



REGULAR TOWN COUNCIL MEETING

Monday, November 15, 2021 at 7:30 pm

1. CALL TO ORDER, PRAYER AND PLEDGE

2. ROLL CALL

3. SUNSHINE LAWS REVIEW

Exhibit: Agenda Report Number 3

Attachments:

- **Agenda Report 3** (Agenda_Report_3.pdf)

4. NOMINATE CHAIR AND VICE-CHAIR

Exhibit: Agenda Report Number 4

Attachments:

- **Agenda Report Number 4** (Agenda_Report_4.pdf)

5. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES

6. CONSENT AGENDA

a. Approve Minutes of RTCM 11/01/2021

Exhibit: Agenda Report Number 6a

Attachments:

- **Agenda Report 6a** (Agenda_Report_6.a.pdf)

b. Approve Minutes of Special Town Council Meeting of 11/04/2021

Exhibit: Agenda Report Number 6b

Attachments:

- **Agenda Report Number 6b** (Agenda_Report_6.b.pdf)

c. Purchase of Zero Turn Kubota Mowers for PW

Exhibit: Agenda Report Number 6c

Attachments:

- **Agenda Report 6.c** (Agenda_Report_6.c.pdf)

d. Mutual Aid ILA Agreement between BCFR and Malabar FD

Exhibit: Agenda Report 6.d

Attachments:

- **Agenda Report 6.d** (Agenda_Report_6.d.pdf)

e. Use of Other Agency Contract Thermoplastic Roadway Striping Brevard County, Contract# B-7-21-05

Exhibit: Agenda Report 6.e

Attachments:

- **Agenda Report 6.e** (Agenda_Report_6.e.pdf)

7. ATTORNEY REPORT

8. STAFF REPORTS

- a. **Manager**
- b. **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: 1

a. Amend Chapter 6 Private Providers (Ordinance 2021-23)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RELATING TO BUILDING CODES; AMENDING CHAPTER 6, CREATING A NEW SECTION 6-10 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR PRIVATE PLAN AND BUILDING INSPECTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report 10.a** (Agenda_Report_10.a.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES:0

RESOLUTIONS:0

MISCELLANEOUS:5

- a. **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

Exhibit: Agenda Report Number 12a

Attachments:

- **Agenda Report 12.a** (Agenda_Report_12.a.pdf)

b. Select Bill Reviewer for 2021/2022

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report 12.b** (Agenda_Report_12.b.pdf)

c. Select Check Signer for 2021/2022

Exhibit: Agenda Report Number 12c

Attachments:

- **Agenda Report 12.c** (Agenda_Report_12.c.pdf)

d. Select Space Coast League of Cities (SCLC) Delegate for 2021/2022

Exhibit: Agenda Report Number 12.d

Attachments:

- **Agenda Report 12.d** (Agenda_Report_12.d.pdf)

e. Select Representative to the TPO/TAC Board for 2021/2022

Exhibit: Agenda Report 12.e

Attachments:

- **Agenda Report 12.e** (Agenda_Report_12.e.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

(2) Vacancies on the Trails and Greenways Committee

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.

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on
11/10/2021 at 12:26 PM

MEMORANDUM

To: Town council

From: Karl W. Bohne, Jr.

Date: November 15, 2021

Re: Sunshine Law/Public Records Law/Quasi-Judicial Proceedings/Voting Conflicts

I. The Florida Sunshine Law is contained in Chapter 286 of the Florida Statutes.

A. What public agencies are covered by the Sunshine Law?

The courts have expressed a view that the legislature intended to extend the application of the Sunshine Law so as to bind every board or commission of the state or of any county or political subdivision over which it has dominion and control. This means that the Sunshine Law is applicable to any government at the municipal as well as the state and county levels. The Sunshine Law applies to the Town Council.

Section 286.011, F.S., provides in pertinent part:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

1. What is meeting subject to the Sunshine Law?

The Sunshine Law extends to the **discussions** and **deliberations** as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to the Sunshine Law.

Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission. The Sunshine Law covers every thought, affirmative act and the entire decision making process. *Times Publishing Company v.*

Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985)

2. Can the Sunshine Law apply to a single individual or a situation where two members are not actually present?

While ordinarily Florida Statutes 286.011 is applicable to two or more members of the same board or commission, certain factual situations have arisen where the presence of two individuals may not always be necessary in order for a violation of law to occur. Courts have expressed a view that the Statute should be construed so as to frustrate all evasive devices. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979); *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977) and *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 264 (Fla. 1973)

In one case, the use of memoranda to conduct city business was held to be subject to the Sunshine Law. A member of a city commission initiated a memorandum reflecting his thoughts on a given subject, and appended to this memo a writing space for other members to concur or disapprove in the position taken. The originator of the memorandum then placed it in a receptacle at the offices of the public body. It was determined that this was a violation of the Sunshine Law and constituted a meeting between two or more members. *Inf. Op. to Blair*, May 29, 1973. And see *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999)

A meeting between individuals who are members of different boards is not subject to the Sunshine Law unless one or more of the individuals has been delegated the authority to act on behalf of his respective board. For example, an individual town council member may meet privately with an individual member of the planning and zoning board to discuss town issues. Since two or more members of either board are not present, there was is violation because no delegation of the decision making authority had been made and neither member was not acting as a liaison between members of the respective boards. *AGO 92-79. Accord Inf. Op. to Batchelor*, May 27, 1982. See also, 72-158. Cf. *AGO 71-295*, cautioning that “[p]ublic bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business.

Additionally the use of non-members as liaisons between board members

of the same board is a violation of the Sunshine Law. These generally create *de facto* meetings in violation of the sunshine law. *See AGO 74-47 (city manager is not a member of the city council and thus may meet with individual council members; however, the manager may not act as a liaison for board members by circulating information and thoughts of individual council members). See also Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners).*

B. To what agency actions or activities is the Sunshine Law directed?

1. Does the term “meeting” include such things as briefing sessions, workshop meetings, informal discussions and other meetings of the public body where no formal vote is taken?

The answer to this question is “yes”. The law is applicable to any gathering where the members deal with some matter on which foreseeable actions will be taken by the board. The attorney general has determined that gatherings such as workshop meetings, conference sessions or meetings, conciliation conferences, fact finding decisions, executive work sessions, and courtesy meetings are all subject to the commands of the Sunshine Law. Additionally, the law is applicable to all deliberations of the public body..

C. May public officials meet together at luncheon meetings, social gatherings, and inspection trips?

Luncheon meetings, social gatherings and the like would not be subject to the Sunshine Law merely because of the presence of two or more members of a board or commission IF there was no discussion among the public officials relating to public business or foreseeable action which would be taken by the board. *AGO 92-79. Accord Inf. Op. to Batchelor, May 27, 1982. See also, 72-158.*

1. Are telephone conversations within the scope of the Sunshine Law?

Telephone conversations between members of a public body are illegal if the conversation is held to discuss public business in a place inaccessible to members of the public and press for the specific purpose of avoiding

public scrutiny. *See State v. Childers, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), per curiam affirmed, 886 So. 2d 229 (Fla. 1st DCA 2004) (private telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law).*

2. Are the uses of computers and other electronic medium subject to the Sunshine Law?

The use of computers or in any case any type of electronic medium, emails twitter, Facebook, Twitter, etc., to carry out public business, by members of a public board or commission to communicate amongst themselves on issues pending before the board is subject to the Sunshine Law. *See AGO 89-39*

3. Are consultations with legal counsel subject to the Sunshine Law?

(a) A governmental body may meet in private with its attorney to discuss pending litigation to which the entity is presently a party for a court or administrative agency, provided that the following conditions are met:

- i. The entity's attorney shall advise the entity at a public meeting that he desires advice concerning litigation.
- ii. The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- iii. The entire session shall be recorded by a certified court reporter. Thereafter, the court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- iv. The entity shall give reasonable public notice of the time and date of the attorney/client session and the names of persons who will be attending the session.
- v. The transcript shall be made part of the public records upon conclusion of the litigation. *See Section 286.011(8), Florida Statutes*

4. Inaudible discussions.

A violation of the sunshine law may occur if, during the meeting or during a recess, board members discuss issues before the board in a manner not generally audible to the public attending the meeting. Discussions of public business which are audible to a select few at the dais may violate the openness requirements of the law. *In AGO 71-159, the Attorney General's Office advised that discussions of public business which are audible only to "a select few" who are at the table with the board members may violate the "openness" requirement of the law. Cf. Citizens for Sunshine, Inc. v. City of Sarasota, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012) (two members of a civil service board violated the Sunshine Law when they held a private discussion concerning a pending employment appeal during a recess of a board meeting).*

With that in mind inaudible discussions before, during and after a meeting between board members discussing issues before the board would be problematic.

D. Appearance at Council meeting via telephone

Based on several Attorney General Opinions a Council member who is unable to attend a Council Meeting due to illness or physical disability or with a finding of extra-ordinary circumstances by the respective board may do so via telephone and may also cast a vote via telephone. It has been determined that an absence due to illness or physical disability is an "extraordinary circumstance" which justifies such attendance via telephone. But those are not the only 2 circumstances which constitute extra-ordinary circumstances. The attendance via telephone cannot be used to establish a quorum. So there must be a quorum present (in our case 3 members). If the quorum is present then the telephone appearance is acceptable. The Council member appearing by phone must be able to hear the meeting and must be able to be heard by the public. The minutes must reflect that the Council member is appearing via telephone due to illness or physical disability or other extra-ordinary circumstances, as the case may be. *AGO 03-41, AGO 94-55. And see AGO s 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).*

E. Curing Violations

It has long been held that Sunshine law violations can be cured by independent, final action done completely in the sunshine. However, such meetings must be more than a perfunctory or ceremonial ratification. Based on numerous cases discussing the ability to cure a violation it has been the thought that if you "cure"

the matter the violation no longer exists.

When a violation of the sunshine law occurs the act taken is void. The “act” can be cured at a subsequent meeting. The curing of the act does not absolve the public body of its responsibility for violating the sunshine law. The “cure” merely is a way to salvage a void act by reconsidering it in the sunshine. This seems to mean that the criminal and non-criminal sanctions may still apply to the violators. *Anderson v. City of St. Pete Beach*, 161 So.3d 548, 553-554 (Fla. 2d DCA 2014), noting that “even when an illicit action is ‘cured’ it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine”).

II. Florida’s Public Records Law is contained in Chapter 119 of the Florida Statutes.

A. Materials of Public Records

In 119.011(1) of the Florida Statutes defines Public Records to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Therefore, any material regardless of form which is used to perpetuate or communicate or formalize knowledge and is received by an agency or individual council member in connection with official business is a public record. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

Any documentation an individual member receives from any source and the documentation is for the purpose of communicating public business this document must be a public record and given to the clerk of the Town. This applies to records received by a member at Town hall or anywhere else. So long as the record is intended to communicate official business it must be maintained as a public record.

Any communication that can be saved in a hard format would also be a public record. This includes emails, twitter messages, texted messages, Facebook postings, or any similar type of communications. The fact that you may have received such a communication on a private account does not exempt it from being a public record. If the contact relates to public business then it is a public record. Purely private matters are not public records. The term “public record” is not limited to traditional written documents. As the statutory definition states, “tapes, photographs, films, sound recordings, data processing software, or

other material, regardless of the physical form, characteristics, or means of transmission” can all constitute public records. *And see National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (“public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form”). *Cf. Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records because in order to constitute a “public record” for purposes of Ch. 119, “the record itself must be susceptible of some form of copying . . .”).

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet" *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983). *And see National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form); AGO 98-54 (application and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records); AGO 91-61 (agency must provide copy of computer disk in response to Ch. 119 request); and AGO 85-03 (computer tape subject to disclosure).

"E-mail" messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of an exemption.

The nature of information--that is, that it is electronically generated and transferred--has been determined not to alter its character as a public record under the Public Records Act. Thus, the e-mail communication of factual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. *Id.* Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or blind recipients and their e-mail addresses.

The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency- owned computer." The Court cautioned, however, that the case before it did not involve e-mails "that

may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *State v. City of Clearwater*, 863 So. 2d 149, 151 (Fla. 2003)

III. Quasi Judicial Proceedings

The Town Council will be asked on occasions, to decide matters that come before it as a quasi-judicial body. The council sits as the Judge of the evidence and makes its determination based on competent substantial evidence. An example of matters that are considered as quasi-judicial, include, but are not limited to, site plan decisions, subdivision plat decisions, permitting decisions, special exceptions, certain rezonings, etc.

The evidence that meets this standard is more than mere opinion. It must be fact based opinion. This usually comes in the form of expert testimony. Unsupported opinions do not rise to the level of competent substantial evidence. Put another way, opinions that are not based on facts are generally not regarded as competent substantial evidence.

Furthermore, as a fact finding body you must abide by certain rules. You cannot prejudge a matter. You must hear all the evidence before you came to a conclusion. You should refrain from ex parte communication. This means you should refrain from viewing property, talking to witnesses, or receiving documents outside the public hearing. If you are presented with an ex parte communication such communication should be revealed and disclosed at the beginning of the quasi-judicial hearing. This gives all interested parties notice of the communication and a chance to further inquire.

Your decision must be based on what the code states. You must refrain from interjecting your opinions on the wisdom of what a code prescribes. Your opinions are irrelevant. Furthermore, the opinions of others on the wisdom of a code are equally irrelevant. Ambiguities in a code must be interpreted in favor of a property owner and construed against the Town.

IV. Voting Conflicts

A voting conflict arises when an official is called upon to vote on:

any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which

he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

If a voting conflict exists and the appointed local official will not participate in the measure then the official must:

- a. Abstain from voting;
- b. Before the vote, publically state the nature of the conflict; and
- c. Within 15 days of the vote, file a voting conflict memorandum.

If the official desires to participate in the discussions then the official must:

- a. Abstain;
- b. File the voting conflict memorandum prior to the meeting in which case a copy must be provided to the other members and it must be read at the next meeting after the filing; or
- c. If the disclosure is not made prior to the meeting or the conflict was unknown prior to the meeting; the official must make the disclosure prior to participating followed by the memorandum within 15 days after the disclosure which shall be given to the other members and read at the next meeting.

If you are faced with a situation that involved a quasi-judicial matter and you are so biased that you can not be fair an objective you should abstain from voting. This is not a true voting conflict under Florida's Voting conflict law but it is a matter of Due Process for an applicant. As I previously stated an applicant who presents a quasi-judicial matter to the Council is entitled to have the matter reviewed by a fair and impartial council. If a council member is biased against a matter then they should not vote on it.

TOWN OF MALABAR

TOWN COUNCIL

AGENDA ITEM NO: 4.
Meeting Date: November 15, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Nominate Chair and Vice Chair

BACKGROUND/HISTORY:

The Town Charter provides that the selection of the Chair and Vice-Chair is done annually at the first regular Council meeting after the election. It also provides that it should only be done if there is a full Council present.

In 1995 the Charter was changed to allow the Mayor to also be considered as candidate for Chair. Prior to that, the Chair was selected from the Council Members only. The Chair approves the meeting agenda and presides over the meetings.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

none

ACTION OPTIONS:

Nomination and Selection of the Chair and Vice-Chair for 2021/2022.

TOWN OF MALABAR

TOWN COUNCIL

AGENDA ITEM NO: 6.a
Meeting Date: November 15, 2021

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Approve Minutes of 11/01/2021

BACKGROUND/HISTORY:

- a. Summary of Actions at the Regular Town Council Meeting of 11/01/2021.

ATTACHMENTS:

- a. Draft Minutes of RTCM 11/01/2021

ACTION OPTIONS:

- a. Request Approval

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
NOVEMBER 01, 2021, 7:30 PM**

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 7:30 pm. CM White led P&P.

2. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL
	DAVID SCARDINO
	DANNY WHITE
TOWN MANAGER: (ITM)	LISA MORRELL
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN Excused
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 10/18/2021

4.b. Authorize Antique Fire Truck Storage at Malabar Fire Dept

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

5. ATTORNEY REPORT: Attorney stated he has not heard from Doug Noah on the Painted Acres litigation. He will contact Council if he receives any updates.

6. BCSO REPORT: none

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Committee Chair Thompson - none

7.b. Park & Recreation Board: Chair Eric Bienvenu – none

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

8. STAFF REPORTS:

8.a. Town Manager – ITM Morrell informed Council that she has submitted a DEP grant. FallFest was exciting and very well attended. Gave special thanks to Town Staff for all of their help. Estimated 500 people in attendance. Land use and code enforcement cases have been increasing.

8.b. Special Projects Manager – Hoping to schedule a workshop to discuss the use of ARPA funds. Waste Pro negotiations are in progress. Hoping for January 1st start date. CM White asks if we can get billing of Waste Pro on the tax roll as a referendum for the next election? ITM Morrell states she believes that is possible. We will work on that moving forward. CM Scardino asks how much would it save the citizens? ITM Morrell states she doesn't have that information now, but she will look into it. CM Rivet stated the downside is residents don't have as much leverage in the event of a missed pick-up.

8.c. Fire Chief: Chief Foley - Excused

8.d. PW Director - written

8.d. Clerk – apologizes for not being present – death in family.

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: 1**

10.a. **Amend Code to Provide Regulations on Temp Portable Storage (Ord 2021-22)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V IN THE LAND DEVELOPMENT CODE TO ADD A NEW SUBSECTION “D” PROVIDING REGULATIONS FOR TEMPORARY STORAGE UNITS IN THE TOWN OF MALABAR; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Ordinance 2021-22 was read by title only.

PH opened. None. PH closed.

MOTION: CM Vail / CM Rivet to Adopt Ord 2021-22.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

11. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES) 1**

11.a. **Recommendation from P&Z on Member Appointment (Reso 31-2021)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF SUSAN SHORTMAN TO THE MALABAR PLANNING AND ZONING BOARD AS A REGULAR MEMBER AS OF 11/01/2021 TO REPLACE OUTGOING MARY HOFMIESTER WHO IS COUNCIL MEMBER ELECT AS OF THE CLOSE OF CANDIDATE QUALIFYING ON 8/10/2021; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Resolution 31-2021 was read by title only.

MOTION: CM Acquaviva / CM Vail to Adopt Reso 31-2021.

Discussion: none

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

12. **ACTION ITEMS:**

ORDINANCES for FIRST READING: 1

12.a. **Amend Chapter 6 of Code to Provide for Private Providers (Ord 2021-23)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, CREATING A NEW SECTION 6-10 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR PRIVATE PLAN AND BUILDING CODE INSPECTIONS; PROVIDING FOR CODIFICATION;

PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE. **Exhibit: Agenda Report No. 12.a.**

Ordinance 2021-23 was read by title only.

MOTION: CM Rivet / CM Vail to Adopt Ord 2021-23.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

RESOLUTIONS: 9

12.b. Oppose the Proposed Senate Bill 280 in the 2022 Legislative Session (Reso 22-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA OPPOSING SENATE BILL 280 WHICH WOULD EVISERATE LOCAL CONTROL FOR FLORIDA CITIES WITH RESPECT TO ADOPTING AND ENFORCING ORDINANCES; CREATE A SUBSTANTIAL UNFUNDED MANDATE; AND REQUIRE COURTS TO CONSIDER SPECIFIC FACTORS IN DETERMINING IF AN ORDINANCE IS ARBITRARY OR UNREASONABLE; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION TO THE BREVARD LEGISLATIVE DELEGATION, THE FLORIDA LEAGUE OF CITIES, THE PRESIDENT OF THE SENATE, SPEAKER OF THE HOUSE AND THE GOVERNOR; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.b.

Resolution 22-2021 was read by title only.

MOTION: CM Rivet / CM Scardino to Adopt Reso 22-2021.

Discussion: Mayor Reilly stated he would share this Ordinance with the Space Coast League of Cities. Clerk's office will email out to all 411 municipalities through the FACC.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

12.c. Appoint Donna Hanna to Board of Adjustment (Reso 23-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF DONNA HANNA TO THE MALABAR BOARD OF ADJUSTMENT AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.c.

Resolution 23-2021 was read by title only.

MOTION: CM Acquaviva / CM White to Adopt Reso 23-2021.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

THE NEXT TWO ARE GROUPED TOGETHER:**12.d. Appoint Vickie Thomas to Park & Recreation Board (Reso 24-2021)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF VICKIE THOMAS TO THE MALABAR PARK & RECREATION BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 12.d.**

12.e. Appoint Jennifer Bienvenu to Park & Recreation Board (Reso 25-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF JENNIFER BIENVENU TO THE MALABAR PARK & RECREATION BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 12.e.**

Resolutions 24 & 25-2021 were read by title only.

MOTION: CM Vail / CM Acquaviva to Adopt Resolutions 24 and 25-2021.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

12.f. Appoint Doug Dial to Planning & Zoning Board (Reso 26-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF DOUG DIAL TO THE MALABAR PLANNING & ZONING BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 12.f.**

Resolution 26-2021 was read by title only.

MOTION: CM White / CM Vail to Adopt Reso 26-2021.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

NEXT 3 ARE GROUPED TOGETHER:**12.g. Appoint Drew Thompson to the Trails & Greenways Committee (Reso 27-2021)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF DREW THOMPSON TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 12.g.**

12.h. Appoint Bob Wilbur to the Trails & Greenways Committee (Reso 28-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF BOB WILBUR TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: **Agenda Report No. 12.h.**

12.i. Appoint Annelie Harvey to the Trails & Greenways Committee (Reso 29-2021)
 A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF ANNELIE HARVEY TO THE MALABAR TRAILS AND GREENWAYS COMMITTEE AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.i.

Resolutions 27, 28 and 29-2021 were read by title only.

MOTION: CM Vail / CM White to Adopt Resolutions 27, 28 and 29-2021.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

12.j. Appoint Barbara Cameron to the Malabar Planning and Zoning Board (Reso 30-2021)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF BARBARA CAMERON TO THE MALABAR PLANNING AND ZONING BOARD AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 12.i.

Resolution 30-2021 was read by title only.

MOTION: CM White / CM Acquaviva to Adopt Reso 30-2021.

Discussion: None

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM White, Aye. Motion carried 5 to 0.

MISCELLANEOUS: 1

12.k. Amendment 1 to State Revolving Fund Loan Agreement SW051400

Exhibit: Agenda Report No. 12.k.

Intro by SPM ITM Lisa: This is an amendment to the Stormwater Master Plan Loan. It is housekeeping to change the payment schedule.

MOTION: CM Rivet/ CM Vail to approve the Amendment. **Vote:** All Ayes. 5-0

Chair released Attorney at this time.

13. DISCUSSION/POSSIBLE ACTION: 0

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

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: Great job to staff on the FallFest. She saw TM Stinnett, and it was great to see him. She wants to make sure its okay with everyone that he begins again in January 2022. Mayor states if he is willing to come in and play catch up, that would be ideal with him. CM Scardino agrees. CM Vail got the impression he would be stopping by to catch up before.

CM Vail: FallFest was a great time. The Halloween costumes were very cool.

CM Rivet: No Comment

CM White: Wants to know if the Alamo Ditcher will be used on Atz Road. He suggests using it more. Mowing the ditches doesn't help water flow, but the ditcher will. Also wanted to thank his wife, Mrs. Dorthea White, who helped paint and upgrade Town Hall, painted signs around

town among other things. He likes that he was able to help implement a road paving program. He then thanked Mayor Reilly and the rest of Council for the fond memories.

CM Scardino: Suggests TM Stinnett come in for a select day to catch up on what is going on in Town. North end of Lett Lane has a gate blocking and concealing the ROW. Its hindering the development of the area. There have been several issues back there. He suggests having the gate removed. ITM Morrell states you cannot restrict access to properties from a ROW. We can make it a public process to open it. It gets the input of the residents in the area, and then we will have a public hearing. CM Vail suggests giving them a deadline and removing it after it. Mayor Reilly suggests we include the several instances of this in the Town, and deal with them together. CM Vail suggests just tackling the one at the end of Lett Lane.

Mayor Reilly: Thanked Council Member Danny White for his service on Council, and his involvement with the Space Coast League of Cities, and the Town.

16. ANNOUNCEMENTS: Openings on T&G Committee.

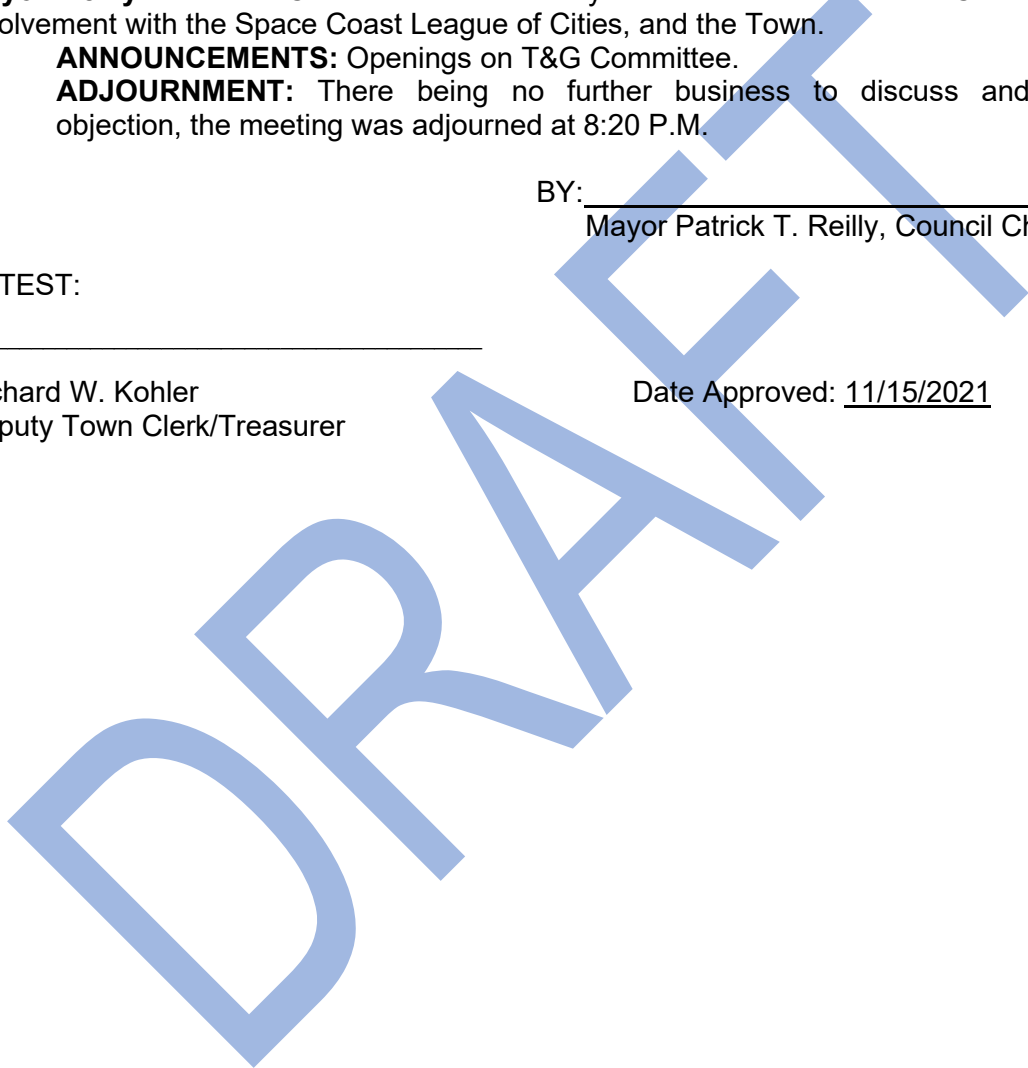
17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:20 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard W. Kohler
Deputy Town Clerk/Treasurer

Date Approved: 11/15/2021



TOWN OF MALABAR

TOWN COUNCIL

AGENDA ITEM NO: 6.b
Meeting Date: November 15, 2021

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Approve Minutes of 11/04/2021

BACKGROUND/HISTORY:

- a. Summary of Actions at the Special Town Council Meeting of 11/04/2021.

ATTACHMENTS:

- a. Draft Minutes of STCM 11/04/2021

ACTION OPTIONS:

- a. Request Approval

**MALABAR TOWN COUNCIL SPECIAL MEETING
NOVEMBER 04, 2021 7:00 PM**

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

A. CALL TO ORDER:

The meeting was called to order at 7:00 pm by Mayor Reilly. The P&P was led by Mayor.

B. ROLL CALL:

COUNCIL CHAIR	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET - Excused
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL - Excused
	DAVID SCARDINO
	DANNY WHITE
TOWN MANAGER:	LISA MORRELL
DEPUTY TOWN CLERK/TREASURER:	RICHARD KOHLER

C. ACTION ITEMS: Swearing in of Council:

There were no candidates on the ballot for this election as both District 4 and 5 were unchallenged. District 4 incumbent CM David Scardino will be sworn in to serve his second two-year term. District 5 CM Elect Mary Hofmeister was unopposed and will be sworn in to serve her first two-year term.

CM White/CM Scardino Motion to accept unofficial election results. 5-0 (All Ayes)

CM Danny White is thanked for his four years of public service to his community.

Mayor Reilly then asked CM White to step down to the podium and presented him with a plaque for his four years of dedicated service to the Town. He was then presented with a Certificate of Appreciation and a copy of the Town's Song on CD.

Clerk then asked Mary Hofmeister to the podium to read the Oath and take her seat on the dais. Clerk then asked CM Scardino to stand and raise his right hand and read the Oath.

Mayor Reilly then asked Board Member Barbra Cameron to come forward and administered the Oath to her. Council thanked them all for their continued support of the Town.

D. ADJOURNMENT

Without objection, Chair adjourned the meeting at 7:08 PM.

TOWN OF MALABAR

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Richard Kohler, Deputy Town Clerk/Treasurer

11/15/2021
Date Approved

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.C.
Meeting Date: November 15, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Procurement of Two Zero Turn Kubota Mowers utilizing the Florida Sherriff Association (FSA) Cooperative Purchasing Program utilizing Ridge Equipment CO. 6820 U.S. 27 North, Seabring, FL 33870, an awarded contract holder.

BACKGROUND/HISTORY:

The FY22 budget includes funding to procure two new mowers within the Parks and Recreation capital outlay budget. Staff has acquired a quote from Ridge Equipment Co., awarded FSA contractor, for the appropriately sized equipment with options required to perform regular mowing duties.

In accordance with The Town of Malabar Code of Ordinances, ARTICLE V. entitled PURCHASING, Section 2-101 - Competitive bids:

“The town administrator is authorized to piggy back contracts for any purpose where the stipulated consideration thereunder to be paid by the town exceeds two thousand dollars (\$2,000.00) awarded by any other governmental entity so long as the bidding process utilized by the other governmental entity in awarding such contract is consistent with the competitive bid procedures outlined in this section. “

Staff is requesting the Town Council to consider allocating FY21/22 budgeted funds to procure the item.

FINANCIAL IMPACT:

- FY22 Parks and Recreation – Machinery and Equipment - 572.6400

ATTACHMENTS:

- Ridge Equipment Co. Quote

ACTION OPTIONS:

- Motion to approve the purchase of two Zero Turn Kubota Mowers using the Florida Sherriff Association (FSA) Cooperative Purchasing Program, contract # FSA20-VEH18.0 Heavy Equipment, utilizing awarded contractor Ridge Equipment Co.
- Motion to surplus two Toro Zero Turn Mowers via GovDeals

Ridge Equipment Co.

Call Us first, for all of your equipment needs.

www.ridgeequipment.com

Corporate Office	6820 U.S. 27 North Sebring, FL 33870	Mailing Address	6820 U.S. 27 North Sebring, FL 33870
Direct	(863) 382-4157	Toll Free	(800) 295-2251
		Fax	(863) 382-0659

PURCHASE QUOTE

Florida Sheriff's Association Bid #FSA20EQU18.0
October 1st, 2020 thru September 30th, 2023

DATE 8-Nov-21 PAGE 1 of 2

REQUESTING AGENCY: Town of Malabar
2725 Malabar Road, Malabar, FL32950
 CONTACT PERSON: Lisa Morrell - Interim Town Manager
 PHONE NUMBER: (321) 727-7764 Cell (321) 272-3340
 FAX NUMBER: _____ Email LMorrell@townofmalabar.org

Kubota Z725KH-3-60 Zero Turn Commercial Grade Mower
Kohler Command Pro CV742 Air Cooled V-Twin 25 Hp./60" Commercial Deck

MODEL: Z725KH-3-60 SPECIFICATION # Line 232 Central
Base Spec Model

Base Spec Color: Kubota Orange – Grey Seats BASE PRICE: \$7,373.00

OPTION #	DESCRIPTION	COST
Z3308	Hitch Kit - Installed	\$38.00
Z3318A	LED Light Kit - Installed	\$198.00
Z3338	Maintenance Lift Kit	\$168.00
Z3360	Operator Controlled Discharge Chute - Installed	\$248.00
Z3356A	Suspension Seat for Z700 Models - Installed	\$418.00
Z3359	3" Suspension Seat Update Kit - Installed	\$604.00

TOTAL OF OPTIONS:	<u>\$1,674.00</u>
EXTENDED WARRANTY:	
SUB TOTAL	<u>\$9,047.00</u>

TAX		State Exempt	
FLORIDA REGISTRATION		N/A	
QTY	1	=	<u>\$9,047.00</u>

I appreciate the opportunity to submit this quotation. Please review it carefully. If there are any errors or changes please feel free to contact me at any time, I will be happy to assist you.

Comments *Delivery to your facility included.*

Ridge Equipment Co. 59-2091512

VEHICLE QUOTED BY **Scott Bradley, Commercial Sales Manager** **Cell (863) 381-5771**

"I Want to be Your Commercial Provider"

sbradley@ridge-equipment.com

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.d
Meeting Date: November 15, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration of an Interlocal Agreement Between Brevard County Board Of County Commissioners and The Town Of Malabar for Automatic Aid For Fire Protection And Rescue Services

BACKGROUND/HISTORY:

An interlocal agreement has been drafted and reviewed by both Brevard County and The Town of Malabar staff to provide mutual agreement for auto aide where each agency has a resource that will have an overall benefit the citizens of the South Brevard County area for fire protections and emergency service response.

The Town agrees to provide the services first response, fire protection, and rescue services within the Unincorporated area of Brevard County, South of Malabar Road to the Brevard County line.

Brevard County Fire Rescue will provide the Town (one) 1 class A pumper, if available, to the Malabar Fire Department's when the apparatus is in for repairs or otherwise not in service.

Term is (3) three years with a (4) year renewal, total term will not exceed (7) Years.

With the approval of Town Council this item will be placed on the Brevard County Commissioner's meeting for consideration, upon approval the agreement will be executed and recorded.

FINANCIAL IMPACT:

No payments to either party during the agreement, resource allocation for emergency response area.

ATTACHMENTS:

- 2021115 Agenda Consent ILA BCFR MFD Mutual Aide.PDF

ACTION OPTIONS:

Motion to approve and execute an Interlocal Agreement Between Brevard County Board of County Commissioners and The Town Of Malabar for Automatic Aid For Fire Protection And Rescue Services

**INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS AND THE TOWN OF MALABAR FOR
AUTOMATIC AID FOR FIRE PROTECTION AND RESCUE SERVICES**

THIS AGREEMENT is entered into this _____ day of _____, 2021, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as the “**County**”, and the **TOWN OF MALABAR**, a municipality incorporated under the Laws of Florida, hereinafter referred to as “**TOWN**”.

RECITALS:

WHEREAS, the Parties desire to enter into this Agreement for the purpose of securing auto-aid first response fire protection and rescue services by each of the Parties, in specific areas and under certain conditions, so as to better protect the lives and property of its citizens; and

WHEREAS, this Agreement is authorized pursuant to section 125.01(1)(p) and 163.01, Florida Statutes, as an interlocal agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

SECTION 1. DEFINITION:

First response fire protection and rescue services (hereinafter “the services”) is defined as the immediate provision of emergency assistance to persons requesting such from either the TOWN or The County Fire Rescue, as necessary, to protect life and property, and which shall include the following equipment and personnel: One (1) Class A Pumper (Staffing levels determined by each department’s manning mandate) for structure fires.

SECTION 2. TERM: This Agreement will commence and be effective upon its approval and execution by the elected bodies of both the County and the TOWN and filing with the Clerk of the Circuit Court in and for Brevard County, Florida. The Agreement shall initially be in effect for three (3) years. After the initial three (3) year term, the agreement shall automatically renew for additional four (4) years. This agreement will not exceed, seven (7) years in total unless terminated or amended as described in Section 3. Termination/Revision of Agreement.

SECTION 3. TERMINATION/REVISION OF AGREEMENT:

3.1 This Agreement may be terminated by either Party upon written notice of termination to the other Party at least sixty (60) days prior to the date of such termination.

3.2 Either Party may request that this Agreement be amended. Such requests must be placed in writing and address the reason for the revision as well as provide proposed revised language. In order to be deemed effective, the amendment must be approved by both respective governing bodies, signed by

both either the Chair of the County or the County Manager, as directed by the Board, and Town Manager, and filed with the Clerk of the Circuit Court in and for Brevard County, Florida. This section does not apply to any changes made to the person to whom notices shall be mailed as set forth in Section 7 herein.

SECTION 4. SERVICES PROVIDED:

Except to the extent agreed herein, the County and the Town agree that their fire rescue departments will provide primary emergency services within their respective jurisdictions. The Automatic Aid initiation shall be in response to a multi-unit incident or a secondary response when the primary County or Town units are unavailable.

4.1 Statement of Reciprocity – The County and the TOWN agree to share both unique and common emergency response resources for the purpose of expeditious and effective emergency service delivery to County and TOWN citizens alike. In that the services are provided by both the County and the TOWN in a mutually beneficial manner, there shall be no monetary payments to either the County or TOWN for services identified in this Agreement.

4.2 Automatic Aid – To provide the highest level of protection possible within the Response Area defined herein, the County and the TOWN hereby agree to provide Automatic Aid. “Automatic Aid” means and refers to the automatic dispatch of, and response by, an emergency medical services unit and/or fire suppression unit to an emergency within an identified service area without the initiation of a mutual aid request. Automatic Aid shall be based on a mutually agreed upon (County and TOWN) predefined process that results in the immediate response of emergency personnel by the Responding Party to the scene of an emergency in the Receiving party’s jurisdiction on behalf of, or along with, the Receiving party, without regard to municipal Town or unincorporated County boundaries. “Receiving Party” shall mean and refer to the authority having jurisdiction of the subject emergency location within the Response Area that is receiving automatic aid pursuant to the Agreement. “Responding Party” shall mean and refer to the authority responding to the request for automatic aid pursuant to this Agreement.

(a) Automatic Aid Response Area –

The **County** shall provide Automatic Aid within the following incorporated boundaries of the TOWN:

1. Secondary response fire protection and Advanced Life Support (ALS) first responder medical service to the geographical areas identified in the attached Addendum 1.
2. Single engine and single rescue fire protection to the incorporated areas bounded by the East by the Indian River and on the west by Babcock St. also a small Subdivision Brook Hollow subdivision off of Briar Creek Boulevard off Port Malabar Road in the city of Palm Bay this is the northern subdivision in the Town. US1 north from 950 Riverview Dr, south to Goat Creek is the Towns boundaries. Valkaria Rd west of US1 Town has one small area located at 3500 Goat Creek Ln.

The **TOWN** shall provide Automatic Aid within the following unincorporated areas of the County:

Secondary response fire protection and Basic Life Support (BLS) first responder medical service to the geographical areas identified in the attached Addendum 2. Single engine fire protection to the areas of unincorporated Brevard County, South of Malabar Road to the Brevard County line.

4.3 The County will provide the services described in Section 1 of the agreement unless noted otherwise, within the following incorporated areas of the TOWN. The TOWN agrees to provide the services defined in Section 1 of this Agreement, unless noted otherwise, within the following unincorporated areas of Brevard County: Unincorporated area of Brevard County, South of Malabar Road to the Brevard County line.

4.4 It is the responsibility of the department receiving the automatic aid to ensure that the assisting Public Safety Answering Point (PSAP) receives the 911 call information.

4.5 Should either the County or the City be unable to respond and provide automatic aid in response to an emergency call within the Response Area, the declining party shall immediately notify the dispatch center of the authority having jurisdiction.

4.6 Officer in Charge – It is further agreed that the first arriving unit will establish incident command and manage the incident in accordance with established procedures until the earlier of mitigation of the incident, or upon scene control being transferred to an officer having authority within the jurisdiction where the incident occurred. The first arriving command officer, whether County or Town, will function as the incident commander. In the case where the first arriving command officer is not of the authority having jurisdiction for the area, incident command shall be transferred to the command officer of the authority having jurisdiction upon the arrival of such command officer. While providing automatic aid in the response Area, the Responding Party's personnel shall be subject to the orders and directions of the office in charge of the operations.

4.7 Service Standard – The responding Party and the Receiving Party shall utilize National Fire Protection Standard 1500, as defined in Florida Statute Section 633.508, to ensure that the Incident Command System, the Personnel Accountability System and the 2 in/2 out standards are adhered to. Failure to comply with this service standard may be deemed to be a breach of this Agreement and cause for immediate termination, notwithstanding the notice provision set forth in Section 2.

4.8 Release of Responding Party – The Responding Party will be released from an automatic aid request by the Receiving Party as soon as is appropriate either based upon operational considerations or when the Receiving Party has adequate resources on scene to mitigate the emergency, as determined by the officer in charge of the scene. The Authority Having Jurisdiction (AHJ) will be responsible for conducting any fire investigation. The (AHJ) for the incorporated areas will be the TOWN, the (AHJ) for the unincorporated areas will be the County.

4.9 Training - Both parties shall engage in fireground company training on quarterly basis, location to be at Malabar station 99, Brevard County Station 87, Brevard County station 86, or other locations to be determined with proper arrangements made.

4.10 Coverage - Brevard County Fire Rescue will provide coverage to the TOWN if the Malabar Fire Rescue units will be committed to a scene for an extended period of time.

SECTION 5. PAYMENT: There shall be no payment to either the TOWN or the County for services identified in this Agreement.

SECTION 6. ADDITIONAL EQUIPMENT: Beyond the initial response, a second response shall be requested as a mutual aid, if necessary. Brevard County Fire Rescue if available will provide the TOWN one (1) class A pumper, if the Malabar Fire Rescue's apparatus is in for repairs or otherwise unavailable.

SECTION 7. NOTIFICATION: Any required notice to be provided by either Party to this Agreement shall be delivered to the other Party's representative at the following locations:

Mike Foley, Fire Chief
Malabar Fire Rescue
1840 Malabar Road
Malabar, Florida 32950

Mark Schollmeyer, Fire Chief
Brevard County Fire Rescue
1040 South Florida Avenue
Rockledge, Florida 32955

With a copy to:

Matthew Stinnett, Town Manager
Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

Frank Abbate, County Manager
Brevard County Manger's Office
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Any notice to be sent to either Party under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first-class U.S. mail, or by nationally recognized overnight courier to the last known address of the Party with appropriate copies as set forth above. A mailing is deemed received at the time of hand delivery or five (5) days after mailing. Either Party may unilaterally change the person to whom a mailing is to be sent to or the address of said person by giving notice to the other Party as provided for herein. Any change of the person to whom a mailing is to be sent shall be provided to the other party in writing and further shall provide the effective date of said change.

SECTION 8. AUDITING, RECORDS AND INSPECTION:

8.1 In the performance of this Agreement, the Malabar Fire Rescue and the Brevard County Fire Rescue shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures, as adopted by the Department of Financial Services, as set forth in Rule 69I-61.0012, Florida Administrative Code, as amended or superceded from time to time, or the Auditor General. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by each Party for a period of five (5) years after termination of this Agreement. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119 and section 401.30, Florida Statutes.

8.2 No reports, data, programs or other materials produced by a Party, in whole or in part, for the benefit and use of either Party under this Agreement shall be subject to copyright by the either Party in the United States or any other country.

8.3 The Parties agree to comply with the requirements of Florida's Public Records Law and public records request made in accordance with Section 119.07, Florida Statutes.

SECTION 9. JURISDICTION, VENUE AND CHOICE OF LAW: All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the Laws of the State of Florida. Any legal action by either Party against the other concerning this Agreement shall be filed in a court having jurisdiction in Brevard County, Florida, which shall be deemed the proper venue for any action arising out of or through this agreement. The parties waive trial by jury for any dispute or action that arises out of this Interlocal Agreement. This waiver is knowingly, willingly and voluntarily made by the parties, and the parties hereby represent that no representations of fact or opinion have been made by any person or entity to induce this waiver of trial by jury or to in anyway modify or nullify its effect. This provision is a material term for the parties entering into this agreement. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver of jury trial. The parties further represent and warrants that they have been represented in the signing of this agreement and in the making of this waiver by independent legal counsel of their own free will, and that they have had the opportunity to discuss this waiver with counsel.

SECTION 10. ATTORNEY'S FEES AND COSTS: In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and costs.

SECTION 11. SEVERABILITY: If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding will not affect the remainder of this Agreement. The remainder of this Agreement shall be effective and shall remain in full force and effect, unless amended or modified by mutual consent of the parties.

SECTION 12. INDEMNIFICATION/HOLD HARMLESS: The TOWN shall indemnify and hold harmless the County and its agents and employees from and against any and all claims, damages, losses, bodily injuries (including death), and expenses, including attorney's fees, arising out of or resulting from any services provided pursuant to this Agreement, where such claim, damage, loss, or expense is caused in whole or in part by the act or omission of the TOWN, or anyone directly or indirectly employed by the TOWN or anyone whose acts any of them may be liable, regardless of whether or not it is caused by or in part by a party indemnified thereunder. No indemnification or requirement to hold harmless the County pursuant hereto shall exceed \$200,000 per person per accident or \$300,000 arising out of the same occurrence or incident. The TOWN shall not be required to indemnify or hold harmless the County to the extent that the County is negligent or intentionally causes or omits to act, thereby causing claims, damages, bodily injuries (including death), losses, or expenses.

County shall indemnify and hold harmless the TOWN and its agents and employees from and against any and all claims, damages, losses, bodily injuries (including death), and expenses, including attorney's fees arising out of or resulting from any services provided pursuant to this Agreement, where such claim, damage, loss, expense is caused, in whole or part, by the act or omission of County, or anyone directly or indirectly employed by County, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by or in part by a party indemnified thereunder. No indemnification or requirement to hold harmless the TOWN pursuant hereto shall exceed \$200,000 per person per accident or \$300,000

arising out of the same occurrence or incident. The County shall not be required to indemnify or hold harmless the TOWN to the extent that TOWN is negligent or intentionally causes or omits to act, thereby causing claims, damages, bodily injuries (including death), losses, or expenses.

Each Party agrees it shall bear responsibility for any injury or loss caused by its agents, representatives, officials, employees or volunteers (hereinafter "agents") including when such agents are acting outside their jurisdiction.

In agreeing to this provision, neither party intends to waive any defense or limit of sovereign immunity or limits to damages to which it may be entitled under section 768.28, Florida Statutes, as that section may be amended from time to time, or as otherwise provided by law. Nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of any contract. The Parties acknowledge that specific consideration has been exchanged for this provision.

SECTION 13. INDEPENDENT CONTRACTORS: It is specifically understood and agreed to by and between the Parties that a material provision in this Agreement is that the relationship between the County and the TOWN is one in which each Party and its employees are independent contractors of the other Party, and not acting as agents, employees, joint venturers, or other partners and neither Party is entitled to any benefits of the other Party. Nothing contained herein shall be construed to be inconsistent with this relationship or status.

SECTION 14. ASSIGNMENTS:

Neither the County nor the TOWN, its assigns or representatives, shall enter into any agreement with third parties to delegate any or all of the rights and responsibilities herein set forth without the prior written approval of the other party's governing body.

SECTION 15. ENTIRE AGREEMENT: This Agreement, including exhibits, riders, and/or addenda, if any, attached hereto, sets forth the entire Agreement between the Parties. This Agreement shall not be modified except in writing and executed by all Parties or as otherwise allowed under the terms of this Interlocal Agreement.

SECTION 16. INTERPRETATION: Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter hereof.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Rachel Sadoff, Clerk
(S E A L)

By: _____
_____, Chair
As Approved by the Board on _____

Reviewed for BCFR Content:

Scott M. Jurgensen, Deputy Fire Chief

Reviewed for Legal Form and Content:

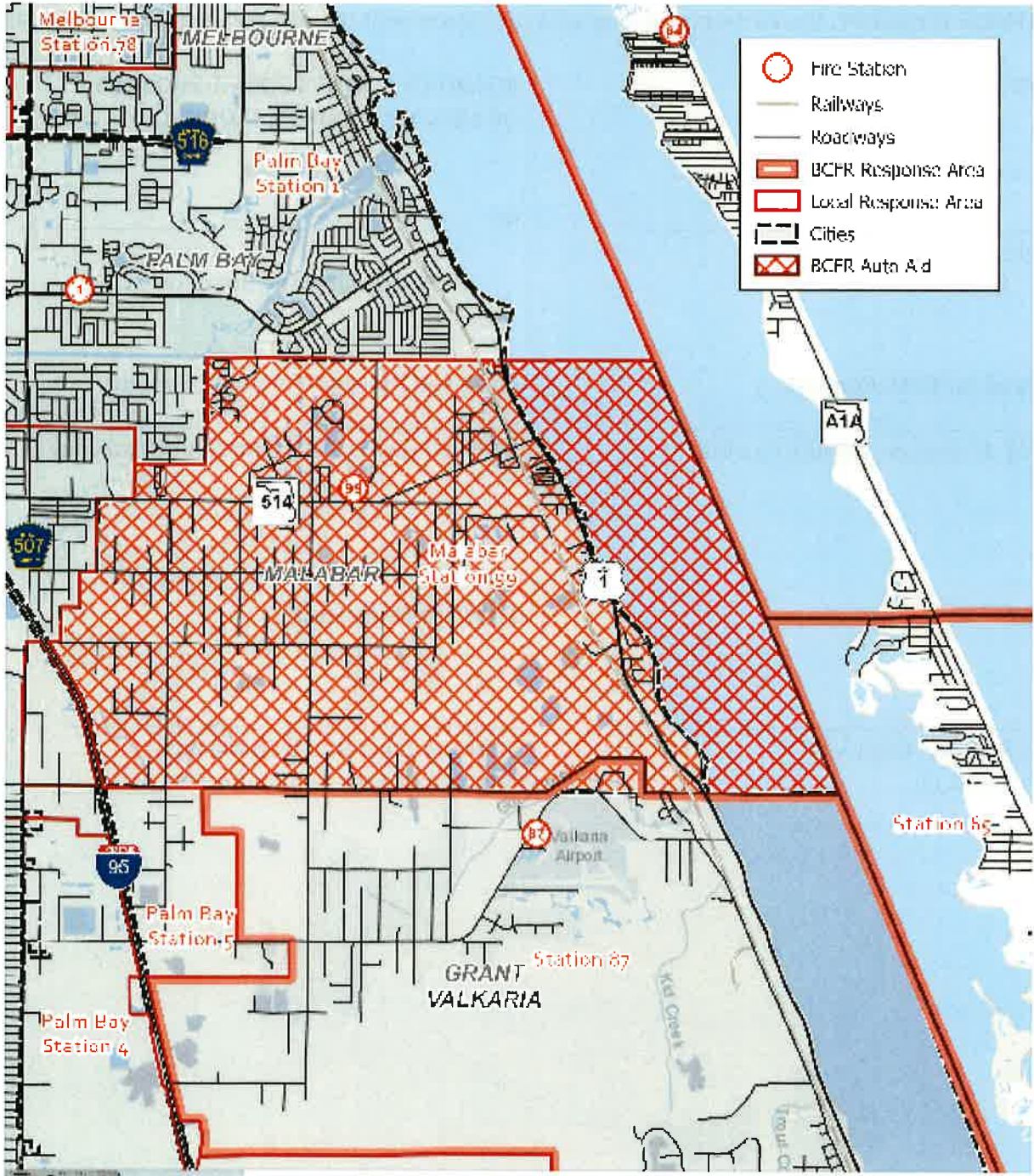
Melissa Powers, Assistant County Attorney

ATTEST:

TOWN OF MALABAR

Debby Franklin, City Clerk
(S E A L)

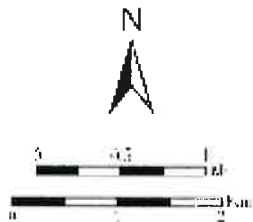
Matthew Stinnett, Town Manager
Approved by the City Council on _____



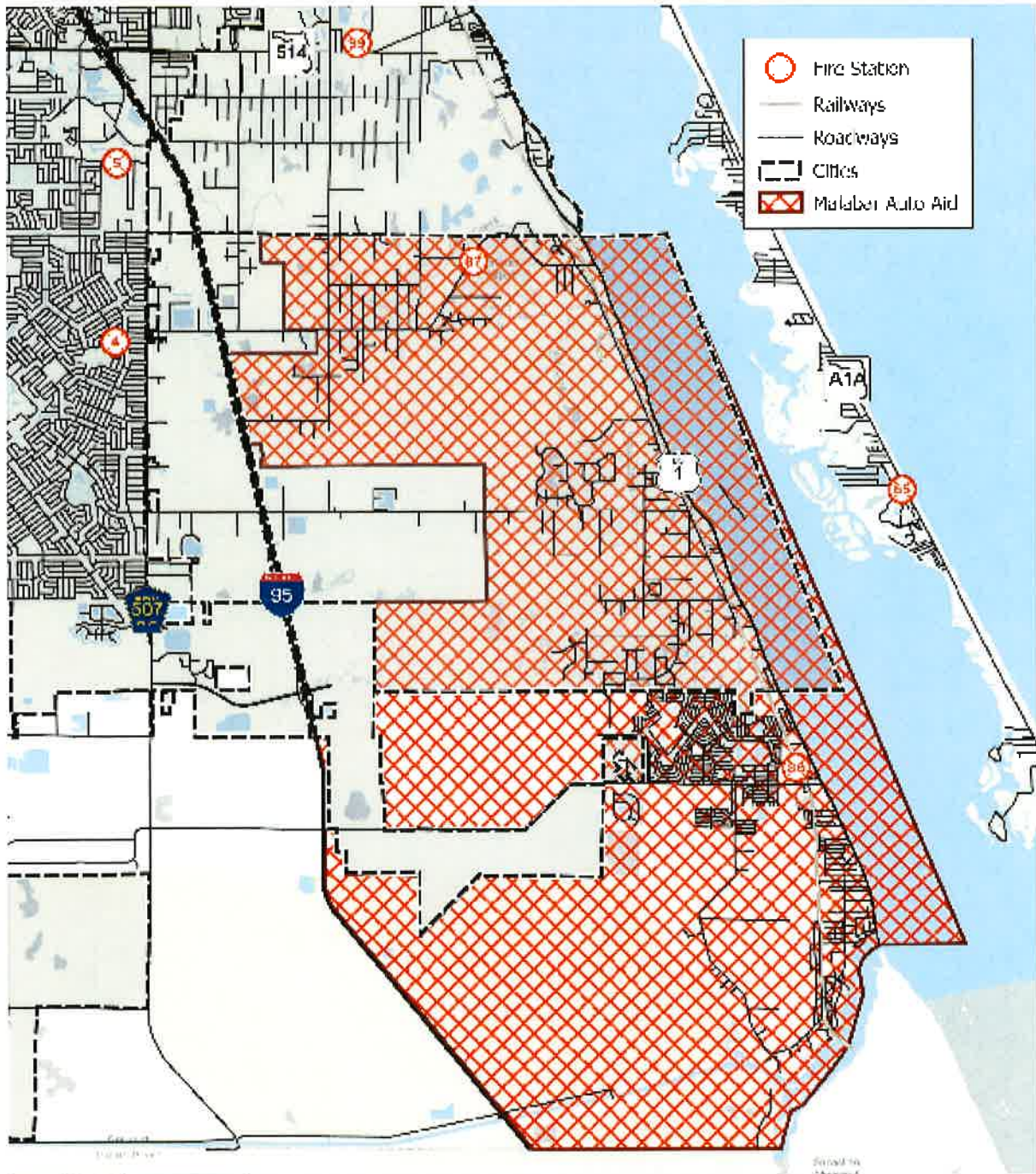
Malabar Auto Aid Addendum 1

Fire Station 38 (111 1/2 Ave)
 Fire Station 1 (105 Ave)
 Fire Station 59 (105 Ave)
 Fire Station 4 (105 Ave)
 Fire Station 5 (105 Ave)

Last Updated
 10/13/2021



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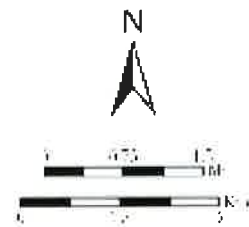


Malabar Auto Aid Addendum 2

Prepared by: [Name], [Title]
 Date: [Date]
 Version: [Version]

Last Updated
 10/13/2021

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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 6.e

Meeting Date: November 15, 2021

Prepared By: Lisa Morrell, Special Projects Manager/Interim Town Manager

SUBJECT: Use of Other Agency Contract Thermoplastic Roadway Striping Brevard County, Contract# B-7-21-05

BACKGROUND/HISTORY:

In accordance with The Town of Malabar Code of Ordinances, ARTICLE V. entitled PURCHASING, Section 2-101 - Competitive bids:

“The town administrator is authorized to piggyback contracts for any purpose where the stipulated consideration thereunder to be paid by the town exceeds two thousand dollars (\$2,000.00) awarded by any other governmental entity so long as the bidding process utilized by the other governmental entity in awarding such contract is consistent with the competitive bid procedures outlined in this section. “

Town Staff is seeking authorization to utilize the contract for roadway pavement markings on an as needed basis to maintain the Town’s roadways using the competitively bid and awarded contract to Florida Striping, Inc. Work has been performed under the contract during the week of November 8th as a matter of eminent need, the contractor was utilized and responded quickly to perform pavement markings at major intersections of Corey and Atz, Hall, and Benjamin; Weber and Atz, Hall, and Marie at Malabar Road, estimated cost of services \$7000.00 and the scope of work task order is attached.

FINANCIAL IMPACT:

FY22 Approved Budget

ATTACHMENTS:

Thermo Contract pricing 2021.PDF
FL-Striping-Primary-Contract-EXE-20201105.PDF
Thermo-Striping-CM-Exe-Memo.PDF
Thermo Contract pricing 2021.PDF

ACTION OPTIONS:

Motion to approve the use of other agency purchase contract awarded by Brevard County. Contract #B-7-21-05 for roadway striping, Florida Striping, Inc.

Attachment A: Temporary Schedule of Unit Prices

DESCRIPTION	UNIT	UNIT PRICE
Retro-reflective pavement marker, Class B	EA	\$3.60
Retro-reflective pavement marker removal with replacement	EA	\$6.00
Retro-reflective pavement marker removal only	EA	\$0.01
Thermoplastic (new) (white) (solid) (4")	LF	\$0.01
Thermoplastic (new) (white) (solid) (6")	LF	\$0.92
Thermoplastic (new) (white) (solid) (8")	LF	\$0.36
Thermoplastic (new) (white) (solid) (12")	LF	\$3.00
Thermoplastic (new) (white) (solid) (18")	LF	\$4.20
Thermoplastic (new) (white) (solid) (24")	LF	\$6.00
Thermoplastic (new) (white) (skip) (4")	LF	\$0.01
Thermoplastic (new) (white) (skip) (6")	LF	\$0.48
Thermoplastic (new) (white) (skip) (8")	LF	\$0.36
Thermoplastic (new) (white) (dot guide) (4")	LF	\$0.01
Thermoplastic (new) (white) (dot guide) (6")	LF	\$0.01
Thermoplastic (new) (white) (message)	EA	\$120.00
Thermoplastic (new) (white) (single arrows)	EA	\$72.00
Thermoplastic (new) (white) (combo arrow)	EA	\$120.00
Thermoplastic (new) (white) (yield lines)	EA	\$60.00
Thermoplastic (new) (white) (speed hump marking) (hump only)	EA	\$120.00
Thermoplastic (new) (yellow) (solid) (4")	LF	\$0.01
Thermoplastic (new) (yellow) (solid) (6")	LF	\$0.86
Thermoplastic (new) (yellow) (solid) (8")	LF	\$0.36
Thermoplastic (new) (yellow) (solid) (12")	LF	\$0.01
Thermoplastic (new) (yellow) (solid) (18")	LF	\$4.20
Thermoplastic (new) (yellow) (solid) (24")	LF	\$0.01
Thermoplastic (new) (yellow) (skip) (4")	LF	\$0.01
Thermoplastic (new) (yellow) (skip) (6")	LF	\$0.48
Thermoplastic (new) (yellow) (skip) (8")	LF	\$0.36
Thermoplastic (new) (yellow) (dot guide) (4")	LF	\$0.01
Thermoplastic (new) (yellow) (dot guide) (6")	LF	\$0.01
Thermoplastic(new)(blue) Handicap Stall with walkway	EA	\$500.00
Thermoplastic (new) (blue) Handicap Stall no walkway	EA	\$500.00
Thermoplastic (refurbish) (white) (solid) (4")	LF	\$0.01

DESCRIPTION	UNIT	UNIT PRICE
Thermoplastic (refurbish) (white) (solid) (6")	LF	\$0.68
Thermoplastic (refurbish) (white) (solid) (8")	LF	\$0.36
Thermoplastic (refurbish) (white) (solid) (12")	LF	\$3.00
Thermoplastic (refurbish) (white) (solid) (18")	LF	\$4.20
Thermoplastic (refurbish) (white) (solid) (24")	LF	\$6.00
Thermoplastic (refurbish) (white) (skip) (4")	LF	\$0.01
Thermoplastic (refurbish) (white) (skip) (6")	LF	\$0.36
Thermoplastic (refurbish) (white) (skip) (8")	LF	\$0.36
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	\$0.01
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	\$0.01
Thermoplastic (refurbish) (white) (message)	EA	\$120.00
Thermoplastic (refurbish) (white) (single arrows)	EA	\$72.00
Thermoplastic (refurbish) (white) (combo arrow)	EA	\$120.00
Thermoplastic (refurbish)(white)(speed hump marking)(hump only)	EA	\$1.20
Thermoplastic (refurbish) (white) (yield lines)	EA	\$60.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	\$0.68
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	\$0.36
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	\$4.20
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	\$0.36
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	\$0.01
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	\$0.01
Thermoplastic (refurbish) (blue) Handicap Stall with walkway	EA	\$500.00
Thermoplastic (refurbish) (blue) Handicap Stall no walkway	EA	\$500.00
Pavement Marking Removal by Grinding	SF	\$3.00
Pavement Marking Removal by Waterblasting	SF	\$5.00
Power Sweeper	GM	\$1,320.00

Brevard County Public Works Department

Contract - Road Striping (Thermoplastic and Reflective Pavement Marking)

Brevard County Public Works Department
2725 Judge Fran Jamieson Way, Building A, Suite 201
Viera, Florida, 32940

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CONTRACT - ROAD STRIPING

THERMOPLASTIC AND REFLECTIVE PAVEMENT MARKING

This is a Contract entered into by and between Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and Florida Striping, Inc., a business having its principal address at 2991 Indiana St, Melbourne, FL 32904, hereinafter referred to as the "Contractor".

RECITALS

Whereas, on August 4, 2020, the Board of County Commissioners granted Purchasing Services approval to solicit competitive bids for Road Striping, Thermoplastic and Reflective Pavement Marking; and

Whereas, the County issued a competitive solicitation for these services pursuant to Invitation to Bid No. B72105;

Whereas, the County awarded the services to Florida Striping, Inc., as primary Contractor; and

Now, therefore, in consideration of the mutual agreement hereinafter contained, the County hereby retains the Contractor, and the Contractor hereby covenants to provide the services as prescribed herein. The foregoing recitals are true and are incorporated herein by reference.

GENERAL TERMS AND CONDITIONS

SECTION 1 - DEFINITIONS

The words and expressions (or pronouns used in their stead) defined in this Contract shall, wherever they appear in the Contract, be construed as follows unless a different meaning is clear from the context.

Addenda: shall mean any additional solicitation provisions issued in writing by the County prior to the date and time for bid openings.

Bid Proposal: shall mean the offer of proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder: shall mean any person, firm or corporation submitting a Bid for the Work.

Board of County Commissioners: shall mean the Board of County Commissioners of Brevard County, Florida, or their duly authorized representative(s).

Change Order: shall mean an order to the Contractor, approved by the County, authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract and/or Task Order, or the Contract Performance Period or Completion Time issued after execution of the Contract or issuance of a Task Order.

Completion Time: shall mean the number of days specified in a Task Order for completion of the Work in that Task Order.

Contract: shall mean the written agreement between the County and the Contractor regulating the Work to be performed.

Contractor: shall mean successful Bidder, whether a corporation, firm, individual or any combination thereof, and their successors, personal representatives, executors, administrators and assigns.

Contract Performance Period: shall mean the overall performance period of this Contract.

County: shall mean the Board of County Commissioners, Brevard County, Florida, or their duly authorized representative(s), for whom the Contract Work is being performed.

Date of Execution: This contract's date of execution is the date last signed by the Parties.

Day: shall mean one calendar day when used in the Contract.

Defective Work: shall mean (a) Work that is unsatisfactory, deficient or damaged, does not conform to the Contract, or does not meet the requirements of any inspection test or approval, or (b) Work associated with punch list items that the Contractor fails to complete within a reasonable time after issuance of the punch list by the Project Manager.

Final Acceptance: shall mean acceptance of the Work specified in an individual Task Order by the County upon the expiration of the warranty period as stated in the Contract.

Notice: shall mean written Notice delivered to an authorized representative identified herein in person or by mail.

Notice of Intent to Award: shall mean the notice given by the County to the successful Bidder

Project: A specific description of Work to be performed at a Site under the scope of this Contract.

Project Manager: Shall mean the Public Works Department Traffic Operations Manager or their designee. The Project Manager will receive correspondence at 580 Manor Drive, Merritt Island, Florida 32952, Phone 321-455-1440.

Site: shall mean the area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated as such by the Project Manager.

Specifications: shall mean the parts of the Contract identified as "Specifications" and organized into Divisions. The Specifications include general requirements and technical descriptions of materials, equipment, construction systems, standards and workmanship. The term "Technical Provisions" where used in the Contract refers to the Specifications.

Sub-contractor: shall mean any person, firm, or corporation other than employees of the Contractor that contract with the Contractor to furnish, or actually furnishes labor, materials and/or equipment for the work.

Task Order: shall mean any order issued against the Contract for construction work in accordance with its terms and conditions.

Work: shall mean any and all obligations, duties and responsibilities necessary to the successful completion of the construction assigned to or undertaken by the Contractor under the Contract, including the furnishing of all labor materials, equipment, and other incidentals.

SECTION 2 - SCOPE OF WORK

This Work consists of the installation of thermoplastic pavement markings and reflective pavement markers on new, newly resurfaced, and existing roads in Brevard County. This Work will also include the removal of thermoplastic markings.

SECTION 3 - TERM OF CONTRACT

The initial term of this Contract is three years after its Date of Execution. In addition, subject to the County's sole discretion, this Contract may be renewed by the County in one-year increments for up to two additional years beyond the initial three-year term of the Contract by providing prior written notice to the Contractor.

SECTION 4 - COMPENSATION

Compensation for Work shall be in accordance with Attachment A: Schedule of Unit Prices. Compensation schedules may be adjusted after the third year of the Contract upon mutual

consent of the parties. Compensation adjustment shall be based on material cost variation or other relevant economic conditions, sufficiently documented by the requesting party. Either party may request a compensation adjustment. Failure to agree upon compensation adjustments shall constitute mutually agreed upon termination of this Contract. The request for compensation adjustment must be made ninety days prior to the anniversary date of this Contract.

SECTION 5 - INDEMNIFICATION

The County shall be held harmless against any and all claims for and related in any way to bodily injury, sickness, disease, death, personal injury, damages to property of any kind (loss of use of any property or assets resulting therefrom), schedule delay claims of any kind, including but not limited to loss of efficiency or productivity, arising out of or resulting from the performance of the products or services for which the County is Contracting hereunder, to the extent caused by the negligent acts, recklessness, or intentional wrongful conduct of the Contractor, or any of their agents or employees, including sub-contractors. Such acts by the Contractor include, but are not limited to, any errors or omissions in the Contractor's services.

The Contractor agrees to fully indemnify the County and pay the cost of the County's legal defenses, including fees of attorneys as may be selected by the County, for all claims described in the hold harmless clause above. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy. It is agreed by the parties hereto that specific consideration has been received under this Contract for this hold harmless/indemnification provision. This indemnification shall survive the termination of this Contract. The County's indemnity and liability obligations hereunder shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of sovereign immunity of Brevard County.

SECTION 6 - INSURANCE REQUIREMENTS

The Contractor providing services under this Contract will be required to procure and maintain, at their own expense and without cost to the County, until final acceptance by the County of all products or services covered by the purchase order or Contract, the following types of insurance. The policy limits required are to be considered minimum amounts.

- A. **General Liability Insurance** policy with a \$1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering this Contract, and Explosion, Collapse and Underground (“XCU”) hazard.
- B. **Auto Liability Insurance** which includes coverage for all owned, non-owned and hired vehicles with a \$1,000,000 combined single limit for each occurrence.
- C. **Workers' Compensation and Employers Liability Insurance** as required by Florida law.

The Contractor shall provide certificates of insurance to the County demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Contract and upon insurance renewal annually. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best’s Financial Strength Rating of A- Class VIII or better. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the County as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers’ Compensation policy is acceptable) and that these policies may not be canceled or modified without thirty days prior written notice to the County.

The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the Contractor under the terms of the Contract. Sub-contractor's insurance shall be the responsibility of the Contractor.

SECTION 7 - BOND

The Contractor shall furnish a surety (performance) bond in the amount of fifty thousand dollars (\$50,000.00), which bond shall guarantee the faithful performance of any and all duties and materials or labor under this Contract.

SECTION 8 - WARRANTY

The Contractor shall extend to the County the same warranty on all materials and equipment furnished under this Contract, which the manufacturer extends to the Contractor, or purchasers, whichever is greater. The Contractor shall guarantee its workmanship under this Contract for a period of one year from the date of acceptance by the County.

SECTION 9 - ATTORNEY'S FEES

In the event of any legal action between the parties to interpret or enforce the terms of this Contract or any provision hereof, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

SECTION 10 - GOVERNING LAW

This Contract shall be governed, interpreted and construed according to the laws of the State of Florida.

SECTION 11 - COMPLIANCE WITH STATUTES

It shall be the Contractor's responsibility to be aware of and comply with all federal, state and local laws.

SECTION 12 - VENUE

Venue for any legal action brought by any party to this Contract (for the purposes of this clause, this includes any city or municipality who is allowed to utilize the Contractor's services under this Contract), to interpret, construe, or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.

SECTION 13 – SUB-CONTRACTING

It is understood that the Contractor will be solely responsible for the assigned work. Any sub-contractors must be previously approved by the Project Manager. The Contractor will not employ any sub-contractor, other person or organization against whom the County or the Project Manager may have reasonable objections, nor will the Contractor be required to employ any sub-contractor against whom he has reasonable objection. The Contractor will not make any substitution for any sub-contractor who has been accepted by the Project Manager, unless the County and the Project Manager determine that there is good cause for doing so.

Nothing in the Contract shall create, nor shall it be interpreted to create, privity or any other Contractual relationship whatsoever between any sub-contractor and the County, or any person or business entity except the Contractor, or any obligation on the part of the County to pay or to see to the payment of any monies due any sub-contractor, except as may otherwise be required by law. The County may furnish to any sub-contractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done. The Contractor agrees to specifically bind every sub-contractor to the applicable terms and conditions of the Contract for the benefit of the County.

SECTION 14 – ASSIGNABILITY

Any Work issued pursuant to this Contract is not assignable without the prior written approval of the Project Manager.

SECTION 15 – PURCHASING AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES

The County permits the awarded Contractor(s) to extend the pricing, terms and conditions of this solicitation to other governmental entities at the Contractor’s discretion. Each governmental entity that utilizes this solicitation or resulting contract will be responsible for execution of its own requirements with the awarded Contractor (s).

SECTION 16 - NON-EXCLUSIVITY

The parties hereto specifically agree that this is a non-exclusive agreement and that the County may select other Contractors to perform construction, rehabilitation and maintenance during the term of this Contract. Contractor may also do such work for any other entity.

SECTION 17 - TERMINATION

- A. If through any cause, the Contractor shall fail to fulfill its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the County shall have the right to terminate this Contract by giving written notice to the Contractor of such termination, specifying the effective date thereof, at least ten days before the effective date of such termination.
- B. The County retains the right to terminate the Contract, in part or in its entirety, without cause, upon thirty days prior written notice. In the event of termination, the Contractor

shall not be entitled to any damages, liquidated or otherwise caused as a result of such termination.

- C. Any Work completed prior to the date of termination shall, at the option of the County, become the property of the County. The County is only responsible for payment of Work completed, inspected and accepted prior to the effective date of termination, excluding any and all anticipated supplemental costs, administrative expenses and profit for uncompleted Work.

SECTION 18 - INDEPENDENT CONTRACTOR

The Contractor shall perform the conditions of this Contract as an independent Contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be in any way construed to constitute the Contractor, or any of its agents or employees, as an agent, employee or representative of the County.

SECTION 19 - RIGHT TO AUDIT RECORDS

In performance of this Contract, the Contractor shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Contractor in conjunction with this Contract, and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Contractor shall retain all documents, books and records for a period of five years after completion or termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes.

SECTION 20 - PUBLIC RECORDS

The County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes, and all other applicable Florida Statutes. If the materials provided by the Contractor do not fall under a specific exemption under Florida or federal law, materials provided by the Contractor to the County would have to be provided to anyone making a public records request. It will be the Contractor's duty to identify the information it deems is exempt under Florida or federal law, and identify the statute, by number, that exempts such information.

Should any person or entity make a public request of the County, which requires or would require the County to allow inspection or provide copies of records which the Contractor maintains are exempt from Public Records Law or are confidential, it shall be the Contractor's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Contractor of the request, of the specific exemption or confidentiality provision so the County will be able to comply with the requirements of Chapter 119, Florida Statutes.

Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, then the Contractor shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Contractor in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney fees, which may be awarded pursuant to 119.12, 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, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE PUBLIC WORKS DEPARTMENT:

ROBERT HENDRICKS 321-617-7202 robert.hendricks@brevardfl.gov

**2725 Judge Fran Jamieson Way, Suite A-201
Viera, FL 32940**

SECTION 21 - UNAUTHORIZED ALIEN WORKERS AND E-VERIFY

The County will not intentionally award publicly-funded Contracts to any Contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider a Contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Contract.

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any sub-contractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the Contract term.

In accordance with the E-Verify provisions, the Contractor agrees to provide a copy of their fully executed E-Verify Memorandum of Understanding prior to execution of the Contract.

Compliance with the terms of this Section is made an express condition of this Contract and the County may treat a failure to comply with the provisions herein as a material breach of this Contract.

SECTION 22 - SCRUTINIZED COMPANIES

Awarded Contractor shall certify that it and its sub-Contractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes. if the Contract is for more than one million dollars, the Contractor further certifies that it and its sub-Contractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes.

For Contracts of any amount, if the County determines the Contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4), Florida Statutes, are met.

For Contracts \$1,000,000 and greater, if the County determines the Contractor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Contractor has been placed on

the Scrutinized Companies with Activities in the Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the County shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the County's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or on a case-by-case basis the County may choose to maintain the Contract if the conditions of Section 287.135(4), Florida Statutes, are met.

The Contractor agrees to observe the above requirements for applicable sub-contracts entered into for the performance of work under this Contract.

As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize these Contracting prohibitions, this section shall become inoperative and unenforceable.

SECTION 23 - FEDERAL TAX ID NUMBER

The Contractor shall provide to the County their Federal Tax ID Number or, if the Contractor is a sole proprietor, a Social Security Number.

SECTION 24 - EMPLOYMENT

The Contractor shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide services relating to this Contract without written consent from the County.

SECTION 25 - PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a Contract to provide any goods or services to a public entity, may not submit a bid on a Contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, sub-Contractor, or consultant under a Contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six months from the date of being placed on the convicted vendor list.

SECTION 26 - CONSTRUCTION OF CONTRACT

The parties hereby acknowledge that they fully reviewed this Contract, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any party as if they were the drafter of this Contract.

SECTION 27 - ENTIRE CONTRACT

This Contract, together with Task Orders that may follow, embody the entire Contract and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that not merged herein. No alteration, change, or modification of the terms of this Contract shall be valid unless made in writing, signed by both parties hereto as an addendum to this Contract, or as specifically prescribed in a Task Order. This Contract shall be governed by and construed according to the laws of the State of Florida.

SECTION 28 - SEVERABILITY

In the event a court of competent jurisdiction finds any sentence, provision, paragraph, or section of this Contract null and void, the remaining parts of this Contract shall continue in full force and effect as though such sentence, provision, paragraph or section has been omitted from this Contract.

SECTION 29 - WAIVER

In the event the County waives any of the Contractor's obligations or duties in this Contract, it shall not constitute a waiver of any of the other obligations and duties of the Contractor, nor shall waiver of any such obligation or duty constitute a continuing waiver of that obligation or duty.

SECTION 30 - DELEGATION OF WORK

The County reserves the right to ascertain the necessity for Contractor service and shall, at its sole discretion, determine the conditions warranting Contractor response.

SECTION 31 - EVALUATION OF PERFORMANCE

The County will conduct an annual evaluation of the Contractor's performance. The evaluation may be used as a consideration with respect to renewal or termination of the Contract.

SECTION 32 - DEFICIENCIES

If, through any cause, the Contractor shall fail to fulfill its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract:

- A. The County shall have the right to direct the Contractor to cease operation until deficiencies are corrected.
- B. The County shall have the right to schedule a meeting to discuss the deficiencies. The Contractor shall be responsible for providing a written corrective action plan within three days after the meeting.
- C. The County shall have the right to reject the defective Work. Upon rejection of defective Work, the Contractor shall remove the defective Work from the site and replace it with non-defective Work within a reasonable time, or as specified in a corrective action plan.
- D. The County shall have the right to specify other remedial action, which may be incorporated into this Contract by mutual consent of the parties.
- E. Any deficiencies not addressed by the Contractor by the time required under this Contract will be grounds to deny payment for the location affected.
- F. The County shall have the right to pursue claims for actual damages involving any defects in the Work performed by the Contractor not remedied to the satisfaction of the County.

SECTION 33 – CHANGE ORDER

A change to a Task Order approved by the County authorizing an addition, deletion or revision in the Work, resulting in an adjustment in the compensation and/or the Completion Time of a Task Order.

CHANGE OF COMPLETION TIME AND CLAIMS FOR DELAYS

- A. The Completion Time may only be changed by a Change Order. Any claim for adjustment of the Completion Time shall be based on notice delivered by the party making the claim to the other party (but in no event later than three days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data, including but not limited to, backup for

additional compensation requests for any delays and/or loss of efficiency, shall be delivered within three days after such occurrence (unless the County allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Completion Time and any related equitable adjustment to the Task Order will be valid if not submitted in strict accordance with the requirements of this paragraph. Otherwise, such claims will be deemed to have been waived.

- B. All time limits stated in the Task Orders are of the essence of the contract. In other words, time is of the essence as to all applicable provisions related to time.
- C. Where Contractor is prevented from completing any part of the Work within the Completion Time due to delay beyond the control of Contractor, the Completion Time will be extended in an amount equal to the time lost due to such delay if a claim is made thereof as provided in this provision. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by the County, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a subcontractor shall be deemed to be delays within the control of Contractor.
- D. No Damages for Delay: NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS. The Contractor shall not be entitled to an increase in the payment or compensation of any kind from the County for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration, or inefficiency, arising because of delay, disruption, interference or hindrances from any cause whatsoever, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts or neglect by utility owners or other contractors performing other work; however, this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith, or active interference on the party of the County or its agents. Otherwise, the Contractor shall be

entitled only to extensions of the Completion Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

- E. Completion Time shall not be extended for rain delays. The County may consider granting time extensions as stipulated in Section 8-6.1.1 of F.D.O.T. Specifications for temporary suspension of work due to adverse weather conditions due to catastrophic occurrences.

DISPUTED CHANGE ORDER REQUEST

- A. Within five days after denial of the Contractor's request for a change order, the Contractor may submit to the County Manager, or designee with experience in the oversight of construction projects for a department or business other than the department responsible for monitoring the disputed request, documentation of the Contractor's position in the dispute or disagreement. The County Manager, or designee, within five days after the receipt of the Contractor's documentation, shall review the request and make a final determination as to whether denial was arbitrary or capricious based upon the sufficiency of the work under the terms of the contract, applicable regulations and relevant construction standards. Based upon the sufficiency and degree of completion, as well as any defects in the work and the amount reasonably required, if any, to correct or repair defective work, the reviewer shall make the final determination as to whether a change order should be approved by the County Manager.
- B. If the denied request or disputed amount exceeds the County Manager's purchasing authority, the County Manager shall present a report, recommendation, and the Contractor's claim and documentation to the County Commission for a final determination within thirty days after receiving the Contractor's documentation for the claim. The Commission shall make its decision using the standards specified in above.
- C. Within thirty days after denial of a request for a change order involving 1] an amount in excess of the County Manager's purchasing authority or 2] for the amount the Contractor claims to be due at the time the project is ready for beneficial use or

occupation, the County may, at the County's option in lieu of the procedure specified above, submit the dispute to a mediator with knowledge or experience in construction management, as agreed upon by the parties.

Upon referral to a mediator, the County and Contractor shall each pay half the estimated cost of the mediator, up front. Within thirty days after the date of submittal, the mediator, applying the standards set forth in the Change Order provision, shall investigate the dispute and submit a written recommendation for disposition of the dispute to the County Manager or designee with the qualifications specified in the Change Order provision.

Within thirty days after receiving the mediator's recommendation, the County Manager shall submit the recommendation to the County Commission, along with a staff report analyzing the dispute and mediator's recommendation. Based on the standards set forth in the Change Order provision, the Commission shall decide whether to grant or deny, in whole or in part, the amounts recommended by the mediator. The Commission's decision will be deemed final action on the disputed claim for the purposes of ripening the decision for judicial review. If the mediator recommends that no Change Order be granted, the Contractor shall reimburse the County any amounts paid by the County to the mediator.

The deadlines for completing the dispute resolution process described above may be extended by mutual agreement of the County and Contractor.

SECTION 34 - LIQUIDATED DAMAGES

It is mutually agreed that time is of the essence of this Contract and should the Contractor fail to complete the Work, or portions thereof, within the specified time, or any authorized extension thereof, liquidated damages as set forth below shall be deducted from the compensation otherwise to be paid to the Contractor. Both parties recognize that precise actual damages for Contractor's failure to complete tasks within the deadline (including any valid extensions) set forth in the Task Order are impossible to determine due to the impossibility of precisely ascertaining the amount of damages that will be sustained by the County as a consequence of such delay. Both parties desire to obviate any question of dispute concerning

the amount of said damages for delay and the cost and impact of the failure of the Contractor to complete the tasks in a Task Order on time. The parties therefore agree to fix liquidated damages for delay in completing tasks in a Task Order to an amount that is not grossly disproportionate and is reasonably expected to follow from a breach of this Contract. Contractor waives any and all challenges and legal defenses to the validity of any liquidated damages established in the Contract, including that the liquidated damages are void as penalties or are not reasonably related to the actual damages sustained by the County as a result of Contractor's untimely performance. The parties stipulate these amounts are not a penalty, but liquidated damages to the County based on a reasonable measure of damages from the County's experience in the pavement marking industry and given the nature of losses that result from delays. For each day that any part of the Work remains uncompleted after the expiration of the time allowed for completion of the Work, the sums per day set forth below shall be deducted from any monies due the Contractor, the County shall have the right to recover the liquidated damages sum from the Contractor, the Surety, or both. The amount of these deductions are to cover liquidated damages to the County incurred by additional and other expenses due to the failure of the Contractor to complete the Work or any part of the Work within the Completion Time specified in the Task Order, and such deductions are not to be considered as penalties.

This liquidated damages clause applies only to delay claims arising out of the Contractor's failure to timely perform the Work required under the Contract. Nothing in this liquidated damages provision shall be deemed to preclude the prosecution of a claim by the County for actual damages involving any defects in the Work, breach of Contract of any kind, negligence or any other claim for damages not involving a claim based solely on delay caused by the Contractor's untimely performance of the Work.

- A. Maintenance: Upon failure of the Contractor to complete the Work (Maintenance) in a Task Order for by the Completion Time, or any authorized extension thereof, the Contractor shall pay \$250.00 per day for each calendar day of delay after the date specified for Completion Time up to but not including the date the Work is deemed complete by the County.

- B. Resurfacing and New Pave: Upon failure of the Contractor to complete the Work (Resurfacing and New Pave) in a Task Order by the Completion Time, or any authorized extension thereof, the Contractor shall pay \$500.00 per day for each calendar day of delay after the date specified for Completion Time up to but not including the date the Work is deemed complete by the County. The dates specified on the notification email shall constitute the basis for the assessment of liquidated damages.

INSTALLATION, MAINTENANCE, AND REMOVAL

SECTION 35 - RESOURCE REQUIREMENTS

The Contractor shall furnish all supervision, quality control, labor, materials, equipment, supervision, tools, transportation, supplies, manpower, and pay disposal fees necessary to complete the Work specified in this Contract. Unit prices shall be inclusive of all incidentals, labor, materials, maintenance of traffic, mobilization, etc. No additional compensation will be provided to the Contractor.

SECTION 36 - UTILITY COORDINATION

The Contractor is responsible for coordinating with all public and private utility companies, as may be necessary for proper and safe completion of the Work.

SECTION 37 - MULTIPLE CONCURRENT PROJECTS

The Contractor shall have adequate resources to handle two or more Projects at the same time.

SECTION 38 - SAFETY AND PROTECTION

The Contractor shall follow all applicable safety standards. The Contractor shall take all necessary precautions for the safety and protection of:

- All employees and other persons who may be affected by the Work;
- All the Work and all materials or equipment on or off the site; and
- Private property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not within the scope of the Project.

SECTION 39 - EQUIPMENT AND RESOURCES

All equipment used in the performance of the Contract on County Property shall be maintained properly. All equipment used by the Contractor is subject to inspection by the Project Manager. Any equipment deemed inoperable, unsafe, or improper for the Work shall be removed from the work site. The Contractor shall utilize equipment of a type and in sufficient quantity to perform the work in a satisfactory manner and as scheduled in the Task Order. The list of equipment shall comply with minimum requirements for equipment as detailed on the Florida

Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition.

SECTION 40 - PROJECT MANAGER

The Contractor will coordinate with the Project Manager who will verify that the work has been completed in accordance with specifications, as scheduled, and handle problems that may arise. The Project Manager may issue verbal orders to address emergencies or to ensure the continuity of critical elements of Contract performance. The County's Project Manager shall be advised, at their request, as to the status and details of work being completed by the Contractor in the format they require. The Contractor will provide the Project Manager a list of all foremen and supervisors who will perform the work. This list will also contain twenty-four hour emergency numbers.

SECTION 41 - CONTRACTOR'S REPRESENTATIVE

The Contractor will designate a competent Contractor's Representative who will not be replaced without written notice to the County's Project Manager at least twenty-four hours before the change. The Contractor's Representative will be present at work locations and will have the authority to act on behalf of the Contractor. Project communications (both verbal and written) given to the Contractor's Representative will be as binding as if given to the Contractor.

SECTION 42 - COORDINATION CONFERENCE

A coordination conference will be held to discuss schedules, procedures, invoicing, maintenance of traffic, utility coordination, and any other aspects of the Work. The conference will be scheduled within twenty days after the effective date of the Contract, but before Contractor begins Work at any site. The conference shall be attended by the Contractor, Project Manager, and other personnel as required. Either party may request and be granted additional coordination conferences.

SECTION 43 - ASSIGNMENT OF WORK

All Work will be ordered by the Project Manager or their designee in the form of a written or verbal Task Order. No work will begin until a Task Order has been issued to the Contractor. The Contractor shall visit the site, if needed, and submit a written quotation to the Project Manager within seven days. The quotation shall be based solely upon the unit prices contained in the Bid

Item Schedule. The quotation shall also include the proposed schedule for completion of the project in days.

A Task Order will be issued for each Project. The Task Order will contain a start date and completion date that will be mutually agreed to between the County and the Contractor. The Contractor will submit a work schedule prior to beginning any work ordered. The work schedule will contain the route to be followed and the location of work each day. The Contractor will consult with the County's Project Manager prior to any schedule variance. The County's Project Manager shall be notified one day prior to the schedule change and must concur with the recommended changes. The Contractor shall start working on assigned projects within two days of notification. If the County deems it necessary, the County may request in writing for the Contractor to visit the site and submit a written quotation to the Project Manager. Written quotations, if requested, must be submitted within seven (7) calendar Days of the Contractor receiving the County's request. The quotation shall be based solely upon the unit prices contained in the Bid Item Schedule. The quotation shall also include the proposed schedule for completion of the project in calendar days. Upon receipt and review of the quotation, the County may issue the Contractor a Task Order for the quoted Work.

SECTION 44 – COORDINATION WITH OTHERS

The Contractor shall arrange his work and dispose of his materials so as not to interfere with the operations of other contractors, utilities, and County forces engaged upon adjacent work and to join his work to that of others in a proper manner, in accordance with the spirit of the Task Order, and to perform his work in the proper sequence in relation to that of other contractors, utilities and County forces.

SECTION 45 - CLEAN UP

The Contractor will keep the site free from accumulations of waste material, rubbish and other debris during performance of the Work. At the completion of the Work the Contractor will remove all waste materials, rubbish, and debris from and about the premises as well as all tools, construction equipment, machinery, and surplus materials, and will leave the site clean and ready for occupancy by the County. The Contractor shall restore those portions of the site not designated for alteration by the Task Order to their original condition.

SECTION 46 - FINAL INSPECTION

Upon written notice from the Contractor that the Work is complete, the County's Project Manager shall schedule and conduct a final inspection with the Contractor and will notify the Contractor in writing of any deficiencies in the Work within seven days. The Contractor shall correct all deficiencies and request an inspection within five days or as agreed to by the Project Manager and before final acceptance and payment is made.

SECTION 47 - ACCEPTANCE

Acceptance of the Project will be granted when the Contractor completes a Project to the satisfaction of the County. The County shall remit payment upon acceptance in accordance with the Florida Prompt Payment Act, Florida Statute section 218.70, et seq.

SECTION 48 - PERFORMANCE STANDARDS

Any marking products utilized must be listed in the current F.D.O.T. "Approved Product List" if the specific device category exists. All materials and installations shall be in accordance with the latest edition of all applicable technical specifications including, but not limited to, the following:

Florida Department of Transportation:

- Standard Specifications for Road and Bridge Construction
- Standard Plans for Road and Bridge Construction
- Manual on Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways
- Accident Prevention Procedures Manual

Federal Highway Administration:

- Manual on Uniform Traffic Control Devices

Associated General Contractors of America, Inc.

- Manual of Accident Prevention in Construction

SECTION 49 - CONFLICTING STANDARDS

In the event of conflicting specifications, the resolution shall be at the discretion of the Project Manager. In those cases where the County specifications are more restrictive, the County specifications shall govern, except as may be otherwise determined by the Project Manager.

SECTION 50 - MODIFICATION OF STANDARDS

The County may, at its discretion, modify and/or exceed performance standards based on engineering judgment or maintenance considerations. In those cases where the County requests a performance level significantly in excess of the specifications, the Contractor shall be entitled to request compensation. Additional compensation must be requested by the Contractor and approved by the Project Manager in writing, prior to commencing the work.

SECTION 51 - MAINTENANCE OF TRAFFIC (M.O.T.)

The Contractor is responsible for maintaining safe traffic flow in accordance with all applicable standards. The County shall reserve the right to specify the Work be conducted at night in order to maintain adequate traffic flow. All costs associated with M.O.T. must be included with the Unit Price. Road closures will not be allowed except in the case of emergencies and only when approved by the Project Manager.

SECTION 52 - NOTICES AND COMMUNICATION

Any notices or other written communications shall be considered delivered when posted by certified mail, delivered in person or by e-mail. Any notices or other written communications required herein, shall be provided as follows:

County Representatives:

Corrina Gumm, P.E., Traffic Operations Manager
2725 Judge Fran Jamieson Way, Suite A-211
Viera, FL 32940
321-633-2077
Email: corrina.gumm@brevardfl.gov

With a copy to:

Lisa Marasco, Traffic Operations Superintendent
580 Manor Drive
Merritt Island, FL 32952
321-455-1440
Email: lisa.marasco@brevardfl.gov

Contractor Representative:

Barbara Harrison, Vice President
P.O. Box 1530
Silver Springs, FL 34489
321-794-5672
Email: floridastriping@aol.com

The Contractor shall provide and keep up to date the name and cell phone number of its Contractor Representative. Each party is responsible for updating this contact information as needed.

SECTION 53 - INVOICING

Invoices shall be submitted with seven days of completed work. The Contractor shall certify that work has been completed. Invoices submitted by the Contractor to the County shall be sent with the proper documentation to the address provided above. The County shall adhere to the Florida Prompt Payment Act, Sections 218.80 through 218.80, Florida Statutes. County Administrative Order-33 directs the prompt payment of invoices, attached herein as Attachment B.

TECHNICAL PROVISIONS

SECTION 54 - PAVEMENT MARKINGS

- A. Thermoplastic pavement markings, material, equipment, and method of application will be in accordance with Sections 970 and 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.
- B. Pavement markings will be laid out in accordance with Index 706-001, 711-001, 711-002 and 711-003 of the F.D.O.T Standard Plans for Road Construction.
- C. Only alkyd resin type thermoplastic material will be used.
- D. Six, eight, twelve, eighteen, and twenty-four inch yellow or white traffic stripes will be measured and paid for by the actual linear foot of thermoplastic installed. Unpainted/un-striped gaps will not be measured or paid for.

SECTION 55 - REFLECTORIZATION

Apply glass spheres on all pavement markings immediately and uniformly following the paint application. The rate of application shall be in accordance with Section 971 of the F.D.O.T. Standard Specifications for Road and Bridge Construction.

SECTION 56 - REFLECTIVE PAVEMENT MARKERS

Reflective pavement markers will be installed in accordance with Index 706-001 of the F.D.O.T. Standard Plans for Road Construction.

SECTION 57 - PAVEMENT MARKINGS ON NEWLY SURFACED ROADS

The painted pavement markings shall be identical in layout to the final thermoplastic pavement markings. Final thermoplastic pavement markings shall be installed after the final asphalt surface has cured sufficiently to prevent asphalt tracing on the pavement markings.

SECTION 58 - REMOVAL OF EXISTING THERMOPLASTIC PAVEMENT MARKINGS

Existing thermoplastic pavement markings will be removed in accordance with Section 971 of F.D.O.T. Standard Specifications for Road and Bridge Construction.

In witness whereof, the parties hereto have set their hands and seals the day and year below written.

Attest:

Scott Ellis
Scott Ellis, Clerk

Board of County Commissioners of
Brevard County, Florida

By: *Lober*
Bryan Andrew Lober, Chair

11/5/2020
Date
Approved by the Board on August 4, 2020

Approved as to legal form and content:

Alex Essee
Alex Essee, Assistant County Attorney

Witness/Seal:

Florida Striping, Inc.

Barbara Harrison
Barbara Harrison
STATE OF FLORIDA
COUNTY OF Marion

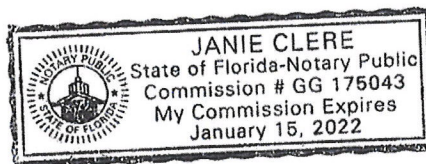
By: *Todd Harrison*
Todd Harrison, President

I hereby certify that before me, an officer duly authorized to take acknowledgments, personally appeared Todd Harrison to me known to be the President of Florida Striping, Inc., or provided personally known as identification and who acknowledged before me that they executed the within instrument freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal in the State and County last aforesaid this 26 day of October, 2020.

Janie Clere
Signature

Janie Clere
Notary Name (typed or printed)



Attachment A: Schedule of Unit Prices

DESCRIPTION	UNIT	UNIT PRICE
Retro-reflective pavement marker, Class B	EA	\$ 3.00
Retro-reflective pavement marker removal with replacement	EA	\$ 5.00
Retro-reflective pavement marker removal only	EA	\$ 0.01
Thermoplastic (new) (white) (solid) (4")	LF	\$ 0.01
Thermoplastic (new) (white) (solid) (6")	LF	\$ 0.72
Thermoplastic (new) (white) (solid) (8")	LF	\$ 0.30
Thermoplastic (new) (white) (solid) (12")	LF	\$ 2.50
Thermoplastic (new) (white) (solid) (18")	LF	\$ 3.50
Thermoplastic (new) (white) (solid) (24")	LF	\$ 5.00
Thermoplastic (new) (white) (skip) (4")	LF	\$ 0.01
Thermoplastic (new) (white) (skip) (6")	LF	\$ 0.40
Thermoplastic (new) (white) (skip) (8")	LF	\$ 0.30
Thermoplastic (new) (white) (dot guide) (4")	LF	\$ 0.01
Thermoplastic (new) (white) (dot guide) (6")	LF	\$ 0.01
Thermoplastic (new) (white) (message)	EA	\$ 100.00
Thermoplastic (new) (white) (single arrows)	EA	\$ 60.00
Thermoplastic (new) (white) (combo arrow)	EA	\$ 100.00
Thermoplastic (new) (white) (yield lines)	EA	\$ 50.00
Thermoplastic (new) (white) (speed hump marking) (hump only)	EA	\$ 100.00
Thermoplastic (new) (yellow) (solid) (4")	LF	\$ 0.01
Thermoplastic (new) (yellow) (solid) (6")	LF	\$ 0.72
Thermoplastic (new) (yellow) (solid) (8")	LF	\$ 0.30
Thermoplastic (new) (yellow) (solid) (12")	LF	\$ 0.01

DESCRIPTION	UNIT	UNIT PRICE
Thermoplastic (new) (yellow) (solid) (18")	LF	\$ 3.50
Thermoplastic (new) (yellow) (solid) (24")	LF	\$ 0.01
Thermoplastic (new) (yellow) (skip) (4")	LF	\$ 0.01
Thermoplastic (new) (yellow) (skip) (6")	LF	\$ 0.40
Thermoplastic (new) (yellow) (skip) (8")	LF	\$ 0.30
Thermoplastic (new) (yellow) (dot guide) (4")	LF	\$ 0.01
Thermoplastic (new) (yellow) (dot guide) (6")	LF	\$ 0.01
Thermoplastic(new)(blue) Handicap Stall with walkway	EA	\$ 500.00
Thermoplastic (new) (blue) Handicap Stall no walkway	EA	\$ 500.00
Thermoplastic (refurbish) (white) (solid) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (white) (solid) (6")	LF	\$ 0.57
Thermoplastic (refurbish) (white) (solid) (8")	LF	\$ 0.30
Thermoplastic (refurbish) (white) (solid) (12")	LF	\$ 2.50
Thermoplastic (refurbish) (white) (solid) (18")	LF	\$ 3.50
Thermoplastic (refurbish) (white) (solid) (24")	LF	\$ 5.00
Thermoplastic (refurbish) (white) (skip) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (white) (skip) (6")	LF	\$ 0.30
Thermoplastic (refurbish) (white) (skip) (8")	LF	\$ 0.30
Thermoplastic (refurbish) (white) (dot guide) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (white) (dot guide) (6")	LF	\$ 0.01
Thermoplastic (refurbish) (white) (message)	EA	\$ 100.00
Thermoplastic (refurbish) (white) (single arrows)	EA	\$ 60.00
Thermoplastic (refurbish) (white) (combo arrow)	EA	\$ 100.00
Thermoplastic (refurbish)(white)(speed hump marking)(hump only)	EA	\$ 1.00

DESCRIPTION	UNIT	UNIT PRICE
Thermoplastic (refurbish) (white) (yield lines)	EA	\$ 50.00
Thermoplastic (refurbish) (yellow) (solid) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (solid) (6")	LF	\$ 0.57
Thermoplastic (refurbish) (yellow) (solid) (8")	LF	\$ 0.30
Thermoplastic (refurbish) (yellow) (solid) (12")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (solid) (18")	LF	\$ 3.50
Thermoplastic (refurbish) (yellow) (solid) (24")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (skip) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (skip) (6")	LF	\$ 0.30
Thermoplastic (refurbish) (yellow) (skip) (8")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	\$ 0.01
Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	\$ 0.01
Thermoplastic (refurbish) (blue) Handicap Stall with walkway	EA	\$ 500.00
Thermoplastic (refurbish) (blue) Handicap Stall no walkway	EA	\$ 500.00
Pavement Marking Removal by Grinding	SF	\$ 3.00
Pavement Marking Removal by Waterblasting	SF	\$ 5.00
Power Sweeper	GM	\$ 1,320.00

ADMINISTRATIVE ORDER

TITLE: Prompt Payment of Invoices

NUMBER: AO-33
CANCELS 04/11/08
APPROVED: June 1, 2016
ORIGINATOR: County Manager
REVIEW: June 1, 2019

I. PURPOSE AND SCOPE

To specify the process for receiving invoices, evaluating invoices for proper content, notifying vendors of improper invoices and resolving disputes related to invoices, so that timely payment occurs.

II. DEFINITIONS AND REFERENCES

- A. Agent: Means project architect, project engineer, or any other agency or person acting on behalf of the County.
- B. Construction services: All labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property that require a license under parts I and II of Florida Statutes, Chapter 489.
- C. Contractor or provider of construction services: Any person who contracts directly with the County to provide construction services.
- D. County: A political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution. For the purpose and scope of this Administrative Order, "County" shall mean the Board of County Commissioners of Brevard County, Florida and those departments and offices under the authority of the Board.
- E. Florida Prompt Payment Act, Sections 218.70 through 218.80, Florida Statutes.
- F. Payment request: A request for payment for construction services which conforms with all statutory requirements and to all requirements specified by the County.
- G. Proper Invoice: An invoice which conforms to all statutory requirements and all requirements set forth in Section V below.
- H. Purchase: The purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by the County.

- I. Vendor: Any person who sells goods or services, sells or leases personal property, or leases real property directly to the County.

III. NOTIFICATION TO VENDORS OF COUNTY REQUIREMENTS

Purchasing, or in the case of contracts where Purchasing is not involved, the appropriate County department/agency shall make the invoice requirements set out herein available to the vendors.

IV. INVOICE RECEIPT

- A. The County agency first receiving an invoice shall mark the invoice with the agency's name and the date received by using a dated stamp, or by typing or writing in ink or other acceptable methods.
- B. All Board agencies are required to submit undisputed invoices for payment to County Finance within ten (10) days after receipt of invoice.
- C. All Board agencies are required to maintain a record of the receipt of services, receipt of invoice and subsequent submittal of invoice to County Finance.

V. INVOICE EVALUATION FOR PROPER CONTENT

- A. The County agency receiving the items specified on the invoice shall review the invoice to ensure that the information is accurate and that it contains all of the information as follows :
 - 1. Invoice fully complies with applicable purchase order, contract, etc.
 - 2. Vendor name and address.
 - 3. Purchase order/contract number (if applicable)
 - 4. Invoice date
 - 5. Invoice Number
 - 6. Itemized invoice, including division of parts and labor charges, if applicable.
 - a. Number of items
 - b. Type of items
 - c. Unit price, extended price and total
 - 7. Delivery date or date of service.
- B. Upon review, those invoices determined to be accurate and correct shall be signed by the agency staff person authorized to approve expenditures of their agency's funds and whose signature is on file with the Finance Department in accordance with AO-39, Signature Authorization Cards. The authorized reviewer shall also indicate the date the review was performed.
- C. Full and partial payments shall be certified for payment and forwarded to County Finance.

VI. NOTIFYING VENDORS OF IMPROPER INVOICES

- A. Any errors shall be annotated on the invoice.

- B. In any case in which an improper invoice (meaning the invoice contains incorrect information or is missing information required under this Administrative Order) is submitted by a vendor, the County agency reviewing the invoice for proper content shall, within 10 days after the improper invoice is first received by Brevard County, notify the vendor that the invoice is improper.
- C. The County agency shall indicate, in writing, what corrective action on the part of the vendor is needed to make the invoice proper and the date by which a corrected invoice should be received by the County.

VII. RESOLVING INVOICE DISPUTES

- A. In the event a dispute occurs between a vendor and the County concerning payment of a payment request or an invoice, such disagreement shall be resolved by a vendor dispute committee consisting of representatives of the affected County agency, Purchasing, and the County Attorney.
- B. Proceedings to resolve the dispute shall commence not later than 45 days after the date on which a payment request or proper invoice was received by the County and shall be concluded by final decision by the County not later than 60 days after the date on which the payment request or proper invoice was received by the County. Resolution of disputes between a vendor and the County concerning payment of a payment request or an invoice will follow F.S. 218.76.
- C. If the dispute is resolved in favor of the County, then interest charges shall begin to accrue 15 days after the County's final decision.
- D. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

VIII. CALCULATION OF TIME UPON WHICH PAYMENT IS DUE

- A. The time at which payment is due for a purchase other than construction services shall be calculated from:
 - 1. The date on which a proper invoice is received by the Finance Department after approval by the receiving department or office; or
 - 2. If a proper invoice is not received, whichever is the latest date of the following:
 - a. The date on which delivery of personal property is accepted by the County;
 - b. The date on which services are completed;
 - c. The date on which the rental period begins; or
 - d. The date on which the County and vendor agree in a contract that provides dates relative to payment periods
- B. Payment for purchases of construction services will follow F.S. 218.735 and are as follows:
 - 1. The due date for payment for the purchase of construction services by the County is determined as follows:
 - (a) If the project architect or project engineer or other agent as defined must approve the invoice prior to the invoice being submitted to the County, payment is due 25

business days after the date on which the invoice is stamped as received by the agent as provided in Section IV, A of this Administrative Order. The contractor may send the County an overdue notice. If the payment request or invoice is not rejected within 4 business days after delivery of the overdue notice, the payment request or invoice shall be deemed accepted, except for any portion of the payment request or invoice that is fraudulent or misleading.

(b) The County shall identify the agent or employee of the County, or the facility or office, to which the contractor may submit its payment request or invoice. This requirement shall be included in the contract between the County and contractor, or shall be provided by the County through a separate written notice, as required under the contract, no later than 10 days after the contract award or notice to proceed.

(c) If an agent need not approve the invoice which is submitted by the contractor, payment is due 20 business days after the date on which the invoice is stamped as received as provided in Section IV, A of this Administrative Order.

2. The County may reject the invoice within 20 business days after the date on which the invoice is stamped as received as provided in Section IV, A of this Administrative Order. The rejection must be written and must specify the deficiency in the invoice and the action necessary to make the invoice proper.

3. If an invoice is rejected under subsection (2) or this subsection and the contractor submits a corrected invoice, the corrected invoice must be paid or rejected 10 business days after the date the corrected invoice is stamped as received.

4. If a dispute between the County and the contractor cannot be resolved by the procedure in (2) and (3), the dispute will be resolved in accordance of Section VII of this Administrative Order.

5. The payment time periods provided in this section for construction services purchased by the County shall not affect contractual provisions or contractual covenants of the County in effect on September 30, 1995.

6. Any portion of an invoice that is not disputed shall be paid in accordance with F.S.218.735. Retainage for payments shall be as provided in F.S. 218.735.

C. Payment by grant funds: If the County intends to pay for a purchase with grant funds, the County shall not make such purchase without reasonable assurance that the funds received will cover the cost. Where payment or the time of payment is contingent on receipt of grant funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

IX. TIMELY PAYMENT OF INVOICE

A. The time by which payment for goods or services other than construction services is due shall be 45 days from the date established in Section IV.A or specified in Section VII and in accordance with F.S. 218.74.

B. The time by which payment for construction services is due shall be in accordance with F.S. 218.735.

X. INTEREST PAYMENT

A. Non-timely payments bear interest from 30 days after the due date at the rate of one percent (1%) per month on the unpaid balance. Any overdue period of less than one (1) month shall

be considered as one month in computing interest. Interest computation will follow F.S. 218.74.

- B. Vendors must invoice the County for the accrued interest. It is the responsibility of the department to fund the interest payment.
- C. No contract between the County and a vendor or a provider of construction services shall prohibit the collection of late payment interest charges allowable under F.S. 218.74.

XI. REPORT OF INTEREST

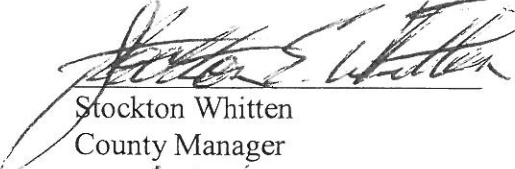
County Finance shall, during December of each year, report to the Board of County Commissioners the number of interest payments exceeding \$250 made by the County during the preceding fiscal year and the total amount of such payments.

XII. STATUTORY REQUIREMENTS

Should any directives or procedures included herein conflict with requirements established within Sections 218.70 through 218.79, Florida Statutes or any other sections of Florida Statutes, as amended, statutory requirements shall prevail.

XIII. RESERVATION OF AUTHORITY

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.



Stockton Whitten
County Manager
6/3/16

Date





Public Works Department
2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940


BOARD OF COUNTY COMMISSIONERS


Inter-Office Memo

TO: Commissioner Bryan A. Lober, Chair

THRU: Frank Abbate, County Manager 

THRU: John P. Denninghoff, Assistant County Manager 

THUR: Marc Bernath, Public Works Director  Bernath, Marc
Digitally signed by Bernath, Marc
DN: cn=Bernath, Marc,
email=Marc.Bernath@brevardfl.gov
Date: 2020.10.26 16:55:56 -0400

FROM: Tammy Thomas-Wood, Support Services Manager  Tammy
Digitally signed by Thomas-Wood, Tammy
DN: cn=Thomas-Wood, Tammy,
email=Tammy.Thomas-Wood@brevardfl.gov
Date: 2020.10.26 13:51:00 -0400

RE: Contract Execution for Road Striping, Thermoplastic and Reflective Pavement Marking

DATE: October 26, 2020

On August 4, 2020, the Board of County Commissioners granted Purchasing Services permission to issue Annual Supply Bids, Proposals, and Request for Qualifications and/or Negotiate Competitive Agreements for Fiscal Year 2020-2021. This Board action also authorized the Chair to execute contracts. Purchasing Services, on behalf of Public Works, issued Invitation to Bid No. B72105 for Road Striping, Thermoplastic and Reflective Pavement Marking. Florida Striping, Inc. was awarded the bid as primary contractor. The secondary contract, awarded to Oglesby Construction, will be routed for execution under separate cover.

The primary contract has been reviewed and approved by the County Attorney's Office, Risk Management and Purchasing Services, per Administrative Order-29. Please find attached two originals of the contract for your execution. Upon your signature, the Clerk to the Board will attest your signature.

Clerk to the Board: Public Works Department requests one fully-executed contract be returned to the Public Works Department. The other original may be retained by the Clerk. Please email Jeanette Scott at jeanette.scott@brevardfl.gov or call 321-617-7202 to arrange for pick up.

Please feel free to contact our office if you have any questions or concerns.

- Encl: Clerk's Memorandum
- Bid Tabulation Sheet
- Contract Review and Approval Form
- Contract - Florida Striping, Inc.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 5, 2020

MEMORANDUM

TO: Steven Darling, Central Services Director

RE: Item F.14., Permission to Issue Annual Supply Bids, Proposals, and Requests for Qualifications (FY2020/2021) and/or Negotiate Competitive Agreements

The Board of County Commissioners, in regular session on August 4, 2020, granted Purchasing Services approval to perform the following actions regarding the attached list of commodities and services for Fiscal Year 2020/2021: Solicit competitive bids, quotes, and/or negotiate competitive agreements and award to lowest responsive, responsible and most qualified vendor; solicit competitive proposals and Requests for Qualifications, establish selection and negotiation committees approved by the County Manager (or designee), and award contracts and/or open purchase orders with the highest ranked proposer(s); exercise renewal options upon evaluation of supplier performance and recommendation from user departments/offices, establishing that continuance of the contract is favorable prior to renewal of the agreement; and authorize the Chair to execute all contracts and contract related documents that exceed \$100,000 in total aggregate value, upon review and approval by the County Attorney's Office, Risk Management, and Purchasing Services. Enclosed is the list of commodities.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Donna Scott
for: Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Manager
Purchasing Services
Risk Management
County Attorney
Budget
Finance

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Florida Striping, Inc.		2. Amount: Value \$100,000+	
3. Fund/Account #: TBD		4. Department Name: Public Works	
5. Contract Description: Primary Contract for Thermoplastic Roadway Striping			
6. Contract Monitor: Jeanette Scott		8. Contract Type: TERM CONTRACT	
7. Dept/Office Director: Marc Bernath, Director			
9. Type of Procurement: Invitation to Bid (ITB)			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thomas-Wood, Tammy <small>Digitally signed by Thomas-Wood, Tammy DN: cn=Thomas Wood, Email=tmwood@brevard.gov, Date: 2020.10.16 12:32:11 -0400</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Darling, Steven <small>Digitally signed by Darling, Steven Date: 2020.10.20 08:28:01 -04'00'</small>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2020.10.16 12:38:56 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseeesse, Alexander <small>Digitally signed by Esseeesse, Alexander Date: 2020.10.16 12:27:57 -04'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

ANNUAL BID/QUOTE/PROPOSAL LIST

FY 2020/2021

- Over \$100,000 Annually -

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
Aggregate (57 Stone & Pea Gravel)	Up to 5 years	\$240,000.00
Agricultural & Aquatic Chemicals	Up to 5 years	\$270,000.00
Asphaltic Concrete	Up to 5 years	\$4,300,000.00
Automotive Parts	Up to 5 years	\$100,000.00
Brevard County Government 2019/2020 Health Plan	5 years	Dependent on plan participants
Bunker Gear for Brevard County Fire Rescue	5 yr. & 5 (1 yr.) renewals	\$300,000.00
Cab & Chassis Trucks and Other Fleet Equipment	Up to 5 years	\$1,000,000.00
Cold in Place Recycling	Up to 5 years	\$100,000.00
Computer Equipment, Peripherals & Services	Up to 5 years	\$100,000.00
Concrete Pipe	Up to 5 years	\$300,000.00
Concrete Sidewalk, Curb, and Gutter Construction	Up to 5 years	\$340,000.00
Consultant Professional Engineering Services, A&E, Roofing Services - All departments	Up to 5 years	Varies per CIP Project and Tasking
Continuing Roofing Contracting Services	Up to 5 years	Varies per CIP Project and Tasking
Contracted Seasonal Recreation Worker Services for P&R	Up to 5 years	\$640,000.00
Copy Machine Rental	5 yr. & 1 (1 yr.) renewal	\$550,000.00
County Dental Insurance	3 yr. & 1 (1 yr.) renewal	Dependent on plan participants
County Group Vision Plan	3 yr. & 2 (1 yr.) renewals	Dependent on plan participants
Debt Collection Services	3 Years	
Deceased Removal and Transport	Up to 5 years	\$140,000.00
Disaster Debris Removal and Recovery Management Services	5 yr. & no renewals	
Disaster Debris Removal Services	5 yr. & no renewals	
Electrical Contractor Services - Hourly	Up to 5 years	\$265,000.00
Electronics Waste Recycling Services	Up to 5 years	\$175,000.00
Emergency Generator Repair & Maintenance	Up to 5 years	\$100,000.00
EMS Billing Services	Up to 5 years	\$630,000.00
Fencing (Brevard County Cooperative Bid)	Up to 5 years	\$210,000.00
Fertilizers	5 yr. & 5 (1 yr.) renewals	\$100,000.00
Fire Rescue Equipment	Up to 5 years	\$150,000.00
Floor Cleaning - Countywide	Up to 5 years	\$170,000.00
Full Depth Reclamation	Up to 5 years	\$100,000.00
Gasoline, Diesel, Fuel Oils (Brevard County Cooperative Bid)	Up to 5 years	\$3,500,000.00
Grassing Services (Brevard County Cooperative Bid)	Up to 5 years	\$380,000.00
HVAC & Ice Machine Services	Up to 5 years	\$200,000.00
HVAC for Maintenance	Up to 5 years	\$1,400,000.00
Inlets, Manholes, & Grates	Up to 5 years	\$485,000.00
Janitorial Services - County Wide	Up to 5 years	\$465,000.00
Janitorial Supplies	Up to 5 years	\$185,000.00
Laboratory Testing & Related Professional Services	Up to 5 years	\$200,000.00
Landfill Stormwater Collection & Gas System Repairs & Installation	Up to 5 years	\$100,000.00
Landscape Design & Detailing Maintenance Svs (Complete) - Facilities	Up to 5 years	\$150,000.00
Lawn Maintenance - Parks & Rec	Up to 5 years	\$249,000.00
Lawn Maintenance (Full Detail) - Merritt Island, District 2	Up to 5 years	\$185,000.00
Lawn Services - Full (Public Works): Mow, Irrigation, Pesticide	Up to 5 years	\$150,000.00
Lime Rock for Solid Waste and Public Works	Up to 5 years	\$150,000.00
Marketing Services for SCAT	Up to 5 years	\$400,000.00
Medical Supplies (EMS) - (Brevard County Cooperative Bid)	Up to 5 years	\$1,900,000.00
Mix-In-Place Soil Cement	Up to 5 years	\$250,000.00
Mulching & Disposal Services for Yard Trash & Vegetative Waste (On Site)	Up to 5 years	\$1,250,000.00
Mulching & Yard Trash/Vegetative Disposal Services (Off Site)	Up to 5 years	\$1,500,000.00
Office Supplies	Up to 5 years	\$200,000.00
Personal Protection Equipment (PPE)	Up to 5 years	\$100,000.00
Petroleum Products - Lube Oil	Up to 5 years	\$100,000.00
Physical Examinations - Fire Rescue	Up to 5 years	\$225,000.00
Pipe, Cured-In-Place Pipe (CIPP)	Up to 5 years	\$3,000,000.00
Plans Examiner Services	Up to 5 years	\$300,000.00
Plumbing Services	Up to 5 years	\$100,000.00
Plumbing Supplies Catalog Discount	Up to 5 years	\$100,000.00
Polymer, Sludge Dewatering	Up to 5 years	\$150,000.00
Postal & Courier Services - Libraries	Up to 5 years	\$200,000.00
Pumpout Services for Cleaning Baffle Box & Sediment Collection Devices Countywide	Up to 5 years	\$180,000.00
Radio System (800 MHZ) Maintenance Contract	Up to 5 years	\$500,000.00
Removal & Disposal of Dewatered Biosolids	Up to 5 years	\$230,000.00
Removal & Final Disposal of Mulch & Wood Waste	Up to 5 years	\$350,000.00
Retention Pond Mowing (Countywide): Natural Resources & Public Works	Up to 5 years	\$160,000.00

**ANNUAL BID/QUOTE/PROPOSAL LIST
FY 2020/2021**

- Over \$100,000 Annually -

COMMODITY/SERVICE	CONTRACT YEAR & RENEWAL OPTION	ESTIMATED ANNUAL EXPENDITURES (>\$100K)
Road Construction Materials	Up to 5 years	\$4,000,000.00
Road Striping - Paint & Reflective Pavement Marking	Up to 5 years	\$150,000.00
Road Striping - Thermoplastic & Reflective Pavement Marking	Up to 5 years	\$1,400,000.00
SAP Support Services	Up to 5 years	\$180,000.00
SCAT Vehicle Fleet Maintenance & Repair Management Services	Up to 5 years	\$4,350,000.00
Security Services - Brevard Government Complexes	Up to 5 years	\$250,000.00
Security Services Unarmed - Multidepartmental	Up to 5 years	\$500,000.00
Select Common Fill - Same Road Landfill	Up to 5 years	\$100,000.00
Select Common Fill - for Landfills (CDF Only)	Up to 5 years	\$983,000.00
Septic Tank, Grease Trap, Lift Station & Sewage Hauling Services	Up to 5 years	\$140,000.00
Sodium Hypochlorite Supply Services	Up to 5 years	\$250,000.00
Soil Cement Pub Mill Mix	Up to 5 years	\$180,000.00
Soil Cement with Oil Injection	Up to 5 years	\$100,000.00
Street Sweeping and Inlet Basket Cleaning	Up to 5 years	\$200,000.00
Structured Cabling System - Small Projects/Limited Drop	Up to 5 years	\$100,000.00
Submersible Pump and Motor Repair Services	Up to 5 years	\$175,000.00
TDC - Website Development & Maintenance Services	Up to 5 years	\$200,000.00
Temporary Employment Services	Up to 5 years	\$250,000.00
Temporary Traffic Control Devices	Up to 5 years	\$100,000.00
Tire Shredding & Disposal Services	Up to 5 years	\$335,000.00
Traffic Sign Materials	Up to 5 years	\$100,000.00
Traffic Signal Construction, Rehab, Maintenance & Emergency Repairs	Up to 5 years	\$250,000.00
Transportation of Dead Bodies	Up to 6 years	\$180,000.00
Travel Media Relations (For TDO)	Up to 5 years	\$200,000.00
Tree Trimming and Removal Services	Up to 5 years	\$170,000.00
Trucking Services	Up to 5 years	\$130,000.00
Uniform Apparel: Fire Rescue	Up to 5 years	\$100,000.00
Water & Wastewater Treatment Chemicals - Sodium Hypochlorite (Brevard County Cooperative Bid)	Up to 5 years	\$100,000.00
Welding/Medical Gases & Supplies	Up to 5 years	\$110,000.00



BID TABULATION SHEET

Bid Title: Road Striping, Thermoplastic & Reflective Pavement Marking
Bid No: B-7-21-05
Opening Date & Time: October 2, 2020 at 11:00 AM
Posting Date: October 9, 2020
Through: 10/16/2020 at 5:00 PM
Posted By: Heather K. Beaudry

Line #	DESCRIPTION	UNIT	Quantity	Primary		Secondary		TRP Construction		McShea Contracting	
				UNIT PRICE	SUB TOTAL	UNIT PRICE	SUB TOTAL	UNIT PRICE	SUB TOTAL	UNIT PRICE	SUB TOTAL
1	Retro-reflective pavement marker, Class B	EA	5000	\$3.00	\$15,000.00	\$3.40	\$17,000.00	\$4.00	\$20,000.00	\$3.00	\$15,000.00
2	Retro-reflective pavement marker removal with replacement	EA	100	\$5.00	\$500.00	\$5.00	\$500.00	\$10.00	\$1,000.00	\$4.00	\$400.00
3	Retro-reflective pavement marker removal only	EA	100	\$0.01	\$1.00	\$1.00	\$100.00	\$6.00	\$600.00	\$1.00	\$100.00
4	Thermoplastic (new) (white) (solid) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.31	\$32,736.00	\$0.90	\$95,040.00
5	Thermoplastic (new) (white) (solid) (6")	LF	264000	\$0.72	\$190,080.00	\$0.80	\$211,200.00	\$0.59	\$155,760.00	\$0.95	\$250,800.00
6	Thermoplastic (new) (white) (solid) (8")	LF	1600	\$0.30	\$480.00	\$1.40	\$2,240.00	\$0.80	\$1,280.00	\$1.25	\$2,000.00
7	Thermoplastic (new) (white) (solid) (12")	LF	5000	\$2.50	\$12,500.00	\$2.75	\$13,750.00	\$3.00	\$15,000.00	\$4.00	\$20,000.00
8	Thermoplastic (new) (white) (solid) (18")	LF	2000	\$3.50	\$7,000.00	\$2.50	\$5,000.00	\$4.00	\$8,000.00	\$5.00	\$10,000.00
9	Thermoplastic (new) (white) (solid) (24")	LF	5000	\$5.00	\$25,000.00	\$5.50	\$27,500.00	\$5.00	\$25,000.00	\$6.00	\$30,000.00
10	Thermoplastic (new) (white) (skip) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.30	\$31,680.00	\$0.90	\$95,040.00
11	Thermoplastic (new) (white) (skip) (6")	LF	264000	\$0.40	\$105,600.00	\$0.55	\$145,200.00	\$0.69	\$182,160.00	\$0.95	\$250,800.00
12	Thermoplastic (new) (white) (skip) (8")	LF	500	\$0.30	\$150.00	\$0.10	\$50.00	\$0.80	\$400.00	\$1.25	\$625.00
13	Thermoplastic (new) (white) (dot guide) (4")	LF	500	\$0.01	\$5.00	\$0.10	\$50.00	\$0.15	\$75.00	\$0.90	\$450.00
14	Thermoplastic (new) (white) (dot guide) (6")	LF	500	\$0.01	\$5.00	\$1.00	\$500.00	\$0.81	\$407.27	\$0.95	\$475.00
15	Thermoplastic (new) (white) (message)	EA	50	\$100.00	\$5,000.00	\$125.00	\$6,250.00	\$157.93	\$7,896.61	\$200.00	\$10,000.00
16	Thermoplastic (new) (white) (single arrows)	EA	100	\$60.00	\$6,000.00	\$70.00	\$7,000.00	\$90.00	\$9,000.00	\$125.00	\$12,500.00
17	Thermoplastic (new) (white) (combo arrow)	EA	100	\$100.00	\$10,000.00	\$70.00	\$7,000.00	\$155.40	\$15,539.72	\$175.00	\$17,500.00
18	Thermoplastic (new) (white) (yield lines)	EA	20	\$50.00	\$1,000.00	\$5.00	\$100.00	\$250.00	\$5,000.00	\$300.00	\$6,000.00
19	Thermoplastic (new) (white) (speed hump marking) (hump only)	EA	50	\$100.00	\$5,000.00	\$50.00	\$2,500.00	\$407.66	\$20,383.12	\$300.00	\$15,000.00
20	Thermoplastic (new) (yellow) (solid) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.15	\$15,840.00	\$0.90	\$95,040.00
21	Thermoplastic (new) (yellow) (solid) (6")	LF	264000	\$0.72	\$190,080.00	\$0.80	\$211,200.00	\$0.64	\$169,305.61	\$0.95	\$250,800.00
22	Thermoplastic (new) (yellow) (solid) (8")	LF	500	\$0.30	\$150.00	\$1.50	\$750.00	\$0.85	\$425.00	\$1.25	\$625.00
23	Thermoplastic (new) (yellow) (solid) (12")	LF	1000	\$0.01	\$10.00	\$0.01	\$10.00	\$1.00	\$1,000.00	\$0.01	\$10.00
24	Thermoplastic (new) (yellow) (solid) (18")	LF	2000	\$3.50	\$7,000.00	\$3.00	\$6,000.00	\$4.00	\$8,000.00	\$5.00	\$10,000.00
25	Thermoplastic (new) (yellow) (solid) (24")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$3.00	\$1,500.00	\$0.01	\$5.00
26	Thermoplastic (new) (yellow) (skip) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.26	\$27,456.00	\$0.90	\$95,040.00
27	Thermoplastic (new) (yellow) (skip) (6")	LF	264000	\$0.40	\$105,600.00	\$0.55	\$145,200.00	\$0.50	\$132,000.00	\$0.95	\$250,800.00
28	Thermoplastic (new) (yellow) (skip) (8")	LF	500	\$0.30	\$150.00	\$0.01	\$5.00	\$0.95	\$475.00	\$1.25	\$625.00
29	Thermoplastic (new) (yellow) (dot guide) (4")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$0.30	\$150.00	\$0.90	\$450.00
30	Thermoplastic (new) (yellow) (dot guide) (6")	LF	500	\$0.01	\$5.00	\$1.00	\$500.00	\$2.00	\$1,002.06	\$0.95	\$475.00

31	Thermoplastic(new)(blue) Handicap Stall with walkway	EA	1	\$500.00	\$500.00	\$250.00	\$250.00	\$1,200.00	\$1,200.00	\$750.00	\$750.00
32	Thermoplastic (new) (blue) Handicap Stall no walkway	EA	1	\$500.00	\$500.00	\$200.00	\$200.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00
33	Thermoplastic (refurbish) (white) (solid) (4")	LF	150600	\$0.01	\$1,506.00	\$0.01	\$1,506.00	\$0.20	\$30,120.00	\$0.70	\$105,420.00
34	Thermoplastic (refurbish) (white) (solid) (6")	LF	264000	\$0.57	\$150,480.00	\$0.62	\$163,680.00	\$0.45	\$118,673.40	\$0.75	\$198,000.00
35	Thermoplastic (refurbish) (white) (solid) (8")	LF	1600	\$0.30	\$480.00	\$1.35	\$2,160.00	\$0.65	\$1,040.00	\$1.00	\$1,600.00
36	Thermoplastic (refurbish) (white) (solid) (12")	LF	5000	\$2.50	\$12,500.00	\$2.50	\$12,500.00	\$2.50	\$12,500.00	\$3.00	\$15,000.00
37	Thermoplastic (refurbish) (white) (solid) (18")	LF	2000	\$3.50	\$7,000.00	\$2.50	\$5,000.00	\$4.00	\$8,000.00	\$4.00	\$8,000.00
38	Thermoplastic (refurbish) (white) (solid) (24")	LF	5000	\$5.00	\$25,000.00	\$4.80	\$24,000.00	\$1.05	\$5,266.24	\$5.00	\$25,000.00
39	Thermoplastic (refurbish) (white) (skip) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.28	\$29,568.00	\$0.70	\$73,920.00
40	Thermoplastic (refurbish) (white) (skip) (6")	LF	264000	\$0.30	\$79,200.00	\$0.45	\$118,800.00	\$0.65	\$171,600.00	\$0.75	\$198,000.00
41	Thermoplastic (refurbish) (white) (skip) (8")	LF	500	\$0.30	\$150.00	\$0.01	\$5.00	\$1.89	\$943.15	\$1.00	\$500.00
42	Thermoplastic (refurbish) (white) (dot guide) (4")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$0.22	\$110.00	\$0.70	\$350.00
43	Thermoplastic (refurbish) (white) (dot guide) (6")	LF	500	\$0.01	\$5.00	\$1.00	\$500.00	\$1.54	\$769.77	\$0.75	\$375.00
44	Thermoplastic (refurbish) (white) (message)	EA	50	\$100.00	\$5,000.00	\$110.00	\$5,500.00	\$85.00	\$4,250.00	\$150.00	\$7,500.00
45	Thermoplastic (refurbish) (white) (single arrows)	EA	100	\$60.00	\$6,000.00	\$65.00	\$6,500.00	\$66.00	\$6,600.00	\$100.00	\$10,000.00
46	Thermoplastic (refurbish) (white) (combo arrow)	EA	100	\$100.00	\$10,000.00	\$65.00	\$6,500.00	\$110.00	\$11,000.00	\$125.00	\$12,500.00
47	Thermoplastic (refurbish)(white)(speed hump marking)(hump only)	EA	50	\$1.00	\$50.00	\$50.00	\$2,500.00	\$375.00	\$18,750.00	\$275.00	\$13,750.00
48	Thermoplastic (refurbish) (white) (yield lines)	EA	5	\$50.00	\$250.00	\$15.00	\$75.00	\$225.85	\$1,129.24	\$275.00	\$1,375.00
49	Thermoplastic (refurbish) (yellow) (solid) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.22	\$23,232.00	\$0.70	\$73,920.00
50	Thermoplastic (refurbish) (yellow) (solid) (6")	LF	264000	\$0.57	\$150,480.00	\$0.55	\$145,200.00	\$0.45	\$118,673.40	\$0.75	\$198,000.00
51	Thermoplastic (refurbish) (yellow) (solid) (8")	LF	500	\$0.30	\$150.00	\$1.30	\$650.00	\$0.95	\$474.15	\$1.00	\$500.00
52	Thermoplastic (refurbish) (yellow) (solid) (12")	LF	1000	\$0.01	\$10.00	\$0.01	\$10.00	\$1.67	\$1,670.00	\$0.01	\$10.00
53	Thermoplastic (refurbish) (yellow) (solid) (18")	LF	2000	\$3.50	\$7,000.00	\$2.80	\$5,600.00	\$3.92	\$7,835.82	\$4.00	\$8,000.00
54	Thermoplastic (refurbish) (yellow) (solid) (24")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$4.00	\$2,000.00	\$0.01	\$5.00
55	Thermoplastic (refurbish) (yellow) (skip) (4")	LF	105600	\$0.01	\$1,056.00	\$0.01	\$1,056.00	\$0.27	\$28,512.00	\$0.70	\$73,920.00
56	Thermoplastic (refurbish) (yellow) (skip) (6")	LF	264000	\$0.30	\$79,200.00	\$0.45	\$118,800.00	\$0.50	\$132,000.00	\$0.75	\$198,000.00
57	Thermoplastic (refurbish) (yellow) (skip) (8")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$0.85	\$425.00	\$1.00	\$500.00
58	Thermoplastic (refurbish) (yellow) (dot guide) (4")	LF	500	\$0.01	\$5.00	\$0.01	\$5.00	\$0.37	\$185.00	\$0.70	\$350.00
59	Thermoplastic (refurbish) (yellow) (dot guide) (6")	LF	500	\$0.01	\$5.00	\$0.85	\$425.00	\$1.51	\$754.15	\$0.75	\$375.00
60	Thermoplastic (refurbish) (blue) Handicap Stall with walkway	EA	1	\$500.00	\$500.00	\$250.00	\$250.00	\$37.48	\$37.48	\$750.00	\$750.00
61	Thermoplastic (refurbish) (blue) Handicap Stall no walkway	EA	1	\$500.00	\$500.00	\$200.00	\$200.00	\$700.00	\$700.00	\$500.00	\$500.00
62	Pavement Marking Removal by Grinding	SF	500	\$3.00	\$1,500.00	\$2.00	\$1,000.00	\$1.75	\$875.00	\$3.00	\$1,500.00
63	Pavement Marking Removal by Waterblasting	SF	500	\$5.00	\$2,500.00	\$5.00	\$2,500.00	\$10.00	\$5,000.00	\$5.00	\$2,500.00
64	Power Sweeper	GM	1	\$1,320.00	\$1,320.00	\$500.00	\$500.00	\$2,000.00	\$2,000.00	\$3,000.00	\$3,000.00
	Grand Total				\$1,235,524.00	Grand Total	\$1,441,838.00	Grand Total	\$1,635,965.18	Grand Total	\$2,769,970.00

Bid tabulations with award recommendations are posted to VendorLink at www.myvendorlink.com or DemandStar at www.demandstar.com. Brevard County encourages prompt and fair handling of all complaints and disputes with the business community. Filing of any disputes and appeals shall be in accordance with procedures specified in bid documents.

Approval Initials 



Scope Of Work

The Town of Malabar has several intersections that need pavement markings of a minimum standard of 24" White Stop Bars and 4" Double Yellow Thermoplastic materials for traffic safety and enforcement improvements of key intersections. The following exhibits of each area depict existing pavement markings for refurbishment or non-existent. Florida Striping is the primary awarded contractor for Brevard County Contract - B-7-21-05 Thermoplastic Roadway Striping for piggyback use by another Florida Municipal agency.

Whereas some of project areas have existing pavement markings, contractor to determine the need for removal via methods in the contract, grinding or waterblasting for new markings or refurbishment.

Project Tasks:

Project Task #1:

Marie Street & Malabar Road (SR514) South Approach

The existing conditions of pavement markings:

Stop bar White 24" Wide:15 LF

Double Yellow 4" Wide:32 LF

Request for pavement markings:

Stop bar White 24" Wide:15 LF

Double Yellow 4" Wide:150 LF

Marie Street South Exhibit 1



Marie Street South Exhibit 2



Project Task #2:

Marie Street & Malabar Road (SR514) North Approach

The existing conditions of pavement markings:

Stop bar White 24" Wide:13 LF

Double Yellow 4" Wide: 32 LF

Request for pavement markings:

Stop bar White 24" Wide:13 LF

Double Yellow 4" Wide:150 LF

Marie Street North Exhibit 3



Marie Street North Exhibit 4



Project Task #3:
Corey Road / Hall Road North
The existing conditions of pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide: N/A LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide:250 LF

Corey/Hall North Exhibit 5



Corey North Exhibit 6



Project Task #4:
Corey Road / Hall Road South
The existing conditions of pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide: N/A LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide:250 LF

Corey/Hall South Exhibit 7



Project Task #5:
Corey Road / Hall Road East
The existing conditions of pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide: 50 LF
Request for pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide:50 LF

Corey/Hall East Exhibit 8



Corey/Hall East Exhibit 9



Project Task #6:
Corey Road / Hall Road West
The existing conditions of pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide: 50 LF
Request for pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide:50 LF

Corey/Hall West Exhibit 10



Project Task #7:
Corey Road / Atz Road North
The existing conditions of pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide:250 LF

Corey/Atz North Exhibit 11



Project Task #8:
Corey Road / Atz Road South
The existing conditions of pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide:250 LF

Corey/Atz South Exhibit 12



Project Task #9:
Corey Road / Atz Road East
The existing conditions of pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide:50 LF

Corey/Atz East Exhibit 13



Project Task #10:
Corey Road / Atz Road West
The existing conditions of pavement markings:
Stop bar White 24" Wide:13 LF
Double Yellow 4" Wide: 50 LF
Request for pavement markings:
Stop bar White 24" Wide13 LF
Double Yellow 4" Wide50 LF

Corey/Atz West Exhibit 14



Project Task #11:
Corey Road / Benjamin Road North
The existing conditions of pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide 250 LF

Corey/Benjamin North Exhibit 15



Project Task #12:
Corey Road / Benjamin Road East
The existing conditions of pavement markings:
Stop bar White 24" Wide:0 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide 50 LF

Corey/Benjamin East Exhibit 16



Project Task #13:
Weber Road / Hall Road North
The existing conditions of pavement markings:
Stop bar White 24" Wide:0 LF
Double Yellow 4" Wide: 250 LF
Request for pavement markings:
Stop bar White 24" Wide:11 LF
Double Yellow 4" Wide 250 LF

Weber/Hall North Exhibit 17



Project Task #14:
Weber Road / Hall Road South
The existing conditions of pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide: 250 LF
Request for pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide 250 LF

Weber/Hall South Exhibit 18



Project Task #15:
Weber Road / Hall Road East
The existing conditions of pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide: 50 LF
Request for pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide: 50 LF

Weber/Hall East Exhibit 19



Project Task #16:
Weber Road / Hall Road West
The existing conditions of pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide: 11 LF
Double Yellow 4" Wide 50 LF

Weber/Hall West Exhibit 20



Project Task #17:
Weber Road / Atz Road North
The existing conditions of pavement markings:
Stop bar White 24" Wide:11 LF
Double Yellow 4" Wide: 250 LF
Request for pavement markings:
Stop bar White 24" Wide:0 LF
Double Yellow 4" Wide 250 LF

Weber/Atz North Exhibit 21



Project Task #18:
Weber Road / Atz Road South
The existing conditions of pavement markings:
Stop bar White 24" Wide:0 LF
Double Yellow 4" Wide: 250 LF
Request for pavement markings:
Stop bar White 24" Wide:11' LF
Double Yellow 4" Wide 250 LF

Weber/Atz South Exhibit 22



Project Task #19:
Weber Road / Atz Road East
The existing conditions of pavement markings:
Stop bar White 24" Wide:0' LF
Double Yellow 4" Wide: 0 LF
Request for pavement markings:
Stop bar White 24" Wide:10 LF
Double Yellow 4" Wide 50 LF

Weber/Atz East Exhibit 23



Project Task #20:
Weber Road / Atz Road West
The existing conditions of pavement markings:
Stop bar White 24" Wide: 12 LF
Double Yellow 4" Wide: 50 LF
Request for pavement markings:
Stop bar White 24" Wide: 12 LF
Double Yellow 4" Wide 50 LF

Weber/Atz West Exhibit 24



TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.a.
Meeting Date: November 15, 2021

Prepared By: Richard W. Kohler Deputy Town Clerk/Treasurer

SUBJECT: 2nd Reading Ord 2021-23 to Amend Chapter 6 of Code to Provide for Private Provider is Hired by Permittee

BACKGROUND/HISTORY:

Section 553.791 of the Florida Statutes requires local jurisdictions to authorize building permit applicants to utilize private providers for plan review and inspection services in lieu of Town staff professionals. Private providers must be fully licensed to perform the required reviews and inspections and are paid directly by the permittee. They must also provide evidence of professional liability coverage with a minimum policy limit of \$1 million per occurrence.

The private provider must provide the Building Department Manager documents and reports stating plans as reviewed and work as performed complies with the Florida Building Code. The Building Official would then review and authorize the use of private providers.

The statute also states that such permittees pay a reduced fee related to plan review and inspections based on the cost savings to the Building Department:

Subsection (2)(b) It is the intent of the Legislature that owners and contractors pay reduced fees related to building permitting requirements when hiring a private provider for plans review and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider; however, the local jurisdiction may charge a reasonable administrative fee.

We have done that review and believe Malabar savings would be like the City of Melbourne, the Town of Grant-Valkaria and the Brevard County Building Departments. They all offer a fee reduction of 25% on the Plan review cost and Inspection fees done by private providers. The City of Palm Bay reduces the plan review and inspection fees by 15%.

ATTACHMENTS:

Ord 2021-23

Legal Notice from Florida Today published 11/04/2021

ACTION OPTIONS:

Action on Second reading of Ord 2021-23

ORDINANCE 2021-23

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, CREATING A NEW SECTION 6-10 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR PRIVATE PLAN AND BUILDING CODE INSPECTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statute Section 553.791 provides, in part that: *Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services... The fee owner may elect to use a private provider to provide plans review or required building inspections, or both; and,*

WHEREAS, Florida Statute Section 553.791 provides, in part, that: *If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services; and,*

WHEREAS, The Town staff has reviewed the total cost savings to the Town for not having to do such inspections and has compared the and reviewed similar cost savings to other local jurisdictions, including the city of Melbourne, Town of Grant-Valkaria, City of Palm Bay and Brevard County and has recommended a reduction of 25% on plan review costs and Inspection fees done by private providers; and,

WHEREAS, The Town Council adopts the findings of Town staff.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1. Chapter 6 of the Malabar Code of Ordinances is hereby amended to add a new section 6-10 to read as follows:

“Section 6-10. Private plan and building code inspections

A property owner or the owner's contractor may elect to use a private provider to provide plans review or required building inspections, or both. However, if the owner or the owner's contractor uses a private provider to provide plans review, the Town's building official, in his or her discretion, may require the owner or the owner's contractor to use a private provider to also provide required building inspections.

If the owner or contractor retains a private provider for purposes of plans review or building inspection services, the Town must reduce the permit fee by 25%. The Town may not charge fees for plan or building inspections if the owner or contractor hires a private provider to perform such services; however, the Town may charge a reasonable administrative fee to be provided by resolution of the Town Council from time to time.

The provisions of Florida Statute section 553.791 are hereby adopted herein by reference and it shall be the responsibility of the property owner or property owner's contractor to comply with the provisions of Florida Statute section 553.791 as amended from time to time.”

SECTION 2. Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of Section 1 of this ordinance to be incorporated into the Code of Ordinances.

SECTION 3. Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4. Conflicts.

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. Effective Date.

This Ordinance shall become effective immediately upon its adoption.

The foregoing 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 Danny White _____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this 15th day of November, 2021.

BY:
TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

(seal)

First Reading: 11/01/2021 Vote:5 to 0.
Second Reading: 11/15/2021

ATTEST:

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

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney



Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF MALABAR
Address: 2725 MALABAR RD
MALABAR FL 32950
USA

Ad No.: 0004986294
Pymt Method: Invoice
Net Amt: \$73.64

Run Times: 1

No. of Affidavits: 1

Run Dates: 11/04/21

Text of Ad:

AD#4986294, 11/4/2021
**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING**
The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, November 15, 2021 at 7:30 PM or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

ok

ORDINANCE NO. 2021-23
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, CREATING A NEW SECTION 6-10 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR PRIVATE PLAN AND BUILDING CODE INSPECTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.
Copies of this ordinance is available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to townclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby Franklin, CMC, Town Clerk/Treasurer

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321-727-7764 (Office) 321-727-9997 (Fax) www.townofmalabar.org

To: brelegals@gannett.com

November 1, 2021

From: Debby Franklin, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, November 4, 2021. Please put the heading in **BOLD** font. Please send proof via email to: townclerk@townofmalabar.org and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **November 15, 2021 at 7:30 PM** or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

ORDINANCE NO. 2021-23

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, CREATING A NEW SECTION 6-10 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR PRIVATE PLAN AND BUILDING CODE INSPECTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a

Meeting Date: November 15,, 2021

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 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 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.

**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: TBD

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	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 _____ day of _____, 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 construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project.
- 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 lumber 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 is 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(ies) 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(ies) 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 pick up 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 person 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 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:

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| (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 |

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|------|--|-------------------------------|
| (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) | | \$100.00 per incident |
| (14) | Failure to have a vehicle operator properly licensed (§13.E) | \$100.00 per vehicle per day |
| (15) | 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 |
| (16) | Failure to assign scheduled vehicles and equipment on a route day (§15.A) | \$100.00 per vehicle per day |
| (17) | 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 |
| (18) | 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 Poors; 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. 2954 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.

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. LITIGATION

In the event of any litigation which arises out of, pertains to, or relates to this Contract, or the breach of it, including, but not limited to, the standard of performance required in it, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party, at both trial and appellate levels.

SECTION 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. HEADINGS

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

SECTION 48. 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 49. 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: _____

Date: _____

Approved as to form and correctness:

Karl W. Bohne, Jr
TOWN ATTORNEY

Date: _____

WITNESSES:

WASTE PRO OF FLORIDA, INC.

By:

Print Name: _____

Print Name & Title: _____

Date: _____

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 1 – 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	\$46.55	\$1.80/month	\$2.05/month
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

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

COMMERCIAL FRONTLOAD COMPACTOR SERVICE		
Service Type	Frequency	Rate per Account per Month
Compactor Service		
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.		

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.		

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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

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)	Formula
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.

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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

Town Council

AGENDA ITEM NO: 12.b
Meeting Date: November 15th, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Select Bill Reviewer for 2021/2022

BACKGROUND/HISTORY:

- a. Each year at the first regular meeting following the election Council selects a Council Member to review all the bills before payment is made. The bill reviewer has been CM David Scardino.

ATTACHMENTS:

- a. None

ACTION OPTIONS:

- a. Action

TOWN OF MALABAR

Town Council

AGENDA ITEM NO: 12.c
Meeting Date: November 15th, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Select Check Signer for 2021/2022

BACKGROUND/HISTORY:

- a. Each year at the first regular meeting following the election Council selects a Council Member to be a signatory on the operating bank account. Currently, the Council Signatory is CM Acquaviva.

ATTACHMENTS:

- a. None

ACTION OPTIONS:

- a. Action
-

TOWN OF MALABAR

Town Council

AGENDA ITEM NO: 12.d
Meeting Date: November 15th, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Select Space Coast League of Cities (SCLC) Delegate for 2021/2022

BACKGROUND/HISTORY:

- a. Each year at the first regular meeting following the election Council selects a Council Member to be the voting delegate to attend the monthly Board and General dinner meetings of the SCLC.
- b. The previous delegate was CM Danny White. He served as the Vice-President of the organization.
- c. Council should also select an alternate delegate to attend and vote when necessary.

ATTACHMENTS:

- a. None

ACTION OPTIONS:

- a. Action

TOWN OF MALABAR

Town Council

AGENDA ITEM NO: 12.e
Meeting Date: November 15th, 2021

Prepared By: Richard W. Kohler, Deputy Town Clerk/Treasurer

SUBJECT: Select Representative to the TPO/TAC Board for 2021/2022

BACKGROUND/HISTORY:

- a. Each year at the first regular meeting following the election Council selects a member to be the Malabar Representative. The current Town Representative is Lisa Morrell, ITM.
- b. Council should also select an alternate representative to attend and vote when necessary. The current alternate representative is Mayor Reilly.

ATTACHMENTS:

- a. None

ACTION OPTIONS:

- a. Action