically provided herein, the CONTRACTOR shall be responsible for the billing and collection of payments for all Residential Collection Service. The CONTRACTOR shall be responsible for directly billing Residential Customers for providing and servicing extra Roll Carts and for providing special collection service as specified in Section 5.D of this Contract. Fees shall be deemed delinquent fifteen days after the end of billing cycle. Interest shall accrue on delinquent fees at the same rate provided in Section 55.03, Florida Statutes. The interest rates established by the Brevard County Chief Financial Officer is published at the following website: <http://brevardclerk.us/civil-judgment-interest-rates>.

To the full extent permitted by law, Contractor is hereby authorized to impose a lien against Residential Property as to which residential collection fees are delinquent ninety (90) days after the billing cycle. Provided however, Contractor agrees to use best efforts to collect delinquent fees by means other than the imposition of liens, such as collection agency, to include additional cost of said collection agency. Contractor shall have the right to recover fees for filing of lien. All liens for delinquent payments shall be imposed within one (1) year of becoming delinquent.

Contractor may terminate residential waste collection service, residential recyclable material collection service, or residential yard trash collection service for non-payment of delinquent payments. No owner or occupant shall avoid the use of or be excused from the payment of the applicable fees for, residential waste collection service, residential recyclable material collection, or residential yard trash collection service by virtue of non-payment.

Residential Service Unit Count. No later than October 1st, 2021, the TOWN will provide the CONTRACTOR with an initial list of Residential Service Units within the Service Area. In the event the CONTRACTOR does not agree with the Residential Service Unit count provided by the TOWN, the CONTRACTOR may request that the TOWN and the CONTRACTOR perform a joint physical count of the Residential Service Units in the Service Area.

- B. Service Rates. In accordance with the rates established in Exhibit 1, attached hereto and included herein, the collection elements of the initial service rate shall not be adjusted for the first year of the contract effective with the commencement of service date of no later than January 1, 2022.
- C. Service Rate Adjustments. The rates for Residential Collection Service shall be adjusted January 1, 2023, and annually thereafter each Contract Year, as described herein. Any requested adjustments must be submitted to the Town by October 1st of each year for the following fiscal year, beginning with October 1, 2022. An example of the calculation of such adjustment is provided in Exhibit 2. All rate adjustments shall be reduced to writing and signed by the CONTRACTOR representative identified in Section 25 and the Town Manager.
- D. Indexes for Adjusting Rates. The following indexes shall be used for calculating rate adjustments pursuant to this Contract. If either of these indexes is discontinued or substantially altered, the TOWN shall select another relevant index published by the United States Government or by a reputable publisher of financial and economic indexes.
- (1) The Consumer Price Index (CPI) used for adjusting rates shall be the Consumer Price Index for Series Id: CUUR0000SEHG02, Garbage and trash collection in U.S. city average, all urban consumers, not seasonally

adjusted as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics.

- (2) The Fuel Index used for adjusting rates shall be the Lower Atlantic (PADD 1C) Ultra Low Sulfur (15 ppm and under) Retail Diesel Prices (Dollars per Gallon) as published by the Energy Information Administration of the United States Department of Energy.
- E. Collection Element Adjustment. The collection elements of the Residential Collection Service rates shall be adjusted based on the Consumer Price Index and Fuel Index, as defined in this Section and illustrated in Exhibit 2.
- (1) Ninety-five percent (95%) of the collection elements of the Residential service rates shall be adjusted based on one hundred percent (100%) of the percentage change in the CPI for February of the previous year and February of the current year, rounded to the nearest hundredth of a percent.
 - (2) Five percent (5%) of the collection elements of the Residential service rates shall be adjusted based on the percentage change in the average monthly Fuel Index for the twelve (12) month period ending February of the previous year and the average monthly Fuel Index for the twelve (12) month period ending February of the current year, rounded to the nearest hundredth of a percent.
- F. Recycle Processing Fee. The recycle processing fee is new to the solid waste industry, has become a permanent fee, with pricing fluctuations. The current recycling processing fee at the Effective Date of this agreement is twenty-five dollars (\$25) per ton. The residential collection rate shall be adjusted based on the new recycle processing fee at the designated facility. The adjustment shall be calculated at time of increase as follows:
- New recycling processing fee (\$/ton) minus current fee, multiplied by total number of tons collected during previous twelve (12) months, divided by most recent house count, divided by twelve (12) months, equals adjusted amount to be added to monthly residential collection rate.
- G. Contract Preparation and Administration Expenses. The TOWN shall assume all expenses regarding contract preparation and general administration of the contract by TOWN employees.
- H. Recycling Revenues. The TOWN shall retain any revenue generated from the processing and sale of Residential Recyclable Materials after processing and transportations fees are paid.

SECTION 12. CHANGE IN LAW AND UNUSUAL CHANGES IN THE COST OF DOING BUSINESS

The CONTRACTOR may petition the TOWN for an additional rate adjustment resulting from a change in federal, state, or local laws or unusual cost of doing business. The CONTRACTOR'S request shall contain substantial proof and justification to support the need for the rate adjustment. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the TOWN, the Town Manager shall make a determination regarding the equity of the request and shall make a recommendation to the Town Council at a regular meeting. Adjusted Rates shall become effective upon approval by the Town Council.

SECTION 13. CONTRACTOR'S PERSONNEL

- A. The CONTRACTOR shall assign a qualified supervisor to oversee the operations within the Service Area and shall provide the name of that person in writing to the Contract Administrator annually and any other time the person in that position changes. The supervisor shall always be available to the TOWN by telecommunications equipment that the CONTRACTOR is providing Residential Collection Service. The

supervisor or their representative shall be available onsite within four (4) hours or before the end of the Work Day if requested by the Contract Administrator.

- B. The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.
- C. The TOWN may request the transfer of any employee of the CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.
- D. CONTRACTOR'S employees shall be required to wear a clean uniform shirt bearing the CONTRACTOR'S name.
- E. Each driver of a Collection vehicle shall at all times carry a valid Florida driver's license and all other required licenses for the type of vehicle that is being operated.
- F. CONTRACTOR'S employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the TOWN. The CONTRACTOR'S name shall be properly displayed on all Collection vehicles.

SECTION 14. SPILLAGE AND LITTER

- A. The CONTRACTOR shall not litter any premises in the process of providing Residential Collection Service. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection services so as to prevent spilling or dropping of Solid Waste, Bulk Waste, or Recyclable Materials during Collection activity and shall immediately, prior to proceeding to the next customer, if reasonably possible, but in no event prior to the end of that pickup day, clean up such spilled or dropped Solid Waste, Bulk Waste, or Recyclable Materials. The CONTRACTOR shall transport all Solid Waste, Bulk Waste, and Recyclable Materials in such a manner as to prevent the spilling or blowing from the CONTRACTOR'S vehicle.
- B. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR'S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street or other surface. When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning or remove contaminated surface soil or material and promptly replace with clean soil or surface material. CONTRACTOR shall provide the TOWN with a daily report of any such leakage, the location of such leakage, the vehicle at issue, and the remediation measures used to correct same.

SECTION 15. COLLECTION EQUIPMENT

- A. The CONTRACTOR shall always have on hand, in good working order, such collection equipment as shall permit the CONTRACTOR to adequately and efficiently perform the duties specified in this Contract. Any proposed change in the collection system being used by the CONTRACTOR during the Contract period shall be submitted in writing by the CONTRACTOR to the Contract Administrator.
- B. Residential collection vehicles shall be of a type sufficient to efficiently collect all Solid Waste, Yard Waste, Bulk Waste, and Recyclable Materials covered by this Contract, and transport such materials to the designated facilities in a manner such that no collected materials can be blown or fall from the vehicle during transport. The CONTRACTOR may utilize open-bed vehicles in the provision of Bulk Waste Collection; however, the vehicles must contain the Bulk Waste so that no material is spilled, leaked, or blown from the vehicle, and the vehicle must be covered with a securely fastened tarp during transport.

- C. Each collection vehicle shall always be equipped with: (a) all safety supplies, equipment, and first aid supplies required by applicable laws; (b) a fire extinguisher; (c) a heavy-duty broom, a rake, and a large dustpan or shovel; (d) a spill response kit; (e) an audible back-up warning device; and (f) back-up cameras. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from CONTRACTOR's collection vehicles.
- D. All equipment shall be kept well painted, shall clearly display CONTRACTOR's name, and shall be maintained in good repair, appearance, and sanitary, clean condition in order to meet community standards of appearance at all times. All collection equipment shall be leak-proof to prevent any liquid from draining onto the ground. The TOWN reserves the right, at its discretion, to require a vehicle be taken out of service for habitual leakage of oil, hydraulic fluid, or other liquids or other maintenance issues. Such vehicle shall not be placed back into service until and unless the TOWN is able to verify that the necessary repairs have been made.
- E. The CONTRACTOR shall have available to it, at all times, reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

SECTION 16. OFFICE

- A. The CONTRACTOR shall maintain an office where complaints can be received, and which provides toll-free telephone access for customers living in the TOWN. Such office shall be equipped with sufficient telephones, shall have responsible persons in charge, and shall be open 8:00 a.m. to 5:00 p.m. Monday through Friday on those days that the CONTRACTOR provides Residential Collection Service. The CONTRACTOR shall provide either a telephone answering service or mechanical device to receive customer inquiries during those times when the office is closed. Messages left on the answering service or mechanical device shall be responded to on the next Work Day.
- B. The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

SECTION 17. SERVICE INQUIRIES, COMPLAINTS, AND PROPERTY DAMAGE

- A. All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints shall be handled by the CONTRACTOR in a prompt and efficient manner. In the case of a dispute between a CONTRACTOR and a customer, the matter will be reviewed, and a decision made by the Contract Administrator.
- B. The CONTRACTOR will maintain a written record of all calls it receives regarding services provided pursuant to this Contract, including but not limited to inquiries, missed Collections, and complaints (Call Log). CONTRACTOR shall use a standard form for the Call Log, as approved by the Contract Administrator, to record the pertinent facts of each call, including but not limited to date and time of call; name, address, and telephone number of persons calling; reason for the call; action taken by CONTRACTOR; and date and time any issue was resolved. CONTRACTOR shall keep this Call Log up to date.
- C. For those complaints related to missed Collections, CONTRACTOR shall make every effort to return to the service address and collect the missed materials that same day. For missed Collection complaints that are received by noon on a Work Day, the CONTRACTOR must return to the service address and collect the missed materials that same day. For missed Collection complaints that are received after noon on a Work Day, the CONTRACTOR must return to the service address and collect the missed materials by noon of the following Work Day.

- D. For those complaints related to repair or replacement of Roll Carts, the appropriate subsections of Section 6 of this Contract shall apply.
- E. The CONTRACTOR shall be responsible for the prompt repair or replacement, if repair is not adequate, of any damage to public or private property during the provision of Residential Collection Service and caused by the CONTRACTOR or the CONTRACTOR'S representative. Within twenty-four (24) hours of occurrence, the CONTRACTOR shall provide the Contract Administrator with a full explanation of the disposition of any complaint involving a claim of damage to public or private property as a result of actions of the CONTRACTOR. The CONTRACTOR shall promptly repair any such legitimate damage claim at its sole expense and within an agreed upon time frame, not to exceed one (1) week, as approved by the Contract Administrator. Upon the request of the CONTRACTOR, the Contract Administrator may grant a time extension. Proof of the need for an extension shall be submitted by the CONTRACTOR.
- F. CONTRACTOR agrees that it is in the best interest of the TOWN that all Residential and Commercial Collection Service be provided on the scheduled Collection Day. Accordingly, missed Collections will normally be collected in accordance with Subsection C above regardless of the reason that the Collection was missed. However, in the event the CONTRACTOR does not address a missed Collection complaint in accordance with Subsection C because it believes such complaint to be without merit, CONTRACTOR shall immediately notify the Contract Administrator in writing. The Contract Administrator will investigate all disputed complaints and render a final and binding decision.

SECTION 18. RECORDKEEPING AND REPORTING

- A. The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." CONTRACTOR acknowledges the public shall have access at all reasonable times to all documents and information pertaining to TOWN's contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law.
- B. To the extent that CONTRACTOR has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of this Contract, CONTRACTOR shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.
- C. CONTRACTOR agrees to keep and maintain public records required by the TOWN to perform the service in CONTRACTOR's possession or control in connection with CONTRACTOR's performance under this Contract and, upon the request from the TOWN's custodian of public records, to provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the TOWN.
- D. Upon completion of the Contract, CONTRACTOR agrees, at no cost to TOWN, to transfer to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If the CONTRACTOR transfers all public records to the TOWN upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology system of the TOWN.

- E. CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by TOWN.
- F. The CONTRACTOR shall keep records of the amounts of Residential Solid Waste, Bulk Trash, and Yard Trash disposed; Residential Bulk Trash, Yard Trash, and Recyclable Materials recycled. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.
- G. The CONTRACTOR shall file and keep current with the TOWN all documents and reports required by this Contract. All documents and reports submitted to the TOWN by the CONTRACTOR shall be fully transparent. CONTRACTOR shall provide additional information as requested by the Contract Administrator to comply with such requirement for transparency.
- H. By the date specified in the TOWN-approved Transition Plan, CONTRACTOR shall electronically transmit to the Contract Administrator the completed and current Residential Customer list that has been revised.
- I. Prior to the fifteenth (15th) calendar day of each month, at the close of each quarter, during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall contain the following information:
 - (1) Tonnage of Residential Solid Waste, Residential Bulk Trash and Residential Yard Trash disposed during the previous month. At the Contract Administrator's request, CONTRACTOR shall provide documentation, in the form of scale house tickets, of the tonnage of Residential Solid Waste and Residential Bulk Waste that is disposed each month.
 - (2) Tonnage of Residential Bulk Trash, Residential Yard Trash, and Residential Recyclable Materials recycled during the previous month.
- J. Prior to September 15th of each year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance, performance bond, route schedules and maps.
- K. In addition to any other requirements of this Contract, the CONTRACTOR shall be required to provide statistical and other pertinent information pertaining to Residential Collection Service as may be requested by the TOWN to monitor compliance with this Contract or to comply with the provisions of Section 403, F.S., as amended, other pertinent laws and regulations, or any interlocal agreements the TOWN has or may enter into during the term of this Contract.
- L. The CONTRACTOR shall mark any information it considers confidential, proprietary, or privileged as such and the TOWN will treat such information accordingly as provided for in Chapter 119, Florida Statutes. If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR's duty to provide public records relating to this Contract, CONTRACTOR shall contact the TOWN's custodian of public records, Town Clerk, at (321) 727-7764.

SECTION 19. LIQUIDATED DAMAGES

- A. It is the intent of the TOWN to ensure that the CONTRACTOR provides a quality level of Residential Collection Service. The TOWN and CONTRACTOR acknowledge and agree that it is impossible to precisely determine the amount of damages that would be incurred by the TOWN due to service failures or circumstances described in this Section for which the CONTRACTOR would otherwise be liable. Accordingly, the TOWN has determined terms and amounts of liquidated damages set forth herein, and the parties agree that the liquidated damages are reasonable under the circumstances. Therefore, the following shall constitute liquidated damages, not penalties, that the TOWN may assess against the CONTRACTOR for failing to comply with requirements of this

Contract, time being of the essence. It is hereby agreed that the TOWN may deduct from any monies due, or which may become due to the CONTRACTOR, such assessed liquidated damages in the following amounts:

- | | | |
|------|--|---|
| (1) | Failure to submit a Transition Plan within thirty (30) days of Contract execution or to revise the Transition Plan within five (5) Work Days of notification by the Contract Administrator without prior approval of the Contract Administrator for such delay in submittal (§4.A) | \$100.00 per day past the due date |
| (2) | Failure to meet the schedule outlined in the TOWN-approved Transition Plan without prior approval of the Contract Administrator for such delay (§4.A) | \$100.00 per incident per day past the due date |
| (3) | Failure or neglect to resolve each valid complaint, including missed Collection, in the timeframe specified (§17) | \$100.00 per each unresolved |
| (4) | Failure to repair damage to public or private property determined caused by the CONTRACTOR or its personnel within the timeframe approved by the Contract Administrator (§17.F) | \$100.00 per incident after the timeframe approved in writing by Contract Administrator |
| (5) | Mixing of materials in violation of §5.D(4) | \$100.00 per occurrence |
| (6) | Failure to comply with hours and days of operation (§5.A(3)) | \$250.00 per occurrence per vehicle |
| (7) | Changing Collection routes without proper notification (§5.K) | \$1,000.00 per incident per day |
| (8) | Failure to distribute Solid Waste Roll Carts by date specified in Transition Plan unless otherwise approved by the Contract Administrator (§6B(2)) | \$100.00 per Roll Cart per day past due date |
| (9) | Failure to repair, replace, exchange, or deliver a Roll Cart within the required timeframe (§6.D) | \$100.00 per Roll Cart |
| (10) | Failure to collect and process Bulk Waste in a manner that enables, at a minimum, recycling of Yard Trash and White Goods (§5.B and §8) | \$100.00 per Residential Service Unit |
| (11) | Failure to deliver all Residential Solid Waste to the Designated Disposal Facility (§9.A) | \$100.00 per incident |
| (12) | Failure to deliver all Residential Recyclable Materials to the Designated MRF (§10.B) | \$100.00 per incident |
| (13) | Failure to have a vehicle operator properly licensed (§13.E) | \$100.00 per vehicle per day |
| (14) | Failure to clean up spillage, leakage, or excessive blowing debris with the timeframe specified after notification by Town (§14.A) | \$100.00 per incident per day |

- (15) Failure to assign scheduled vehicles and equipment on a route day (§15.A) \$100.00 per vehicle per day
 - (16) Failure to submit to the TOWN all plans, reports, records, or other documents in the time required under the provisions of this Contract, including §20, unless otherwise approved by the Contract Administrator \$250.00 per month
 - (17) Failure or neglect to complete more than 95 percent of a route (number of missed pickups must be less than 5 percent of total customers on that daily route to be considered more than 95 percent complete) on the regularly scheduled Collection Day without justifiable cause (cause that is beyond the control of the CONTRACTOR) or prior approval by the Contract Administrator \$250.00 per incident
- B. The Contract Administrator may assess liquidated damages pursuant to this Section at any time during the term of this Contract. The Contractor Administrator shall notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, within ten (10) Work Days of receipt of written notice, CONTRACTOR shall request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims within five (10) Work Days of such meeting. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.

SECTION 20. EMERGENCY SERVICE PROVISIONS

- A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Contract Administrator may grant the CONTRACTOR a variance from regular routes and schedules. Such variance from regular routes and schedule to ensure the safety of the CONTRACTOR's employees and members of the community shall not be unreasonably denied by the TOWN. However, CONTRACTOR shall make its best effort to resume regular Collection service as soon as possible. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular Collection services may be resumed.
- B. The clean-up from some events may require that the CONTRACTOR hire additional equipment, employ additional personnel, dispose of additional solid waste and bulk waste or work existing personnel on overtime hours to clean debris resulting from the event. The CONTRACTOR shall receive additional compensation, per Exhibit 4, above the normal compensation contained in this Contract, to cover documented costs provided the CONTRACTOR has first secured written authorization and approval from the TOWN through the Contract Administrator. The CONTRACTOR shall substantiate such additional costs for labor, equipment, transportation, and/or disposal in writing. The TOWN shall have the right to audit such costs.
- C. The TOWN reserves the right to contract additional hauling contractors for debris removal operations after it is determined by the Contract Administrator that additional services are needed and after notice to the CONTRACTOR for events hurricane, tornado, major storm, natural disaster, or other such event.

SECTION 21. PERFORMANCE BOND

Prior to commencing services, the CONTRACTOR shall furnish to the TOWN, and keep current for the full duration of the Contract and any renewal, a Performance Bond for the faithful performance of this Contract and all obligations arising hereunder in the amount of three hundred thousand dollars (\$300,000.00). It shall be executed by a surety company licensed to do business in the State of Florida; having an "A-" or better rating by A. M. Best or Standard and Poor's; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the TOWN.

SECTION 22. INSURANCE

- A. The CONTRACTOR shall provide, pay for, and always maintain in force during the term of this Contract, such insurance, including Worker's Compensation Insurance and comprehensive general liability insurance as stated below. The CONTRACTOR shall also name the TOWN as an additional insured to CONTRACTOR'S comprehensive general liability insurance policy, and shall provide the TOWN with annual Accords documenting both insurance coverages and that the TOWN has been named as an additional insured on the comprehensive general liability insurance policy and as a certificate holder for all other forms of insurance and setting forth the minimum insurance standards set forth below:
- (1) Worker's Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the CONTRACTOR'S employees.
 - (2) Comprehensive General Liability Insurance, including contractual, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit for bodily injury liability and property damage liability. The TOWN is to be included and named as an "additional insured" with respect to any claims arising out of this Contract.
 - (3) Business Automobile Liability Insurance with minimum limits of one million dollars (\$1,000,000) per occurrence, combined single limits bodily injury liability and property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements, as filed by the Insurance Services Office, and must include all owned vehicles and all hired or non-owned vehicles.
- B. UPON EXECUTION OF THIS CONTRACT, CONTRACTOR SHALL SUBMIT TO TOWN COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES REQUIRED HEREIN AND SPECIFICALLY PROVIDING THE ENDORSEMENT TO THE POLICIES THAT SHOWS THE TOWN OF MALABAR IS AN ADDITIONAL NAMED INSURED CERTIFICATE HOLDER, AS APPLICABLE, WITH RESPECT TO THE REQUIRED COVERAGES AND CONTRACTOR'S WORK UNDER THIS CONTRACT.
- C. The CONTRACTOR shall not commence operations, and/or labor to complete any of the work pursuant to this Contract until certification or proof of insurance issued directly by the insurance company underwriting department or insurance agent, detailing terms and provisions of coverage has been received and approved by the Town.
- D. Insurance policies and coverages shall not be affected by any other policy of insurance which the TOWN may carry in its own name.
- E. CONTRACTOR'S insurance policies shall be endorsed to provide the TOWN with at least thirty (30) calendar days' prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits. Notice shall be sent to:

Town Manager
Town of Malabar

2725 Malabar Road
Malabar, Florida 32950

- F. All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance.
- G. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- H. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which TOWN is named as an additional insured shall not apply to TOWN. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN's actual notice of such event.
- I. If any of CONTRACTOR's initial insurance expires prior to the completion of the term of this Contract, renewal copies of policies shall be furnished to TOWN at least thirty (30) days prior to the date of their expiration, and TOWN shall be an additional named insured by endorsement on all of CONTRACTOR's renewal policies.
- J. The official title of the owner is Town of Malabar. This official title shall be used in all insurance policies and documentation.
- K. Notwithstanding any other provisions of this Contract, CONTRACTOR's obligation to maintain all required insurance as specified in this Section of the Contract shall survive the expiration or earlier termination of this Contract.

SECTION 23. INDEMNIFICATION OF TOWN

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind resulting from the negligent reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor of CONTRACTOR, or any person directly or indirectly employed by CONTRACTOR or any subcontractor of CONTRACTOR to perform or furnish any services, or caused by the breach of this Contract or violation of applicable law in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property.
- B. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsection A, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly

reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days.

- C. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights and responsibilities contained in this Contract.
- D. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 24.
- E. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

SECTION 24. POINT OF CONTACT

The day-to-day dealings between the CONTRACTOR and the TOWN shall be between the CONTRACTOR and the Town M Manager or designee.

SECTION 25. NOTICE

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the TOWN:

Town Manager Town of Malabar 2725 Malabar Road Malabar, Florida 32950	and	Town Clerk/Treasure Town of Malabar 2725 Malabar Road Malabar, Florida 32950
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As to the CONTRACTOR:

Division Manager Waste Pro of Florida, Inc. 2951 W. King St. Cocoa, Florida 32926	and	Regional Vice President Waste Pro of Florida, Inc. 3705 St. Johns Parkway Sanford, Florida 32771
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Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Electronic transmission is acceptable notice, effective when received; however, electronic transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted electronically must also be mailed as required herein.

SECTION 26. TERMINATION OF CONTRACT

- A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days' advance written notice, to be served as provided in Section 25, upon the happening of any one of the following events:
- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
 - (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
 - (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
 - (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money due the TOWN to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or
 - (7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide Collection for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4th) Work Day in order to provide interim Contract Collection until such time as the matter is resolved and the

CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN, except to the extent the failure to provide Collection services is the result of the occurrence of an event of force majeure.

- B. Habitual Violations. If the Contractor frequently, regularly, or repetitively fails to comply with its obligations and requirements under this Agreement, The Town may conclude that the Contractor is a "habitual violator." The Town has determined that habitual violations are those administrative charges that cumulatively amount to \$100,000 or more over a 12-month period. If The Town concludes the Contractor is a habitual violator, The Town shall issue a final warning to the Contractor, citing the grounds for the warning, and any single default by the Contractor within a 6-month period thereafter shall be grounds for immediate termination of this Agreement.
- C. Effective Date of Termination. In the event of the aforesaid events specified in subsections A and B above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The Contractor and its surety on the performance bond, shall be liable for any excess cost for performing such work over the cost to The Town if the Contractor had continued to perform in accordance with the Contract.

SECTION 27. MODIFICATIONS TO THE CONTRACT

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make changes in Solid Waste Management legislation and that changes in law may mandate certain changes to this Contract. Should such changes materially alter the obligations of the CONTRACTOR, then the Collection charges established in the Exhibits to this Contract shall be adjusted accordingly. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required. In addition, TOWN and the CONTRACTOR may approve other changes upon mutual agreement to address any other amendments to this contract. If an agreement cannot be reached, this Contract shall terminate upon one hundred and eighty (180) days of a declared impasse by either party.

SECTION 28. PERMITS AND LICENSES

The CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect, and shall, prior to execution of the Contract, provide copies of those permits and licenses to the TOWN, and within fifteen (15) days of receipt, all renewals thereof.

SECTION 29. INDEPENDENCE OF CONTRACT

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting the CONTRACTOR as an agent, representative or employee of the TOWN for any purpose whatsoever. The CONTRACTOR is to be, and shall remain, an independent contractor with respect to all services performed under this Contract.

SECTION 30. FORCE MAJEURE

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics,

quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, or federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated.

SECTION 31. EMPLOYEE STATUS

Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TOWN'S officers and employees either by operation of law or by the TOWN.

SECTION 32. EQUAL OPPORTUNITY EMPLOYMENT

CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, age, color, sex or national origin, or physical or mental handicap, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

CONTRACTOR shall comply with all federal, state and TOWN laws applicable to the CONTRACTOR services and specifically those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA") and the South Florida Building Code, The CONTRACTOR is expected to fully comply with all provisions of all laws and the TOWN reserves the right to verify the CONTRACTOR'S compliance with them. Failure to comply with any laws will be grounds for termination of the Contract for cause.

SECTION 33. DISPUTE RESOLUTION

The parties shall endeavor to settle all issues regarding this Agreement by amicable negotiations. Issues that are not amicably settled shall be submitted to non-binding mediation in front of a mutually agreed upon mediator.

- A. Mediation may be commenced by the TOWN or COLLECTOR by the service of a written request for mediation ("Request for Mediation") upon the other party. Such Request for Mediation shall summarize the controversy or claim to be mediated.
- B. The mediation shall be heard in Brevard County before a single mediator.
- C. All attorneys' fees and costs of the mediation shall be borne by the respective party incurring such costs and fees.
- D. If mediation is unsuccessful then the parties are free to file a lawsuit in Brevard County to enforce the provisions herein.
- E. The prevailing party in any litigation to enforce this Agreement, including at all appellate levels shall be entitled to an award of attorney fees.

SECTION 34. SERVICE DURING DISAGREEMENT

During any dispute which arises between the TOWN and the COLLECTOR, in any way relating to this contract, performance, or compensation hereunder, the COLLECTOR shall continue to render full compliance with all terms and conditions of this contract but shall not waive or relinquish any rights by doing so.

The failure of the TOWN at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the TOWN thereafter to enforce same, nor shall waiver by the TOWN of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

SECTION 35. GOVERNING LAW

The parties agree that this Contract shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 36. CONSENT TO JURISDICTION

The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Contract shall be with the State Courts of Florida, and specifically, the County or Circuit Court for the Eighteenth Judicial Circuit in and for Brevard County, depending upon the respective jurisdictional limit. Each party further agrees that venue for any action to enforce this Contract shall be in Brevard County, Florida.

SECTION 37. COMPLIANCE WITH LAWS

The CONTRACTOR shall conduct its operations under this Contract in compliance with all applicable Federal, State, and local laws and regulations.

SECTION 38. SEVERABILITY

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

SECTION 39. ASSIGNMENT AND SUBCONTRACTING

- A. Assignment. No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.
- B. Subcontracting. CONTRACTOR shall not employ subcontractors without the advance written permission of the TOWN. CONTRACTOR shall be fully responsible for the services and work provided by a subcontractor under the terms of this Contract. CONTRACTOR agrees that any employee or agent of the CONTRACTOR and any agent/employee of a subcontractor to the CONTRACTOR shall be removed from the TOWN jobsite or TOWN

premises upon request by the Town Administrator or designee. Such request will only be issued to remove a person if the Town Administrator or designee has a reasonable basis (as determined in his or her discretion) that the presence of such person on TOWN property or at a TOWN jobsite is not in the best interest of the TOWN, or its employees, guests, visitors or citizens.

- C. CONTRACTOR shall not be permitted to alter its contracted name, create a dba, or transfer more than fifty percent (50%) interest in its company without the specific written approval of the TOWN.

SECTION 40. MODIFICATIONS

This Contract constitutes the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

SECTION 41. LEGAL REPRESENTATION

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

SECTION 42. FUND APPROPRIATION

The CONTRACTOR understands and agrees that the TOWN, during any fiscal year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Contract shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. CONTRACTOR shall not proceed with services under this Contract without TOWN'S written verification that the funds necessary for CONTRACTOR'S compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The TOWN does not represent that said budget item will be adopted, said determination being the determination of the Town Council at the time of the adoption of the budget.

SECTION 43. PUBLIC ENTITY CRIME

CONTRACTOR understands that a person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. CONTRACTOR herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Contract for Residential Collection Service.

SECTION 44. FINANCIAL INTEREST

CONTRACTOR warrants and represents that no elected official, officer, agent, or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director, or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or

appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

SECTION 45. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 46. EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. Each such exhibit is a part of this Contract and each is incorporated by this reference.

SECTION 47. MODIFICATION OF TERMS

At any time after the first year of the term of this Agreement, upon the application of the Contractor, or on the initiative of the Town, the Town and the Contractor may negotiate changes in the type, level and method of delivery of services provided by the Contractor under this Agreement, whether in connection with rate adjustments or otherwise. Such negotiations and modifications may include, but shall not be limited to, innovative proposals to improve the quality of service, decrease the rates for service or both; take advantage of new equipment and procedures available in the industry; make reasonable modifications in the terms and provisions of the Agreement to assist in cost containment to the customers; or otherwise modify the terms and provisions of this Agreement in such manner as Contractor and Town may agree, Town does not hereby commit itself to agree to any requested or proposed modification in terms and specifications, but reserves the right to make such modifications and amendments to this Agreement as the Town may determine from time to time to be in the best interest of the Town, its residents and customers of the Contractor. Contractor specifically acknowledges the reserved right of the Town to negotiate modifications to this Agreement once executed. All modifications of this Agreement shall be in writing. No modifications shall be binding upon the Town until such modification shall have been authorized by resolution of the Town Council. Moreover, no modification of this Agreement shall be binding and valid as to surety without the consent of the surety.

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.

TOWN OF MALABAR, FLORIDA
A municipal corporation

ATTEST:

By:



Town Manager/Town Clerk

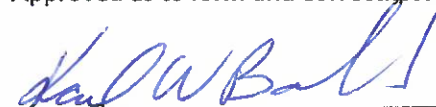


Patrick T. Reilly, Mayor

Date: 12-2-2021

Date: 12/6/2021

Approved as to form and correctness:




Karl W. Bohne, Jr
TOWN ATTORNEY

Date: 12/6/2021

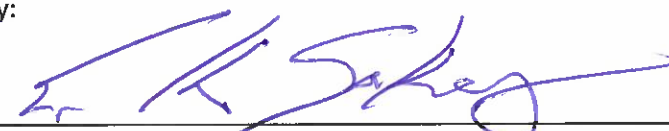
WITNESSES:

WASTE PRO OF FLORIDA, INC.

By:



Print Name: Kerry M. Salazar



Print Name & Title: ERIK SANKEY - RUP

Date: 12-1-21

Print Name: _____

**EXHIBIT 1
 RESIDENTIAL AND COMMERCIAL COLLECTION AND DISPOSAL SERVICE RATES**

These rates shall be in effect from January 1, 2022, through December 31, 2022. Rates shall be adjusted starting January 1st of each Contract Year thereafter in accordance with Section 11 and 12 herein. An example rate adjustment calculation is provided in Exhibit 2.

Service	Rates per household Per Month	Additional customer requested solid waste carts	Additional customer requested recycling carts
Residential Solid Waste Option 1a – Twice Per Week Collection for Solid Waste & Once Per Week Recycling of multiple size carts provided by Collector. (35, 64, 96 gallon). Weekly Collection of Unlimited Yard Waste and 12 cubic yards of Bulky/White Goods. Town to reduce Franchise Fee to 5%.	\$43.88	\$1.80/month	\$2.05/month

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: CAN AND CART SERVICE

Service Type	Frequency	Rate per Account per Month
32-gallon can (curbside) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$18.63
	2x weekly	\$24.35
32-gallon can (carryout) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$31.13
	2x weekly	\$36.85
35-gallon cart	1x weekly	\$18.70
	2x weekly	\$24.42
64-gallon cart	1x weekly	\$18.97
	2x weekly	\$24.69
96-gallon cart	1x weekly	\$19.07
	2x weekly	\$24.79

Town of Malabar, Florida
Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: BIN SERVICE		
Service Type	Frequency	Rate per Account per Month
2 c.y. bin	1x weekly	\$54.99
	2x weekly	\$109.98
	3x weekly	\$164.97
	4x weekly	\$219.96
	5x weekly	\$274.96
	6x weekly	\$329.95
4 c.y. bin	1x weekly	\$109.98
	2x weekly	\$219.96
	3x weekly	\$329.95
	4x weekly	\$439.93
	5x weekly	\$549.91
	6x weekly	\$659.89
6 c.y. bin	1x weekly	\$164.97
	2x weekly	\$329.95
	3x weekly	\$494.92
	4x weekly	\$659.89
	5x weekly	\$824.87
	6x weekly	\$989.84
8 c.y. bin	1x weekly	\$219.96
	2x weekly	\$439.93
	3x weekly	\$659.89
	4x weekly	\$879.86
	5x weekly	\$1,099.82
	6x weekly	\$1,319.78

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

COMMERCIAL FRONTLOAD COMPACTOR SERVICE		
Service Type	Frequency	Rate per Account per Month
3 c.y.*	1x weekly	\$125.35
	2x weekly	\$250.71
	3x weekly	\$376.06
	4x weekly	\$501.41
	5x weekly	\$626.77
4 c.y.*	1x weekly	\$167.14
	2x weekly	\$334.28
	3x weekly	\$501.41
	4x weekly	\$668.55
	5x weekly	\$835.69
5 c.y.*	1x weekly	\$208.92
	2x weekly	\$417.85
	3x weekly	\$626.77
	4x weekly	\$835.69
	5x weekly	\$1,044.61
6 c.y.*	1x weekly	\$250.71
	2x weekly	\$501.41
	3x weekly	\$752.12
	4x weekly	\$1,002.83
	5x weekly	\$1,253.54
* Plus charge for equipment lease, rental, or purchase.		

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

INDUSTRIAL / C&D ROLLOFF DEBRIS BOX SERVICE		
Service Type	Rate	
10 c.y.**	\$355.00	per pull **
15 c.y.**	\$355.00	per pull **
20 c.y.**	\$375.00	per pull **
25 c.y.**	\$395.00	per pull **
30 c.y.**	\$415.00	per pull **
Less than 30 c.y. compactor**	\$415.00	per pull **
30 c.y. - 39 c.y. compactor**	\$435.00	per pull **
Greater than 40 c.y. compactor**	\$435.00	per pull **
** Plus disposal charge.		

5

Town of Malabar, Florida
Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

SPECIAL CHARGES	
Special Service	Charge
Wheel-out service for non-qualifying households	\$26.00 additional per month per hh
On-call bulky waste pick-up for non-qualifying residents	\$30.00 per cubic yard per event
Bulk waste pickup in excess of 12 cy per event	\$30.00 per cubic yard above 12 cy
Refrigerant removal charge, if applicable	TBD per unit
On-call extra solid waste collection for residential premises.	35-gallon cart: \$25.00 64-gallon cart: \$25.00 96-gallon cart: \$25.00
Cart exchange (for requests in addition to 2 x first year free exchange and subsequent 1x annual free exchange; includes delivery).	\$100.00 per event
Call back for collection as a result of set-out after collection time.	\$30.00 per event
Cart replacement as a result of loss or damage through willful or intentional misuse or abuse.	\$70.00 per cart plus exchange fee
Extra Commercial Pick-up:	
32-gallon can	\$25.00 per event
35-gallon cart	\$25.00 per event
64-gallon cart	\$25.00 per event
96-gallon cart	\$25.00 per event
2 c.y. bin	\$55.00 per event
4 c.y. bin	\$55.00 per event
6 c.y. bin	\$55.00 per event
8 c.y. bin	\$55.00 per event
Key charge: Allowed when container access requires driver to remove lock to service the container.	\$15.00 per container per month
Enclosure charge: Allowed when collection requires removing a container from an enclosure and replacing it when empty.	\$15.00 per container per month
Gate service charge: Allowed when collection requires passing through a gate in order to access a container.	\$15.00 per container per month
Distance charge: Allowed when a container is placed further than 10 feet from where the collection vehicle has access.	\$15.00 per fifty (50) feet per container per month
Other: Special Collection Solid Waste	TBD per issue

Town of Malabar, Florida
 Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

STORM OPERATIONS	
Special Service	Charge
Rear Load truck and 1 driver	\$225.00 per hour
Additional laborers	\$75.00 per person per hour
Grapple truck and 1 driver	\$225.00 per hour
Rolloff truck / container and 1 driver	\$225.00 per hour

EXHIBIT 2
SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENTS

Service rates are adjusted as defined and described in Sections 12 and 13 of this Contract and as illustrated in this Exhibit. All assumptions are for demonstration purposes only. Assumptions (for demonstration purposes only):

- CPI February 2020 = 243.283
CPI February 2021 = 247.126
100% of percentage change in CPI = $100\% \times ((247.126 - 243.283) / 243.283) = 0.01264 = 1.26\%$
- Average of monthly Fuel Index prices for March 2016-February 2017 = 2.56375
Average of monthly Fuel Index prices for March 2017-February 2018 = 2.65231
Percentage change in Fuel Index = $(2.65231 - 2.56375) / 2.56375 = 0.034543 = 3.45\%$

Residential Service Rate	a	b	c	d	e	f	g
	Rates for Demonstration Purposes Only (\$/unit/month)	95% of Collection Element	CPI 100% of % Change	5% of Collection Element	Fuel Index (% Change)	New Rate (\$/unit/month)	
COLLECTION ELEMENTS							
	\$/unit/month					\$/unit/month	
Solid Waste Collection	\$12.94	\$12.29	1.26%	\$0.65	3.45%	\$13.12	$f = a + (b \times c) + (d \times e)$
Bulk Waste Collection	\$11.83	\$11.24	1.26%	\$0.59	3.45%	\$11.99	$f = a + (b \times c) + (d \times e)$
Recycling Collection	\$3.32	\$3.15	1.26%	\$0.17	3.45%	\$3.37	$f = a + (b \times c) + (d \times e)$
	\$28.09					\$28.47	
DISPOSAL ELEMENTS							
	See Calculations Below (\$/unit/month)					\$/unit/month	
Bulk Waste Disposal	\$12.12	na	1.26%	na	na	\$12.27	$f = a + (b \times c)$
Solid Waste Disposal	\$4.77	Adjusted only when actual tip fee changes				\$4.77	na
TOTAL	\$44.98					\$45.51	

**EXHIBIT 3
 TECHNICAL SPECIFICATIONS FOR ROLL CARTS**

Following are minimum requirements for Solid Waste and Recyclables Roll Carts as required within the scope of this Contract. CONTRACTOR must provide a prototype of each of the TOWN's program-sized Roll Carts (Solid Waste and Recycling) that meet the following technical specifications for TOWN approval prior to ordering the TOWN's Roll Carts. The TOWN reserves the right to waive the requirement of a prototype.

Construction and Design	<ul style="list-style-type: none"> • Must meet ANSI Standards Z245.30 and AZ245.60 "Type B/G" containers, all rules, regulations, and laws pertaining to this product. • Roll Carts must be produced by a major manufacturer. • The upper lift point shall be permanently molded into the Roll Cart and the lower must be a 1" diameter galvanized free floating metal bar or composite equivalent, securely attached to prevent failure or loss. Molded bars are unacceptable. • The Roll Cart must be manufactured with a narrow width design to fit through a 30" door opening.
Size (Capacity)	<ul style="list-style-type: none"> • Three different sized Roll Carts are required with the following capacities: <ul style="list-style-type: none"> ○ Large = 94-96 gallon ○ Medium = 64-66 gallon ○ Small = 32-36 gallon
Materials	<ul style="list-style-type: none"> • Must be rotationally or injection molded using medium to high density 100% recyclable polyethylene. • Minimum resin weight of unassembled Roll Cart, including cart body and lid, must be: <ul style="list-style-type: none"> ○ 30 pounds or greater for large Roll Cart ○ 22 pounds or greater for medium Roll Cart • Resin used in the manufacturing process must contain a minimum of 25% post-consumer recycled material. • All plastic parts must be stabilized against ultraviolet light deterioration with a UV stabilizer additive.
Body	<ul style="list-style-type: none"> • The body of the Roll Cart must be one piece. • The Roll Cart wall and bottom thickness must be a minimum of .150 inches. • The body of the Roll Cart must be designed with a drag rail on the container bottom and reinforced in the area that contacts the ground with a molded-in bottom wear strip. • The top of the body must be molded with a reinforced rim to add structural strength and stability to the container and to provide a flat surface for lid closure. This reinforced rim must have a raised inner perimeter. The rim of the Roll Cart must not be designed to have an inward radius to obstruct free flow emptying the material out of the container.
Lid	<ul style="list-style-type: none"> • Lids must be of a configuration that the lid will not warp, bend, slump, or distort to such an extent that it no longer fits the body properly or becomes otherwise unserviceable.

	<ul style="list-style-type: none"> • The lid must be one-piece construction and securely attached to the rear of the wheeled section of the Roll Cart using a rustproof, weather-resistant fastener system. • The lid must be hinged to open to a position of 270 degrees from the closed position and hang open without stressing the lid, body, or tipping over the Roll Cart. • Lids must be designed to be easily removed in the event of damage or failure. Lid latches are not acceptable.
Handle	<ul style="list-style-type: none"> • Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the Roll Cart. • The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.
Wheels/Axle	<ul style="list-style-type: none"> • Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered. • Wheels shall be snap-on or attached in a way that prevents unintended detachment. • Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts. • Each Roll Cart shall be furnished with a minimum 5/8 inch diameter axle with a corrosion-resistant coating that must be securely attached to the body by molded axle retainers. • The wheels and axle must be rated to meet the maximum load requirements of 3.5 pounds per gallon.
Stability	<ul style="list-style-type: none"> • Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.
Color	<ul style="list-style-type: none"> • Color must not be streaked in the finished product and must be colorfast so that the color does not alter significantly with normal use. Painted Roll Carts are unacceptable.
Warranty	<ul style="list-style-type: none"> • Roll Carts must be fully (100%) warranted against defects in materials and workmanship. • Warranty is understood to include the following coverage: <ul style="list-style-type: none"> ○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body. ○ Damage to the body, the lid, or any component parts through opening or closing the lid. ○ Failure of the lid hinge to remain fully functional and continually hold lid in the originally-designed and intended positions when either opened or closed. ○ Failure of the body and lid to maintain its original shape. ○ Wear through of Roll Cart bottom so that it leaks liquid. ○ Failure of the wheels to provide continuous, easy mobility, as originally designed. ○ Failure of any part to conform to minimum standards as specified.

Exhibit 4

Disaster Cleanup Agreement

Storm Operations

Pre-Storm

- On an annual basis Contractor will be available to meet with the Town, prior to the traditional hurricane season to discuss readiness plans.
- Contractor subscribes to the Brevard County Emergency Management notification system. The VCEM provides information on all potentially hazardous/severe weather events. If the Town, Brevard County, the State of Florida or the United States Federal government declare an impending or actual emergency, Contractor will contact the Town to coordinate any needed services.

During Storm – Normal collection operations will be suspended upon direction of governmental officials or when sustained winds have forced the closure of any bridges to the Town. During the actual storm, operations will cease and will only resume when it is safe to operate.

Post Storm - Operational hours during the first 72 hours after a storm or disaster event will be up to 12 hours per day and work will commence as soon as it is safe to deploy work crews and at the Town's direction. The scope of service available in the first 72 hours will be dependent on personnel and equipment availability.

Additional work – Any work over and above normal activity is likely to affect collection services. The Contractor will be compensated for any additional labor and disposal expenses incurred as a result of performing the additional work. Hours to be paid will be any additional hours worked over normal route time. Normal route time is defined as the average number of hours the Contractor runs over the same calendar month, over a 3-year period, not to include any period affected by a storm event. In the event there is not 3 years of operational data available the Town and Contractor will develop an estimate of operations time to be used to determine any extra work. The Town recognizes that operations may be performed on the normal solid waste and yard waste collection days or throughout the normal work week if equipment and personnel are available.

Pricing

Post Storm Operations – TBD Fleet

- Charges will be:
 - Rear load truck and (1) man crew \$ 225.00 per hour
 - Additional laborers \$ 75.00 per hour
 - Grapple truck and (1) driver \$ 225.00 per hour
 - Roll off truck/container with (1) driver \$ 225.00 per hour

- Contractor will cooperate with the Town's monitoring contractor to provide documentation of all work activities.
- Billing for storm debris removal service will be on a weekly basis with payment within 30 days of invoice date.
- Disposal charges will be billed to the Town.
- Pricing is subject to annual CPI adjustments, or the CONTRACTOR shall provide the TOWN with a separate disaster cleanup agreement with specified rates at the commencement of each Contract Year.

Post Storm Operations - Extraordinary Services

- In the event the Town needs additional storm debris removal assistance, Contractor will cooperate with the Town to locate and provide sub-contracted storm debris removal services.
- Pricing will be obtained at the time of the event and Contractor will cooperate with the Town to secure the lowest available pricing possible.
- Billing for Extraordinary Services will be on a weekly basis with payment within 30 days of invoice date.
- Disposal charges will be billed to the Town.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b.
Meeting Date: January 03, 2022

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Resolution 01-2022 Adopting and implementing Performance Measures for Compliance with National Flood Insurance Program

BACKGROUND/HISTORY:

The Town Council adopted Ordinance 2020-13 to update out Floodplain Management regulations in November of 2020. At that same time, we should have adopted these performance measures to use in our daily practice of permit and plan reviews.

ITM Lisa submitted responses to the State regarding the delinquent report and adoption. Her responses are included for your information. In the past, we were able to utilize the floodplain administrator in Brevard County to assist with these types of review. It should be a regular function within the Building Department but for the last many years we have used existing staff to make these determinations.

The seven (7) performance Measures are bulletized in the resolution and as a separate attachment to the Resolution with more detail. They are further explained in a separate booklet entitled "Floodplain Management Performance Measures for NFIP Compliance" updated periodically by the State NFIP Coordinator and State Floodplain Manager. This will be sent out separately from the Council packet.

It has already been provided to the Building Department for active use.

FINANCIAL IMPACT:

Unknown at this time. Currently using existing staff.

ATTACHMENTS:

Resolution 01-2022

Responses to the State regarding our current and proposed Best Practices we will be using.

ACTION OPTIONS:

Staff requests action on Resolution 01-2022

RESOLUTION 01-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE IMPLEMENTATION OF PERFORMANCE MEASURES FOR COMPLIANCE WITH THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR FUTURE UPDATES AS NECESSARY TO COMPLY WITH THE OBJECTIVES OF THE NFIP AND CRS PROGRAMS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar has been a National Flood Insurance Program (NFIP) participant in good standing since September 28, 1979 , and seeks to maintain and improve its flood resiliency through the NFIP and Community Rating System (CRS); and,

WHEREAS, the Town of Malabar has designated special flood hazard areas on NFIP flood insurance rate maps that were adopted on January 29, 2021, and the community has adopted policies within the Code of Ordinances to address the flood hazard areas; and,

WHEREAS, the Town of Malabar has reviewed and re-dedicated itself to meeting all requirements for joining the NFIP that it adopted by Ordinance when it first joined the voluntary NFIP; and,

WHEREAS, the Town of Malabar re-dedicates itself to be compliant with the NFIP subject to determination by the Florida Division of Emergency Management and/or the Federal Emergency Management Agency (FEMA) by virtue of a determination through a periodic audit to determine that the community has an NFIP-compliant floodplain management program; and,

WHEREAS, the Town of Malabar has developed and is actively implementing "Performance Measures" to ensure that its floodplain management program meets or exceeds the minimum requirements of the NFIP; and,

WHEREAS, it is the intent of this Council to continue participation in the CRS program and strive to exceed the minimum NFIP requirements set forth in Parts 59, 60, and 65 of the National Flood Insurance Program Regulations (Title 44 of the Code of Federal Regulations).

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Malabar, Brevard County, Florida, that:

SECTION 1. The Town Council of Malabar hereby assures the State of Florida, Division of Emergency Management and the Department of Homeland Security's Federal Emergency Management Agency (FEMA), that it will enact as necessary, and maintain in force in those areas having flood, or flood-related hazards, adequate land use and floodplain regulations with effective enforcement provisions necessary to implement an NFIP-compliant program and to implement the performance measures required to ensure consistency with the NFIP and CRS program as referenced and incorporated herein.

SECTION 2. The Town Council of Malabar hereby vests the Town of Malabar floodplain administrator and their associates with the responsibility, authority and means to implement the following performance measures:

- a. Adopt and maintain a flood damage prevention ordinance based on the State model that is coordinated with the Florida Building Code.

- b. Conduct annual inspections of development in SFHAs to be reported annually that addresses identified compliance issues to be resolved through enforcement and mitigation to the maximum extent possible.
- c. Administer a flood zone permit application for regulating all development in SFHAs with procedures and checklists approved by the State and FEMA Region IV.
- d. Ensure accurate completion of all elevation certificates before vertical construction and prior to issuance of certificates of occupancy.
- e. Annually disseminate letters to utility companies concerning tanks that must be elevated or anchored and new HVAC equipment that must be elevated above the BFE.
- f. Administer substantial improvement/damage determination procedures approved by State and FEMA Region IV staff and maintenance of permanent records of determinations.
- g. Provide DFIRMs or links to DFIRMs and elevation certificates on the community's website where feasible.

The Town of Malabar also agrees to take such other official action as may be reasonably necessary to carry out the objectives of the NFIP and CRS programs.

SECTION 3. All resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 4. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 5. This Resolution shall become effective immediately upon its passage and adoption.

This Resolution was moved for adoption by Council Member _____ . This motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Mary Hofmeister	_____

This resolution was then declared to be duly padded and adopted this 3rd day of January 2022.

TOWN OF MALABAR

By:

(seal)

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

APPROVED FOR LEGAL SUFFICIENCY:

Karl W. Bohne, Jr., Town Attorney

Seven Performance Measures

That Must be Adopted to Enroll in CRS Under the Pilot Program

<https://www.floridadisaster.org/dem/mitigation/>

Performance Measure 1: Adopt State model flood damage prevention ordinance coordinated with the Florida Building Code and provide evidence that floodplain staff coordinate with the building official;

Performance Measure 2: Conduct annual inspections of development in special flood hazard areas and annually report identified compliance issues resolved through enforcement and mitigation to the maximum extent possible;

Performance Measure 3: Adopt and implement a flood zone permit application for regulating all development in special flood hazard areas with procedures and checklists approved by State and FEMA Region IV staff for use by the community;

Performance Measure 4: Verify accurate completion of all Elevation Certificates before vertical construction and prior to issuance of certificates of occupancy;

Performance Measure 5: Disseminate letters annually to utility companies concerning tanks that must be elevated or anchored, and heating, ventilation and air conditioning (HVAC) equipment that must be elevated above the Base Flood Elevation (BFE);

Performance Measure 6: Develop and implement “Substantial Improvement/Substantial Damage” determination procedures approved by State and Region IV staff and retention of permanent records of determinations; and,

Performance Measure 7: On community websites, where feasible, provide digital Flood Insurance Rate Maps (DFIRMs) and Elevation Certificates (ECs), or links to DFIRMS and ECs

RE: CAVs Closure

Lisa Morrell <LMorrell@townofmalabar.org>

Mon 12/13/2021 3:33 PM

To: Tierra Williams <Tierra.Williams@em.myflorida.com>

Cc: Matt Stinnett <TownManager@townofmalabar.org>; Debby Franklin <townclerk@townofmalabar.org>; Denine Sherear <dsherear@townofmalabar.org>

Ms. Williams,

Thank you for your patience and understanding. I have provided the Town's responses in Red below. The Next Regularly Scheduled Town Council Meeting is January 3, 2022 where the resolution will be adopted; I have copied Debby Franklin, Town Clerk to inform of the upcoming agenda item. We appreciated the level of communication within the Performance Measures document that I will be disseminating to all plan reviewers and implementing in our standard of operations plans and improvement of the building permitting system for tracking and reporting of the outlines measures.

At what stage of permit application review is the flood zone determination made? Who conducts the flood zone determination?

During the permit application review period, the Town reviews each application and any applicable other agency permits or reports, ex. Florida Department of Health for Septic Tanks and or Drainage plans by the engineer of record submitted for review by the Town Engineer; for the final determination by the Building Official prior to issuing permits for construction.

At what stage of permit application review is the substantial improvement (SI) or substantial damage (SD) determination made? Who conducts the SI/SD determination?

During a post-disaster event, field surveys are coordinated by the Town Manager, Emergency Responders, and The Building Official and or designated inspector will review visual damage and assist the permitting process for emergency repair or evacuation needs. Other damage/repairs are reviewed during the permit application review process for and SI/SDs. In all cases, the Building Official has the final determination at the local level.

Are elevation certificates required by the Town? If so, who reviews and approves elevation certificates.

Yes, elevation certificates are required by the Town during the application review for building permits. These are approved by the Town Engineer for drainage plans with final review by the Building Official.

How does the Town regulate manufactured housing replacements and new installations in SFHAs?

The Town has adopted code of ordinance: Malabar, Florida - Code of Ordinances PART II - CODE OF ORDINANCES Chapter 9 - FLOODPLAIN MANAGEMENT ARTICLE I. - ADMINISTRATION SUBPART 6. - INSPECTIONS Sec. 9-65. - Manufactured homes.
(https://library.municode.com/fl/malabar/codes/code_of_ordinances?nodeId=PTIICOOR_CH9FLMA_ARTIAD_SP6IN_S9-65MAHO)

Sec. 9-65. - Manufactured homes.

The building official shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this chapter and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the building official.

(Ord. No. 20-13, § 1, 11-16-20)

At what stage of permit application review is the Endangered Species Act (ESA) review conducted? Who conducts the ESA review?

During the application submission, the Building Department Manager reviews the application for completeness which requires an environmental survey for clearing and building permits. For land clearing and fill activities, The Town Manager reviews the report prior to issuance of permit. The building official, town manager, and town engineer provide a pre-site plan meeting and review for larger developments and also review the environmental reports prior to permit issuance and inspect/coordinate mitigation by other agencies by the applicant.

How does the Town regulate development within the regulatory floodways?

The Town has adopted code of ordinance: Malabar, Florida - Code of Ordinances PART II - CODE OF ORDINANCES Chapter 9 - FLOODPLAIN MANAGEMENT ARTICLE I. - ADMINISTRATION SUBPART 5. - SITE PLANS AND CONSTRUCTION DOCUMENTS Sec. 9-52. - Additional analyses and certifications.

https://library.municode.com/fl/malabar/codes/code_of_ordinances?nodeId=PTIICOOR_CH9FLMA_ARTIAD_SP5SIPLCODO_S9-52ADANCE

Sec. 9-52. - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1)For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in section 9-53 of this chapter and shall submit the conditional letter of map revision, if issued by FEMA, with the site plan and construction documents.

(2)For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the flood insurance study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analysis that demonstrates the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as zone AO or zone AH.

(3)For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in section 9-53 of this chapter.(4)For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.

(Ord. No. 20-13, § 1, 11-16-20)

Thank you,

Lisa Morrell
Interim Town Manager

Town of Malabar
2725 Malabar Road,
Malabar, Florida 32950



WELCOME RESIDENTS OF THE TOWN OF MALABAR





IMPORTANT NOTICE

**EFFECTIVE
JANUARY 1, 2022**

Waste Pro will be your new provider of garbage, recycling, yard waste, and bulk collection.

More information on the reverse side or visit:
www.wasteprousa.com/malabar

-  wasteprousa.com
-  [@Waste_Pro_USA](https://twitter.com/Waste_Pro_USA)
-  [wasteprousacorp](https://www.facebook.com/wasteprousacorp)

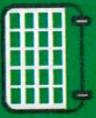
**WE APPRECIATE THE OPPORTUNITY TO SERVICE
THE RESIDENTS OF THE TOWN OF MALABAR**



Carts will be delivered the week of
12/26/2021

DO NOT use carts until **JANUARY 1ST**

Questions on what to do with your
current carts? Please leave them curbside
for Waste Management to collect on the
last service date of the year.



NEW COLLECTION SCHEDULE

Garbage Pickup:
TUESDAY/FRIDAY

Recycle:
WEDNESDAY

Yard Waste:
MONDAY

Garbage, recycle, yard waste, and bulk rate is \$131.64 per
quarter. If you need an extra cart please contact our office.

Your first quarterly invoice will arrive in December 2021.

For any questions, please contact us at (321) 837-0055
or visit us online www.wasteprousa.com/malabar



Waste Pro
2951 W. King Street
Cocoa, FL 32926