



# REGULAR TOWN COUNCIL MEETING

Monday, March 7, 2022 at 7:30 pm

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

**a. Approve Minutes of RTCM 02/07/2022**

Exhibit: Agenda Report Number 4a

**Attachments:**

- **Agenda Report Number 4a** (Agenda\_Report\_Number\_4a.pdf)

**b. Award of RFP 2022-01 to Southeastern Lighting Solutions for Parks, Facilities, and Wayfinding Signs**

Exhibit: Agenda Report Number 4b

**Attachments:**

- **Agenda Report Number 4b** (Agenda\_Report\_Number\_4b.pdf)

**c. Award Piggy-Back Plan Review & Building Inspection Services, IFB #09-0-2021, City of Palm Bay, Joe Payne, Inc.**

Exhibit: Agenda Report Number 4c

**Attachments:**

- **Agenda Report Number 4c** (Agenda\_Report\_Number\_4c.pdf)

**d. Approve contract with MCCi for scanning and archiving purposes**

Exhibit: Agenda Report Number 4d

**Attachments:**

- **Agenda Report Number 4d** (Agenda\_Report\_Number\_4d.pdf)

**e. Approve Piggy-back Procurement of Electronic Sign - Art-Kraft Sign Company**

Exhibit: Agenda Report Number 4e

**Attachments:**

- **Agenda Report Number 4e** (Agenda\_Report\_Number\_4e.pdf)

**f. Approve Glenn's Tire & Service Company for Town Heavy Equipment Tires**

Exhibit: Agenda Report Number 4f

**Attachments:**

- **Agenda Report Number 4f** (Agenda\_Report\_Number\_4f.pdf)

**g. Approve Purchasing Card Program with Bank of America under the State of Florida Contract**

Exhibit: Agenda Report Number 4g

**Attachments:**

- **Agenda Report Number 4g** (Agenda\_Report\_Number\_4g.pdf)

**5. ATTORNEY REPORT**

**6. BCSO REPORT**

**7. BOARD / COMMITTEE REPORTS**

- a. **T&G Committee - Chair Drew Thompson**
- b. **Park & Recreation Board - Chair Eric Bienvenu**
- c. **Planning & Zoning Board - Chair Wayne Abare**

**8. STAFF REPORTS**

- a. **Town Manager - Matt Stinnett**
- b. **Special Projects Manager - Lisa Morrell**
- c. **Fire Chief - Mike Foley**
- d. **PW Director - Tom Miliore (Written Report)**
- e. **Clerk**

**9. PUBLIC COMMENTS**

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

***Five (5) Minute Limit per Speaker***

**10. PUBLIC HEARINGS: 1**

**a. Decision by Council to Authorize the Closure of Lett Lane north of Booth Rd**

Per Chapter 13, Section 13-26 a public road can only be closed, temporarily or permanently by Malabar Town Council after a Public Hearing and notice to the surrounding property owners. The existing gate was erected by an adjacent property owner.

Exhibit: Agenda Report Number 10a

**Attachments:**

- **Agenda Report Number 10a** (Agenda\_Report\_Number\_10a.pdf)

**11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY**

## RELATED TO RESIDENTS PRESENT AT MEETING

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

### a. Request for Council to take legal action to provide Public Access to Publicly Purchased Land (Malabar Scrub Sanctuary) by CM Scardino

Exhibit: Agenda Report Number 11a

#### Attachments:

- **Agenda Report Number 11a** (Agenda\_Report\_Number\_11a.pdf)

## 12. ACTION ITEMS

ORDINANCES:1

RESOLUTIONS:0

MISCELLANEOUS:1

### a. Amend Chapter 6 Building Codes Pertaining to Unsafe Structures (Ordinance 02-2022)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL CONSTRUCTION CODES DEALING WITH ABATEMENT OF DANGEROUS BUILDINGS AS PROVIDED IN THE FLORIDA BUILDING CODE 1997 EDITION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

#### Attachments:

- **Agenda Report Number 12a** (Agenda\_Report\_Number\_12a.pdf)

### b. Request from Trails & Greenways Committee for Council Directive to Brevard County Commission regarding Briar Creek Blvd.

Exhibit: Agenda Report Number 12b

#### Attachments:

- **Agenda Report Number 12b** (Agenda\_Report\_Number\_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

## 13. DISCUSSION/POSSIBLE ACTION

## 14. PUBLIC COMMENTS

General Items (Speaker Card Required)

## 15. REPORTS - MAYOR AND COUNCIL MEMBERS

## 16. ANNOUNCEMENTS

(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  
02/25/2022 at 8:43 AM

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 4.a.**  
**Meeting Date: March 07, 2022**

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

---

**SUBJECT: Meeting Minutes**

---

**BACKGROUND/HISTORY:**

Summary of Council actions at the Town Council Regular Meeting Minutes

**ATTACHMENTS:**

- Draft Minutes of RTCM Minutes of 2/07/2022

**ACTION OPTIONS:**

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL  
REGULAR MEETING MINUTES  
FEBRUARY 07, 2022, 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 Acquaviva led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER, excused

MATT STINNETT

LISA MORRELL

KARL BOHNE

DEBBY FRANKLIN

TOWN MANAGER:

SPECIAL PROJECTS MANAGER

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

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

**4. CONSENT AGENDA:**

**4.a. RTCM Minutes of 1/03/22, 1/24/22 Spec Mtg, 1/24/22 WS ARP, 2/2/22 Spec Mtg**

**4.b. Cancel RTCM of 2/21/2022**

**4.c. Approve Standard Allowance for Coronavirus State & Local Fiscal Recovery Funds (SLFRF)**

**MOTION: CM Vail / CM Scardino to approve Consent Agenda. Vote: 4 Ayes.**

**5. ATTORNEY REPORT: nothing**

**6. BCSO: none**

**7. BOARD / COMMITTEE REPORTS:**

**7.a. T&G Committee:** Chair Drew Thompson – asked Murray Hann to join him. Offered to go over hard copy of presentation from the Special Meeting that was handed out but not reviewed at that mtg of 1/24/2022.

**7.b. Park & Recreation Board:** Chair Eric Bienvenu – not present

**7.c. P&Z Board:** Chair Wayne Abare – not present

**8. STAFF REPORTS:**

**8.a. Town Manager Matt Stinnett – FLC Attorney representing the Town in the Painted Acres lawsuit is working on a response to their proposal.**

**8.b. Special Projects Manager Lisa Morrell**

- Sign RFP has closed and will be on 3/7 agenda for award
- Staff report for P&Z re: tree clearing and conservation.
- Pre-pre mtg request under new RVP Ord
- Rivet Ln EDC Eng. Design will be on next agenda. She introduced the Eng. David Baggett, and he was able to construct it, but it will be very tight. Due to swales, etc., there is an alternate and you may want to adopt a Reso to augment road standards to make the drainage in the center. 100% Eng. plans not the cost estimate yet so it is not ready to bring forward. Intro Eng. David Baggett and showed the existing ROW swales, utilities. Went over the extra steps necessary if following the existing road specs; relocating mailboxes, removing DW and relocating culverts. This will be on private property and would require about nine months of activity. May want to consider alternative

provides centerline drainage. Any opposition to providing the alternative plan? No opposition. She will bring Eng. estimate using the alternative plan as well as the estimated cost at an upcoming meeting. Eng. David Bagget of EDC offered additional input on the alternative plan to put drainage in center of ROW.

- MCCi Laserfiche scanning contract will be on 3/7 agenda
- Digital sign at park asking for piggyback or will go out for RFP
- Per the SLFRF (State & Local Fiscal recovery Funds) – once Council takes action tonight on approving the standard deduction, SPM will start on the RFP for upgrading the MCP restrooms to make them as touchless as possible
- CE Orders and Cases are still being addressed on Malabar Road (Rico & Grindley)

8.c. Fire Chief – no written report.

8.d. PW Director (written)

8.e. Clerk - nothing

**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.**

Jim Cannon – new rep with SJRWMD for this area. Deadline is 2/18/22 for current grant application. He started in Dec and his area includes all Indian River, Brevard, and Volusia Counties and parts of two other counties.

**10. PUBLIC HEARINGS: 2**

**10.a. (Ord 2021-16) Final Adoption of Comprehensive Plan Amendment 2021-02ESR within Ordinance 2021-16 to add a Property Rights Element to Malabar Comp Plan**  
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE COMPREHENSIVE PLAN LARGE SCALE AMENDMENT (LSA) NO. 2021-02 BY ADDING A PROPERTY RIGHTS ELEMENT WITH THE ASSOCIATED GOAL AND POLICIES GOVERNING PROPERTY RIGHTS TO THE COMPREHENSIVE PLAN; RECEIVING NOTIFICATION OF COMPLIANCE FROM THE STATE; AND PROVIDING AN EFFECTIVE DATE.

**Exhibit: Agenda Report No. 10.a.**

Ord read by title only.

Opened PH: none Closed PH:

Chair asked staff – as presented in Agenda Report.

**MOTION:** CM Vail / CM Acquaviva to adopt Ord 2021-16.

Discussion: Clerk said it was long process, but this completes it.

**ROLLCALL VOTE:** CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, excused. Motion carried 4 to 0.

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

**Exhibit: Agenda Report No. 10.b.**

Ord read by title only.

Opened PH: none Closed PH:

Chair asked staff – as presented in Agenda Report.

**MOTION: CM Rivet / CM Scardino to adopt Ord 2022-01.**

Discussion: CM Rivet stated he has experienced no missed pick-ups – he called this morning for a special pick-up and an electronic pick-up, and both were set for this Friday. Very pleased. CM Vail is also very happy. CM Scardino wishes they had different colors for cans. Mayor thanked Lisa for the smooth transition. CM Acquaviva had some neighborhood complaints, but it is still the same number of trucks.

**ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, excused. Motion carried 4 to 0.**

**11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING: 2**

**11.a. Request for Special Exception to Construct eight-foot (8') fence on south property line by Malabar Resident Jennifer Doyle**

**Exhibit: Agenda Report No. 11.a.**

Chair asked Clerk to introduce: Franklin said the applicant requested this special consideration due to issues with neighbor as explained in her agenda request. Clerk explained that the applicant asked that she be given special consideration to construct an 8" high privacy fence on a portion of her south property line to provide privacy from the adjacent property. Her agenda report summarized her reasons and her appeal for staff to present.

**MOTION: CM Rivet / no second to approve request as presented for that portion of fence. Motion failed.**

**MOTION: CM Rivet / CM Vail to deny request.**

**Discussion: CM Acquaviva stated the other neighbors should have to be noticed if Council is considering. CM Scardino is against changing the allowed height. Attorney doesn't think this is the right process. CM Vail said that we have codes for a reason. Vegetative buffers work great – CM Scardino said there is a bamboo that doesn't spread.**

**Vote: Ayes, 4; CM Hofmeister excused.**

**11.b. Agenda Request to Accept Walker Lane south of Atz Road by Linda Walker**

**Exhibit: Agenda Report No. 11.b.**

Chair asked Applicant or Agent to present.

Collette McNamara is friend and presented request on behalf of Ms. Linda Walker. They both moved here in 1970s. Went thorough the history of Malabar Road maintenance in the early days of 1970s-1980s – one man ran the grader and filled in the potholes.

Walker Lane is now full of gargantuan holes that could be described as small ponds. The rented places on the west side use this roadway dozens of times per day. There are large piles of debris. There are large piles of dirt in front of D&D Ranch. The same owners own the property to the west. The Ranch uses their own material and equipment to carefully fill potholes over there for the cattle ranch access. Why hasn't the Ranch done that on the south side of Atz Road for their tenants? Asked Council to provide minimum services to existing road for public safety.

**MOTION: CM Rivet / CM Scardino to maintain Walker Ln to minimum safety standards for 725'.**

**Vote: 4 Ayes.**

**12. ACTION ITEMS: ORDINANCES for FIRST READING: 0; RESOLUTIONS: 1; MISC: 0  
12.a. Resolution 02-2022 opposing House Bill 531**



**12. ACTION ITEMS: ORDINANCES for FIRST READING: 0; RESOLUTIONS: 1; MISC: 0****12.a. Resolution 02-2022 opposing House Bill 531**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA OPPOSING HOUSE BILL 531 WHICH WOULD REQUIRE ALL LOCAL ELECTIONS TO DESIGNATE THE POLITICAL PARTY EACH CANDIDATE BELONGS TO IN THEIR SIGNAGE AND ON THE BALLOT; BILL WOULD ALSO RESTRICT VOTERS TO ONLY VOTE FOR THE ONE SCHOOL BOARD CANDIDATE THAT REPRESENTS THEIR DISTRICT AND NO LONGER ALLOW VOTERS TO VOTE FOR ALL DISTRICT CANDIDATES FOR SCHOOL BOARD; 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.a.**

Reso read by title only.

Chair asked Clerk to introduce. Franklin said there are many bills going through the 2022 Legislative Session that again strive to remove local municipality's ability to govern their communities at the local level. HB 531 represents a proposal first introduced in 2019 that failed. It essentially would require candidates for local office to declare their political party to serve their community; and by doing so would only encourage outside county, state and federal input, pressure, influence, and monetary support. Both major political parties admitted to this in 2019. Since 1947 Florida law has provided for an at-large voting system.

This bill also intends to restrict voters' ability to elect all representatives on the school board that set policy for the education of our children by only allowing voters to vote for the one candidate from their district. Again, since 1947 Florida law has provided for an at-large Voting system wherein each voter in a district is entitled to vote for all school board members elected to the district member residence areas. School board members make employment and budgetary decisions for the schools within their county, establish long-term vision for the district, and provide oversight on some of the district's higher-level employees. Florida contains over 4,000 schools serving over 2.5 million students, so each board plays a role in thousands of students' lives.

**MOTION: CM Vail / CM Scardino to adopt Reso 02-2022.**

Discussion: CM Rivet said district voting has created more problems here in Malabar.

**ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Aye; CM Hofmeister, excused.** Motion carried 4 to 0.

**12.b. T&G Request for Council Endorsement of their proposed amendments to the Malabar Scrub Sanctuary Restoration Plan for submittal at Brevard County Commission meeting of February 8, 2022**

**Public:**

Murray Hann – Said he asked the SMC what is the hurry if they must stop by March 1?

Drew Thompson – This is the most serious issue this Town has faced. FS 1264 provides process for dispute resolution. If the County is claiming a critical situation exists that exempts them from this process without even discussing at staff level it is a demonstration that the County govt is not listening to us. Need to be on record for the reasons he identified in the presentation that a workable solution can be reached with dispute resolution.

TM Matt said he was not planning to go to the meeting but would if directed. He has drafted and forwarded a letter to the Cty Mgr. and copied all of County Commission. CM Scardino

Council discussed the presentation given by Drew. They understand the need for written document as directed by Council at the Jan 24 mtg. and completely support TM Matt written communication to County. But that needs to be reiterated by Council formally endorsing the latest plan revision presented by Malabar T&GC at the Special meeting on 2/2/2022 and directing TM to attend BCBOCC mtg on 2/8 and requesting Commission to direct County staff to work with Malabar staff to reach an agreeable mediation and presenting said resolution to their respective councils/commissions.

**MOTION:** CM Scardino / CM Vail to endorse the plan as depicted in the revised presentation; Direct TM Matt to attend the County Commission and ask the County Commission to table the proposed Resolution. Discussion: CM Acquaviva asked TM if he would attend. Yes. CM Scardino said his attendance and the endorsement of this plan by Town Council will speak volumes for the residents.

**VOTE:** 4 Ayes, CM Hofmeister excused.

**Chair dismissed Attorney.**

**5. DISCUSSION / POSSIBLE ACTION: 0**

**6. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**15. REPORTS – MAYOR AND COUNCIL MEMBERS**

**CM Acquaviva:** no

**CM Vail:** no

**CM Rivet:** no

**CM Hofmeister:** excused

**CM Scardino:** no

**Mayor Reilly:** no

**16. ANNOUNCEMENTS:** Openings on T&G Committee.

**17. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:00 P.M.

BY: \_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 03/07/2022

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 4.b.

Meeting Date: March 7, 2022

Prepared By: Lisa Morrell, Special Projects Manager

---

**SUBJECT: Consideration to Award - RFP 2022-01 Parks, Facilities & Wayfinding Signs**

### BACKGROUND/HISTORY:

Staff solicited a request for proposal (RFP) on November 29, 2022, as RFP# 2022-01 entitled parks, facility, and wayfinding signs for the purpose of soliciting proposals from responsive and qualified proposers for a contract award for design, fabrication, and installation of various outdoor signage for Town facilities, park and trail areas, and wayfinding to replace existing signs within the Town of Malabar. With an award of contract, the Town will execute a contract term of 3 years with the awarded proposer to address immediate replacement signage needs and future signs as needed, either due to unexpected damage or scheduled and budgeted replacements.

The RFP was due on January 14, 2022, for submission. On January 18, 2022, The Town opened the submittals and received one proposal from Southeastern Lighting Solutions, Inc of Daytona Beach, FL. The attached bid tabulation contains the sign description and total costs to include the design, fabrication, design cost, delivery, installation based on dimensions of current signage, with the stated warranty period.

After evaluation the proposal from Southeastern Lighting Solutions, Inc, staff recommends awarding the proposal to Southeastern Lighting Solutions, Inc, as it meets the criteria of the response and contains all the required forms as an eligible vendor for turnkey solution for the Town's sign replacement and additional needs. The proposal included a unique material, Custom High-Pressure Laminate (CHPL) manufactured by IZone. The material has been used in unique environments, wayfinding, and interpretive signage programs, and decorative surfaces worldwide, such as Theme Parks, Zoos, Museums, Aquariums, and Nature Centers. It has a 10-year warranty period where the product will not delaminate, peel, blister, crack, or fade and has been described in the product as UV Resistant, scratch and graffiti resistant, to include minimal maintenance with cleaning with warm water and mild soap. This product is installed locally at parks Facilities in Charlotte County, Florida and Paco County, Florida. The material allows for printing vibrant graphics, image, graphics, wording, maps with various finishes.

### FINANCIAL IMPACT:

The total award request is \$35,571.16 with a 3-year contract.

\$7,500 is estimated for FY21/22 for Malabar Community Park and The Disc Golf Sanctuary entrance signs.

### ATTACHMENTS:

Southeastern Lighting Solutions Technical Proposal and RFP and Bid Tabulation. PDF

### ACTION OPTIONS:

Motion to award RFP 2022-01 Parks Facility & Wayfinding Signs to Southeastern Lighting Solutions, Inc, located at 821 Fentress Ct, Daytona Beach, FL 32117 with a contract total of \$35,571.16



**iZone**  
Imaging

## Technical Product Overview

© 2015 iZone Imaging, All rights reserved.

### Manufacturer

iZone Imaging  
2526 Charter Oak Dr, Suite 100  
Temple, TX 76502  
888-464-9663 toll free, 254-778-0722 voice  
254-778-0938 fax  
email: [info@izoneimaging.com](mailto:info@izoneimaging.com)  
[www.izoneimaging.com](http://www.izoneimaging.com)

### Product Composition

Digital graphic surface papers encapsulated with melamine resins are pressed over a portion of recycled post-consumer kraft paper core sheets impregnated with phenolic resin. These sheets are bonded under pressures greater than 1200 pounds per square inch and at temperatures approaching 300°F (149°C). Finished sheets are trimmed to sheet size or cut to shape by computer assisted equipment. The 0.040" backs are sanded to facilitate bonding to other substrates.

### Recommended Uses

iZone Imaging's CHPL product is suitable for interior and exterior use in museums, exhibits, zoos, parks and wildlife parks, municipal wayfinding, hiking trails markers, parking garage signage, swimming pool areas, wall murals, branded environments, and many more applications.

- **0.040"** is frequently used for laminating to surfaces on counters, islands, fixtures, displays, desks and tables. Typical vertical uses include surfacing for wall panels, murals, teller stands and panels of workstations, many of which are found in museums, exhibits, libraries, hospitals, airports, schools, sports facilities and restaurants. Our 0.040" material is produced for both horizontal and vertical interior applications where the surface must be functional, durable and decorative. The back-side is sanded to facilitate bonding and must be adhered with appropriate adhesives to a suitable substrate. Not recommended for exterior use.
- **0.060"** is frequently used for reader rails, interpretive panels, signage inserts and some murals. These laminates require to be mechanically attached with perimeter screws, or contained in a frame system. The 0.060" laminates can be used for exterior applications when properly mounted or framed.
- **0.090"** is frequently used for reader rails, interpretive panels, wall murals, signage and wayfinding components. The 0.090" is a National Parks standard for the NPS frames. This material requires mechanical attachment with perimeter screws or contained in a frame system. The 0.090" laminates can be used for exterior applications when properly mounted or framed. This material can also be made double-sided with images on both sides, however the double-sided graphics need to be contained in a frame system to prevent any warping.
- **0.125"** is frequently used for double-sided flip books, signage and wayfinding components, interpretive graphics and wall murals. This material requires mechanical attachment with perimeter screws or contained in a frame system to prevent any warping. The 0.125" material can be used for exterior applications when properly mounted or framed.



- **0.250"** is frequently used for double-sided flip books, signage and wayfinding components, interpretive graphics and wall murals. This material requires mechanical attachment to a solid substrate along the perimeter edges with screws or contained in frames to prevent warping. The 0.250" material can be used for exterior applications when properly mounted or framed.
- **0.500 "** has a smooth back and is structurally self-supporting. Commonly used in areas where free-standing elements and shaped panels are required. Can be produced as solid, monolithic double-sided panels. Material can be machined or drilled and tapped to accept 1/4"-20" bolts for mounting, or drilled through for mounting with visible fasteners. Regularly used for exterior applications where high levels of durability are required.
- **0.750 "** has a smooth back and is structurally self-supporting. Commonly used in areas where free-standing elements and shaped panels are required. Can be produced as solid, monolithic double-sided panels. Material can be machined or drilled and tapped to accept 1/4"-20" bolts for mounting, or drilled through for mounting with visible fasteners. Regularly used for exterior applications where high levels of durability are required.

## Finishes

**SATIN** > A smooth finish, reproducing a medium sheen surface. Recommended primarily for interior surfaces in either horizontal or vertical applications.

**MATTE** > This Fine Grain premium finish features, a subtle, narrow grain structure and low glare surface. Recommended for all horizontal and vertical applications.

**ICE** > A very finely stippled texture that minimizes smudges and fingerprints and improves scratch resistance. Recommended for all horizontal and vertical applications.

## Finish Availability

All finishes are available on both exterior and interior products.

## Sheet and Panel Sizes

Maximum single image area is 46" x 142". Larger 58" x 142" sheets and panels are available when required but will result in a slightly longer lead time. Single images larger than 5' x 12' can be created by tiling multiple panels with index cut seams.

## Technical Data - iZone Imaging graphic laminates sheets and panels

iZone Imaging's 0.040" material is not recommended for direct application to plaster, concrete walls, or gypsum wallboard. A solid smooth substrate is recommended.

The 0.040" sheet is not structural material and must be bonded to a suitable substrate. When designing, cutout openings should be avoided. When required, design cutout openings with seams running along all sides. Note that custom laminates are somewhat more brittle than standard commercial grade laminates. The 0.040" material is not recommended for exterior use. Do not subject iZone Imaging interior grade laminates to extremes in humidity, temperatures higher than 275° F (135°C) or intense, direct sunlight for substantial periods of time.

Bond with suitable adhesives and follow the techniques recommended by the adhesive manufacturer. To avoid stress cracking, avoid cutout openings in thinner materials. Give special attention to edges and seams - leave a minimum gap of 3/32" for expansion and contraction. Wall panel systems are

a preferred method for murals and wall graphics that provide substrates, jointing and mounting solutions. Use permanent adhesive to reinforce contact adhesive at corners, along edges and at seams.

Always drill oversized holes for screws or bolts. Screws or bolts should be slightly countersunk into the face side of a laminate-clad substrate. This will allow for expansion and contraction.

Take care to ensure an appropriate acclimation time between the laminate and the substrate prior to fabrication. The face and backing laminates and the substrate should be acclimated in the same environment for at least 48 hours before fabrication.

Recommended materials conditioning temperature is about 75°F (24°C). Laminates should be conditioned at 45% to 55% relative humidity for interior installation.

Carbide-tipped saw blades and router bits should be used for cutting of laminate sheets and panels to avoid chipping. High tool speed and low feed rate are recommended. Cutting blades and bits should be kept sharp and may be required to be changed more often. Use hold-down methods to prevent any vibration.

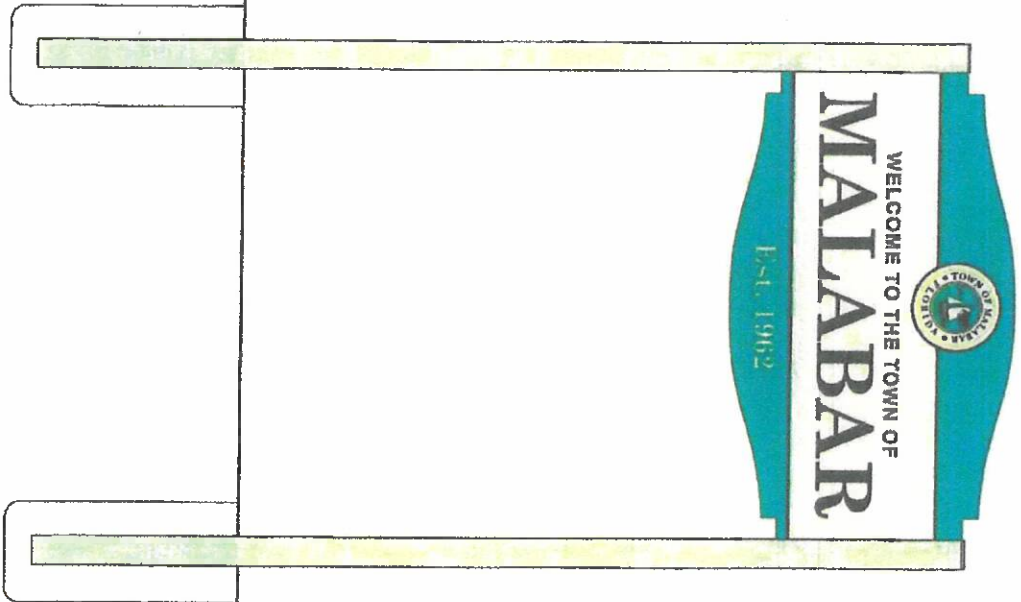
## Maintenance

The decorative surface may be cleaned with warm water and mild soaps, such as those used for hands or dishes. Don't use cleansers that contain abrasives, acids or alkalis; they will damage the decorative surface.

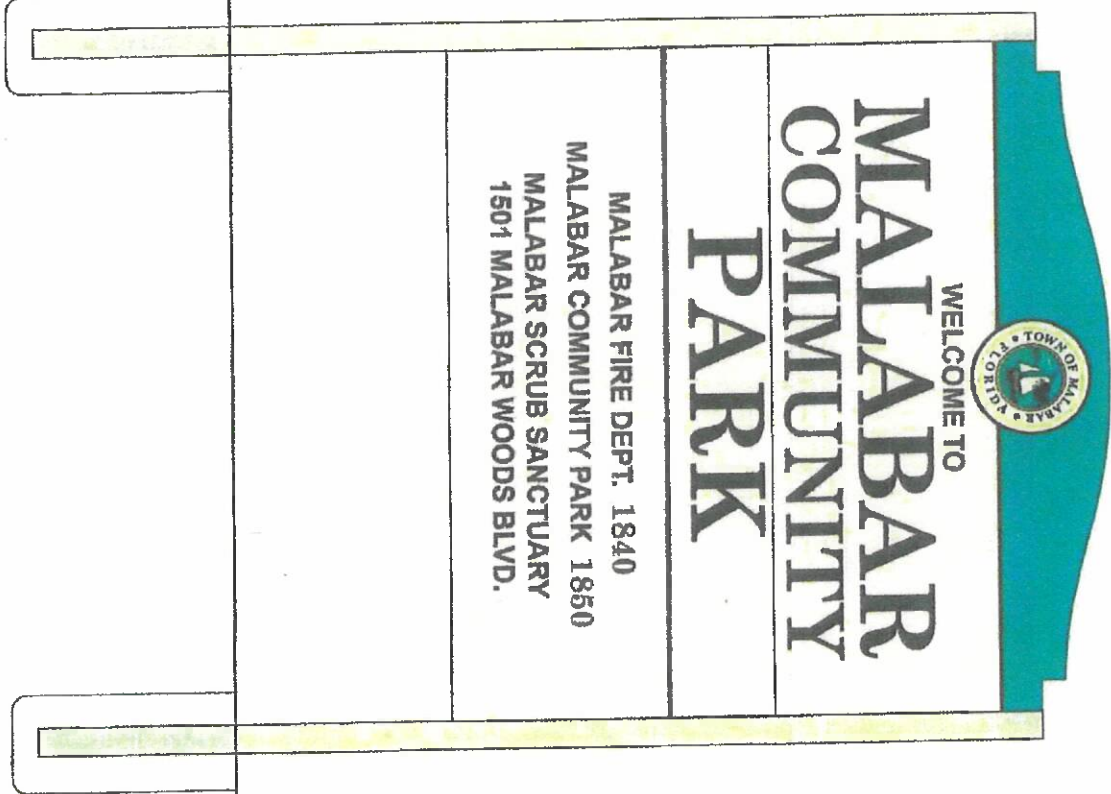
Remove stubborn stains with a 2-minute exposure to hypochlorite bleach such as Clorox®, followed by a clean water rinse. Edges should be wiped with a liquid wax, like Thompson's® Water Seal® annually. We recommend that you **DO NOT** allow any of the following agents to remain in contact with the decorative surface:

1. Hypochlorite bleach, except as described above
2. Hydrogen peroxide solution
3. Mineral acids, hydrochloric acid such as Lime-A-Way™, sulfuric or nitric acid
4. Caustic solutions containing greater than 2% lye, such as Drano®
5. Sodium bisulfate, such as Sani-Flush®
6. Potassium permanganate
7. Berry juices
8. Silver nitrate, in 1% concentration or greater
9. Gentian violet
10. Mild silver protein, such as 20% argyrol
11. Bluing agents
12. Fabric dye, such as Tintex® or Rit®
13. Alcohol containing 1% iodine in solution

**FRONT VIEW**

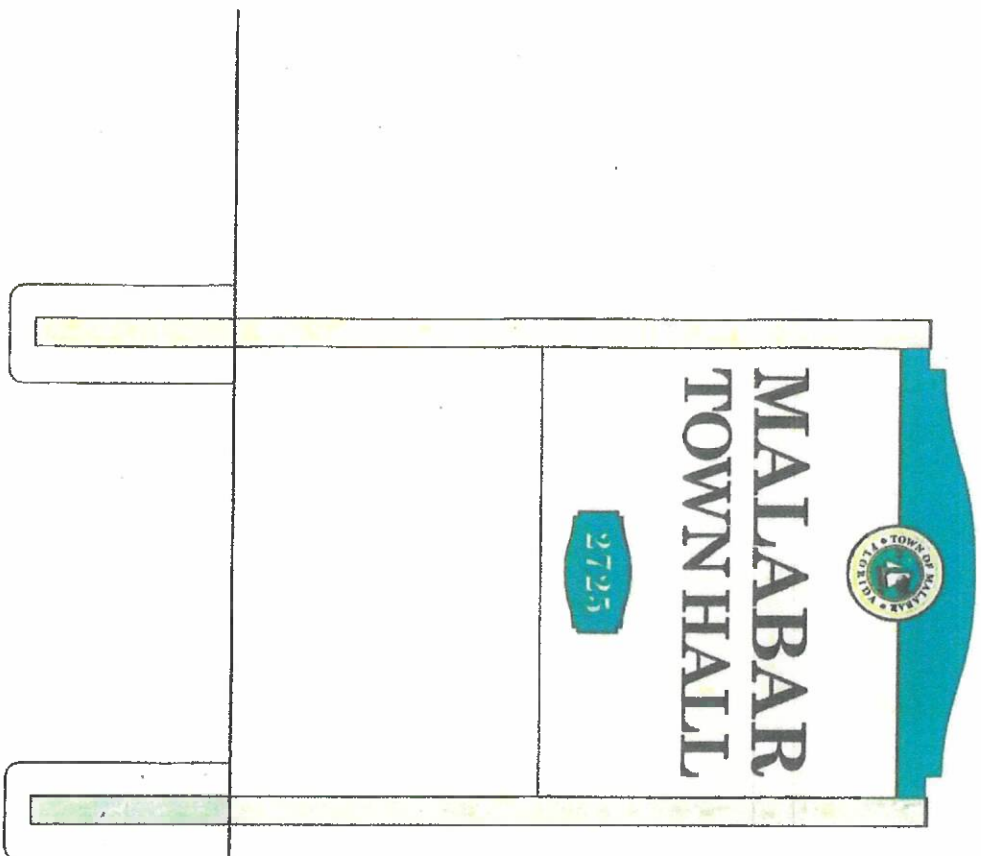


**FRONT VIEW**

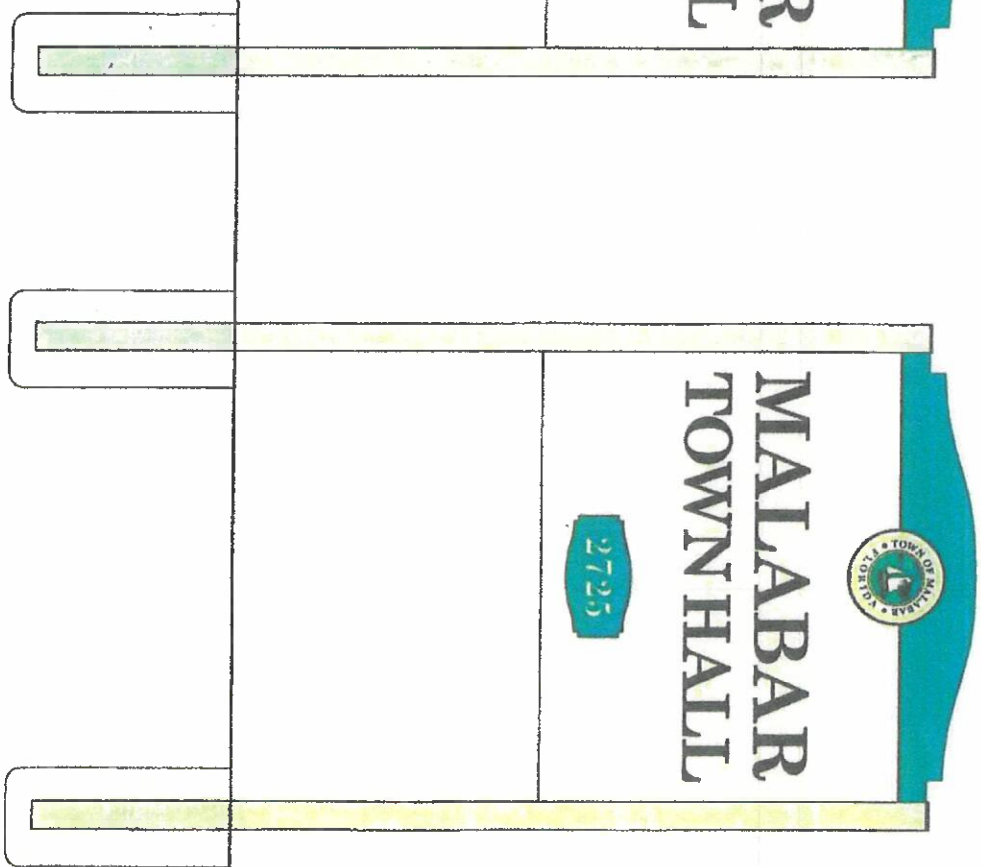




FRONT VIEW



REAR VIEW



# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 4.c  
Meeting Date: March 7, 2022

Prepared By: Matthew Stinnett, Town Manager

---

**SUBJECT: Piggy-back Contract – Plan Review and Building Inspector Services, IFB#09-0-2021, City of Palm Bay, Joe Payne, Inc**

---

### **BACKGROUND/HISTORY:**

April 19, 2021, Council approved the utilization of a piggy-back contract award by another governmental agency for Plan Review and Building Inspector Services to SAFEbuilt Florida, LLC. SAFE built has been unable to fulfill the Town's request for the requisition of external contracted personnel services for the Building Department. The other agency contract was an invitation to bid and included a multi-vendor award, which includes Joe Payne, Inc (JPI). Staff has contacted JPI and confirms available personnel and can provide staffing needs in the immediate future.

Staff is requesting the use of other agency contract for Plan Review and Building Inspections Services, as needed, to meet the demands of the building department for the Town of Malabar. Within the contract seven positions, including Building Inspector, Plans Examiner, Building Official, Fire Inspector, Fire Examiner, and Permit Technician may be used in conjunction with existing Town staff to augment and better serve the needs of the growing number of building permit applications, reviews, inspection services, construction site monitoring, and issuance of permits.

An immediate need and first executed use of this contract, if approved by Town Council, will be to add a contracted Building Inspector and Official for 8 hours per week.

### **ATTACHMENTS:**

0902021JPIrenewal.PDF  
Agreement Joe Payne.PDF  
Attachment A & B

### **FINANCIAL IMPACT:**

Estimated current fiscal year end expenditures from the restricted Building Fund, 524.3130 Building Contracted Services not to exceed the budgeted amount \$60,000.

### **ACTION OPTIONS:**

Motion to approve and execute a piggy-back contract for Plan Review and Building Inspector Services, other agency contract, IFB#09-0-2021, City of Palm Bay, with Joe Payne, Inc, located at 9629 Gretna Drive, Tampa, Florida 33626.

**SERVICE AGREEMENT FOR  
IFB NO. 09-0-2021/SZ  
PLAN REVIEW AND BUILDING INSPECTOR SERVICES**

**THIS AGREEMENT**, made this 11 day of March 2021, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907, a Florida municipal corporation and political subdivision of the State of Florida, hereinafter referred to as City and **JOE PAYNE, INC.** (FEIN Number 80-0640420), 9629 Gretna Green Drive, Tampa, FL 33626, hereinafter referred to as "Contractor", for the term specified herein, with the City having the option to extend this Agreement for an additional period of time, upon mutual agreement of the parties, therefore, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**WITNESSETH:**

**1. DOCUMENTS**

The following documents are hereby incorporated into and made part of this agreement.

- 1.1. Specifications and Contract Documents prepared by the City of Palm Bay, "IFB #09-0-2021/SZ, Plan Review and Building Inspector Services" (Exhibit A).
- 1.2. Bid for the City of Palm Bay prepared by Contractor dated January 25, 2021, (Exhibit B).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. Specific direction from the City Manager (or designee).
- B. This Agreement dated March 11, 2021 and any attachments.
- C. Exhibit A
- D. Exhibit B

**2. SCOPE**

The Contractor is to perform the Work under the general direction of the City as defined in the Invitation for Bid and amendments, if any, the Invitation for Bid and any amendments thereto being attached hereto as Exhibit "A" (CITY's Invitation for Bid documents), incorporated by reference herein and made a part thereof as fully as if herein set forth.

Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables to complete the Work.

By signing this Agreement, the Contractor represents that it has thoroughly inspected the work site (as described in the Documents) and the weather, soil and water conditions that may affect it, and has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the work and the conditions under which the work is to be performed.

### 3. TERM OF AGREEMENT

The period of this Agreement shall be for twelve (12) months, beginning on March 20, 2021 and ending on March 19, 2022. This Agreement may, by mutual written assent of the parties, be extended for four (4) additional twelve (12) month periods or portions thereof, up to a cumulative total of sixty (60) months.

### 4. COMPENSATION

The Contractor agrees to provide the services and materials as specified in its bid to the City at the hourly rates specified in said bid and amendments, if any, the bid and any amendments thereto being attached hereto as Exhibit "B", incorporated by reference herein and made a part hereof as fully as if herein set forth.

The amount as specified in Exhibit "B" may be increased or decreased by the City under this Agreement, through the issuance of a written Addendum.

Any prices specified in this Agreement or Addendum thereto, will remain firm for the term of this Agreement or Addendum period.

### 5. PAYMENT

Upon acceptance of work by using department of the City, employees and others, the City shall make payment to the Contractor in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

The City reserves the right, with justification, to partially pay any invoice submitted by the Contractor when requested to do so by the using City department. All invoices shall be directed to the Accounts Payable Section, City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907.

**NOTE: ALL INVOICES MUST CLEARLY INDICATE THE CITY PURCHASE ORDER NUMBER.**

### 6. GENERAL CONDITIONS

#### 6.1. Patents

The Contractor shall pay all royalties and assume all costs arising from the use of, including but not limited to, any invention, design, process, materials, equipment, product or device in performance of the Work, which is the subject of patent rights or copyrights. For other good and valuable consideration, Contractor shall, at its own expense, hold harmless and defend the City, and all persons and entities defined as the "City" elsewhere in this Agreement (hereinafter and through the Agreement as "City"), against any claim, suit or proceeding brought against the City which is based upon a claim, whether rightful or otherwise, that the Work, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent or copyright of the United States or any other country. The Contractor shall pay all damages and costs awarded against and/or assessed or paid by the City and acknowledges other and additional good and valuable consideration for this provision. This provision is supplemental to the following Section 6.2.

#### 6.2. Indemnification

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor, including but not limited to the Contractor's officers, officials, employees, representatives, agents, contractors officers,

etc., subcontractors and their officers, etc. (hereinafter Contractor) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to its officers, agents, subcontractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter City) against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit cost, for trials and appeals, that the City may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of Contractor in the execution, performance or non-performance or failure to adequately perform Contractor's obligation pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

In addition, Contractor shall indemnify, defend and hold harmless City against all liability, costs, expense, expert witnesses' fees, attorney's fees, claims, losses or damages that the City may incur arising from the following:

1. A violation by Contractor of any applicable federal, state or local law, rule or regulation including, without limitation, performance conditions in this Agreement.
2. Any penalty or fine incurred by or assessed against City to the extent caused by any act of the Contractor;
3. Any injury, illness, disease, death or other harms suffered or incurred by any employee of Contractor, resulting from the failure of Contractor to comply with applicable health and safety procedures, regardless of whether or not the entity involved has adopted OSHA or EPA safety and health protocols and procedures;
4. Any patent or copyright infringement by Contractor;
5. Any lien or other claim by contractor inconsistent with this Agreement;
6. Any obligation of City resulting from Contractor's errors, omissions or breach of obligation.

### **6.3. Environmental Health and Safety**

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all federal, state and local requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

Nothing contained in this Agreement shall affect Contractor's status as an independent contractor. Contractor shall ensure that the provisions of this Agreement are made

binding on all persons or entities who perform on Contractor's behalf. A violation of this provision shall be considered to be a material and substantial breach of this Agreement.

#### **6.4. Termination**

The City reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to terminate.

The City may terminate with cause if at any time the contractor fails to fulfill or abide by any of the terms or conditions specified. Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the discretion of the City.

In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the contractor of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the City.

Contractor understands and agrees that the City may immediately terminate this contract upon written notice if the Contractor is found to have submitted a false certification or any of the following occur with respect to the Contractor or a related entity: (i) for any contract for goods or services in any amount of monies, it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars (\$1,000,000) or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

#### **6.5. Notice of Deficiency**

If the Contractor is notified in writing of a fault, deficiency or error in the equipment, materials, Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the Contractor shall, at the City's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the City, or 2) refund to the City, any amounts paid by the City that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other Contractors.

#### **6.6. Default**

An event of default shall mean a breach of this Agreement by Contractor as determined by City. An event of default shall include but not be limited to the following:

- Contractor has not performed services on timely basis;
- Contractor has refused or failed to supply enough properly-skilled personnel;
- Contractor has failed to make prompt payment to subcontractors or suppliers for any services;
- Contractor has failed to fulfill representations made in this Agreement;
- Contractor has refused or failed to provide the Services as defined in this Agreement; or
- Contractor has failed to timely address a fault, deficiency or error in the equipment, materials, Work or criminal records of employees as provided in the Notice of Deficiency.

If a contractor is in default on its contract with the City, the City shall follow the procedures contained herein:

1. The City shall notify, in writing, the Contractors to adhere to contract terms and conditions. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure within a reasonable time period. The notice will also provide that, should it fail to perform within the time provided, the contractor will be found in default and removed from the City's approved vendor list.
2. Unless the Contractor corrects its failure to perform within the time provided, or unless the City determines on its own investigation that the Contractor's failure is legally excusable, the City shall find the Contractor in default and shall issue a second notice stating (i) the reasons the Contractor is considered in default, (ii) that the City will reprocure or has reprocured the commodities or services, and (iii) and the amount of the reprocurement if known.
3. The defaulting Contractor will not be eligible for award of a contract by the City until such time as the City is reimbursed by the defaulting Contractor for all reprocurement costs. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.
4. Pursuant to Section 38.14, Procurement Code of Ordinance, the defaulting Contractor will be advised of their right to initiate written protest proceedings pursuant to Section 38.13 of the Procurement Ordinance within five (5) business days after the date of notification.
5. Until such time as it reimburses the City for all reprocurement costs and the City is satisfied that further instances of default will not occur, the defaulting Contractor shall not be eligible for award of a contract by the City. To satisfy the City that further instance will not occur, the defaulting Contractor shall provide a written corrective action plan addressing the original grounds for default.

The forgoing provisions do not limit, waive or exclude the City's remedies against the defaulting contractor at law or in equity.

#### **6.7. WARRANTY**

The Contractor warrants that the Work including, but not limited to the equipment, materials and employees provided shall conform to professional standards of care and practice in effect at the time the Work is performed, shall be of the highest quality and be free from all faults, defects or errors. Whenever required by the specifications of the Invitation for Bid, the Contractor warrants that all equipment and materials provided shall be new. If the Contractor is notified in writing of a fault, deficiency or error in the equipment, materials, Work or criminal records of employees provided within ten (10) days from the discovery of any fault, deficiency or error of the Work, the Contractor shall, at the City's option, either: 1) re-perform such portions of the Work to correct such fault, defect or error, at no additional cost to the City, or 2) refund to the City, any amounts paid by the City that are attributable to such portions of the faulty, defective or erroneous Work, including the costs for re-performance of the work provided by other Contractors.

**ALL EQUIPMENT AND MATERIALS PROVIDED AND USED BY THE CONTRACTOR SHALL BE MERCHANTABILITY AND BE FIT FOR THE PURPOSE INTENDED.**

**THE CONTRACTOR SHALL BE LIABLE FOR SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE RESULTING FROM ANY WORK PERFORMED UNDER THIS AGREEMENT.**

**6.8. TIME OF COMPLETION**

The parties understand and agree that time is of the essence in the performance of this Agreement. Neither the Contractor nor the City shall be liable for any loss or damage resulting from any delay or failure to perform its contractual obligations within the time specified due to but not limited to acts of God, any force majeure, actions or regulations by any governmental entity or representative, strikes or other labor trouble, fire, natural or man-made disasters, or any other causes, contingencies or circumstances not subject to either the Contractor's or City's control, that prevent or hinder the performance of the Contractor's or City's contractual obligations. Any such causes of delay, even though existing on the date of the Agreement or on the date of the start of Work, shall extend the time of the Contractor's or City's performance by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules. However, under such circumstances as described herein, the City may at its discretion, cancel this Agreement at its sole discretion for the convenience of the City and the Contractor shall only be entitled to compensation for all work satisfactorily performed and the limitation of damages provision contained in Section 20 - LIMITATION OF LIABILITY shall apply.

**6.9. LIQUIDATED DAMAGES**

Parties agree that damages are difficult to determine but the following liquidated damages are agreed to be a reasonable cost for any delays: If the Contractor shall neglect, fail or refuse to complete the Work within the time specified, or any proper extension thereof granted by the City, then the Contractor hereby agrees, as part consideration for awarding the Agreement, to pay the City the sum of One-Hundred Dollars (\$100.00), for each and every calendar day that the Contractor shall be in default after the time stipulated in the Agreement for completing the Work. The Contractor and City acknowledge and agree that said sum is not a penalty but liquidated damages for breach of contract.

The City and Contractor agree that the damages that will be incurred by the City as a result of Contractor's delay in meeting a completion date are of a kind difficult to accurately estimate, and the Contractor further agrees that the amount herein provided is a reasonable forecast of the damages that will actually be incurred by the City in the event of any such delay and not a penalty.

**6.10 Insurance Requirements:** The Contractor, and its subcontractors, subconsultants, assignees and suppliers, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:



**6.10.1 Commercial General Liability:** The contractor shall provide combined single minimum limits of \$1,000,000.00 each occurrence / \$2,000,000.00 general aggregate for bodily injury and property damage liability. This shall include premises/operations, products, completed operations, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay to and shall name the City of Palm Bay as an additional insured. The policy of insurance shall be written on an "occurrence" basis and form.

**6.10.2 Automobile Liability:**

Contractor shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:

- Owned Automobiles
- Hired Automobiles
- Non-Owned Automobiles

**6.10.3 Umbrella / Excess Liability:**

Contractor shall provide umbrella/excess coverage with limits of no less than \$1,000,000.00 excess of Commercial General Liability, Automobile Liability and Employers Liability. \*\*This coverage is optional if the Contractor has \$2,000,000 General Aggregate under the Commercial General Liability Policy\*\*

**6.10.4 Workers' Compensation Coverage:**

Full and complete Workers' Compensation Coverage, including coverage for Employer's Liability, as required by State of Florida law, shall be provided. Should the Named Vendor utilize a Professional Employer Organization, said Vendor acknowledges and agrees that all employees sent to the City of Palm Bay MUST be included on that PEO roster.

**6.10.5 Professional Liability Insurance or Errors and Omissions Insurance:**

Successful Bidder shall provide professional liability insurance, or Errors and Omissions Insurance, with a minimum limit of \$1,000,000.00 aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to exceed \$5,000.00 for each claim. Consultant represents it is financially responsible for the deductible amount.

**Insurance Certificates:**

The City of Palm Bay is to be specifically included as an additional insured on all certificates of insurance (with exception to Workers Compensation). Waiver of Subrogation is required for Commercial General Liability and Automobile Liability. All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty - (30) days prior to said expiration date. The certificate shall provide a thirty - (30) day notification clause in the event of cancellation or modification to the policy.

JP  
Initials here

The Contractor shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the contractor to ensure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

Contractor shall obtain insurance on an "occurrence" basis if such insurance is available at commercially reasonable premium costs. Any insurance on a "claim made" basis shall be maintained for at least three (3) years after acceptance of the Work.

#### **7. ACCEPTANCE**

The City will be deemed to have accepted the Work after the Chief Procurement Officer is notified by the appropriate City department(s) of its satisfaction that the work for their respective department(s) is completed.

#### **8. CORRECTION OF WORK**

The Contractor shall promptly correct all Work rejected by the City for failing to conform to this Agreement. The Contractor shall bear all costs of correcting such rejected Work.

#### **9. RIGHT TO AUDIT RECORDS**

The City reserves the right to audit the records of the Contractor related to this Agreement at any reasonable time during the prosecution of the work included herein and for a period of three (3) years after termination of the date of the contract. The Contractor agrees to provide copies of any records necessary to substantiate payment requests to the City as may be requested by the City, solely at the cost of reproduction.

#### **10. PUBLIC RECORDS**

The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records law. Specifically, the Contractor shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform this service.
- B. Provide the agency with access to public records at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- C. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- D. Meet all requirements for retaining public records and transfers to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of the Contractor to comply with the provisions set forth in this section shall constitute a material breach of Agreement and shall be cause for immediate termination of the Agreement.

**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 City of Palm Bay Procurement Department, 120 Malabar Road SE, Suite 200 Palm Bay, Florida 32907; 321-952-3424; or [procurement@pbfl.org](mailto:procurement@pbfl.org).**

#### **11. TIME IS OF THE ESSENCE**

The parties agree that time is of the essence in the completion of the Work called for under this Agreement. By executing this Agreement, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

The Contractor agrees that all Work shall be prosecuted regularly, diligently, and uninterrupted at such a rate of progress that will ensure full completion thereof within the time specified.

#### **12. INFORMATION**

All information, including but not limited to data, documents, plans, and specifications furnished to or developed for the City by the Contractor or its employees, pursuant to this Agreement, excluding previously copywritten materials, shall be the sole property of the City and all rights therein are reserved by the City, except that the Contractor may disclose any such information to its corporate affiliates and their agents.

#### **13. EXTRA WORK**

The City, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, the Agreement price and time being adjusted accordingly. All such changes in the Work shall be authorized by written Addenda to this Agreement and shall be executed under the applicable conditions of the Agreement.

If the Contractor plans to make a claim for an increase in the Agreement price or an extension in the Agreement Schedule/Term, written notice shall first be given to the City within ten (10) calendar days after the occurrence of the event giving rise to such a claim. The Contractor shall give this written notice to the City, together with written approval secured from the Procurement department before proceeding to execute the Work.

No claim for extra work will be considered valid by the City unless first approved by the City in writing with Contractor's claim submitted in writing.

#### **14. FAMILIARITY WITH THE WORK**

The Contractor by executing this Agreement acknowledges full, total and complete understanding of the extent and character of the Work required and the conditions surrounding the performance thereof. The City will not be responsible for or be bound by any claimed misunderstanding of the Work to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Agreement by the Contractor serves as its stated unequivocal commitment to fulfill all the conditions referred to in this Agreement.

**15. TITLE AND RISK OF LOSS**

The title and risk of loss to the Work shall pass from the Contractor to the City upon the City's final acceptance of the Work.

**16. INDEPENDENT CONTRACTOR, ASSIGNMENT AND SUBCONTRACTS**

In the performance of the Work, Contractor shall operate and have the status of an independent contractor and shall not act as or be an agent or employee of City.

This Agreement cannot be assigned without the written approval of the City. Assignment may be made solely at the discretion of the City, and the City's decision will be final. Contractor shall obtain the consent of City, in writing, of each subcontractor it intends to use before entering into a contract with any subcontractor.

Contractor shall advise each prospective subcontractor of these requirements and shall assure that each subcontractor complies with them.

**17. INSPECTION AND NON-WAIVER**

Contractor shall permit the representatives of City to inspect and observe the Work at all times.

The failure of City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as waiver of City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**18. NOTICES**

All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

To the Contractor:      Joseph Payne, President  
                                      Joe Payne, Inc.  
                                      9629 Gretna Green Drive  
                                      Tampa, FL 33626

To the City:                Chief Procurement Officer  
                                      City of Palm Bay  
                                      120 Malabar Rd SE  
                                      Palm Bay, FL 32907

Copy to:                    City Manager  
                                      City of Palm Bay  
                                      120 Malabar Rd SE  
                                      Palm Bay, FL 32907

**19. NO LIENS**

Contractor acknowledges that Contractor or any other person directly or indirectly acting for or through Contractor are legally unable to file a mechanic's or construction lien against the real property on which the work is performed or any part thereof or against any personal property or improvements thereon or make a claim against any monies due or to become due from the City to Contractor for or on account of any work, labor, services, material,

equipment, or other items furnished in connection with the Work or any change order, Contractor agrees to inform all subcontractors of such inability and further agrees to satisfy, remove, or discharge any liens or claims that may be filed at its own expense by bond, payment, or otherwise within twenty (20) days of the filing thereof or from receipt of written notice from the City.

Additionally, until such time as such lien or claim is satisfied, removed or discharged by Contractor, all monies due to Contractor or that become due to Contractor before the lien or claim is satisfied, removed or otherwise discharged shall be held by City as security for the satisfaction, removal and discharge of such lien and any expense that may be incurred while obtaining such. If Contractor shall fail to do so, City shall have the right, in addition to all other rights and remedies provided by this Agreement or by law, to satisfy, remove, or discharge such lien or claim by whatever means City chooses at the entire and sole cost and expense of Contractor which costs and expenses shall, without limitation hereby, include attorney's fees, litigation costs, fees and expenses and all court costs and assessments.

## **20. LIMITATION OF LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor expresses its willingness to enter into this Agreement with the knowledge that the Contractor's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the City shall include attorney fees, investigative costs, expert fees, suit costs or pre-judgment interest. This section shall not prevent the City from taking corrective action against the Contractor.

## **21. MISCELLANEOUS PROVISIONS**

- 21.1.** The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of Work under this Agreement.
- 21.2.** By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.
- 21.3.** The Contractor's employees are required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to performance

- of its awarded contract. This law is established by the City Council through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 2007-96, with an effective date of November 15, 2007.
- 21.4.** No waiver, alterations, consent or modification of any of the provisions of this Agreement shall be binding unless written and signed by the Chief Procurement Officer.
  - 21.5.** The Contractor shall procure all permits, licenses, and certificates for the proper execution and completion of the Work under this Agreement, including any approvals of plans or specifications as may be required or federal, state and local laws, ordinances, rules, and regulations.
  - 21.6.** Award of this contract shall impose no obligation on the City to utilize the vendor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each term.
  - 21.7.** This Agreement shall be governed by and construed according to the laws of the State of Florida, and the rights of the parties hereto shall be construed and be subject to the laws of the State of Florida. The parties hereby waive the right to a trial by jury in any action, proceeding or counterclaim brought or filed by either of them against the other. Venue for any court action arising out of this Agreement shall be in Brevard County, Florida.
  - 21.8.** The undersigned hereby certify that this Agreement is made without prior understanding, agreement or connection with any corporation, firm or person who submitted bids for the Work covered by this Agreement and is in all respects fair and without collusion or fraud. As to Contractor, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute it on behalf of the Contractor as the act of the said Contractor, and the City will rely upon such execution by the Contractor's representative.
  - 21.9.** This Agreement is for the exclusive benefit of the parties. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.
  - 21.10.** This Agreement, including Exhibits "A" and "B", contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
  - 21.11.** If any term or provision of this Agreement or the application thereof shall be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and each remaining term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
  - 21.12.** If consultant receives a subpoena or summons or receives any other correspondence related to legal proceedings or any correspondence from an attorney or owner's representative in response to work done on behalf of the City under this Agreement, the Consultant must immediately notify the City Attorney's Office and the City Building Official. Any attendance required at a legal proceeding which the City was notified about and (if applicable) approved the Consultant to attend will be compensated as described in the Agreement at the applicable hourly rate(s) in Exhibit B.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above

Approved by City Council On: February 18, 2021

ATTEST:

  
\_\_\_\_\_  
Terese Jones, City Clerk

CITY OF PALM BAY, FLORIDA

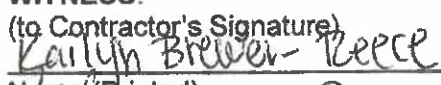
  
\_\_\_\_\_  
Juliet Misconi, Chief Procurement Officer

Date

3/11/2021

WITNESS:

(to Contractor's Signature)

  
\_\_\_\_\_  
Name (Printed)

Name (Printed)

  
\_\_\_\_\_  
Signature

Signature

JOE PAYNE, INC.

  
\_\_\_\_\_  
(Signature)

Name and Title

Joseph Payne President

JPI

Company

Date

2/26/20



[joepayneinc@gmail.com](mailto:joepayneinc@gmail.com)

January 12, 2022

Joseph Payne, President  
Joe Payne, Inc.  
9629 Gretna Green Drive  
Tampa, FL 33626

Dear Mr. Payne,

Attached, please find an Amendment for renewal of Contract #09-0-2021 for Plan Review and Building Inspection Services.

The current agreement expires March 19, 2022. The City desires to renew the agreement for an additional one (1) year term with no price increase.

If your company is in concurrence, please sign the amendment and return to the City via e-mail ([procurement@pbfl.org](mailto:procurement@pbfl.org)). Additionally, please forward your current Certificate(s) of Insurance which is required to be updated on an annual basis. The certificates we have on file are currently expired.

If you have any questions, please feel free to contact me at (321) 952-3424.

Sincerely,

CITY OF PALM BAY

A handwritten signature in blue ink that reads "Juliet Misconi".

Juliet Misconi, NIGP-CPP, CPPO, CPPB  
Chief Procurement Officer  
Procurement Department



"A"

**CITY OF PALM BAY  
AMENDMENT TO CONTRACT # 09-0-2021  
Plan Review and Building Inspection Services**

This amendment to contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Palm Bay, a municipal corporation organized and existing under the State of Florida, hereinafter referred to as the "City" and Joe Payne, Inc, 9629 Gretna Green Drive, Tampa, FL 33626, hereinafter referred to as the "Contractor."

WHEREAS, the City and the Contractor entered into a Contract under the date of March 20, 2021, whereby the contractor would perform certain services with respect to Plan Review and Building Inspection Services; and

WHEREAS, the City and Contractor desire to renew the term of said Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- I. The renewed term of agreement shall be March 20, 2022 through March 19, 2023.
- II. No price increases will be allowed.

In all other respects and, except as specifically modified and amended, the Contract dated, March 20, 2021, shall continue in full force and effect as written. The parties hereto execute this Amendment to become effective as of the date and year first above written.

**CITY OF PALM BAY**

**Joe Payne, Inc.**

\_\_\_\_\_  
Juliet Misconi, NIGP-CPP, CPPO, CPPB  
Chief Procurement Officer

*Joseph Payne*  
\_\_\_\_\_  
Signature

By: Joseph Payne, President  
Name/Title

\_\_\_\_\_  
Date

02.2.2022  
Date

11 B

<b>IFB #09-0-2021/SZ Plan Review and Building Inspector Services</b>	<b>Bureau Veritas North America, Inc.</b> 1422 S. Narcoosee Rd St. Cloud, FL 34771 407-556-0027 <a href="mailto:david.stephens@bureauveritas.com">david.stephens@bureauveritas.com</a>	<b>C.A.P. Government, Inc.</b> 343 Almeria Ave Coral Gables, FL 33134 305-448-1711 <a href="mailto:cap@capfla.com">cap@capfla.com</a>	<b>Joe Payne, Inc.</b> 9629 Gretna Green Dr. Tampa, FL 33626 813-731-1501 <a href="mailto:joepayneinc@gmail.com">joepayneinc@gmail.com</a>
<b>Position</b>	<b>Hourly Rates</b>		
Building Inspector	\$120.00*		
Plan Examiner	\$120.00*		
Building Official	\$150.00*		
Fire Inspector	N/A		
Fire Examiner	N/A		
Permit Technician	N/A		
	* 8 hour daily minimum		
<b>IFB #09-0-2021/SZ Plan Review and Building Inspector Services</b>	<b>PDCS, LLC.</b> 3361 Rouse Rd Ste 210 Orlando, FL 32817 407-277-9795 <a href="mailto:bookkeeping@pdcslc.com">bookkeeping@pdcslc.com</a>	<b>SAFEbuilt Florida, LLC</b> 3755 Precision Dr. Ste 140 Loveland, CO 80538 863-977-4111 <a href="mailto:proposals@safebuilt.com">proposals@safebuilt.com</a>	<b>Universal Engineering Sciences</b> 820 Brevard Ave Rockledge, FL 32955 321-638-0808 <a href="mailto:rhoaglin@universaleengineering.com">rhoaglin@universaleengineering.com</a>
<b>Position</b>	<b>Hourly Rates</b>		
Building Inspector	\$92.00		
Plan Examiner	\$92.00		
Building Official	\$112.00		
Fire Inspector	\$92.00		
Fire Examiner	\$92.00		
Permit Technician	N/A		

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 4.d**  
**Meeting Date: March 7, 2022**

**Prepared By: Lisa Morrell, Special Projects Manager**

---

**SUBJECT: Use of Other Agency Contract, Document and Records Retention, National Cooperative Purchasing Alliance (NCPA), Contract #11-26**

---

### **BACKGROUND/HISTORY:**

The Town retains public records pursuant of Chapter 119 Public Records Laws of the State of Florida. A myriad of paper documents in a storage rental facility that include but not limited to building permits, associated plans and applications, land parcel and rights of ways, agreements and contracts, employee records, financial records, legislative ordinances, resolutions, public meeting agendas and minutes accordingly to those established and future amended retention schedules.

Storage space is an ongoing and recurring cost that will continue to increase and grow in need due to the number of records generated over the course of daily operations of the Town. These cost can be managed more efficient and cost-effectively through a document imaging solution with scanning services to expedite the implementation and reduction of paper stored in these facilities without burdening the limited resources of Town Hall personnel and reduce the disturbance of day-to-day Town activities and services with additional duties of a large-scale project.

MCCi, is an awarded contractor for Document and Records Retention of contract #11-26 by National Cooperative Purchasing Alliance (NCPA). MCCi has provided a master service agreement to perform two large task orders. One task order is to provide and implement the electronic database and software components of Laserfiche Document Imaging software. Laserfiche is a software application and database used by many government agencies nationwide and will also be retained to securely host and store public records in an internet cloud-based solution and become the Town's central electronic repository for public records, after scanning. Town staff will be trained and equipped with hardware and software tools to scan paper documents received, create electronic documents, and electronically retrieve historically stored paper documents without leaving their workstation. In this manner, the use of SLRFR funds is eligible for the project to prevent and reduce points of contact and improve general government services using the approved standard allowance method for expending these funds. The second task of the project will expedite back scanning services,

In the scope of the project, where the Building Department has a specific need scan large paper plans and submittals, a wide format scanner, a physical piece of hardware that is complaint and recommended to be used with the Laserfiche software will be procured separately in a future agenda request. This will serve to scan continued intake and storage of large and wide paper submittals, up to ANSI E size paper; until such time the existing Building Department software for application, plans, and permitting is upgraded and equipped to intake electronic only applications and submittals. Many local municipalities no longer accept paper submittals and require electronic submissions, permitted in the updated Florida Building Code. These qualify as for SLRFR funds use to minimize touchpoints and in-person contact of multiple contractors, plan reviewers, review and permitting staff, and property owners.

This project is estimated to be complete within an 18-month to 24-month implementation plan from contract execution and purchase order issuance date(s) respectively.

**ATTACHMENTS:**

Renewal letter of NCPA Contract #11-26.PDF

MCCi Master Services Agreement.PDF

Addendum #1 Laserfiche Software & Maintenance Subscription, 2 year.PDF

Addendum #2 MCCi Document Scanning Services Contract.PDF

**FINANCIAL IMPACT:**

SLRFR Funds, eligible uses of approved standard allowance election, project allocated a budget of \$60,000

Laserfiche Software Solution 2-year Subscription, \$21,808.25

Document Conversion Building, Clerk, Finance, \$20,687.14

Total Estimate: \$42,495.39

Future annual recurring maintenance FY23/24, \$5500

Current annual warehouse storage costs: \$5,760

**ACTION OPTIONS:**

Motion to approve and execute contracts for Document and Records Retention utilizing other agency contract, National Cooperative Purchasing Alliance (NCPA), Contract #11-26, and awarded to MCCi located at 3717 Apalachee Parkway, Suite 20, Tallahassee, FL 32311.



## Region XIV Education Service Center

---

1850 Highway 351  
Abilene, TX 79601-4750  
325-675-8600  
FAX 325-675-8659

Monday, January 3<sup>rd</sup>, 2022

MCCi, LLC  
ATTN: Donny Barstow  
3717 Apalachee Parkway, Suite 201  
Tallahassee, FL 32311

Re: Annual Renewal of NCPA contract #11-26

Dear Donny:

Region XIV Education Service Center is happy to announce that MCCi, LLC has been awarded an annual contract renewal for Document and Records Management based on the proposal submitted to Region XIV ESC.

The contract will expire on April 30<sup>th</sup>, 2023, completing the fifth year of a possible five-year term. If your company is not in agreement, please contact me immediately.

If you have any questions or concerns, feel free to contact me at 325-675-8600.

Sincerely,

A handwritten signature in blue ink that reads 'Shane Fields'.

Shane Fields  
Region XIV, Executive Director

## **MASTER SERVICES AGREEMENT NO. 24347**

This Master Services Agreement No. 24347 (this "**Agreement**") is effective on the date of the last signature, ("**Effective Date**") and is made by and between MCCi, LLC, a Florida limited liability company with its principal office located at 3717 Apalachee Parkway, Suite 201, Tallahassee, FL 32311 ("**MCCi**") and Client (defined herein). MCCi and Client may each be referred to individually herein as a "**Party**" or collectively as the "**Parties**".

The terms "**Client**" in this Agreement shall also include Client's "**Affiliates**," defined as a legal entity that directly or indirectly controls, is controlled by, or is under common control with the applicable Party. It is agreed that Client's Affiliates who are a party to the applicable Order (defined below) shall enjoy the same rights, benefits and obligations set forth in this Agreement as are applicable to Client.

As used in this Agreement, "MCCi" means the MCCi Affiliate providing the Services (defined below) to the Client in the applicable Order.

The Parties hereto intending to be legally bound hereby, agree as follows:

### **1. Scope of Service**

MCCi and Client may develop and enter into one or more sales orders, attached hereto or incorporated by reference, incorporating a description of the specific goods and/or services requested by Client and agreed to be performed or otherwise provided by MCCi (each, and as modified in writing by the Parties, each an "**Order**"). MCCi will provide to Client those goods and/or services described as its obligation in the Order (collectively, the "**Services**"). If applicable, each Order will also describe items specifically required to be delivered by MCCi to Client (each a "**Deliverable**"), and the acceptance criteria, if any, for each of the Deliverables. Further, each Order will set forth, among other things, tasks to be performed by the Parties and roles and responsibilities of each Party. Each Order shall specifically identify this Agreement and indicate that it is subject to the terms hereof. Unless provided to the contrary in the applicable Order, to the extent there are any conflicts or inconsistencies between this Agreement and any Order or Client purchase order, except in regard to Sections 2 or 3 herein, the provisions of this Agreement shall govern and control. Use of pre-printed forms, including, but not limited to email, purchase orders, shrink-wrap or click-wrap agreements, except those that may appear in the applicable Order, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect. No amendment or modification to this Agreement will be valid unless set forth in writing and formally approved by authorized representatives of both parties. To the extent that there are any conflicts or inconsistencies between this Agreement and any Client-entered third-party government purchasing agreement ("**Purchasing Vehicle**"), the provisions of the Purchasing Vehicle shall govern and control.

No change order, notice, direction, authorization, notification or request (each a "**Change Order**") will be binding upon Client or MCCi, nor will such Change Order be the basis for any claim for additional

Last updated: August 2021

compensation by MCCi, until Client and MCCi have both signed such Change Order, or a new Order, as appropriate.

Each MCCi Affiliate will only be liable for those obligations expressly set forth in the applicable Order to which it is a party. In no event will a MCCi Affiliate be liable for any of the obligations or liabilities of any other MCCi Affiliate pursuant to this Agreement.

### **2. Fees**

Client shall pay to MCCi the fees and other compensation set forth in each Order. By executing the applicable Order, Client acknowledges their pre-approval for any Order Expenses, defined below, quoted, and will reimburse MCCi for all reasonable out-of-pocket travel, living and other ancillary expenses paid or incurred by MCCi in connection with the Services ("**Order Expenses**"). If relevant, and provided to MCCi, MCCi will make commercially reasonable efforts to conform to Client's expense policy. If a dispute occurs regarding MCCi's invoicing of Order Expenses not in conformity with Client's expense policy and greater than five (5) percent of a specific invoice, such dispute will be subject to investigation and correction; otherwise, Client agrees to reimburse MCCi for the full amount of expenses invoiced. The Client acknowledges that it may incur expenses due to circumstances such as non-refundable items (e.g., airline tickets, training/install charges, hotel reservations, rental cars, and the like), in the event that (i) Client cancels or reschedules performance, after MCCi has made the applicable arrangements; or (ii) If Client is not prepared upon MCCi's arrival, which results in cancellation, delays, and/or the need to reperform any Deliverables.

Client acknowledges that the price of the license and/or subscription for the use of a third-party licensed product is subject to increases during the term of the license and/or subscription or at the time of renewal. If MCCi is reselling a license and/or subscription of a third-party product to Client, then MCCi will provide Client at least 15 days prior to written notice (an email will be sufficient) of an increase in the price of the license and/or subscription. If Client does not agree to pay such increase in the license and/or subscription, Client must provide written notice to MCCi within 15 days of the date of the notice of such increase. Upon receipt of such notice, MCCi will cancel Client's license and/or subscription to the third-party licensed product.

### **3. Invoicing and Payment**

Unless otherwise stated in an Order, MCCi will invoice Client for all fees, charges and reimbursable expenses on a monthly basis and upon completion of each Order.

Client agrees to pay all undisputed invoices and undisputed portions of a disputed invoice in full within thirty (30) days from the date of each invoice. Failure to pay invoices by the due date, unless MCCi has been informed by said due date that an invoice is being contested and the reason therefor, may result in the imposition of interest charges to the extent allowable by law as well as any associated legal and collection fees incurred.

To the extent that Client is not exempt and/or has not communicated its tax status to MCCi, Client further agrees to pay

amounts equal to any federal, state or local sales, use, excise, privilege or other taxes or assessments, however designated or levied, relating to any amounts payable by Client to MCCI under this Agreement or any other Agreement between the Parties, exclusive of taxes based on MCCI's net income or net worth. Client understands and accepts that any pricing set forth in an Order does not include such taxes.

All recurring software maintenance support, subscriptions and/or other service packages ("**Recurring Services**") will automatically renew unless Client has

- (a) terminated the Agreement and/or applicable Order, per Section 4;
- (b) provided sixty (60) days written notice prior to the scheduled renewal date of the Recurring Services; or
- (c) not paid in full the renewal invoice by the renewal service period start date.

Once payment has been received, no refunds for Recurring Services are available.

#### **4. Term, Termination, and Cancellation**

This Agreement will commence on the Effective Date and will be effective for the longer of (i) a one (1) year period or (ii) the term of the original Order and will renew automatically for one (1) year periods and continue in full force and effect, unless terminated by either Party as set forth below. Termination of this Agreement or any Order hereunder may occur upon any of the following:

- (a) Thirty (30) days after a Party's receipt of written notice from the other Party that this Agreement or the Services, in whole or in part under an Order, shall be terminated; or
- (b) Thirty (30) days after a Party notifies the other in writing that they are in breach or default of this Agreement, unless the breaching Party cures such breach or default within such thirty (30) day period; or
- (c) Fifteen (15) days after the filing of a petition in bankruptcy by or against either Party, any insolvency of a Party, any appointment of a receiver for such Party, or any assignment for the benefit of such Party's creditors (a "**Bankruptcy Event**"), unless such Party cures such Bankruptcy Event within the fifteen (15) day period; or
- (d) If Client is a city, county, or other government entity the following applies: If Client's governing body fails to appropriate sufficient funds to make payments due and to become due during Client's next fiscal period, Client may, subject to the terms herein, the applicable Order as of the last day of the fiscal period for which appropriations were received (each an "**Event of Non-appropriation**"). Client agrees to deliver notice of an Event of Non-appropriation to MCCI at least 30 days prior to the end of Client's then-current fiscal period, or if an Event of Non-appropriation has not occurred by that date, promptly upon the occurrence of any such Event of Non-appropriation. If this Agreement is terminated following an Event of Non-appropriation, Client agrees (but only to the extent permitted by applicable law) that, for a period of one (1) year from the effective date of such termination, Client shall not purchase or

otherwise acquire any technology performing functions similar to those performed by the Recurring Services from a third party.

In all events, Client shall be liable for full payment for Services and/or Deliverables and reimbursement of MCCI's expenses incurred through the effective date of termination. If Client cancels or suspends an Order, pursuant to this Agreement and only if allowed hereunder, between completed milestones, MCCI will invoice Client for a pro-rated share of the completed portion of each milestone(s) for Deliverables performed through the date of such termination or delay. If Services are resumed or Deliverables continued, MCCI will recommence invoicing per the applicable Order.

#### **5. Working Arrangements**

All Services shall be performed remotely, unless otherwise agreed to by the Parties. If Services are to be performed on Client's premises, Client shall provide the following to MCCI Personnel: (i) a suitable and adequate work environment, including space for work and equipment for performance of the Services; (ii) access to and use of Client's facilities and relevant information, including all necessary software, hardware and documentation; (iii) timely assistance in the acquisition, or correction of any hardware or software problems that would affect the performance of Services and/or delivery of a Deliverable; and (iv) any other items set forth in the applicable Order.

Client will ensure that all Client's personnel, vendors, and/or subcontractors who may be necessary or appropriate for the successful performance of the Services and/or delivery of a Deliverable will, on reasonable notice: (i) be available to assist MCCI Personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures in a timely manner; (ii) participate in the Services as reasonably necessary for performance under an Order; and (iii) be available to assist MCCI with any other activities or tasks required to complete the Services in accordance with the Order.

#### **6. MCCI Personnel**

Neither MCCI nor its Personnel (defined below) are or shall be deemed to be employees of Client but instead are independent contractors to Client. MCCI shall be responsible for the compensation of its Personnel, in addition to any applicable employment taxes, workmen's compensation and any other taxes, insurance or provisions associated with the engagement of such Personnel.

In addition, MCCI shall be responsible for all acts or omissions of its Personnel. MCCI will not discriminate in the referral or hiring of MCCI Personnel on the bases of race, religion, sexual orientation, color, sex, age, national origin, disability that does not affect the ability for an individual to perform his or her job, or other protected categories as required by applicable state, federal, and local laws.

MCCI may utilize independent subcontractors in satisfying its obligations under this Agreement (collectively with MCCI employees



"Personnel"). MCCI remain responsible for all acts and omissions of all Personnel.

Upon receipt of notice from Client that any MCCI Personnel is not suitable, MCCI shall remove such person from the performance of Services and will provide a qualified replacement as quickly as reasonably possible.

Unless a particular MCCI Personnel member has been identified as a key resource to the relevant Order, MCCI at its sole discretion may reassign, if and as necessary, other appropriately qualified MCCI Personnel to the relevant Order as long as such assignment will not affect MCCI's fee for the Services defined or ability to satisfy its Deliverables.

Neither Party is a legal representative of the other nor does a Party have the authority, either express or implied, to bind or obligate the other in any way.

#### **7. Non-Solicitation**

To the extent permitted by law, during the term of this Agreement and for a period of twelve (12) months thereafter, neither Party shall knowingly (i) induce or attempt to induce any then-current employee or independent contractor of the other Party to terminate his or her employment or other relationship with the non-soliciting Party or (ii) solicit or hire any former employee or independent contractor that had been employed or engaged by the non-soliciting Party during the previous twelve (12) months. Notwithstanding the foregoing, either Party may solicit for employment, offer employment to, employ, or engage as a consultant or advisor, any of the other Party's personnel who: (i) had no previous direct contact with the soliciting Party's personnel in connection with, and during the performance of, the Services hereunder, or (ii) have responded to a general, publicly-available advertisement for employment by the hiring Party (including its Affiliates), or (iii) make unsolicited approaches or inquiries to such Party (including its Affiliates) regarding employment opportunities. The current engaging Party, in its sole discretion, may waive this provision in writing for an individual. In consideration for such waiver, the soliciting Party agrees to pay a placement fee equal to fifty (50) percent of such person's new total annual compensation. This placement fee shall be due immediately upon such person's commencement of services.

#### **8. Confidential Information**

The Parties acknowledge that in the course of MCCI providing Services for Client hereunder, each may receive Confidential Information (as defined below) of the other Party. Any and all Confidential Information in any form or media obtained by a Recipient (defined below) shall be held, **to the extent allowed by Florida Law**, in confidence and shall not be copied, reproduced, or disclosed to third parties for any purpose whatsoever except as necessary in connection with the performance hereunder. Each Recipient further acknowledges that it shall not use such Confidential Information for any purposes other than in connection with the activities contemplated by this Agreement. All consultants assigned by MCCI to Client will sign appropriate forms of confidentiality agreements on or prior to their start date.

"Confidential Information" means any and all confidential information of a Party disclosed to the other Party, including, but not limited to, research, development, proprietary software, technical information, techniques, know-how, trade secrets, processes, customers, employees, consultants, pricing information and financial and business information, plans and systems. Confidential Information shall not include information which: (i) was known to the Party receiving the information (the "Recipient") prior to the time of disclosure by the other Party (the "Disclosing Party"); (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of this Agreement or other wrongful act by the Recipient; (iii) was lawfully received by Recipient from a third party without any obligation of confidentiality; or (iv) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority.

The obligations set forth in this Section shall survive termination of this Agreement for a period of three (3) years thereafter.

#### **9. Compliance with Florida Public Records Law (Florida Statute 119.071)**

To the extent applicable and required by Chapter 119, Florida Statutes, MCCI shall specifically:

a. Keep and maintain public records required by the Client to perform the service.

b. Upon request from the Client's custodian of public records, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 of the Florida Statutes or as otherwise provided by law.

c. 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 MCCI does not transfer the records to the Client.

d. Upon completion of the contract, transfer, at no cost, to the Client all public records in possession of the MCCI or keep and maintain public records required by the Client to perform the service. If MCCI transfers all public records to the Client upon completion of the contract, the MCCI shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If MCCI keeps and maintains public records upon completion of the contract, MCCI shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client.

IF MCCI HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MCCI'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (Town Clerk, Debby Franklin, 321-727-7764, [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org), 2725 Malabar Road, Malabar, Fl. 32950).

#### **10. Intellectual Property**



Unless otherwise specified in any Order, or subject to a third party license agreement, title to all materials, products software, Services, and/or Deliverables, including, but not limited to, reports, designs, programs, specifications, documentation, manuals, visual aids, and any other materials developed and/or prepared for Client by MCCi under any Order (whether or not such Order is completed) ("**Works**"), and all interest therein shall vest in Client and shall be deemed to be a work made for hire and made in the course of the Services rendered hereunder. MCCi shall retain a non-exclusive, royalty-free, world-wide, perpetual license to use, sell, modify, distribute, and create derivative works based upon any of the foregoing Works in its information technology professional services business, provided that in so doing MCCi shall not use or disclose any Client Confidential Information or Deliverables unique to Client. To the extent that title to any such Works may not, by operation of law, vest in Client or such Works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to Client. All such Works shall belong exclusively to Client, except as set forth herein, with Client having the right to obtain and to hold in its own name, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. MCCi agrees to give Client and any person designated by Client, reasonable assistance, at Client's expense, required to perfect the rights defined in this Section 9. Unless otherwise requested by Client, upon the completion of the Services to be performed under each Order or upon the earlier termination of such Order, MCCi shall promptly turn over to Client all Works and Deliverables developed pursuant to such Order, including, but not limited to, working papers, narrative descriptions, reports and data.

Notwithstanding the foregoing, the following shall not constitute the property of Client: (i) MCCi software, including but not limited to any proprietary code (source and object), or that which is subject to third-party license agreements with MCCi; (ii) those portions of the Deliverables which include information in the public domain or which are generic ideas, concepts, know-how and techniques within the computer design, support and consulting business generally; and (iii) those portions of the Deliverables which contain the computer consulting knowledge, techniques, tools, routines and sub-routines, utilities, know-how, methodologies and information which MCCi had prior to or acquired during the performance of its Services for Client and which do not contain any Confidential Information of Client conveyed to MCCi. Should MCCi, in performing any Services hereunder, use any computer program, code or other materials developed by it independently of the Services provided hereunder ("**Pre-existing Work**"), MCCi shall retain any and all rights in such Pre-existing Work. MCCi hereby grants Client a paid up, world-wide, non-exclusive license to use and reproduce the Pre-existing Work for its internal business needs.

Client understands and agrees that MCCi may perform similar services for third Parties using the same Personnel that MCCi may use for rendering Services for Client hereunder, subject to MCCi's obligations respecting Client's Confidential Information pursuant to Section 8.

#### **11. Data Privacy**

In the event that MCCi, in the course of providing Services to Client, receives, stores, maintains, processes or otherwise has access to "**Personal Information**" (as defined by the State Data Protection Laws (defined below) and/or European Union Directives, and including, but not limited to, an individual's name and social security number, driver's license number or financial number) then MCCi shall safeguard this information in accordance with these laws. MCCi may disclose Personal Information for business purposes only on a need-to-know basis and only to (i) MCCi Personnel, (ii) any third-party service providers that has agreed to safeguard Personal Information in a like manner as MCCi safeguards such information, and (iii) with other entities authorized to have access to such information under applicable law or regulation. MCCi may disclose Personal Information when necessary to protect its rights and property, to enforce its terms of use and legal agreements, as required or permitted by law, or at the request of law enforcement authorities and the courts, and pursuant to a subpoena. MCCi shall have no duty to notify Client of such compliance with law. MCCi takes reasonable and appropriate measures to maintain the confidentiality and security of Personal Information and to prevent its unauthorized use or disclosure. To the extent that MCCi experiences a Security Breach as defined under the applicable State Data Protection Laws for information generated in connection with this Agreement or any Order hereto, MCCi shall notify Client in writing within five (5) business days of confirming the same.

#### **12. Warranty**

##### **(a) Services Warranty.**

MCCi warrants that all Services shall be performed by personnel with relevant skill sets and familiar with the subject matter for the Order in a professional, competent, and workman-like manner.

MCCi's delivery of a Deliverable to Client shall constitute a representation by MCCi that it has conducted a review of the Deliverable and believes it meets the written specifications, if any, set forth in the corresponding Order. Client shall then have the right to conduct any review of the Deliverable as Client shall deem necessary or desirable. If Client, in its reasonable discretion, determines that any submitted Services, or Deliverable does not meet the specifications, set forth in the applicable Order, Client shall have five (5) business days after MCCi's submission to give written notice to MCCi specifying the deficiencies in reasonable detail. MCCi shall use reasonable efforts to promptly cure any such deficiencies. After completing any such cure, MCCi shall resubmit the Deliverable for review as set forth above. Notwithstanding the foregoing, if Client fails to reject any Deliverable within five (5) business days, such Deliverable shall be deemed accepted.

MCCi DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, PROVIDED THAT MCCi SHALL REMAIN OBLIGATED PURSUANT TO THIS SECTION 11. IF THE SERVICES FAIL TO CONFORM TO THE FOREGOING WARRANTY IN ANY MATERIAL RESPECT OR TO THE SPECIFICATION SET FORTH IN AN ORDER, CLIENT'S INITIAL REMEDY WILL BE FOR MCCi, AT ITS EXPENSE, TO PROMPTLY USE COMMERCIALY REASONABLE

EFFORTS TO CURE OR CORRECT SUCH FAILURE. UPON FAILURE OF THE FOREGOING, CLIENT'S REMEDIES, AND MCCi'S ENTIRE LIABILITY, AS A RESULT OF SUCH FAILURE, SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 12 BELOW. THE FOREGOING WARRANTY IS EXPRESSLY CONDITIONED UPON (I) CLIENT PROVIDING MCCi WITH PROMPT WRITTEN NOTICE OF ANY CLAIM THEREUNDER PRIOR TO THE EXPIRATION THEREOF, WHICH NOTICE MUST IDENTIFY WITH PARTICULARITY THE NON-CONFORMITY; (II) CLIENT'S FULL COOPERATION WITH MCCi IN ALL REASONABLE RESPECTS RELATING THERETO, INCLUDING, IN THE CASE OF MODIFIED SOFTWARE, ASSISTING MCCi TO LOCATE AND REPRODUCE THE NON-CONFORMITY; AND (III) WITH RESPECT TO ANY DELIVERABLE, THE ABSENCE OF ANY ALTERATION OR OTHER MODIFICATION OF SUCH DELIVERABLE BY ANY PERSON OR ENTITY OTHER THAN MCCi. MCCi ALSO DOES NOT WARRANT ANY THIRD-PARTY PRODUCTS PROCURED ON BEHALF OF CLIENT. IF THERE ARE ANY PRODUCT WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCT, ANY REMEDY SHOULD BE REQUESTED DIRECTLY FROM MANUFACTURER AND MCCi HAS NO LIABILITY ASSOCIATED THEREWITH.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, MCCi DOES NOT MAKE OR GIVE ANY REPRESENTATION OR WARRANTY, WHETHER SUCH REPRESENTATION OR WARRANTY BE EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY REPRESENTATION OR WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE.

In the event that Client asserts any claim for warranty services hereunder and such claim relates to any matter that is mutually determined by the Parties not to be MCCi's responsibility hereunder (including any problem with Client's computer hardware or software that was not caused by any Services performed by MCCi), Client shall pay MCCi for all costs incurred for all evaluation, correction or other services performed by MCCi relating to such claim on a time and materials basis at MCCi's then standard rates.

#### **(b) General Warranty.**

MCCi shall perform the Services in compliance with all applicable federal and state laws and regulations and industry codes, including but not limited to (i) federal and state anti-kickback laws and regulations, (ii) federal and state securities laws, meaning that MCCi agrees that Client may be a publicly traded company and MCCi shall instruct MCCi Personnel that federal and state securities laws prohibit the purchase, sale, or pledge of Client stock while in possession of any material, non-public information, (iii) the Foreign Corrupt Practices Act of 1977, (iv) federal and state privacy and data protection laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act (collectively, "**State Data Protection Laws**"), and (v) MCCi also represents that it uses E-Verify to verify the work authorization of all newly hired employees.

### **13. Indemnification and Limitation of Liability**

Each Party ("**Indemnifying Party**") shall indemnify, defend, and hold the other harmless against any loss, damage, or costs (including

reasonable attorneys' fees) in connection with third party claims, demands, suits, or proceedings ("**Claims**") to the extent caused by the Indemnifying Party.

#### **(a) MCCi Indemnification.**

MCCi shall defend, indemnify, and hold Client harmless against Claims made or brought against Client for Bodily injury or personal property damage arising out of the Indemnifying Party's performance within the scope of its responsibilities under this Agreement or by a third party alleging that the use of any Deliverable as provided to Client under this Agreement or any Order hereto and used in accordance with this Agreement and relevant documentation, infringes any third party's intellectual property rights. Notwithstanding the foregoing, MCCi shall not be required to indemnify Client to the extent the alleged infringement: (x) is based on information or requirements furnished by Client, (y) is the result of a modification made by an entity other than MCCi, or (z) arises from use of a Deliverable in combination with any other product or service not provided or approved in writing by MCCi. If Client is enjoined from using the Deliverable or MCCi reasonably believes that Client will be enjoined, MCCi shall have the right, at its sole option, to obtain for Client the right to continue use of the Deliverable or to replace or modify the same so that it is no longer infringing. If neither of the foregoing options is reasonably available to MCCi, then this Agreement may be terminated at either Party's option, and MCCi's sole liability shall be subject to the limitation of liability provided in this Section.

#### **(b) Client Indemnification.**

If the Services require MCCi to access or use any third party products provided or used by Client, Client warrants that it shall have all rights and licenses of third Parties necessary or appropriate for MCCi to access or use such third party products and agrees to produce evidence of such rights and licenses upon the reasonable request of MCCi and to indemnify, hold harmless and defend MCCi from and against any Claims to the extent arising from MCCi's access to or use of such third party products. Should MCCi provide third party licensed software hereunder, Client will indemnify, defend, and hold MCCi harmless for the breach by Client or any entity for whom Client provides access the same, for any breach of such third-party terms of use, including, without limitation, a licensor's end user license agreement, acceptable use policy and the like.

IF CLIENT IS A CITY, COUNTY, OR OTHER GOVERNMENT ENTITY AND SUCH ENTITIES GOVERNING BODY PROHIBITS INDEMNIFICATION THEN CLIENT'S INDEMNIFICATION OBLIGATIONS SHALL BE REDUCED TO REFLECT THE LIMITATIONS THAT ARE LEGALLY BINDING ON CLIENT.

#### **(c) Indemnification Procedure.**

Each indemnified Party shall give the indemnifying Party (a) prompt written notice of the Claim; (b) sole control of the defense and settlement of the Claim (provided that the indemnifying Party may not settle any Claim unless it unconditionally releases the indemnified Party of all liability and does not otherwise negatively impact the indemnified Party's rights, including, without limitation, those in its intellectual property); and (c) at indemnifying Party's cost, all reasonable assistance.

**(d) Limitation of Liability.**

(i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, PROFITS, SAVINGS OR BUSINESS) OR LOSS OF RECORDS OR DATA, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SUCH PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY, AND WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE. EXCEPT FOR A PARTY'S PAYMENT AND INDEMNIFICATION OBLIGATIONS, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS, LOSSES OR OTHER LIABILITY ARISING OUT OF, OR CONNECTED WITH, THIS AGREEMENT, THE SERVICES, DELIVERABLES AND/OR SOFTWARE PROVIDED HEREUNDER OR CLIENT'S USE OF ANY SUCH SERVICES, DELIVERABLES AND/OR SOFTWARE, AND WHETHER BASED UPON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, SHALL IN NO CASE EXCEED THE AGGREGATE AMOUNTS PAID TO MCCI BY CLIENT UNDER THE APPLICABLE ORDER, GIVING RISE TO SUCH CLAIM DURING THE LAST SIX (6) MONTHS.

(ii) NOTWITHSTANDING SECTION 12(d) MCCI'S LIABILITY FOR CLAIMS INVOLVING ITS INDEMNIFICATION OBLIGATIONS SHALL BE LIMITED TO \$500,000.

EACH PARTY'S ENTIRE LIABILITY AND CLIENT'S REMEDIES UNDER THIS AGREEMENT SHALL BE SUBJECT TO THE LIMITATIONS CONTAINED IN THIS SECTION 12. THE LIMITATIONS ON WARRANTY AND LIABILITY SPECIFIED IN SECTIONS 11 AND 12 HEREOF WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

The Town's said indemnification shall not exceed the limits of the waiver of sovereign immunity as set forth in Section 768.28, Florida Statutes.

The Parties acknowledge that the limitation of warranties and liabilities as set out in this Agreement are an essential basis of this Agreement and that the prices agreed to be paid by Client for Services reflect these limitations.

**14. Insurance**

During the term of this Agreement, MCCI shall carry, at its sole expense, insurance coverage to include at a minimum the following:

- Workers Compensation: State statutory limits and \$1,000,000 employers' liability
- Comprehensive General Liability: \$2,000,000 per occurrence and \$4,000,000 in the aggregate
- Professional Liability and Errors & Omissions: \$1,000,000 per occurrence and \$3,000,000 in the aggregate
- Cyber and Technical Errors and Omissions: \$3,000,000 in the aggregate

MCCI, at Client's request, will name Client as an additional insured under the Comprehensive General Liability policy. MCCI represents that Client is automatically included as an additional insured under

the Errors and Omissions and Cyber and Technical Errors and Omissions policies for vicarious liability but no modified certificate of insurance will be provided.

**15. Notices**

All notices, demands and other communications required or permitted hereunder or in connection herewith shall be in writing and shall be deemed to have been duly given if delivered (including by receipt verified electronic transmission) or five (5) business days after mailed in the Continental United States by first class mail, postage prepaid, to a Party at the following address, or to such other address as such Party may hereafter specify by notice:

If to MCCI

MCCI, LLC  
3717 Apalachee Parkway  
Suite 201  
Tallahassee, FL 32311  
Attn: Legal Department  
Email: [legal@mccinnovations.com](mailto:legal@mccinnovations.com)

If to Client:

Town of Malabar  
2752 Malabar Road  
Malabar, FL 32950  
Attn: Debby Franklin  
Email: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

**16. Miscellaneous**

**(a) 3rd Party EULA Provisions.**

Client acknowledges that they are responsible for adhering to any third-party End User License Agreements, acceptable use policies and/or terms and conditions or similar requirements ("EULA"), whether supplied by MCCI as a convenience or not, for any products procured on behalf of Client by MCCI.

**(b) Use of Open-Source Code.**

Except as disclosed in the Order, MCCI does not distribute nor otherwise use any open source or similar software in a manner that would obligate MCCI to disclose, license, make available or distribute any of its material proprietary source code as a condition of such use. For purposes of this Agreement, "Open Source" shall mean any software or other Intellectual Property that is distributed or made available as "open source software" or "free software" or is otherwise publicly distributed or made generally available in source code or equivalent form under terms that permit modification and redistribution of such software or Intellectual Property. Open - Source Materials includes, but may not be limited to, software that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License or BSD License, as well as all other similar "public" licenses.

**(c) Client Software Customizations.**

Client may choose to customize their software internally without MCCI's help. MCCI is not responsible for any damages caused by Client's customization of the software. MCCI will not be held responsible for correcting any problems that may occur from these customizations.

**(d) MCCI Software Configuration Services.**

Client may elect to contract with MCCI to configure Client's software. In these situations, Client acknowledges they are responsible for testing all software configurations and as such,

waives any and all liability to MCCi for any damages that could be related to these software configurations.

**(e) Compliance with Laws.**

To the extent applicable to the Parties each Party shall comply with and give all notices required by all applicable federal, state, and local laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on use of the Services, Deliverables and/or software and the performance of this Agreement.

**(f) Equal Opportunity.**

To the extent applicable to the Parties each shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

**(g) Excluded Parties List.**

To the extent required by law and applicable to Client, MCCi agrees to promptly report to Client if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

**(h) Force Majeure.**

If either of the Parties hereto are delayed or prevented from fulfilling any of its obligations under this Agreement by force majeure, said Parties shall not be liable under this Agreement for said delay or failure. "Force Majeure" means any cause beyond the reasonable control of a Party including, but not limited to, an act of God, an act or omission of civil or military authorities of a state or nation, epidemic, pandemic, fire, strike, flood, riot, war, delay of transportation, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

**(i) Audit Rights.**

With reasonable notice and at a convenient location, Client will have the right to audit MCCi's records to verify the accuracy of invoicing to Client.

In addition, should any of Client's regulators legally require access to audit the Services, MCCi will, to the extent legally required by such regulators, provide access for the same. All results of such audits shall be MCCi Confidential Information.

Client shall bear all costs associated with audits.

**(j) Assignment.**

Neither Party may assign or otherwise transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party. Either Party, however, without any requirement for prior consent by the other, may assign this Agreement and its rights hereunder to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such Party, if the succeeding entity agrees in writing to assume and be bound by all of the obligations of such Party under this Agreement. This

Agreement shall be binding upon and accrue to the benefit of the Parties hereto and their respective successors and permitted assignees.

**(k) Modification.**

This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of both Parties.

**(l) Provisions Severable.**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such provision shall be severed from this Agreement and the remaining provisions will continue in full force.

**(m) Dispute Resolution.**

Should a dispute arise between MCCi and Client involving their respective responsibilities, limitations or the working relations between the Parties under this Agreement or any Order, then the Parties will make reasonable efforts to amicably resolve the dispute. Prior to entering arbitration as set forth below, the Parties agree that any dispute will initially be referred to their senior management for resolution within ten (10) business days of receipt of notice specifying and asking for the intervention of the Parties' superiors.

**(n) Interpretation.**

The descriptive headings of this Agreement and of any Order under this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. As used herein, "include" and its derivatives (including, "e.g.") shall be deemed to mean "including but not limited to." Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisers participated in the preparation of this Agreement.

**(o) Publicity.**

MCCi may use the name of Client, the existence of this Agreement and the nature of the associated services provided herein for marketing purposes, except that such use shall not include any Client Confidential Information as defined in Section 8 of this Agreement.

**(p) Entire Agreement.**

This Agreement and all Order(s) attached hereto constitute the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the Parties relating to the subject matter herein.

**(q) Counterparts.**

This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which taken together will constitute one single agreement between the Parties with the same effect as if all the signatures were upon the same instrument. The counterparts of this Agreement may be executed and delivered by

facsimile or other electronic signature (including portable document format) by either of the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

**(r) Governing Law.**

This Agreement, any claim dispute or controversy hereunder (a "Dispute") will be governed by (i) the laws of the State of Florida, or (ii) if Client is a city, county, municipality or other governmental entity, the law of state where Client is located, in all cases without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each Party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees. Venue of any proceedings shall be in Brevard County, Florida.

**(s) Bench Trial.**

The Parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

**(t) No Class Actions.**

NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST EACH OTHER, SUCH PARTY'S PROVIDERS, AND/OR CLIENTS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

**(u) Limitation Period.**

Neither Party shall be liable for any claim brought more than two (2) years after the cause of action for such claim first arose.

*(Remainder of Page Intentionally Left Blank; Signature Page Follows)*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**MCCI, LLC**

**TOWN OF MALABAR ("Client")**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

2752 MALABAR ROAD  
MALABAR, FL 32950

**ADDENDUM NO. 1 TO MASTER SERVICES AGREEMENT NO. 24347**

**INITIAL LASERFICHE CLOUD SITE LICENSE ORDER**

Pursuant to Master Services Agreement No. 24347 ("**Agreement**");

This Initial Laserfiche Cloud Site License Order, designated as Addendum No. 1 is entered into as of \_\_\_\_\_, ("**Addendum Effective Date**"), by and between MCCi and Client and is hereby incorporated into the Agreement and made a part thereof. If there is any conflict between a provision of the Agreement and this Addendum, the Agreement will control. Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. This Order supersedes any previous quote or proposals received.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum No. 1 to be executed by their respective duly authorized representatives as of the Addendum Effective Date.

**MCCi, LLC**

**TOWN OF MALABAR ("Client")**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# PRICING: LASERFICHE



3717 Apalachee Parkway, Suite 201  
 Tallahassee, FL 32311  
 850.701.0725  
 850.564.7496 fax

**Bill to:** Debby Franklin  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

**Ship to:** Lisa Morrell  
[lmorrell@townofmalabar.org](mailto:lmorrell@townofmalabar.org)

**cc AP Contact:** [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)

**Client Name: Town of Malabar**

**Quote Date: February 21, 2022**

**Quote Number: 22735**

**Order Type: Net New**

<i>Product Description:</i>	<i>Qty.</i>	<i>Unit Cost</i>	<i>NCPA 11-26</i>	<i>Annual Total</i>
<b>LASERFICHE CLOUD ANNUAL SUBSCRIPTION - BASIC</b>				
<input checked="" type="checkbox"/> Laserfiche Cloud Municipality Site License Subscription (Population Less than 10,000)	1	\$3,100.00	\$3,007.00	\$3,007.00
<input checked="" type="checkbox"/> Laserfiche Cloud Records Management Subscription	1	Included	Included	Included
<input checked="" type="checkbox"/> Laserfiche Cloud Quick Fields Complete with Agent Subscription (10-Pack)	1	Included	Included	Included
<input checked="" type="checkbox"/> Laserfiche Cloud Workflow Bots Subscription	1	Included	Included	Included
<input checked="" type="checkbox"/> Laserfiche Cloud Unlimited Public Portal	1	Included	Included	Included
<input checked="" type="checkbox"/> Laserfiche Cloud Forms Portal Subscription (Unlimited Submissions Per Month)	1	Included	Included	Included
<input checked="" type="checkbox"/> Laserfiche Cloud SDK Subscription	1	Included	Included	Included
<b><i>Laserfiche Annual Recurring Subscription Subtotal</i></b>				<b><i>\$3,007.00</i></b>
<b>MCCI SUPPLEMENTAL SUPPORT SERVICES SUBSCRIPTION</b>				
<input checked="" type="checkbox"/> Managed Support Services for Laserfiche, Level 2 <i>Client needs are estimated based on the current components provided herein: up to 10 hours that will expire at the end of your renewal term.</i>	1	\$1,485.00	\$1,485.00	\$1,485.00
<input checked="" type="checkbox"/> Training Center for Laserfiche Site License, Population Less than 10,000	1	\$450.00	\$450.00	\$450.00
<input checked="" type="checkbox"/> MCCI SLA for Laserfiche Site License, Population Less than 10,000	1	\$600.00	\$540.00	\$540.00
<b><i>MCCI Supplemental Support Services Annual Recurring Subscription Subtotal</i></b>				<b><i>\$2,475.00</i></b>
<b>GRAND TOTAL - RECURRING ANNUAL SUPPORT/SUBSCRIPTION YEAR 1</b>				<b><i>\$5,482.00</i></b>
<b>GRAND TOTAL - RECURRING ANNUAL SUPPORT/SUBSCRIPTION YEAR 2*</b>				<b><i>\$5,482.00</i></b>

<i>Service Description:</i>	<i>Qty.</i>	<i>Unit Cost</i>	<i>NCPA 11-26</i>	<i>Total</i>
-----------------------------	-------------	------------------	-------------------	--------------



### **MCCI SERVICE PACKAGES**

<input checked="" type="checkbox"/> Implementation Services Package <i>Cost is based on the current components provided herein. MCCI's certified personnel will administer these services to assist Client with implementing the software/subscription components purchased.</i>	1	\$2,250.00	\$2,137.50	\$2,137.50
<input checked="" type="checkbox"/> Laserfiche Training Services, Remote Per Day <i>Workflow training and installation excluded.</i>	1	\$1,600.00	\$1,520.00	\$1,520.00
<input checked="" type="checkbox"/> Basic Records Management Configuration <i>(Includes 1/2 Day of Training)</i>	1	\$7,565.00	\$7,186.75	\$7,186.75
<b>Service Packages Subtotal</b>				<b>\$10,844.25</b>

### **GRAND TOTAL - ONE-TIME SERVICES**

**\$10,844.25**

### **TOTAL LASERFICHE PROJECT COST**

**\$21,808.25**

*\* Client has requested to prepay for the 2nd year of Recurring Annual Support/Subscription. In the event that any Support and/or Subscription components are purchased prior to Year 2's Renewal, those recurring annual costs will be reflected on the 2nd Year's Renewal Invoice.*

***All Order Pricing Expires in 30 Days***

**This is NOT an invoice. Please use this confirmation to initiate your purchasing process.**

### **RECURRING SERVICES**

The Recurring Services portion of this Order will be based on the pricing at the time of renewal. It will systematically renew unless written notice of termination has been provided per the master agreement. In the event that a manufacturer increases its prices for recurring annual services, the increase will be passed along to the Client. No more than once per year, MCCI may adjust its recurring annual services to coincide with current U.S. inflation rates; any increase will not exceed the cumulative increase in the Consumer Price Index (CPI) occurring since the last price increase.

### **SALES TAX**

Sales tax will be invoiced where applicable and is not included in the fee quote above.

### **REMOTE SERVICES**

All services will be performed remotely unless noted otherwise.

## PRODUCT ORDER TERMS

---

MCCi will process Product Orders as follows:

Product/Service Description	Timing of Product Order
All Software, Recurring Annual Support/Subscription, and Supplemental Support Services	<b>Initial System Implementations:</b> Post Project Kick-Off.

The act of MCCi processing orders determines the start date of annual Recurring Service periods. Establishment of start dates for 3<sup>rd</sup> party manufacturer products are subject to each manufacturer's current policy.

## BILLING TERMS

---

MCCi will invoice Client as follows:

Product/Service Description	Timing of Billing
All Software, Recurring Annual Support/Subscription, and Supplemental Support Services	<ul style="list-style-type: none"><li>▪ <b>Initial Sale:</b> Upon delivery of software or activation of the subscription.</li><li>▪ <b>Annual Renewal:</b> 75 days in advance of expiration date.</li></ul>
Service Packages	50% of the total upon receipt of Order, remaining 50% upon delivery completion and Client acceptance.

MCCi shall not send any invoices nor claim payment for any fees or expenses incurred by MCCi until both parties authorize this Order. Sales tax will be invoiced where applicable and is NOT included in the Pricing section.

# SERVICE PACKAGES

---

## GENERAL ASSUMPTIONS

To determine which platform/licenses are applicable, please refer to the [Pricing](#) section. The following assumptions serve as the basis for the Service Package(s) reflected below. Any service or activity not described below is not included in the Scope of services to be provided. Variations to the following may impact the Service Package's cost and/or schedule justifying a change order.

- MCCi's completion of a Deliverable to Client shall constitute that MCCi has conducted its own review and believes it meets Client's requirements. Client shall then have the right to conduct its own review of the Deliverable as Client deems necessary. If Client, in its reasonable discretion, determines that any submitted Deliverable does not meet the agreed upon expectations, Client shall have five (5) business days after MCCi's submission to give written notice to MCCi specifying the deficiencies in reasonable detail. MCCi shall use reasonable efforts to promptly resolve any such deficiencies. Upon resolution of any such deficiencies, MCCi shall resubmit the Deliverable for review as set forth above. Notwithstanding the foregoing, if Client fails to reject any Deliverable within five (5) business days, such Deliverable shall be deemed accepted.
- If either party identifies a business issue during the project, MCCi and Client must jointly establish a plan to resolve the issues with potential impact analysis of timeline and budget within five (5) business days of identification. Any necessary business decision resulting from the identified business issues must be made by Client within five (5) business days from request.
- Client is responsible to ensure that adequate hardware/infrastructure is in place and capable of handling the extra resources that may be required to support the services performed.
- Any additional software licensing needs related to this service/process configuration have not been considered or included as part of service packages. Client is responsible for ensuring that the required software licensing is available.
- If the Services require MCCi to access or use any third party software products provided or used, Client warrants that it shall have all rights and licenses of third parties necessary or appropriate for MCCi to access or use such third party products and agrees to produce evidence of such rights and licenses upon the reasonable request of MCCi and to indemnify, hold harmless and defend MCCi from and against any claims, actions, demands, lawsuits, damages, liabilities, settlements, penalties, fines, costs and expenses (including reasonable attorneys' fees) to the extent arising from MCCi's access to or use of such third party products.
- Client will maintain primary contacts and project staff for the duration of the project, as a change in staff may result in a change order for time spent by MCCi on retraining, reeducating, or changes in direction.
- Through the course of this project, MCCi may choose to utilize the third-party service Asana (<http://www.asana.com>) for project management and team collaboration. Documentation and correspondence exchanged between MCCi and Client may be stored in Asana.
- Client will ensure that all Client's personnel who may be necessary or appropriate for the successful performance of the services will, on reasonable notice: (i) be available to assist MCCi's personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures in a timely manner; (ii) participate in the services as reasonably necessary; and (iii) be available to assist MCCi with any other activities or tasks required to complete the services.
- All pricing assumes Client will grant MCCi unattended access to the required infrastructure for the project. Failure to provide this access can result in a change order increasing the cost to the client and the timeline of the project.

## IMPLEMENTATION SERVICES PACKAGE

MCCI's certified personnel will administer these services to assist Client with implementing the software/subscription components purchased.

### MCCI ACTIVITIES AND/OR DELIVERABLES

Professional Services may include any of the following for the purchased components:

- Project management associated with the proposed solution:
  - Outlining requirements
  - Setting expectations for project success
- Assistance with basic repository configuration and user account setup (Laserfiche only)
- Basic configuration of all software components and remote installation as needed
- Review of implemented solution

## LASERFICHE TRAINING SERVICES

Client is provided with instructor-led Laserfiche training, hands-on, or train-the-trainer.

### SYSTEM ADMINISTRATION TRAINING

- Windows Client Installation
- System Settings
- Troubleshooting Procedures
- Tags
- Users and Groups
- Document Relationships
- Technical Support Overview
- Audit Trail (If purchased)
- Volumes
- Templates
- Security

### FULL USER TRAINING

- Introduction to Laserfiche
- OCR and Full Text Indexing
- Exporting a Document
- Index Fields/Templates
- Folders and the Folder Browser
- Searching & Annotations
- Scanning and Importing
- Document Display
- Security
- Customize Laserfiche

## BASIC RECORDS MANAGEMENT CONFIGURATION

MCCI will configure Records Management in Client's repository using Transparent Records Management (TRM). Using TRM, both records managers and general users can organize the same repository in the manner they each prefer, simultaneously. The process is "transparent" because it enables general users to see through the complex records management layout to their desired structure. Records management requirements do not interfere with day-to-day business needs, and records managers can retain control over the way information is categorized and filed outside of the view of everyday users of the system.

### CLIENT DELIVERABLES

- Provide unattended access to servers hosting related application to project
- Provide a Client representative to participate in organizing the repository through templates and folder structure and plan out the templates, record types, and folder structure, not to exceed 15 record types that will be implemented
- Provide all necessary information on the retention schedules to be implemented
- Assemble a testing team to complete User Acceptance Testing (UAT) within two (2) weeks of the completion of deployment
- Complete all final testing and confirmation that process functions as described

## MCCi ACTIVITIES AND/OR DELIVERABLES

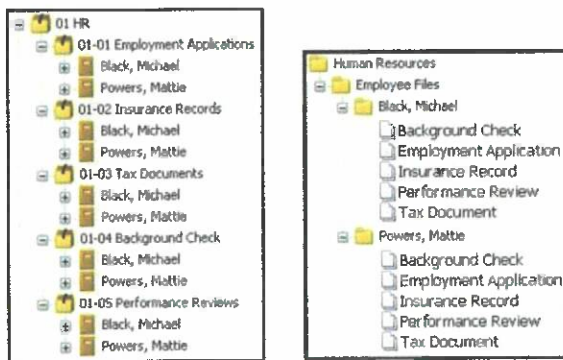
- Create up to three (3) templates, up to 15 Record Series, and up to 15 folders
- Build workflow(s) to file record in correct record series and create a shortcut in the end user folder structure. Workflows will be based on information that users input into the template when adding the document to Laserfiche. These workflows will be for filing purposes only and not include any business process steps for approval, review, etc.
- Build a workflow to run on a schedule set by Client that sends an email notification (to Client's Records Manager and up to one (1) other user) with up to three (3) links to display a list in the Web Client of all records available for cutoff, disposition, or vital records that need review
- Conduct ½ day of "train the trainer" training on administering and executing the document import process, records keeping, purging and other records keeping responsibilities inside Laserfiche including:
  - Understanding how the completed workflows function
  - Participating in the workflows and basic records management actions (searching, cutoff procedure, destruction)
- Conduct alpha and beta testing on the built processes. MCCi will transition project to Client UAT team once beta is complete and successful

## EXCLUSIONS

- Assigning an external URL for Laserfiche Forms or Web Access
- Creating or maintaining a Laserfiche backup and recovery plan
- Creating training documentation for these processes
- Conducting final testing prior to Client going live with the system and configurations
- Managing or providing upkeep of the Laserfiche Records Management System
- Configuring any e-mail notifications for records management actions outside of basic notifications for records available for cutoff, records available for disposition, and vital documents for review
- Anything not listed as included

## ASSUMPTIONS

- Client must own Laserfiche Records Management Edition and Laserfiche Workflow
- Client owns and has Laserfiche Web Client installed and configured





## SUPPLEMENTAL SUPPORT PACKAGES

As Client's first-tier solution provider, MCCi provides multiple options for technical support. Client's annual renewal covers application break/fix support, version downloads, and continued educational resources. MCCi offers supplemental support packages to cover remote training, basic configuration services, and maintenance of existing business processes. MCCi Managed Support Services (MSS) or Process Administration Support Services (PASS) packages are strongly encouraged to be included with every renewal. Supplemental Support Packages are annual subscriptions and pricing is based on the package purchased and an advanced discounted block of hours, which expire on the same date as Client's annual renewal.

### LASERFICHE

Description	Managed Support Services
	MSS 2
Easy access to MCCi's team of Certified Technicians for application break/fix support issues (i.e. error codes, bug fixes, etc.) <sup>+</sup>	■
Remote access support through web conferencing service <sup>+</sup>	■
Access to product update version and hotfixes (Client Download) <sup>+</sup>	■
24/7 access to the Laserfiche Support Site and Laserfiche Answers discussion forums <sup>+</sup>	■
Additional Remote Basic Training	■
Additional System Settings Consultation	■
Assistance with Implementation of Version Updates	■
Annual Review (upon Client's request) of Administration Settings	■
Priority Offering of Laserfiche CPPs & Laserfiche Empower Registration Scholarships	■
Configuration and maintenance of <i>basic</i> business processes and MCCi packaged solution utilizing Laserfiche Forms and Workflow	■
Configuration of Laserfiche Quick Fields sessions	■
Basic Records Management Module Overview Training	■
Administration Configuration Services	■
Dedicated Certified Professional	
Proactive recurring consultation calls upon the Client's request	
Annual Review of business process configurations	
Institutional Knowledge of Client's Solution	
Maintenance of MCCi/Client configured <i>complex</i> business processes	
Ability to schedule after-hours migrations/upgrades Monday-Friday 8 am to 10 pm ET and Saturday-Sunday from 12 pm to 4 pm ET	
Basic JavaScript, CSS, and Calculations for Laserfiche Forms <sup>+</sup>	

<sup>+</sup> Client's Support/Subscription Renewal includes these benefits, regardless of whether a supplemental package is purchased.

\* Excludes the development of new integrations, large-scale development projects, and SQL queries.

\*\* **Hours:** MCCi allows clients to use their hours for a multitude of services, as long as a request will not start a service that cannot be completed with the hours available. None of the packages listed above are intended to be utilized to configuration a new *complex* business process. In those instances, a separate SOW is required.

## **BUSINESS PROCESS DEFINITIONS (RELATIVE TO THE TABLE ABOVE)**

A Workflow, Forms, or Quick Fields process that automates or streamlines an organization-specific process.

- **BASIC:** A business process requiring minimal configuration and virtually no institutional knowledge of the Client's business process, allowing an MCCi Application Support Analyst to assist with configuration, support, and maintenance of the process.
- **COMPLEX:** A large business process with an extensive configuration that is mission-critical to the organization.
  - *EXAMPLES:* Large accounts payable process with a high volume of transactions, approval steps, database lookups, etc. Complex business processes require MCCi's Application Support Analyst to have institutional/process knowledge to configure the process.
  - For creation of new complex Forms, Workflow, and Transparent Records Management configurations, please discuss a Business Process Configuration Service with Client's Account Executive or Account Manager.
- **MCCi Packaged Solution:** A solution MCCi has created for a market that has a specific business process automation use.

## **SUPPLEMENTAL SUPPORT PACKAGE DESCRIPTIONS**

### **CLIENT RESPONSIBILITIES (ALL PACKAGES)**

- For self-hosted (applications hosted by Client) solutions: Configuring/maintaining backups and any general network, security, or operating system settings outside of Client's solution (Laserfiche, ABBYY, Blue Prism).
- Managing application-level security.
- Managing and creating retention policies related to Records Management Module.
- Providing an IT contact (internal or third-party) for MCCi to work with as necessary.
- Providing remote access capabilities as needed. If the Client requests MCCi to have unattended access, the Client assumes all responsibility for the related session(s). The Client will work with MCCi to set up user profiles, user tags, etc. to allow desired security rights/access.
- Creating/providing process diagrams (and any other necessary paperwork/examples).

### **MANAGED SUPPORT SERVICES LEVEL 2 (MSS 2)**

MCCi's **MSS 2** package provides all of the MSS benefits plus is for clients who need additional administration services.

**MSS 2** pricing for the advanced block of hours is based on MCCi's Support Technician II hourly rate discounted by 10%. The number of hours included is based on active products and will expire on the same date as Client's annual renewal. **MSS 2** can be used for the following:

- **ADMINISTRATION CONFIGURATION SERVICES**

MCCi will assist with administration configuration services, including setting up users, metadata, security, etc.

- **CONFIGURATION AND MAINTENANCE OF BASIC BUSINESS PROCESS**

Utilizing Laserfiche Forms and Workflow, MCCi will assist with the configuration and maintenance of *basic* business processes (see definitions above). Examples include Filing Workflows, simple Forms, or approval/notification workflows that have few routing steps, no integration, and little to no database lookups.

- **CONFIGURATION OF LASERFICHE QUICK FIELDS SESSIONS**

Using Client's current Quick Fields modules, MCCi will configure Quick Fields sessions, excluding custom scripting, custom calculations, etc.

- **BASIC RECORDS MANAGEMENT MODULE OVERVIEW TRAINING**

MCCi will provide refresher overview training of the records management module. Initial training cannot be performed under this support level.

- **MAINTENANCE OF MIDDLEWARE/CONFIGURABLE INTEGRATIONS**

Does not include maintenance of custom-built integrations, or any item not purchased from MCCi.

## **SERVICE LEVEL AGREEMENT (SLA)**

MCCi's SLAs are offered as additional options to Client's annual support/subscription. An SLA offers clients escalated response times depending on the severity of the support issue, as well as other additional benefits. The SLA documentation and pricing is readily available upon request. MCCi currently has two separate SLAs available:

- Infrastructure Hosting
- Application Support (Client Self-Hosted)
- Application Support (Cloud Applications)

## **THE TRAINING CENTER FOR LASERFICHE**

MCCi's Training Center for Laserfiche annual subscription provides an easy, cost-effective way for all users in Client's organization to access training videos for Laserfiche and ABBYY.

### **BENEFITS**

- 24/7 access to on-demand Laserfiche training videos and other resources
- Reduction in training expenses
- Caters to all skill levels from Basic Users to Advanced System Administrators
- Unlimited access for Client's entire organization
- User determined schedule and pacing
- Reduction in internal support and increased user productivity
- Increased efficiency through improved internal usage/adoption
- Instant/budgeted training available in the case of employee turnover
- Enhance Client's organization's internal Laserfiche training program

*\*The Training Center subscription gate is based on Laserfiche user counts*



# MCCi ASSUMPTIONS

---

## TECHNICAL SUPPORT

Clients may contact MCCi support via MCCi's Online Support Center, email ([support@mccinnovations.com](mailto:support@mccinnovations.com)), or telephone 866-942-0464. Support is available Monday through Friday (excluding major holidays) from 8 am to 8 pm Eastern Time.

## PROFESSIONAL SERVICES

### CHANGE ORDER PROCESS

Any deviations from the contract will be documented in a Change Order that Client must execute.

### CONFIGURATION ASSISTANCE

Many of MCCi's packages list remote configuration assistance for up to a certain number of days. This is based on total days, not business days.

### TRAVEL

MCCi will schedule travel in consecutive days for most engagements unless otherwise stated or agreed upon.

### SCHEDULING

All rates are based on normal business hours, Monday through Friday from 8 am to 5 pm local time. If scheduling needs to occur after business hours, additional rates may apply.

## RETURN POLICY

Any product returns are subject to the manufacturer's return policy.

## LIMITED LIABILITY

If the Master Agreement is silent on each Parties' limited liability, liability is limited to the amount of dollars received by MCCi directly associated with this Order.

## PRE-EXISTING INTELLECTUAL PROPERTY (IP)

The following products noted below are deemed Pre-existing IP as defined in the Master Agreement and are not considered "Works Made for Hire" and as such all rights, title or interest remains with MCCi. Client shall retain, a non-exclusive, royalty-free, world-wide, perpetual license to use the product(s) if such product(s) is integrated into the solution purchased by Client.

- Laserfiche PowerPack by MCCi
- Laserfiche EnerGov Integration by MCCi
- Laserfiche Neogov Integration by MCCi
- GoFiche Suite for Avante/Rio/Subscription
- Common Web Service API for Laserfiche

## CLIENT SOLUTION CUSTOMIZATIONS

Client may also choose to customize their system internally, without MCCi's help. MCCi is not responsible for any damages caused by the user's customization of the system not performed by MCCi. MCCi will not be held responsible for correcting any problems that may occur from these customizations. Routine updates to as provided by software

manufacturers may affect any customizations made by entities other than MCCi. If MCCi's help is required to correct/update any customizations made by any entity other than MCCi, appropriate charges will apply.

## **CLIENT INFORMATION TECHNOLOGY ASSISTANCE**

For MCCi to excel in providing the highest level of service, Client must provide timely access to technical resources. Client must provide adequate technical support for all MCCi installation and support services. If Client does not have "in-house" technical support, it is Client's responsibility to make available the appropriate Information Technology resources/consultant when needed.

# LASERFICHE CLOUD ASSUMPTIONS

*The following assumptions are current as of the date of order. Manufacturer's terms and conditions are subject to change.*

## REQUIREMENTS

Laserfiche Cloud is not recommended for clients with less than 10 mb/s download and upload speed. Client is responsible for ensuring they meet these requirements.

## LASERFICHE CLOUD AGREEMENT

As part of Client's account activation process, Laserfiche requires acceptance of the Laserfiche Cloud Agreement, which is made available by Laserfiche during the activation process, or can be supplied by MCCi upon request.

- By accepting this Order, Client acknowledges Laserfiche's Cloud Agreement and agrees to abide by its terms and absolve MCCi of any Laserfiche Cloud product-related liability.

## LASERFICHE SOFTWARE SUPPORT PLAN

MCCi acts as first-tier support and works with Laserfiche, who would provide second-tier level support when needed. Laserfiche software support plans are bundled Laserfiche Cloud systems. All software support plans are on a yearly subscription basis and accompany the applicable software product designed, developed, created, written, owned, or licensed by Laserfiche. Laserfiche Cloud system subscribers are advised to export data from their Laserfiche system prior to cancellation or any other termination.

### ACTIVE LASERFICHE SOFTWARE SUPPORT PLAN BENEFITS INCLUDE:

- Easy remote access to MCCi's team of Laserfiche Gold Certified Support Technicians
- Continued access to Client's Laserfiche solution

### POLICIES

- Laserfiche Cloud subscriptions are annual, prepaid and non-refundable
- The annual term start date for new systems is established by Laserfiche at the time MCCi submits an order to Laserfiche on Client's behalf. This is not contingent upon a completed implementation.
- For expansion purchases, the applicable service period is prorated to match Client's existing or future service period, which is dependent on Laserfiche's then current policy and the timing of the expansion order vs. the Client's annual service period renewal date (i.e. prorating for less than 4 months may not be permissible due to the timing of renewal invoicing.)

### LATE PAYMENTS

- If payment is not received before Client's renewal date, Client's Laserfiche software support plan expires. Please allow up to five (5) business days after receipt of payment for MCCi to process renewal payment to Laserfiche.
- Impact of Expiration:
  - Client will be able to access MCCi Support Technicians for 30 days post expiration. However, if there are support issues that require Laserfiche involvement, these issues cannot be resolved until Client's support is renewed.
  - Access to Client's Laserfiche Cloud solution will be turned off after 30 days and Client's access.
- Cloud products cancelled 30+ days before the renewal date will not be charged a cancellation fee.

- Cloud products cancelled 1 – 30 days before or on the renewal date will be charged a 10% cancellation fee based on the total annual Laserfiche Cloud subscription cost.
- Cloud products cancelled 1 – 30 days after the renewal date will be charged a 50% cancellation fee based on the total annual Laserfiche Cloud subscription cost.
- Cloud products cancelled 30+ days after the renewal date are nonrefundable.
- Subscribers are advised to export data from their Laserfiche system prior to cancellation or any other termination.

Cloud Renewal Cancellation Timeframe	Cancellation Fee
<b>30+ days before the renewal date</b>	No Fee
<b>1-30 days before or on the renewal date</b>	10% Cancellation Fee
<b>1-30 days after the renewal date</b>	50% Cancellation Fee
<b>30+ days after the renewal date</b>	Non-Refundable

## **OVERAGE FEES FOR DATA STORAGE/BANDWIDTH**

If additional data storage or bandwidth is needed mid-term, additional charges will apply. MCCi recommends reviewing this annually and pre-purchasing any additional storage/bandwidth based on anticipated needs.

## **DATA RESTORATION SERVICES**

On an exception basis and subject to written approval from Laserfiche, Client may receive assistance to restore data which it may have lost as a result of its own actions. Additional fees may apply.

## **LASERFICHE SOLUTION PROVIDER OF RECORD**

As Client's current Solution Provider of Record, Laserfiche's policy dictates that MCCi is the only Laserfiche Solution Provider that has access to Client's support account, along with the ability to process subscription renewals and initiate additional purchases on Client's behalf. Unless Client decides to cancel Client's contract with MCCi or work with Laserfiche to formally change Client's Laserfiche Solution Provider of Record, future purchases and subscription renewals will be processed and provided by MCCi.

*[remainder of page intentionally left blank]*

**ADDENDUM NO. 2 TO MASTER SERVICES AGREEMENT NO. 24347**

**SCANNING ORDER**

Pursuant to Master Services Agreement No. 24347 ("**Agreement**"):

This Scanning Order, designated as Addendum No. 1 is entered into as of \_\_\_\_\_, ("**Addendum Effective Date**"), by and between MCCI and Client and is hereby incorporated into the Agreement and made a part thereof. If there is any conflict between a provision of the Agreement and this Addendum, the Agreement will control. Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. This Order supersedes any previous quote or proposals received.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum No. 2 to be executed by their respective duly authorized representatives as of the Addendum Effective Date.

**MCCI, LLC**

**TOWN OF MALABAR ("Client")**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# PROJECT SCOPE 1:

## GENERAL DESCRIPTION

DOCUMENT SIZE	Regular up to 11" x 17" and Large Format up to 42" wide
DEPARTMENT	Building Department
DOCUMENT TYPES	Permits
DOCUMENT COUNT	3,150
IMAGE COUNT	Regular Format: 76,800 Large Format: 6,650

## DOCUMENT PREPARATION

CURRENT STORAGE METHOD	Boxes in offsite warehouse and cabinets at Town Hall
CONDITIONS OF DOCUMENTS	Documents are well organized in regular banker's boxes in climate-controlled environment. Average number of staples and clips for these record types. A lot of folded plans mixed with regular format pages in the permit files

## IMAGE PROCESSING & INDEXING

DPI & COLOR	300 DPI, Black & White
NUMBER OF INDEX FIELDS	Up to 3 Fields, but only Permit Number will be keyed (indexing database will be provided by the client)
DOCUMENT NAMING CONVENTION	Permit Number
FIELDS TO BE INDEXED	Permit Number, Section/Township/Range/Address
OPTICAL CHARACTER RECOGNITION	Included for Regular Format Images

## IMAGE OUTPUT

DELIVERY METHOD	Secure FTP Transfer
OUTPUT TYPE	Laserfiche Briefcase

## MATERIAL HANDLING

SHIPPING LOGISTICS	MCCi Pickup
SHIPPING & DELIVERY TERMS	One roundtrip pickup and return is included in pricing
PHYSICAL DOCUMENTS	Return to Client

- *All estimates below have been provided and/or confirmed by Client. Both Parties agree that the Pricing defined herein is based on the Project Scope and the following assumptions. If documents are not as initially represented, additional charges will apply. MCCi will call for authorization to proceed with the project. Client is to provide database of indexing data for automated population of additional stated index fields by performing a look up based on the keyed permit number. If the data provided is incorrect or missing, additional fees would apply for manual indexing or fields would be left blank.*



## PROJECT SCOPE 2:

### GENERAL DESCRIPTION

DOCUMENT SIZE	Regular up to 11" x 17"
DEPARTMENT	Clerk and Finance
DOCUMENT TYPES	Minutes, Resolutions, AP/AR Files
DOCUMENT COUNT	4,100
IMAGE COUNT	86,000
IMAGES PER DOCUMENT	Approximately 20

### DOCUMENT PREPARATION

CURRENT STORAGE METHOD	Boxes in offsite warehouse and cabinets at Town Hall
CONDITIONS OF DOCUMENTS	Documents are well organized in regular banker's boxes in climate-controlled environment. Average number of staples and clips for these record types.

### IMAGE PROCESSING & INDEXING

DPI & COLOR	300 DPI, Black & White
NUMBER OF INDEX FIELDS	Up to 2 Fields
DOCUMENT NAMING CONVENTION	Clerk Files - Date or Resolution Number Finance - Vendor Name
FIELDS TO BE INDEXED	Clerk Files - Date, Meeting Type or Ordinance/Resolution Number Finance - Vendor Name and Year
OPTICAL CHARACTER RECOGNITION	Included

### IMAGE OUTPUT

DELIVERY METHOD	Secure FTP Transfer
OUTPUT TYPE	Laserfiche Briefcase

### MATERIAL HANDLING

SHIPPING LOGISTICS	MCCi Pickup
SHIPPING & DELIVERY TERMS	One roundtrip pickup and return is included in pricing
PHYSICAL DOCUMENTS	Return to Client

*All estimates below have been provided and/or confirmed by Client. Both Parties agree that the Pricing defined herein is based on the Project Scope and the following assumptions. If documents are not as initially represented, additional charges will apply. MCCi will call for authorization to proceed with the project.*

## MILESTONES, TASKS & DELIVERABLES

MILESTONE	TASKS / DELIVERABLES
<b>#1: Project Kickoff</b>	<p><b>Tasks:</b> Client's MCCi salesperson will set up a project kickoff call. During the kickoff call, the MCCi team will walk Client through the project scope and contract. Requirements, timeline, pickup and delivery, and other project specifics will be discussed with Client.</p> <p><b>Assumptions:</b> MCCi may utilize Basecamp to communicate with Client on a regular basis about project progress, issues, etc.  MCCi may not conduct Client kickoff for continuations of existing project(s).</p>
<b>#2: Sample Sign-Off</b>	<p><b>Tasks:</b> Once Client documents are brought into MCCi facility and reviewed, the MCCi team will scan a sample of Client's documents. MCCi will select settings based on the Project Scope, and to make sure Client's documents are being digitized in a manner that preserves as much detail, clarity, and quality as possible.</p> <p>MCCi will deliver these sample scans to Client electronically for review. Once Client agrees that the sample scan quality is satisfactory, the MCCi team will proceed with the rest of the project.</p> <p><b>Assumptions:</b> Sample scans may not be needed if MCCi and Client have previously worked on similar conversion projects together.  Client will review sample scans within two (2) business days of receiving them from MCCi.</p>
<b>#3: Scheduled Finished Product Delivery</b>	<p><b>Deliverable:</b> At regular intervals (typically monthly), the MCCi team will electronically deliver the digitized documents that were finished in the previous period.</p> <p><b>Assumptions:</b> Billing will occur upon completion of this milestone.  These documents will have gone through MCCi prepping, scanning, and quality control processes.  The delivery schedule will vary based on the size and scope of project.</p>
<b>#4 Physical Document Return</b>	<p><b>Tasks:</b> Once the last finished product delivery has taken place, Client's documents will be returned in the fashion indicated in the Project Scope. Documents will continue to be treated with care until they are in Client's possession.</p> <p>Client should review all returned documents to ensure all originals are back in their possession.</p> <p>If Client has chosen to have MCCi destroy their documents (as opposed to being returned), Client will receive written notification that the documents have been destroyed.</p>



# PRICING



3717 Apalachee Parkway, Suite 201  
Tallahassee, FL 32311  
850.701.0725  
850.564.7496 fax

**Bill to:** Debby Franklin  
[townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)  
**Ship to:** Lisa Morrell  
[lmorrell@townofmalabar.org](mailto:lmorrell@townofmalabar.org)

**Quote Date: February 17, 2022**  
**Quote Number: 22736**

<b>Project 1</b> – Conversion of Documents estimated cost	\$26,531.00
Regular Format Excess Images @ \$0.171	
Large Format Excess Images @ \$1.88	
NCPA Discount	(\$1,314.05)
<b><u>TOTAL ESTIMATED PROJECT COST</u></b>	<b>\$25,216.95</b>

<b>Project 2</b> – Conversion of Documents estimated cost	\$16,272.00
Regular Format Excess Images @ \$0.176	
NCPA Discount	(\$801.10)
<b><u>TOTAL ESTIMATED PROJECT COST</u></b>	<b>\$15,470.90</b>

*All Quotes Expire in 30 Days*

**This is NOT an invoice. Please use this confirmation to initiate your purchasing process.**

NCPA Pricing - The pricing and terms in this statement of work ("SOW") are derivative of the "Not-To-Exceed" digitization rates that were competitively sourced through the National Cooperative Purchasing Alliance (NCPA). The rates and terms listed are based upon the complexity and volume of the project(s) outlined in this SOW. The rates listed may be applied to additional projects that haven't been specifically outlined in this SOW, but MCCi reserves the right to verify the complexity of those projects and if needed modify the rates accordingly.

## BILLING SCHEDULE

Deliverables will be billed monthly for work completed during the previous month. Client is responsible for all images processed by the MCCi project team. Any expected overages will be raised with Client before such overage is to occur so that Client can appropriately make arrangements to accommodate for the overages.

## SALES TAX

Sales tax will be invoiced where applicable and is not included in the fee quote above.

## SCANNING ASSUMPTIONS

---

The following assumptions serve as the basis for this SOW. Any service or activity not described in this SOW is not included in the scope of services to be provided. Variations to the following may impact this SOW's cost and/or schedule and require a change order.

### DELIVERABLE ACCEPTANCE CRITERIA

- Both Parties acknowledge that the acceptance period noted herein is in conflict with the Master Agreement and the terms defined below take precedence.
- MCCi's delivery of a Deliverable to Client shall constitute that MCCi has conducted its own review and believes it meets Client's requirements.
- Client shall then have the right to conduct its own review of the Deliverable as Client deems necessary.
- MCCi's acceptable error rate will be less than 0.5% for the overall project, unless otherwise stated in writing. MCCi cannot be accountable for records not reflected in the original inventory report provided by Client. MCCi will correct only those valid discrepancies above the acceptable error rate reported within the Acceptance Period (defined below).
- If Client, in its reasonable discretion, determines that any submitted Deliverable does not meet the agreed upon expectations, Client shall have 30 days after MCCi delivers the Deliverable to Client (the "Acceptance Period") to give written notice to MCCi specifying the deficiencies in reasonable detail.
  - MCCi shall use reasonable efforts to promptly resolve any such deficiencies.
  - Upon resolution of any such deficiencies, MCCi shall resubmit the Deliverable for review as set forth above.
  - Notwithstanding the foregoing, if Client fails to reject any Deliverable within 30 days, such Deliverable shall be deemed accepted.

### GENERAL

- Client is to provide database of indexing data for automated population of additional stated index fields by performing a look up based on the keyed permit number. If the data provided is incorrect or missing, additional fees would apply for manual indexing or fields would be left blank.
- Charges apply on a per project basis and are dependent upon size and volume of documents. MCCi requires having the entire project in bulk, rather than in small quantities. Breaking the project into smaller quantities will affect the volume pricing, and additional charges per image may apply. A sample may be required prior to confirming large volume job pricing.
- Client agrees that the work described herein represents MCCi's current best estimate and is subject to possible change due to circumstances beyond MCCi's direct control and/or new or additional information discovered during the course of the project. Further, Client understands and acknowledges that MCCi's ability to meet such work schedule is dependent upon, among other things, the accuracy of the assumptions and representations made by Client, the timeliness of Client business decisions, and the performance of Client and Client's vendor personnel in meeting their obligations for this project and in accordance with this Order.
- MCCi maintains partnerships for the purpose of offering additional capacity and flexibility in meeting Client expectations. In the event partners are used for a project, the management and support of the project will be handled directly by MCCi. Physical documents will never leave the United States, but our partners may utilize offshore resources to handle document indexing, quality control, and other processes.
- Through the course of this project, MCCi may choose to utilize the third-party service Basecamp (<http://www.basecamp.com>) for project management and team collaboration. Documentation and correspondence exchanged between MCCi and Client may be stored in Basecamp.

## DOCUMENTS

- Client understands that MCCi will process every image supplied to MCCi by Client as furnished. Client is responsible for removing any documents before shipping to MCCi for processing.
- Client will furnish MCCi with all hardcopy/electronic documents for its use in preparing the document imaging project for conversion. Upon completion of scanning, MCCi will return the documents to the Client in the order as received from Client but not placed back into their file folders/envelopes or re-prepped unless specifically stated otherwise in the Project Scope.
- Client is required to package all materials per MCCi's instructions prior to shipment/delivery of materials to MCCi's facility. If Client chooses to utilize MCCi's pickup and delivery service (offered in select states), pricing is based on picking up the entire project described in the scope of services in one (1) shipment. At the time of updating or if additional trips are required due to Client not having all the documents ready for pick up, additional charges will be applied. If Client chooses to ship via a certified carrier, Client incurs all shipping costs.

## DOCUMENT & DATA STORAGE

- MCCi's facilities contain secure rooms for hardcopy "work in progress" document storage. MCCi will arrange for the return of hardcopy documents to Client after completion of scanning. If documents reside at MCCi facilities for a period longer than 90 days after converted electronic data is delivered to Client, storage charges of \$2.50 per cubic foot per month will apply.
- MCCi is not responsible for maintaining a copy of Client data, with the exception of clients who subscribe to MCCi's Online Document Hosting Services. MCCi periodically reviews and deletes Client data from previous projects. The timing of the periodic review and deletion of data is at MCCi's discretion. If Client requires MCCi to delete copies of its data prior to MCCi's standard process of deleting data, Client is responsible for submitting an official request in writing and for obtaining confirmation of data deletion.

## LASERFICHE

Laserfiche system clients with a pre-existing template are required to supply MCCi with a Laserfiche Briefcase of their current folder/template structure, prior to each scanning project.

## LIMITED LIABILITY

If the Master Agreement is silent on each Parties' limited liability, liability is limited to the amount of dollars received by MCCi directly associated with this Order.

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 4.e.  
Meeting Date: March 7, 2022

Prepared By: Lisa Morrell, Special Projects Manager

---

**SUBJECT: Procurement of Electronic Sign Using Other Agency Contract –Art-Kraft Sign Company, LLC**

---

### **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. “*

City of Palm Bay issued and awarded a competitive solicitation for a electronic sign under RFP-#05-9-2017 to Art-Kraft Sign Company LLC, located at 2675 Kirby Circle NE, Palm Bay, Florida 32905. Art-Kraft has provided a proposal for the same product installation and services associated with the awarded solicitation to the Town of Malabar.

### **FINANCIAL IMPACT:**

Budgeted Funds available in Disaster Recovery FUND 525 as an eligible expense of State and Local Fiscal Recovery Fund (SLFRF), General Fund Uses designated by Standard Allowance approved at RTCM 2/7/2022.

### **ATTACHMENTS:**

Notice of Award CPO.PDF  
Town of Malabar Monument Sign Design Proposal.PDF

### **ACTION OPTIONS:**

Motion to approve the use of other agency contract, RFP #05-9-2017 and procure electronic sign, design, and installation from Art-Kraft Sign Company, LLC, located at 2675 Kirby Circle NE, Palm Bay, Florida 32905.

**POSTING DATE**  
March 7, 2017

## NOTICE OF AWARD

The Chief Procurement Officer awarded the following:

Solicitation No.	Title of Solicitation	Contractor Information	Amount of Award
RFQ # 27-0-2017/ET	Street Sweeping	Pete's Land Clearing LLC PO Box 4453 Clearwater, FL 33758 Phone 727-858-5980 Email <a href="mailto:peteslandsclearing@hotmail.com">peteslandsclearing@hotmail.com</a>	\$15,844.00
RFP # 05-0-2017/SB	Palm Bay Community Center Sign (Rebid)	Art-Kraft Sign Company 2675 Kirby Circle NE Palm Bay, FL 32905 Phone 321-727-7324 Fax 321-951-2466 Email <a href="mailto:don@art-kraft.com">don@art-kraft.com</a>	\$34,530.00





# ART-KRAFT SIGN COMPANY, INC.

# PROPOSAL

QUALITY SIGNAGE SINCE 1968

2675 KIRBY CIRCLE, PALM BAY, FL. 32905 · PH 321.727.7324 · FX 321.951.2466 · WWW.ART-KRAFT.COM

**Proposal Submitted To:**

Town of Malabar

**Contact Name**

Lisa Morrell

**Phone**

**Date**

2/14/2022

**Sales Person**

Matt Reilly

**Job Name & Location**

Malabar Community Park  
1830 Malabar Rd.  
Malabar, FL.

**Fax**

**Designer**

Wayne

**E-mail**

LMorrell@TownofMalabar.org

**Design #**

42585

**We propose hereby to furnish material and labor complete in accordance with specifications below, for the sum of:**

**\$37,225.00 + applicable taxes**

**Payment to be made as follows:**

Deposit of 50% down

**Balance due upon completion. Credit Card payments subject to a 2% service fee.**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature

Matt Reilly

*We hereby submit specifications and estimates for:*

AKS to supply all labor/materials to complete the following:

42585: Remove and dispose of existing monument sign.

Manufacture and install double sided internally illuminated sign with pan-formed acrylic faces. Faces to have 3M vinyl graphic overlay. Sign to have TwinPak16MM Watchfire RGB Displays with 4G LTE Connection (Plan included)  
\*20A Electrical connection provided by others\*

PRICE:\$37,225.00 + applicable tax

\*Note permitting/engineering fees billed as extra @AKS cost plus cost to obtain\*

OPTION: Above Double-Sided monument with 10MM Hi-Res Watchfire Displays

PRICE: \$43,595.00 + applicable tax

**REVISED**  
2:07 pm, Feb 14, 2022

Customer Notes LM2 2/14/2022

16MM Watchfire RGB Displays Acceptable as proposed \$37,225+

Use of Other Agency Award 05-0-2017 PBCC Sign.

Sign Design - Strike Community Center; Add "d" to Florida

Color Match to Town Logo Teal: Hex:37AFD1 or CMYK: 74,16,0,18 and Orange Hex:EA933C or CMYK 0,37,74,8)

Seeking Town Council Approval on 3/7/22, PO can be executed next business day upon approval.

**\*\* NOTE: Permit & Engineering to be billed as extra @ AKS cost, plus cost to obtain.\*\***

**NOTE: THIS PROPOSAL MAY BE WITHDRAWN FROM US IF NOT ACCEPTED WITHIN 30 DAYS**

1. All signage to remain property of Art-Kraft Sign Company, Inc. until paid in full. The Client/Buyer agrees to pay all cost in the event of default of payment by the Client/Buyer, including a reasonable attorney's fee.
2. The Client/Buyer hereby grants Art-Kraft Sign Company, Inc. the right of entry into and on the property of the Client/Buyer for the purpose of retaking possession of the signage in the event of default.
3. Any payments not timely received by Art-Kraft Sign Company, Inc. shall bear interest from the due date at the rate of 18% per annum until paid in full.
4. Primary electric to signs by others. Primary electric not included in price.

**Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.**

Digitally signed by Lisa Morrell  
Date: 2022.02.14 14:10:33 -05'00'

Customer Signature

2/14/2022

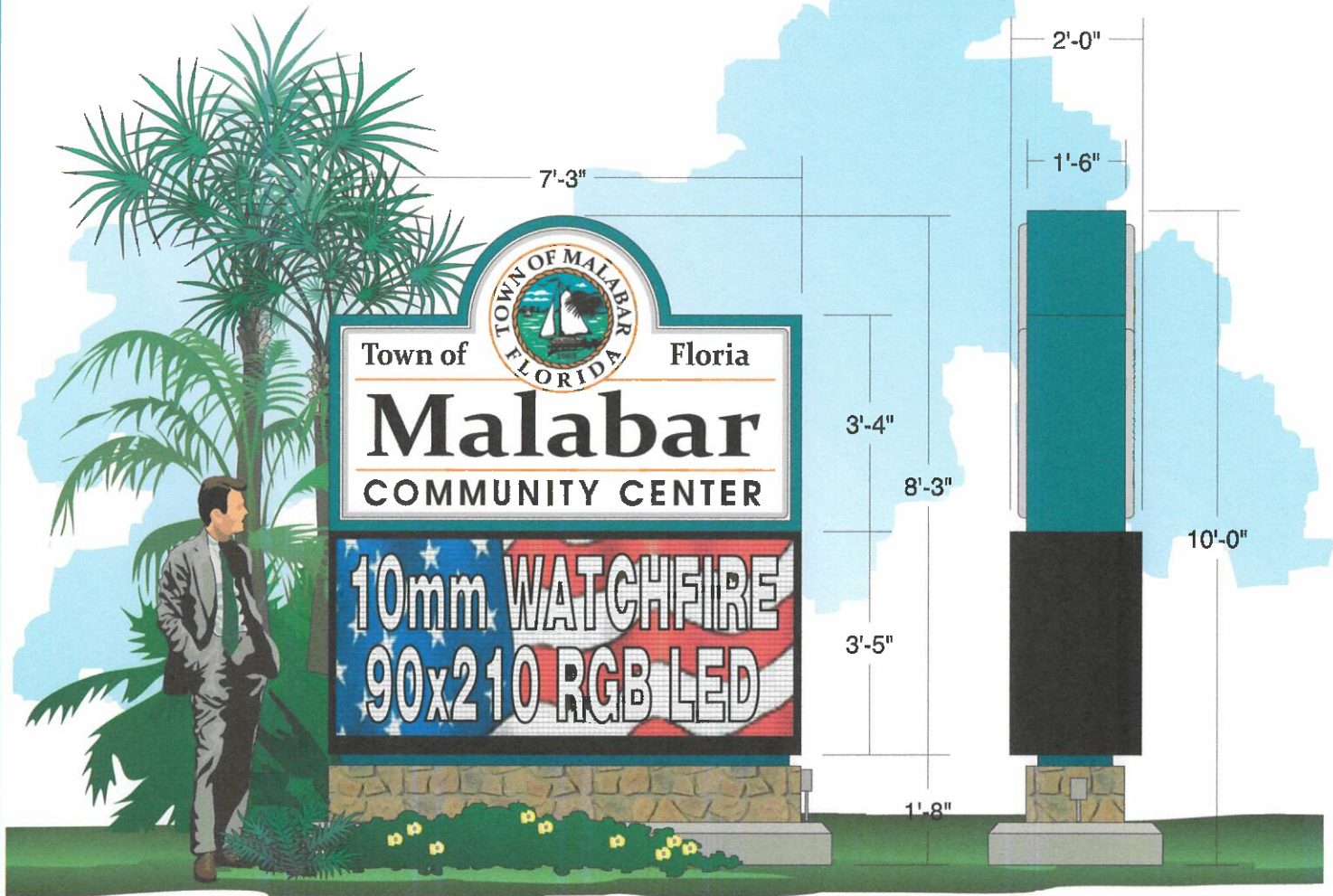
Date

WE ARE PLEASED TO ACCEPT





TOWN OF MALABAR COMMUNITY PARK  
 1830 MALABAR RD.  
 MALABAR FL



**INTERNALLY ILLUMINATED DOUBLE SIDED PYLON SIGN**

SCALE 3/8" = 1'-0"

FABRICATED ALUMINUM SIGN WITH INTERNAL ALUMINUM ANGLE FRAME CONSTRUCTION  
 ID FACES TO BE 3/16" THICK PAN FORMED ACRYLIC WITH OUTSIDE SURFACE APPLIED TRANSLUCENT VINYL DECORATION  
 ID CABINET TO HAVE INTERNAL WHITE "LED" ILLUMINATION  
 CABINET FINISHED IN SATIN ACRYLIC ENAMEL, COLOR TO MATCH 230-246 TEAL  
 POLE COVER TO HAVE TEXTURE PLUS STONE VENEER COVERING  
 BASE TO HAVE LT. SPRAY STUCCO ENAMEL FINISH  
 MESSAGE UNITS TO BE WATCHFIRE "TWIN PAK" 10mm, FULL COLOR RGB DISPLAYS WITH 90 x 210 MATRIX  
 LED DISPLAYS MOUNTED BACK TO BACK TO INTERNAL SUPPORT STRUCTURE  
 SIGN INSTALLED ON SINGLE VERTICAL STEEL SUPPORT POLE WITH DIRECT BURIAL CONCRETE FOUNDATION  
 STONE VENEER SHOWN BY OTHERS



*Celebrating 54 years of Quality Manufacturing and Service*



**ART-KRAFT SIGN COMPANY, INC.**

2675 Kirby Circle N.E. Palm Bay Fl., 32905 (321) 727-7324 FAX (321) 951-2466

DESIGN NO. 42585	CUSTOMER TOWN OF MALABAR
DESIGNER WAYNE	SALES REP. MATT
DATE 2 - 11 - 22	SCALE 3/8" = 1'-0"
ART-KRAFT SIGN COMPANY IS NOT RESPONSIBLE FOR PRIMARY ELECTRICAL HOOK-UP OF SIGN	
CUSTOMER APPROVAL	

www.Art-Kraft.com ArtKraftSigns



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 4.f.**  
**Meeting Date: March 07, 2022**

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

---

**SUBJECT: Approve Glenn's Tire and Service Company for Town's Heavy Equipment Tires**

---

### **BACKGROUND/HISTORY:**

The Town has historically used Callagy Tires for the needs of the Public Works and Fire Department vehicle tires and related services. They have now closed.

I sent requests for quotes to the three resellers of HERC tires in this area and asked for pricing on service calls and grader tires to get comparisons.

Requests for Quotes were sent to Glenn's Tires on US 1 in Melbourne, Gatto's in Cocoa (location for heavy equipment tires) and Moody's Tire Service in Wabasso, Florida.

Moody's was a no response and Gatto's and Glenn's were close but when you consider the distance to take equipment to vendor for service or pay for service at the PW yard, Glenn's offers a much more economical price. They charge one \$95.00 service charge to do a site visit whereas Gatto's charges \$85.00 per hour for onsite work.

Staff requests Council approval to use Glenn's Tire and Service Company for Malabar heavy equipment tire needs.

**FINANCIAL IMPACT:** As estimated annually in the budget for Fire Dept and Public Works

### **ATTACHMENTS:**

- Quotes from Glenn's and Gatto's
- Draft Minutes of RTCM Minutes of 2/07/2022

### **ACTION OPTIONS:**

Council Action on Consent Agenda



Gatto's Tires & Auto Service  
 510 N. Cocoa Blvd  
 Cocoa, FL 32922  
 (321)632-7500

FEB 16 2022 PAGE 1

RECEIVED

Customer ID: 0003001009  
 Name: Town of Malabar  
 Address: 2725 Malabar Road  
 Address 2:  
 City, State, Zip Code: MALABAR, FL, 32950  
 Home Phone: (321) 727-7764  
 Work Phone: () -  
 Mobile Phone: () -  
 Tax Exempt #: TOWN OF MAL

Year:  
 Make: GRADER  
 Model: GRADER  
 Lic No:  
 VIN:  
 Color:  
 Engine:  
 Mileage In: 0  
 Mileage Out: 0

Create Date: 02/16/22 15:09:24  
 Date/Time: 02/16/22 15:13:01  
 Workorder #: 3635  
 Invoice #:  
 Email Address: townclerk@townofmalabar.org  
 PO Number:  
 Fleet/Wholesale: N

Salesperson: E. HODGE  
 Service comments:

TIRE PRESSURE: LF \_\_ RF \_\_ LR \_\_ RR \_\_ SPARE \_\_  
 ITREAD DEPTH: LF \_\_/32 RF \_\_/32 LR \_\_/32 RR \_\_/32 SPARE \_\_/32

Qty.	Part #	RFR	Loc	Description	Parts	Labor	Total
6	*94715			15.5-25/12 TL 168A2 HER L2 LOA	638.99	0.00	3,833.94
6	MOUNT			MOUNT/DISMOUNT TIRE	0.00	50.00	300.00
6	047100			ORING	7.25	0.00	43.50
6	046356000			COMMERCIAL TIRE DISPOSAL FEE	15.00	0.00	90.00
1	046166			ON-SITE REGULAR HOURS PER	0.00	85.00	85.00
<b>Sub-total:</b>					<b>3,967.44</b>	<b>385.00</b>	<b>4,352.44</b>

\*\*\* Customer Wishes To Discard Old Parts \_\_\_\_\_ \*\*\*



QUOTATION #-7381747  
02/14/2022  
(Acct#: 100001)

GLENN'S TIRE & SERVICE COMPANY  
2726 SOUTH HARBOR CITY BLVD  
MELBOURNE, FL 32901  
PH. 321-723-0751

CASH ACCOUNT THANK YOU FOR YOUR BUSINESS! MELBOURNE, FL 32901	Lic: <i>g</i>	Quoted By: HOUSE Billed By: SEAN
---	---------------	-------------------------------------

Qty	Product #	Size/Description/Mfr#	Unit Price	F.E.T.	Ext.Amount
1	ROAD1	SERVICE CALL MELBOURNE AREA	95.00		95.00
6	94715	15.5X25 HERC L2 LOADER TL12 PR	648.13		3888.78
6	TC12	TIRE CHANGE LOADER-GRADER 15.5/17.5	50.00		300.00
6	OR25T	ACCESSORY- OR25T SMALL 25 INCH O-RING	7.50		45.00
6	OTR SCRAP 1	LOCAL SCRAP DISPOSAL	16.00		96.00

TOWN OF MALABAR

FEB 15 2022

RECEIVED

*Grader Tires*

Parts/Tires	Labor/Other	Supplies	Disc/Adj	F.E.T.	Subtotal	Sales Tax	Total
3933.78	491.00	22.00	0.00		4446.78	<u>311.27</u>	4758.05

PO#	Terms:	DUE DATE	AMT. DUE	Misc. Adj.		
				0.00	\$	0.00
				0.00	\$	0.00
				4758.05	\$	4758.05

Pg: 1/1

**Thank you for your TRUST!**  
*Serving Brevard since 1952*

An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto.

Standard New Parts and Repair Labor Limited Warranty is 12 months/12,000 miles unless superceded by Manufacturer's Warranty or otherwise indicated.

GLENN'S TIRE IS NOT RESPONSIBLE FOR LOSS OR DAMAGE TO VEHICLES OR ARTICLES LEFT IN VEHICLES IN CASE OF FIRE, THEFT OR ANY OTHER CAUSE BEYOND OUR CONTROL.

A 1.5% (18% APR) service charge will apply to past due balances.

SAFETY NOTICE: Your wheels have been torqued to the recommended settings. Wheel torque must be re-checked within 50-100 miles of any wheel removal. Failure to do so could lead to serious personal injury.

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 4.g.  
Meeting Date: March 07, 2022

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

---

**SUBJECT: Approve Purchasing Card Program with Bank of America under the State of Florida Contract No. 84121500-15-01**

---

### **BACKGROUND/HISTORY:**

This is another one of the projects we have been working on since last fall. We met with the State of Florida Department of Management Services representatives in December to gather information, submit qualifying paperwork and financials. We have just received notice that we have been determined to be eligible and have met the credit approval process.

SPM Lisa is drafting the operational regulations that will be the backbone for the purchasing update information in the ordinance as well as the Standard Operating Procedures handbook she is compiling.

This purchasing card program will give us more flexibility to customize each card to the user and set individual limits, restrictions, types of purchases allowed, as well as places the card can be used. It also will provide individual accountability to get the proper authorization and expenditure account information to the finance department before payment is made.

This program will improve the accounting process and provide better transparency.

There is also a rebate calculation provided within in this program. Malabar's expenses probably won't meet the threshold for rebates initially, but the potential is there as its use is expanded.

Staff will provide more detail on this when we bring the operational regulations before you for adoption in an upcoming meeting.

Signing the Eligible User Agreement is the first step in this process.

### **ATTACHMENTS:**

- State of Florida Purchasing Card Program Eligible User Agreement

### **ACTION OPTIONS:**

Council Action on Consent Agenda

## **State of Florida Purchasing Card Program Eligible User Agreement**

In accordance with State Term Contract No. 84121500-15-01

The State of Florida Department of Management Services ("Department" or "DMS") has agreed that State Agencies and local government entities in the State of Florida (each an "Eligible User") may utilize the purchasing card program of the State of Florida ("Purchasing Card Program") as the basis for establishing a purchasing card program with an Eligible User.

This Eligible User Agreement (the "Agreement") is entered into by (the "Eligible User") and Bank of America (the "Contractor") as of the date last signed by the parties (the "Effective Date"). By signing this Agreement, the Eligible User requests, and the Contractor agrees to provide to the Eligible User, the corporate purchasing card services set forth in State Term Contract number 84121500-15-01. Incorporated documents do not negate the provision of the Contract. Any product, service or maintenance provisions that do not comply with Florida law or require an Eligible User to indemnify the Contractor are invalid. The Eligible User and the Contractor agree as follows:

- A. All defined terms in the Contract apply to this Eligible User Agreement.
- B. By signing this Eligible User Agreement, the Eligible User and the Contractor agree to be bound by the terms of this Eligible User Agreement and the Contract in the performance of their obligations. By signing below, the Eligible User represents that a copy of the Contract has been provided or made available to it.
- C. With regard to Eligible User participation, the following applies:

### 1. Eligible User Warranties.

The Eligible User represents and warrants to the Contractor that:

- 1.1 it is an Eligible User, as defined under the Contract;
- 1.2 it is contracting for purchasing card services with the Contractor, and its performance of its obligations under this Agreement and the Contract will not violate any law, regulation, judgment, decree or order applicable to it; and
- 1.3 it desires to utilize the Purchasing Card Program ("Program") of the Department as the basis for establishing a purchasing card program.

The Eligible User acknowledges and agrees that, notwithstanding anything to the contrary in the Contract, the Contractor will provide the Department and DFS with access to the following information: (i) Eligible User's name and agreement to the provisions of the Contract and the Agreement; (ii) data related to the Eligible User's Cardholder Transactions and use of the purchasing card program; and (iii) amount of rebate paid by the Contractor to the Eligible User under the Program.

## 2. Contractor's Obligations.

2.1 Card Accounts. The Contractor will open Card Accounts, upon the Eligible User's request, which Cardholders may use to conduct Transactions for the Eligible User's business. All Transactions made on a Card Account are considered authorized by the Eligible User unless the Contractor receives, and has had a reasonable period of time to act upon, written notice from the Eligible User that the Cardholder is no longer authorized to use the Card or the Card Account.

At the Eligible User's request, the Contractor may also establish a Cardless Account. If an OEU so requests, the Contractor will provide to the Cardholder, at the address the OEU specifies, a Billing Statement reflecting the Cardholder's use of the relevant Card Account.

2.2 External Fraud. The Contractor will assume the financial liability for all external fraud if the Eligible User or Cardholder has not authorized or participated in the specific Transaction. If there is internal fraud or collusion, the Contractor will deliver misuse insurance provided by the card network to help the Eligible User with recovery from card networks.

## 3. Eligible User's Obligations.

3.1 The Eligible User shall use each Card Account solely for business purposes, and shall pay according to section 13, Exhibit C, Special Contract Conditions, for each Transaction, regardless of its purpose or whether the Eligible User signed a sales draft or received a receipt.

3.2 The Eligible User represents and warrants to the Contractor that each Cardholder is a current employee, or for OEU's, an employee or agent of the OEU. If a Cardholder ceases to be the Eligible User's employee or agent, the Eligible User must provide notice as soon as practicable and destroy or return to the Contractor as soon as practicable the Card allocated to that Cardholder.

3.3 The Eligible User will promptly furnish such financial and other information as the Contractor requests for the purpose of reviewing the Eligible User's ability to perform the Eligible User's obligations to the Contractor. Notwithstanding the foregoing, the financial information for State Agencies is located at:

[http://www.myfloridacfo.com/aadir/statewide\\_financial\\_reporting/index.htm](http://www.myfloridacfo.com/aadir/statewide_financial_reporting/index.htm). The Eligible User represents and warrants that all information about the Eligible User, its employees, and agents is accurate and sufficiently complete to give the Contractor accurate knowledge of the Eligible User's financial condition.

3.4 The Eligible User and each Cardholder will check to ensure that the information on each new Card is correct, and the Eligible User will contact the Contractor if there is an error.

3.5 The Statewide Purchasing Card Administrator or OEU Eligible User must give Contractor prompt written notice of any addition, deletion or change of its Purchasing Card Administrator.

3.6 The Eligible User is responsible for maintaining the security of its data outside the Contractor's or Contractor's vendors' systems. The Contractor is responsible for maintaining the security of the Eligible User's data on the Contractor's or Contractor's vendors' systems.

3.7 Compliance with Law. The Eligible User must comply, and ensure that its Cardholders and Transactions comply with all laws to which the Eligible User, the Cardholder or the Transaction may be subject, including all AML/Sanctions Laws. The Eligible User must provide all notifications or information necessary to allow the Contractor to comply with obligations under any AML/Sanctions Laws, including (if necessary) providing any information required to establish and verify the identity and background of any Cardholder. The Eligible User represents and warrants to the Contractor that the performance of its obligations will not violate any law or facilitate illegal transactions.

3.8 OFAC Covenant. The Eligible User covenants that it will not use or permit any Cardholder to use, any Card, Cardless Account, Cash Advance or Convenience Check to transact, lend, contribute, or otherwise make available funds to any Subsidiary, joint venture partner or other individual or entity ("Person"), to fund any disallowed activities of or business with any Person, in Cuba, Iran, North Korea, Sudan, Syria, or in any country or territory, that, at the time of such funding, is the subject of any Sanctions, or in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as advisor, investor or otherwise) of Sanctions.

3.9 Credit Limit. The Contractor will establish one total credit limit for all Card Accounts issued to the Eligible User and all of its Cardholders. The Eligible User shall determine an individual credit limit for each Cardholder Account which is part of any of its Card Accounts issued to the Eligible User and all of its Cardholders. The individual credit limits for each Cardholder Account, when aggregated, may exceed the total credit limit for all Card Accounts issued to the Eligible User and all of its Cardholders. However, this will not increase the total credit limit. Upon the Eligible User's request and if approved by the Contractor, the Contractor may increase the total credit limit or any individual limit. The Contractor may decrease the total credit limit or any individual limit in its reasonable discretion with notification to the Eligible User as soon as practicable, but in no event later than the same date as the decrease.

3.10 Transactions Exceeding the Credit Limit. The Eligible User agrees not to incur obligations which would cause the total credit limit for all Card Accounts to be exceeded. The Contractor will make available online tools and standard reporting to monitor cardholder activity. If the Eligible User exceeds the total credit limit for all Card Accounts, the Contractor may refuse any Transactions on all Card Accounts. The Contractor also may require the entire balance owing on the most recent Billing Statement to be immediately due and payable before further use of Card Accounts. If the Eligible User's individual Card limit is exceeded and that individual Cardholder Account is individually billed, the Contractor may (i) refuse any Transactions applicable to that Cardholder Account until a payment is made to reduce the balance below the individual Cardholder's credit limit or until the Eligible User increases that Cardholder's credit limit; and (ii) charge the Eligible User a fee as set in the Schedule of Charges in Exhibit A-1 (attached hereto).



3.11 Currency Conversion. If an Eligible User or its Cardholders make a Transaction in currency other than U.S. dollars, Visa or MasterCard will convert the charge or credit into a U.S. dollar amount. The conversion rate on the processing date may differ from the rate on the date of your Transaction. The exchange rate used by Visa will either be (i) a rate selected by Visa from a range of rates available in wholesale currency markets for the applicable central processing date, which rate may differ from the rate Visa receives, or (ii) the government-mandated rate in effect for the central processing date. MasterCard will use an exchange rate of either (i) a wholesale market rate or (ii) a government-mandated rate.

3.12 International Transaction Fee. The Contractor may add a fee to the U.S. dollar amount of any Transaction that is made in a foreign currency (the "International Transaction Fee"). The International Transaction Fee is set in the Schedule of Charges in Exhibit G (as defined in State Term Contract number 84121500-15-01) and Exhibit A -1 (attached hereto).

#### 4. Disputes with Merchants and Suppliers.

4.1 Disputes with Merchants and Suppliers. The Contractor will have no liability for goods or services purchased with, or for a Merchant's or Supplier's failure to honor purchases made with a Card Account. If the Eligible User has any questions, problems or disputes concerning the quality of any goods or services purchased using a Card Account or Card, a purchase price discrepancy, warranty or other performance issues or any other purchase matter, the Eligible User must contact the Merchant or Supplier directly. The Eligible User may not rely on any claim or dispute concerning the purchase of goods or services using a Card Account or Card as a reason to avoid the Eligible User's payment obligations under the Contract. Notwithstanding the foregoing, when the Contractor processes any request for a Transaction refund through a card network on the Eligible User's behalf, which for the avoidance of doubt shall be processed in accordance with the operating rules and regulations of such card network, the Eligible User agrees that, in a dispute with a Merchant or Supplier, the Contractor will be subrogated to the Eligible User's rights and each Cardholder's rights against the Merchant or Supplier and the Eligible User will assign (and cause the Cardholder to assign) to the Contractor the right to assert a billing error against the Merchant or Supplier. The Eligible User will, and will cause the Cardholder to, do whatever is necessary to enable the Contractor to exercise those rights. The Contractor may reverse from any Card Account any Transactions relating to the dispute.

4.2 Authorization for Transactions. A Merchant or Supplier may seek prior authorization from the Contractor before completing a Transaction. If the Eligible User advises the Contractor in writing that the Eligible User desires to restrict Transactions to Merchants falling within certain categories the Contractor designates, to the extent consistent with the Statement of Work and the Contract, the Contractor will take reasonable steps to prevent authorization of Transactions from other types of Merchants. The Contractor, however, will not be liable to the Eligible User if Merchants or suppliers nonetheless accept a Card for other types of Transactions, or if authorization for a Transaction is not given. The Contractor may also refrain from authorizing a Transaction for any reason in the Contractor's reasonable discretion.

4.3 Forms of Consent. If a Transaction is made using a Card or a Card Account number, the Eligible User needs to consent to the Transaction (whether by a Cardholder giving consent or otherwise) so that the Contractor can make sure that it is genuine. A Transaction can be consented to by:

- i. using a Card with the relevant card PIN or a signature;
- ii. using the account number and other details requested;
- iii. presenting a Card to the supplier's terminal if the Transaction is made using contactless technology; or
- iv. such other means as the Department and the Contractor may from time to time agree.

The Contractor may deem Transactions which have not been consented to in one of the above manners to be unauthorized and the Contractor may decline to process such Transactions. This is in addition to any other rights the Contractor has to decline Transactions according to Eligible User Agreement Sections 4, 5.1, or 5.2 (disputes, authorizations and Unauthorized Use).

## 5. Lost or Stolen Cards; Unauthorized Use.

5.1 Authorization Denials. The Contractor may refrain from authorizing any Transaction:

- i. if the Contractor suspects that the Transaction is or might be fraudulent or unlawful or for the purpose of any fraudulent or unlawful activity;
- ii. if the Contractor suspects that the Transaction constitutes or might constitute Unauthorized Use as defined in Section (3)(yyy), Exhibit A, Definitions; or
- iii. if to authorize that Transaction would cause the Contractor to breach any law (including any AML/Sanctions Laws by which the Contractor must abide).

5.2 Failure to Authorize. Subject to applicable law, the Contractor will not be liable to the Eligible User if the Contractor fails to authorize or declines any Transaction for any reason. If a Transaction is not authorized or declined, the Eligible User may seek, and the Contractor will provide, reasonable assistance in investigating and resolving the declined or unauthorized Transaction.

5.3 Reporting a Loss, Theft or Unauthorized Use; Assisting with Investigations. In the event of a possible loss or theft of a card, or Card Account or possible Unauthorized Use, the Eligible User will give the Contractor notice as provided in section 10.6, Exhibit D, Statement of Work, or using the Solution. The Eligible User agrees to give the Contractor this notice as soon as reasonable after discovery of the known or suspected loss or theft or Unauthorized Use. If notice is provided and the Eligible User assists the Contractor in investigating the loss, theft or possible Unauthorized Use, then the Eligible User will not be liable for Transactions resulting from Unauthorized Use. If the Contractor has issued fewer than ten Card Accounts to the Eligible User, the Eligible User's liability for Transactions by a person who does not have actual, implied or apparent authority to use the Card, or Card Account and whose use does not result in a direct or indirect benefit to the Eligible User, will not exceed \$50 on each Card.

## 6. License to Use the Eligible User's Marks.

Upon the Eligible User's request, the Contractor may place the Eligible User's trademark, trade name, service mark and/or designs ("Eligible User's Marks") on the Cards consistent with section 10, Exhibit D, Statement of Work. The Eligible User will provide the graphics to the Contractor in sufficient time to allow for review and approval by the Contractor and, if necessary, the respective card network. The Eligible User or the State, as applicable, grants to the Contractor a non-exclusive license to use, during the term of the service, Eligible User's Marks on the Cards.

#### 7. Convenience Checks.

In the event the Contractor provides Convenience Checks with regard to an OEU Card Account, the Convenience Checks may not be used to make payment on the Card Account. The Contractor may pay a Convenience Check and post its amount to the Card Account regardless of any restriction on payment, including a Convenience Check that is post-dated, that states it is void after a certain date or that states a maximum or minimum amount for which it may be written. Once paid, Convenience Checks will not be returned to the OEU or the Cardholder.

If an OEU wishes to stop payment on a Convenience Check, it must call the Contractor at the customer service number shown on the Billing Statement and provide such information as the Contractor requests or is required under the relevant User Documentation. The Contractor will stop payment if the request is received on or before the Business Day on which the Contractor would otherwise pay the Convenience Check. The date on which the Contractor would pay a Convenience Check may be prior to the date it would post to the Card Account. A stop payment order will remain in effect for up to six months.

#### 8. Cardless Accounts; Accounts not in Name of Individual.

The Contractor may establish a Cardless Account or establish a Card Account with a designation which is not an actual individual, including, without limitation, designation of a vehicle identification number, license number, department name or "Authorized Representative" on the Card Account if requested by the Eligible User. The Eligible User may provide the number associated with the Cardless Account to its Cardholders. The Eligible User agrees to be solely responsible for the use of any such Cardless Account or Card Account, including, without limitation, any Unauthorized Use. The Contractor will however assist the Eligible User with any disputed transaction as described in Section 4.

#### 9. Statements and Payment.

For Eligible Users see section 13, Exhibit C, Special Contract Conditions. For OEUs, see Sections 9.1 – 9.5.

9.1 Issue of statements. The Contractor will provide to the Card Administrator, or other person the OEU designates in writing, a Billing Statement which will identify each Transaction posted during the billing cycle and the date of the Transaction. The Billing Statement will also list any applicable fees and charges for a Service. If the OEU has requested a Card Account for travel and entertainment Transactions, the Contractor will provide, upon the OEU's request, an additional copy of the Billing Statement covering such use of the relevant Card Account to the appropriate Cardholder at the address which the OEU or the Cardholder provides to the

Contractor. The OEU agrees that the Contractor may provide Billing Statements or make Billing Statements available by electronic means, including by way of electronic mail or a Website.

9.2 Review of statements. On the OEU's receipt of a Billing Statement, the OEU must review it and notify the Contractor by telephone (using the appropriate telephone number set out in the Billing Statement), electronic mail, or other method that may be agreed upon by the parties of any Transaction appearing on that statement which the OEU considers may have resulted from any Unauthorized Use. The OEU must give this notice as soon as practicable but in any event not later than 60 days after the OEU receives the Billing Statement. If the OEU opts to have individual statements sent to individual Cardholders, the OEU must ensure that each relevant Cardholder complies with the provisions of this Section 9.2. Subject to the requirements of any applicable laws, if the OEU does not (or if a relevant Cardholder does not) give the Contractor notice in accordance with this Section 9.2, the Contractor may not be liable to refund any amounts relating to that Transaction.

9.3 Payment of statement amount. The OEU will pay, or ensure that the relevant Cardholder pays on the OEU's behalf, to the Contractor the total amount shown as due on each Billing Statement on or before the Payment Due Date shown on the statement. If the Contractor does not receive payment in full by the specified due date, in addition to its other rights, the Contractor may assess a late fee and finance charge as set in the Schedule of Charges for the OEU in Exhibit A -1 (attached hereto). The OEU has no right to defer any payment due on any Card Account. For the avoidance of doubt, if individual billing applies, the Contractor will collect from the OEU for any amount due which is not paid by a Cardholder.

9.4 Service fees. The OEU will pay the Contractor for a Service set in the Schedule of Charges in Exhibit A -1 (attached hereto).

9.5 Account identification. If an OEU or any Cardholder makes any payment to the Contractor in connection with a Card Account, it must, or ensure that the Cardholder must, at the same time provide the Contractor with either the account number or the Card number. The Contractor shall not be liable for any delay in crediting any such payment or recording any Transaction, where this information is not provided to the Contractor in accordance with this Section 9.5.

## 10. Termination.

10.1 All terminations are contingent on written notice. The following events may be the basis for termination for default:

10.1.1 If an Eligible User fails to pay when due undisputed charges totaling at least two months' charges under the Contract and fails to make such payment within fifteen (15) days after receipt of written notice of non-payment from the Contractor referencing this section, and stating that the Contractor intends to terminate the Eligible User Agreement for nonpayment, then the Contractor may terminate the Agreement as of the date specified by the Contractor in a separate written notice of termination. This notice is contingent on prior completion of a dispute resolution process between the parties.

10.1.2 If an Eligible User fails to comply with any material law or regulation controlling its operation, including AML or Sanctions Law, the Contractor has the right to file a notice of termination immediately, which notice shall specify the asserted non-compliance and attach supporting evidence.

10.1.3 If an Eligible User materially breaches any of the terms and conditions of this Agreement, and does not cure or commence a cure of the breach within 30 days of written notice, then the Contractor has the right to file an immediate notice of termination contingent on prior completion of a dispute resolution process between the parties.

10.2. If an Eligible User experiences a material adverse change in the Eligible User's financial condition and the Eligible User's ability to perform its obligations under the terms of the Eligible User Agreement are negatively impacted, then the Contractor may terminate the specific Eligible User Agreement after providing written notice referencing this section and stating that the Contractor intends to terminate the Eligible User Agreement as of a date specified in the notice of termination. This notice is contingent on prior completion of a dispute resolution process between the parties.

10.3 Upon any termination of an Eligible User Agreement, the Eligible User will immediately destroy, and will instruct all Cardholders to immediately destroy, all Cards. The Eligible User's responsibility to pay for all undisputed Transactions regarding each Card Account will continue until the Eligible User notifies the Contractor to close the Card Account or until the Eligible User pays for all Transactions entered into before the Contractor closes the Card Account to future use, whichever occurs later. The Contractor and the Eligible User shall settle all outstanding liabilities and all claims arising out of such termination. After termination, the Eligible User and all Cardholders will make no new Transactions on any Card Account. If, however, the Eligible User makes such Transactions, the Eligible User will be liable for each of them. These obligations will continue after a service the Eligible User is using has been terminated.

#### 11. Receipts Imaging Service.

The OEU may elect to use the Contractor's receipts imaging service whereby the OEU will send copies of its transaction receipts, and the Contractor will electronically store those receipts (the "receipts imaging service"). It is the OEU's obligation to send the Contractor legible copies of transaction receipts. The OEU acknowledges and agrees that the Contractor will not review the transaction receipts and that the OEU is responsible for retaining the original receipts. The Contractor will not be liable for damages if the images are illegible or blank or for failure to provide copies by a given time or for failure to provide copies the Contractor is not reasonably able to provide. Images will be made available to the OEU by website at such times as may be set forth in the applicable User Documentation or as otherwise established by the Contractor. There is no charge for this service.

#### 12. Notices.

Any notice required or permitted to be given under this Eligible User Agreement or the Contract from one party to the other will be in writing and will be given and deemed to have been given when actually received, if hand delivered, delivered by telephonic facsimile transmission equipment and confirmed by telephone, with and original mailed or hand-delivered thereafter or

mailed by certified or registered mail with postage prepaid to the Party or their successor at the address specified as follows:

i. Eligible User: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ii. Contractor: Bank of America  
P.O. Box 28  
Norfolk, VA 23510

*For overnight delivery send to:*  
Bank of America  
Commercial Card: Floor 11  
3 Commercial Place  
Norfolk, VA 23510

Routine notices given by Contractor to the Eligible User, such as transaction details, changes in terms required by systems updates or payment card network changes and any reasonable notice required by the Contractor's licenses or schedules, may be delivered by electronic mail to the address provided by the Eligible User. Either party may change the address to which notices are to be delivered by giving to the other party not less than ten (10) Business Days prior written notice thereof.

13. Information Security/Data Protection.

Data Security requirements are described in section 7, Exhibit C, Special Contract Conditions. The following are policies of the Contractor:

13.1 Overall Data Security Regulations. As a financial institution, the Contractor is required to comply with the information security standards of, as applicable, the Gramm Leach Bliley Act and the regulations issued thereunder the Fair and Accurate Credit Transactions Act and the regulations issued thereunder; the Federal Financial Institutions Examination Council (FFIEC) criteria; the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice; the US Securities and Exchange Commission; FINRA; the NASD; and other federal statutory, national and international legal and regulatory requirements. The Contractor is evaluated regularly for compliance with these obligations by various US and international regulators, including, the US Office of the Comptroller of the Currency, as applicable.

13.2 Security and Confidentiality. The Contractor maintains an information security policy that: contains appropriate administrative, technical, and physical safeguards designed to protect against Information Security Events; conforms as required to the requirements of applicable data protection laws; and sets forth policies and procedures that are consistent with, to the extent applicable to the Services, PCI DSS standards, the card networks' rules and regulations; and Financial Services Industry Best Practices.

13.3 Organizational Security. All information is stored in the United States for programs in the United States and Canada.

13.4 Human Resources Security. The Contractor takes reasonable steps to ensure that its Workforce is aware of their obligations in the provision of the Services and applicable data protection laws, including that any unauthorized processing or disclosure of the Personal Data may lead to disciplinary action under their contract of employment or other contractual arrangements. Prior to receiving access to Personal Data, the Workforce and any Extended Workforce will receive appropriate security awareness training and recurring security awareness training at appropriate intervals. The access rights of the Contractor's Workforce with access to the Contractor's Information Processing System(s) or media containing Personal Data are removed upon termination of their employment, contract or agreement, or adjusted upon change of job function.

13.5 Physical and Environmental Security. Contractor protects all areas that contain Information Processing System(s) or media containing Personal Data by the use of security controls deemed appropriate by the Contractor.

13.6 Information Security Event Management. The Contractor maintains an incident response plan that addresses handling of Information Security Events. In accordance with such incident response plan, the Contractor will:

Provide Eligible User prompt, but in no event later than two (2) Business Days of becoming aware thereof, notice of any Information Security Event documented and verified by the Contractor as part of its standard incident response process that involves, or which the Contractor reasonably believes involves, the unauthorized access, use or disclosure of Eligible User's Personal Data.

Such notice shall, to the extent the Contractor is legally allowed, summarize in reasonable detail the Information Security Event and the corrective action taken or to be taken by the Contractor, if known at that time. The Contractor will promptly take all corrective action deemed necessary or appropriate by the Contractor at no additional charge to the Eligible User.

13.7 Security Assessments. The Contractor permits the Eligible User's representatives to perform one annual on-site or written assessment of the security controls used at the Contractor's data processing and business facilities. Also such assessment may be requested after an Information Security Event. Such assessments will be performed during regular business hours, at a date and time agreed to by both Parties, and will not require access to Information Processing System(s). Such assessments will be subject to the Contractor's security policies, procedures, and restrictions, including restrictions on access to data centers, the ability to perform hands-on testing, and copying of certain materials.

The Contractor scans internal and external facing Information Processing System(s) with applicable industry standard security vulnerability scanning software (including network, server,



application and database scanning tools) at a minimum once per month and perform mitigations that the Contractor deems appropriate to address issues identified.

The Contractor performs a comprehensive application penetration test and security evaluation of all websites used to store, access, or process Personal Data prior to use and at least annually thereafter.

---

IN WITNESS WHEREOF, the parties hereby execute this Eligible User Agreement as of the Effective Date.

**Bank of America, N.A.**

\_\_\_\_\_  
**Eligible User**

**Signature:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Signature:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

# **Schedule of Fees, Charges and Rebates**

## **Other Eligible Users**

**Please Note: Section III under “Rebate Calculation and Payment:” the equation formula, the Standard Transactions Rebate Multiplier Table and the Large Ticket / Partner Program Transactions Rebate Multiplier Table are confidential trade secret information.**

EXHIBIT A-1

I. GENERAL PRODUCT FEES AND CHARGES

General Fees	
Annual Card Fee	Waived
Logo Fee:	Fee Waived
Unique Custom Design Fee	As quoted
Return Payment Fee	Waived
International Transaction Fee	1.5% of USD amount*
Expedited Card Delivery Fee	<ul style="list-style-type: none"> <li>➤ U.S. Mail/Bulk Mail (Default)=No Fee</li> <li>➤ Overnight=\$35.00</li> </ul>
Overlimit Fee	Waived
Corporate Billed Fees	
Late Fee (assessed 3 days after cycle date when account is past due) (Assessed as a % of the past due amount for the current month's charges and any unpaid balances)	Pursuant to Section 218.70-218.80, Florida Statutes
Cash Advance Fee	2.5% of transaction amt (\$5 min/no max)
Individual Billed Fees	
Late Fee (assessed 3 days after due date when account is past due)	Pursuant to Section 218.70-218.80, Florida Statutes
Cash Advance Fee	2.5% of transaction amt (\$5 min/no max)

If you make a transaction in currency other than U.S. dollars, Visa or MasterCard will convert the charge or credit into a U.S. dollar amount. The conversion rate on the processing date may differ from the rate on the date of your transaction.

The exchange rate used by Visa will either be (i) a rate selected by Visa from a range of rates available in wholesale currency markets for the applicable central processing date, which rate may differ from the rate Visa receives, or (ii) the government-mandated rate in effect for the central processing date. MasterCard will use an exchange rate of either (i) a wholesale market rate or (ii) a government-mandated rate. We may add a 2% fee to the U.S. dollar amount of any transaction that is made in foreign currency or that is made outside the United States even if you pay in U.S. dollars (the "International Transaction Fee").

II. ELECTRONIC PRODUCTS SCHEDULE OF FEES AND CHARGES

Reporting and Data	
Works	Fee Waived
Payment Center	Fee Waived
Data File Feeds To Customers / Third Parties:	
<ul style="list-style-type: none"> <li>• Statement Billing File</li> <li>• EDI 811</li> <li>• Visa Commercial Format (VCF)</li> <li>• MC Commercial Data Format (CDF)</li> <li>• 1099 &amp; Socioeconomic Reporting</li> </ul>	Fee Waived
Visa Intellilink - OPTIONAL	\$4,166

END OF SCHEDULES I AND II

### III. US SCHEDULE OF REBATES

#### (Cycle and Grace Days)

##### REBATE DEFINITIONS

Capitalized terms, which are not defined in this Section III have the meanings ascribed in the applicable Card Agreement.

“Calculation Period” means the twelve (12) month period commencing on the first day of the month after Bank receives a fully executed original of the Agreement and thereafter, each subsequent twelve (12) month period.

“Credit Losses” means any balances which remain unpaid by Other Eligible User, Participant or a Cardholder six (6) billing periods after the closing date on the Billing Statement in which the Transactions, fees and charges appeared for the reporting period.

“Cycle Days” means the number of days from the start of the billing period to the Billing Statement date.

“Grace Days” means the number of days after the Billing Statement closing date within which payment is due.

“Large Ticket Interchange (LTI) Transactions” means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

“Rebate Multiplier” means the multiplier corresponding to the Standard Transactions volume, Cycle Days and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table below.

“Standard Transactions” means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

“Total Credit Losses” means, for any Calculation Period, the sum of (i) Bank’s Credit Losses on the Card Accounts for the Calculation Period and (ii) Bank’s Credit Losses on the Card Accounts for any previous Calculation Period which have not been applied against any rebate payable under the Agreement.

“Transaction Volume” means, for any Calculation Period, the total dollar amount of purchase Transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume.

##### REBATE CONDITIONS

During the Calculation Period, the program must meet all of the following conditions in order to qualify for a rebate:

- i. Other Eligible User and Participant pay Bank the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date; and
- ii. Other Eligible User and Participant complied with terms in this Agreement; and
- iii. Calculation Period Transaction Volume meets the minimum volume requirement as set out in the Standard Transactions Rebate Multiplier Table; and
- iv. The Agreement has not been terminated by either party prior to the completion of a rebate calculation period.
- v. The four conditions above, together being the “Rebate Conditions”.

## EXHIBIT A-1

**Please Note: Section III under "Rebate Calculation and Payment:" the equation formula, the Standard Transactions Rebate Multiplier Table and the Large Ticket / Partner Program Transactions Rebate Multiplier Table are confidential trade secret information.**

### REBATE CALCULATION AND PAYMENT

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, Bank will pay a rebate to Other Eligible User, which shall be calculated at the end of the Calculation Period in accordance with the Standard Transactions Rebate Multiplier Table and using the following equation:

$$\text{((Transaction Volume for Standard Transactions x Standard Transactions Rebate Multiplier) + (Transaction Volume for Large Ticket + Transaction Volume for Partner Programs) x Large Ticket and Partner Program Rebate Multiplier)} - \text{Total Credit Losses}$$

The Standard Transactions rebate multiplier will be determined based on the Calculation Period cumulative total of all Standard Transactions volume.

Payment of any rebate will be made by ACH credit or other means determined by Bank, within ninety (90) days following the end of the Calculation Period.

Should one or more of the above Rebate Conditions not be met, Bank will be under no obligation to pay any rebate, although Bank may, in its sole discretion, determine to pay a rebate in an amount determined by Bank. Bank's payment of a rebate in such circumstance will in no way obligate Bank to pay a rebate with respect to any subsequent Calculation Period.

Florida Other Eligible User (OEU)		Cycle days	7	14	14	30	30	30	30	30
Annual US Volume Tiers		Grace days	3	3	7	3	7	14	20	25
Excludes Large Ticket and Partner Program Transactions		<b>REBATE BASIS POINTS</b>								
0	\$999,999		0	0	0	0	0	0	0	0
\$1,000,000	\$2,499,999		125	123	120	117	115	110	106	102
\$2,500,000	\$3,499,999		160	158	155	152	150	145	141	137
\$3,500,000	\$6,999,999		167	165	162	159	157	152	148	144
\$7,000,000	\$9,999,999		170	168	165	162	160	155	151	147
\$10,000,000	\$14,999,999		181	179	176	173	171	166	162	158
\$15,000,000	\$19,999,999		187	185	182	179	177	172	168	164
\$20,000,000	\$24,999,999		195	193	190	187	185	180	176	172
\$25,000,000	\$29,999,999		202	200	197	194	192	187	183	179
\$30,000,000	\$34,999,999		203	201	198	195	193	188	184	180
\$35,000,000	\$39,999,999		204	202	199	196	194	189	185	181
\$40,000,000	\$44,999,999		205	203	200	197	195	190	186	182
\$45,000,000	\$49,999,999		206	204	201	198	196	191	187	183
\$50,000,000	\$59,999,999		207	205	202	199	197	192	188	184
\$60,000,000	\$84,999,999		208	206	203	200	198	193	189	185
\$85,000,000	\$99,999,999		209	207	204	201	199	194	190	186
\$100,000,000	+		210	208	205	202	200	195	191	187
Large Ticket/Partner Program		Cycle Days	7	14	14	30	30	30	30	30
Transaction Volume		Grace Days	3	3	7	3	7	14	20	25
		<b>REBATE BASIS POINTS</b>								
\$0	+		55	55	55	55	55	55	55	55



EXHIBIT A-1

Nothing in these schedules are intended to state a term for the Agreement. For the avoidance of doubt, any period of time set forth in the Schedules applies solely to pricing terms, but only to the extent the Agreement has not been terminated as set forth in the Agreement.

Notwithstanding anything to the contrary in the Agreement or any of its Schedules all fees, charges and rebates are subject to change upon 60 days' prior written notice to you if, in connection with us providing this card program, or any Services to you:

- i. An event external to us increases the cost or decreases the revenue to us;
- ii. There is any decrease to the interchange rates paid to us by a card network; or
- iii. There is an increase to funding costs due to interest rate changes;
- iv. There is any deterioration in your financial condition

END OF US SCHEDULE III

IV. ACKNOWLEDGEMENT

By signature of an authorized representative(s), you agree to the terms and conditions of this Schedule of Fees and Charges presented herein. This form must be signed in ink by an authorized representative(s) and submitted with the original signature to your Bank representative.

OTHER ELIGIBLE USER

Bank of America, N.A

\_\_\_\_\_ [OTHER ELIGIBLE USER NAME]

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or Type)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 10.a.**  
**Meeting Date: March 7, 2022**

**Prepared By: Lisa Morrell, Special Projects Manager**

---

**SUBJECT: Public Hearing – Lett Lane Right of Way**

---

### **BACKGROUND/HISTORY:**

Historical events have led to the closure or gated access of Lett Lane, north of Booth Road. Staff research has resulted in these past events results without the proper public notice requirements per FSS and Town of Malabar Ordinances that require notice and a public hearing with the legislative body, Town Council, for the closure of a right-a-way.

Town Council approved amended Chapter 13 to Provide for Road Closures and Vacates (Ordinance 2021-15) at the RTCM September 16, 2021, meeting essentially removing the language from Land Development Codes of Administrative Procedures for development only activities and applying those same codes to all activities applicable to streets and roads within the Town to Chapter 13, Streets and Roads.

Staff has determined the Scott Ryan received permission from a former Town Administrator to erect or construct a locked gate at the northerly portion of Lett Lane. Mr. Ryan posted (2) phone number contacts at the locked gate, if access was necessary, whereas Mr. Ryan would provide access upon contact coordination. The Town had keys to a previous lock, those locks have since been replaced where the keys were inoperable. Town staff has received (3) copies to the new locks installed and reside with the Town Manager. Mr. Ryan opposes the removal of the locked gate and provided to the Town copies of emails from property owners beyond the locked gate to continue and authorize Mr. Ryan to control and safeguard access to the vacant parcels to the north of Lett Lane.

Town staff has communicated to Mr. Ryan and stated that these were insufficient procedures, and the Town has a duty to remove the gates. The purpose of this agenda item is to follow the proper procedures to ensure the expressed authority to close a right of way by the procedures established in the Town's Code of Ordinances; to include but not limited to a public notice, a 500' radius package notice to the surrounding parcel owners, a legal advertisement, and a public meeting for approval by a resolution by The Town Council.

**SECTION 1. Chapter 13, Article II, Division 1, Section 13-26 Close, Vacate and Abandonment.**

- A. Definitions:** For purposes of this ordinance the following terms shall have the following meanings:
1. Close a public right-of-way shall mean the Town's authority to close, fence, gate off access to a public right-of-way without vacating same.
  2. Vacate and abandon shall mean vacate, abandon, renounce, disclaim or any other term that indicates the relinquishment of the Town's right, title, or interest in a public right-of-way.
  3. Public right-of-way shall mean public road, street, lane, thoroughfare, or travel way that has been platted or dedicated for public purposes such as roads, utilities, or stormwater
- B. The Town Council may by resolution "close" a portion of public right-of-way**

1. All requests to close any public right-of-way shall be by petition and shall state the name and address of requestor and the reason for the request
  - a. Such requests can come from residents or Town Staff.
  - b. A Radius Package from the Brevard County Property Appraiser or Planning and Zoning Department that includes a list of all property owners within five hundred (500) feet of the proposed closure of public right-of-way under request. Such list shall include a map of the radius area, mailing addresses for all affected property owners and a list by parcel ID and owner.
2. Before the adoption of any resolution "closing" any public right-of-way, the Town Clerk shall cause to be published in a newspaper of general circulation in the Town a notice that the Town Council shall hold a public hearing regarding said Ordinance 2021-15 Page 2 resolution. Said notice shall be published at least fourteen (14) days prior to the date of said public hearing
3. A courtesy copy of the notice shall be mailed to all property owners identified in subparagraph 1.b. above and to all utility companies serving south Brevard County.
4. The Requestor will present their petition at the Public Hearing meeting
5. Any decision by the Town Council concerning a vacate and abandonment shall be a legislative decision and governed by the fairly debatable standard.
6. Notice of the adoption of the resolution vacating and abandoning any public right-of-way by the Town Council shall be published one (1) time within thirty (30) days following its adoption in a newspaper of general circulation in the Town
7. The proof of publication of notice of the public hearing, the resolution adopted by the Town Council, and the proof of publication of the notice of adoption of the resolution all shall be recorded in the public records of Brevard County after same has been completed.

Staff has performed the aforementioned procedures for this agenda item.

**FINANCIAL IMPACT:**

Financial obligations to legal notice the public, obtain a radius package, and conduct a public hearing.

**ATTACHMENTS:**

9.14\_agenda\_ Road Closures and Vacates. PDF  
 Scott Ryan Emails.PDF  
 Resolution # *64-2022*

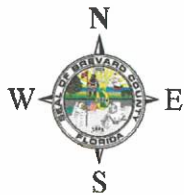
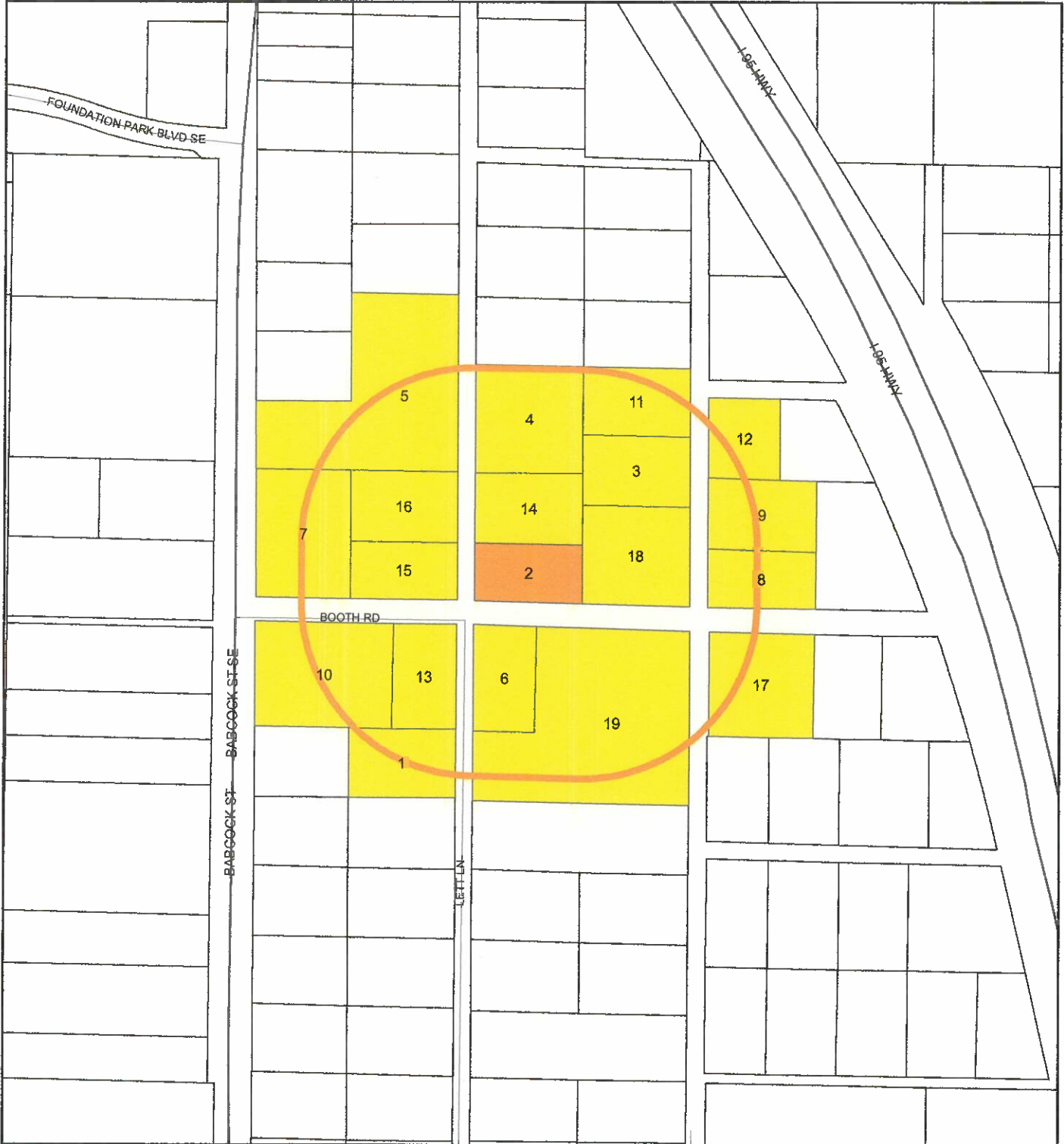
**ACTION OPTIONS:**

Motion to approve and adopt resolution to close a public right of way at the northerly portion of Lett Lane, North of Booth Road.

# RADIUS MAP

ANJO OF BREVARD INC

boothe500







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/13/2022

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

boothe500  
Page1

FRANKLIN, Debby  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

ANJO OF BREVARD INC  
1251 OLDE BAILEY LN  
WEST MELBOURNE FL 32904-8006

BACKOS, NICHOLAS  
BACKOS, THOMAS  
16585 KYLA DR  
CLINTON TWP MI 48038-1986

BREVARD WORSHIP CENTER INC  
6825 BABCOCK ST SE  
MALABAR FL 32950-

CLICK, SANDRA FAYE  
SPARKS, JEANNE MARIE  
2925 LETT LN  
MALABAR FL 32950-5014

COMMUNITY GOSPEL TRUTH CHURCH OF  
GOD INC  
PO BOX 120759  
WEST MELBOURNE FL 32912-0759

FLORIDA, STATE OF (DOT)  
ATTN: S FORGUSON  
719 S WOODLAND BLVD - MS 551  
DE LAND FL 32720-6834

FLORIDA, STATE OF (DOT)  
719 S WOODLAND BLVD  
DELAND FL 32720-6834

HEDBERG, JAY B  
HEDBERG, DONNA  
45 BOOTH RD  
MALABAR FL 32950-

NELSON, DENNIS G  
NELSON, PATRICIA F TRUSTEES  
3201 SAN MIGUEL AVE SE  
PALM BAY FL 32909-

PALERMO, LEON V  
PALERMO, SUSAN L  
106 BUTTER ROAD  
PALERMO NJ 08230-

PAPPAS, ANDREW T II  
75 BOOTH ROAD  
MALABAR FL 32950-

PLATINUM SUPERIOR EXPRESS LLC  
1242 SW DALTON AVE  
PORT SAINT LUCIE FL 34953-7342

SALVATORE TABONE AND MARIE  
E TABONE REVOCABLE TRUST  
5236 PEBBLE BEACH BLVD  
WINTER HAVEN FL 33884-3539

SEELEE INC  
3336 PENINSULA CIRCLE  
MELBOURNE FL 32940-

ST JEAN, FRANTZCIA  
9314 TREASURE COAST ST  
FORT PIERCE FL 34945-3319

WOLFGRAM, RUSSELL  
WOLFGRAM, MARIA  
2955 LETT LN  
MALABAR FL 32950-



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

**TOWN OF MALABAR  
NOTICE OF  
PUBLIC HEARING  
March 7, 2022 at 7:30 pm**

The Malabar Town Council will consider the issue of the existing gate closing off Lett Lane north of Booth Road at a Public Hearing to be held on Monday, March 7, 2022 at 7:30 p.m., at Malabar Town Hall located at 2725 Malabar Road, Malabar, Florida.

Per Chapter 13, Section 13-26 a public road can only be closed, temporarily or permanently by Malabar Town Council after a Public Hearing and notice to the surrounding property owners 14 days in advance of the meeting.

The existing gate was erected by an adjacent property owner.

**If you received this notice then you are listed as an owner of property, as shown in the records of Brevard County Property Appraiser's office, within 500' of the road closure. This Notice is provided as required by Malabar Code, Chapter 13, Section 13-26. You are invited to attend or submit you comments before the meeting to the Town Clerk at [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org).**



RE: 5098839 Malabar legal ad for next month

Gannett Legals Public Notices 3 <ganlegpubnotices3@gannett.com>

Thu 1/20/2022 3:19 PM

To: Debby Franklin <townclerk@townofmalabar.org>

I have corrected the line.

Ad#5098839 02/10/2022

**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, **March 07, 2022 at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: the issue of a gate closing off Lett Lane north of Booth Road in Section 10, Township 29, Range 37. A public road right-of-way can only be closed, permanently or temporarily, by order of Council after notice to surrounding property owners and a Public Hearing. The existing gate was erected by an adjacent property owner.

Copies of the Code pertaining to this are 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](mailto: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

Erin Duffy

Team Lead – Public Notice



Office: 866-301-5578

---

**From:** Debby Franklin <townclerk@townofmalabar.org>

**Sent:** Thursday, January 20, 2022 1:41 PM

**To:** Gannett Legals Public Notices 3 <ganlegpubnotices3@gannett.com>

**Subject:** Re: 5098839 Malabar legal ad for next month

Scott Ryan  
293 Haverford Lane  
Palm Bay, Fl.  
32907

Lisa Morrell  
Interim Town Manager  
Town of Malabar  
2725 Malabar Road,  
Malabar, Fl. 32958

I, Lisa Morrell, have received copies of the g-mails sent to Scott Ryan giving him the authority to keep the following properties private.

Parcels: 271,253,312,268,311,319,262,275,316,306.

  
-----  
Signature

  
-----  
date

 SCOTT RYAN

"

12/28/21

Scott Ryan  
293 Haverford Lane  
Palm Bay, Fl.  
32907


Lisa Morrell  
Interim Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, Fl.  
32950

Lisa,

Regarding the North Lett Lane Industrial Park, these are the g-mails that were sent to me from the property owners of the following parcels giving me the authority to keep them private. (I also maintain all survey markers on these properties).

Parcels: 271,253,312,268,311,319,262,275,316,306.

On 12/05/21 between 3:21pm and 3:45pm, trespassers on ATV's went up the north/south easement to the east and allegedly discharged a semi-automatic weapon into the woods where I was working. Due to this incident, the sheriff's department has requested these same documents to be submitted to the sheriff's office. They will then process the paperwork giving them permission to charge and prosecute any trespassers on the aforementioned parcels.



Scott Ryan

Scott Ryan <1976shr@gmail.com>  
To: rujoper@bellsouth.net  
Wed, Dec 8 at 5:50 PM

----- Forwarded message -----

From: **Don Barker** <brandywinelee@gmail.com>  
Date: Mon, Nov 22, 2021, 2:12 PM  
Subject: Foundation Park  
To: <1976sHR@gmail.com>

To whom it may concern:

I Donald W. Barker aka Mardon Investments, LLC do hereby give permission to keep my 2 parcels private.

Regards,  
Donald W. Barker  
parcel 271 parcel 253  
Sent from my iPhone

Scott Ryan <1976shr@gmail.com>  
To: rujoper@bellsouth.net  
Wed, Dec 8 at 6:20 PM

----- Forwarded message -----

From: **William Baker** <wwbaker42@icloud.com>  
Date: Sun, Nov 21, 2021, 5:53 PM  
Subject:  
To: <1976shr@gmail.com>

Me Scott, please keep my property private in my absence! William Baker  
Sent from my iPhone

Parcel 312

• • •



December 6, 2021

Town of Malabar  
2725 Malabar Road  
Malabar, Florida  
32950

Dear Sirs,

Re : Tax id - 2931366

This letter serves as authorization for Scott Ryan to keep gate in place for privacy at Lett Lane, Malabar, Florida, therefore not allowing trespassers to enter.

I trust the above is satisfactory.

Sincerely,

  
Patrick Harrack

367 Williams Point Blvd. Cocoa, Florida, 32927

Scott Ryan <1976shr@gmail.com>  
To:rujoper@bellsouth.net  
Wed, Dec 8 at 6:21 PM

----- Forwarded message -----

From: **Tim Finlayson** <finvols@gmail.com>  
Date: Thu, Nov 11, 2021, 4:02 PM  
Subject: Brevard Worship Center  
To: <1976SHR@gmail.com>

To Whom it May Concern:

I, Pastor Tim Finlayson, Senior Pastor and President of Brevard Worship Center Inc. give my permission for Scott Ryan to be on our property anytime he needs to work on the Lett Lane Property. I also give my permission for Scott Ryan to be on my property to do any improvements or upkeep to BWC inc. property.

Pastor Tim Finlayson  
Brevard Worship Center  
6825 Babcock St. SE  
Malabar, FL 32955  
Parcel 275 Parcel 316



To whom it may concern:

I, Ruby Pergeorelis give my husband Scott Ryan permission to keep our property private.

Parcel 306 Lett Lane

 12/28/21

I have not been in contact with the owners of parcel 305 and parcel 286 since 2015. I will be sending them a short note on the situation and a new key for the gate by registered mail and return receipt requested.

RESOLUTION 04-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE CLOSURE OF LETT LAND NORTH OF BOOTH ROAD IN SECTION 10, TOWNSHIP 29 RANGE 37; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified of an road blockage created by a private citizen; and

WHEREAS, Malabar Town Council has the sole authority to close rights-of-way either temporarily or permanently.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

**Section 1.** The Town Council of Malabar, Brevard County, Florida, hereby approves the closure of Lett Lane, north of Booth Road in Section 10, Township 29, Range 37.

**Section 2.** The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the surrounding property owners and run the legal ad of this resolution after recording with the Clerk of Court.

**Section 3.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**Section 4.** This resolution shall take effect immediately upon adoption.

This Resolution was moved for adoption by Council Member \_\_\_\_\_ and a second by Council Member \_\_\_\_\_ and the vote was as follows:

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

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

(seal)

TOWN OF MALABAR

By: \_\_\_\_\_

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to form and content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 11.a.

Meeting Date: March 07, 2022

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

---

**SUBJECT: Request for Council to Take Legal Action to Provide Public Access to Publicly Purchased Land (Malabar Scrub Sanctuary) by CM Scardino**

---

### BACKGROUND/HISTORY:

CM Scardino requested this item to be placed on the agenda for Council action. He has asked me to provide this agenda report summarizing his concerns and intentions as well as his request for Council action in directing legal action.

CM Scardino requests Council to seek an injunction to the actions taken by Brevard County Commission to fence, gate and block off access to the Malabar Scrub Sanctuary to the public.

CM Scardino also requests Council to state in the injunction, or whatever other legal process is applicable, that the claim by Brevard County Commission to adopt a resolution stating the "imminent peril of the situation overrides the requirement for dispute resolution as dictated in the F.S. 164" is invalid as the management plan for this area has not been updated in ten years.

CM Scardino has previously withheld his concerns hoping for amicable direction from the County Commission to the EELs staff to discuss and work on an agreeable resolution with the Town but believes now that is not forthcoming.

CM Scardino requests Council support and action for the following reasons:

- The County Commission has acted in bad faith in illegally blocking access to the 577 acres of public land purchased with taxpayer money for the public
- EELs land acquisition and management plans were approved by voters in referendum questions on the ballot for taxpayer funding and stated the program would provide the following public benefits:
  - Conservation of the natural resources for future generations
  - Enjoyment and education by the public of these natural resources
  - Development of the educational center as stated in the acquisition plan
- Brevard County Commission has denied access to the natural and manmade trails within the area that existed before procurement, since procurement and with coordination of the EELs program for the benefit of the public
- Brevard County Commission has failed to provide adequate notice to the Town or the public until less than a week before activity was planned in conflict with the State's direction to always involve potentially affected property owners when land use changes are proposed (Property Rights Element)
- Brevard County Commission has caused irreparable harm to the citizens, residents, taxpayers, and thousands of visitors to the area by denying them access and the quiet enjoyment of the Sanctuary

- Brevard County Commission has failed to provide transparency on the status of the \$700,000.00 budgeted, acquired and earmarked for the educational center as planned for in the Acquisition Plan and continually reaffirmed through two 5-year "Memorandum of Understanding (MOU) of Cooperation (2004-2019) with the Brevard County Board of County Commissioners on a coordination of development of the educational center at the entrance of the Malabar Scrub Sanctuary.

As previously reported to Council by staff, 20% of the land mass of Malabar is owned by the State, County or Town for public purposes. The Town holds title or is responsible for the management of 150 acres of that land. That leaves almost 8,000 acres of land within Malabar jurisdiction that is off the tax roll.

Municipalities cannot oppose the transfer of land between a willing seller and willing buyer. As reported to Council in the mid 2000's the purchase of all this land by the State has reduced our Industrial Zoning to 20 acres and reduced our PUD residential from 400 acres to 0 acres and mixed use from 200 acres to zero in those areas.

**FINANCIAL IMPACT:** Malabar adopted and updated our Comprehensive Plan to meet the requirements of the Florida Dept of Community Affairs (now known as the Dept of Economic Opportunity) and provided for mixed use, industrial, medium density residential planned unit development areas as required. If developed as planned they could have produced over seven million (7 mil) in ad valorem taxes. Unfortunately, those areas of potential development were later purchased by the State for conservation and protection of natural resources.

**ATTACHMENTS:** none

**ACTION OPTIONS:**  
Council Action

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 12.a.**

**Meeting Date: March 07, 2022**

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

---

**SUBJECT: First Reading of Ord 2022-02 Providing Code for Unsafe Structures**

---

### **BACKGROUND/HISTORY:**

The International Code Council updates the Building Codes utilized in Florida construction triennially and is adopted by F.S. 553. Local governments then adopt those Codes so they will be referenced in the current code we cite when processing permits.

The Town's most recent update was in 2020. Building codes and regulations are covered in the front of the Code Book in Chapter 6. This is considered a housekeeping process for the benefit of residents and contractors working in Malabar. It also provides Town Staff guidance on what Codes to reference when dealing with permitting, construction, flood plain, demolition, fire control and life safety issues

In the past we also adopted the Uniform Code for Abatement of Dangerous Buildings, 1997 Edition. Our most recent update inadvertently left that reference out. We are providing this to reinsert this reference in Chapter 6. This is also a necessary Code to pursue certain Nuisance violations found and brought to the Special Magistrate Hearing. Those regulations are covered in Chapter 2 of the Code and require reference to adopted Codes in order to prosecute.

In order to proceed with certain unsafe code enforcement activities, that Code must be identified as a Code the Town of Malabar has adopted.

This ordinance adds that Uniform Code back into the Chapter 6.

**FINANCIAL IMPACT:** Not applicable

### **ATTACHMENTS:**

- Ordinance 2022-02

### **ACTION OPTIONS:**

Council Action on First Reading of Ord 2022-02

**ORDINANCE NO. 2022-02**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL CONSTRUCTION CODES DEALING WITH ABATEMENT OF DANGEROUS BUILDINGS AS PROVIDED IN THE FLORIDA BUILDING CODE 1997 EDITION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, it is the desire of the Town Council to adopt in all respects the various building and construction codes identified herein to provide for the health, safety, and general welfare of the public; and

**WHEREAS**, the Town Council adopted the most recent Codes approved by the Florida Legislature in 2021 but failed to include codes dealing with unsafe structures as previously provided in Ordinance 2018-01; and

**WHEREAS**, the existing codes as adopted in Ordinance 2020-15 are still current and applicable to new construction, remodels and demolition and are in the best interest of the public; and

**WHEREAS**, codification of the codes dealing with unsafe, dangerous structures and the abatement process as stated in this ordinance are also in the best interest of the public.

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

**SECTION 1.** Sections 6-1 of Chapter 6 of the Malabar Code of Ordinances is hereby amended as follows and all other codes referenced in Chapter 6 shall remain in force unless found to be in conflict with Florida Statute 553:

**“Section 6-1. Codes and amendments adopted**

As of December 31, 2020, the Florida Building Code supersedes all local building codes which are developed and maintained by the Florida Building Commission. It is updated every three years and may be amended annually to incorporate interpretative and clarifications. The 2020 7<sup>th</sup> Edition, Florida Building Code, Building, and the following volumes are adopted:

- The 2020 7<sup>th</sup> Edition, FBC, Residential
- The 2020 7<sup>th</sup> Edition, FBC, Accessibility
- The 2020 7<sup>th</sup> Edition, FBC, Energy Conservation
- The 2020 7<sup>th</sup> Edition, FBC, Florida Existing Building Code
- The 2020 7<sup>th</sup> Edition, FBC, Plumbing
- The 2020 7<sup>th</sup> Edition, FBC, Mechanical
- The 2020 7<sup>th</sup> Edition, FBC, Fuel Gas
- The 2020 7<sup>th</sup> Edition, FBC, Test Protocols for High Velocity Hurricane Zones

Additionally, the following are adopted:

- The Florida Fire Prevention Code, 2018 7<sup>th</sup> Edition, Chapter 9
- The National Electric Code (2018 Edition) N.F.P.A. 70\*
- Dictionary of Architecture and Construction, 4<sup>th</sup> Edition”
- Uniform Code for Abatement of Dangerous Buildings, 1997 Edition

**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 Mary Hofmeister	_____

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this 21st day of March 2021.

BY:  
**TOWN OF MALABAR**

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

First Reading Approved: 03/07/2022: Vote: \_\_ to \_\_  
Second Reading: 03/21/2022

**ATTEST:**  
By \_\_\_\_\_  
Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 12.b**  
**Meeting Date: March 7th, 2022**

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

---

**SUBJECT:** Request from the Trails & Greenways Committee for Council Directive to Brevard County Commission regarding Briar Creek Blvd

---

### **BACKGROUND/HISTORY:**

- a. On February 17<sup>th</sup>, the Trails & Greenways Committee held their monthly meeting and discussed the Malabar Scrub Sanctuary Restoration Project.
- b. Members of the Committee expressed concern for the Briar Creek Blvd ROW that bisects Malabar Scrub West, as well as the bridge on Briar Creek Blvd north of the subdivision, and recommend action be taken to protect it.

### **FINANCIAL IMPACT:**

- a. Unknown

### **ATTACHMENTS:**

- a. Memo 2022-DTC/T-2
- b. Draft Minutes from the 02/17/2022 T&GC Meeting

### **ACTION OPTIONS:**

- a. Motion that the Briar Creek Blvd be maintained with no tree removal within the 100' ROW without Town of Malabar permission; that the ROW remain open to emergency traffic during the restoration project; and that no lumber trucks travel over the Briar Creek Blvd Bridge north of the Brook Hollow Subdivision.

# TOWN OF MALABAR

## MEMORANDUM

---

**Date:** February 23, 2022 2022-DTC/T-2

**To:** Town Clerk & Town Manager

**CC:** Town Council and Mayor Reilly

**From:** Richard W. Kohler, Deputy Town Clerk/Treasurer

**Ref:** Trails & Greenways Committee Recommendations

---

*During the February 17<sup>th</sup> Trails and Greenways Committee Meeting, the Committee discussed at length the Malabar Scrub Sanctuary Restoration Project, and its expected impacts on the Town of Malabar, and the trails in Malabar. After a lengthy discussion, the following motion was passed unanimously:*

**“Vice-Chair Hann moves to recommend to Council that the Briar Creek Blvd ROW be maintained, with no tree removal within the 100’ ROW without Town of Malabar permission; that the ROW remain open to emergency traffic during restoration; and that no lumber trucks travel over the Briar Creek Blvd bridge north of the Brook Hollow Subdivision.”**

*Motion seconded by Committee Member Waite and passed unanimously.*

*At the same meeting, the Trails and Greenways Committee also moved to begin work on a new trail in the Cameron Preserve to reopen the one directional single-track trails. The fences installed by the EELs program blocked one-way trails and create the opportunity to cause head on collisions. To prevent this, a new trail was scouted and partially cut on 02/19/2022. The new trail is 100% in the Town of Malabar owned Cameron Preserve and will allow one way traffic on the trails once again.*

**MALABAR TRAILS AND GREENWAYS COMMITTEE REGULAR MEETING**  
**February 17th, 2021, 6:00 PM**

This meeting of the Malabar Trails and Greenways Committee was held at Town Hall at 2725 Malabar Road.

**1. CALL TO ORDER, PRAYER AND PLEDGE:**

Meeting called to order at 6:00 P.M. Prayer and Pledge led by Chair Thompson.

**2. ROLL CALL:**

CHAIR:	DREW THOMPSON
VICE-CHAIR:	MURRAY HANN
BOARD MEMBERS:	ANNELIE HARVEY-EXCUSED
	BOB WILBUR-EXCUSED
	DANIEL WAITE
GRANT/VALKARIA LIASON:	CRAIG SMITH
BOARD SECRETARY:	RICHARD KOHLER
COUNCIL MEMBER:	

**3. Additions/Deletions/Changes**

**4. CONSENT AGENDA**

**4.a. Regular Trails and Greenways Committee Mtg Minutes of 1/10/2022**

**Motion to accept by Hann/Waite**

**Waite recommended to changed asks to acts on page 2.**

**All Ayes: Carried 3-0.**

**5. PUBLIC COMMENTS: NONE**

**6. ACTION ITEMS: NONE**

**7. DISCUSSION**

**a. Trail, Kiosk and Firebreak Conditions**

Chair Thompson states he attended the BPTAC meeting and was told to not speak about the Malabar Trails issue. He still brought up the issues and stated that some of the County staff were surprised by the actions taken, particularly the lack of warning before fences. Chair states this is a huge issue because peoples rights are being restricted. VC Hann states that a 2016 study by EELs, 31k people visited the Malabar Scrub Sanctuary. The Land Manager of Turkey Creek Sanctuary has estimated trail usage is up 200-300%. VC Hann states the trails are in good condition. He states that he helped tie ribbons to trees before the fences in order to make them more noticeable to trail users. Liaison Smith states that the fences force users to ride against traffic on one-way trails. Chair Thompson stated that the Trails and Greenways Committee wants to encourage people to respect the fences, and that the Cameron Preserve is open and rideable.

**b. New Trail Addition in Cameron Preserve**

Chair begins by giving a brief review of the current situation, and the fences that have been installed. VC Hann states this is an opportunity to turn lemons into lemonade. We have wanted to create a complete loop in Cameron Preserve, and this is a great opportunity for that. Liaison Smith states that the trail should follow the same style of the rest of the preserve, being winding and tight.

Barbra Cameron asked if the EELs program will be cutting trees in the Cameron Preserve?

Chair states they are not supposed to. VC Hann stated the group should look at a higher level of maintenance in Cameron. Chair Thompson states that on Briar Creek Blvd, the Town should enforce their 100' ROW as being off limits. He suggests proactive action to fence or mark that area. It is a dual-purpose project that protects the emergency entrance/exit to Brook Hollow, and will save trees. VC Hann states that this is one of the issues we have with this project, as the contract turns the property over to the contractor while the work is being accomplished. Typically, there would be a bond to protect the roads and culverts. VC Hann has also contacted TM Stinnett about the EELS program blocking access to Briar Creek Blvd ROW, as it is not the programs to block. Chair asks if the Committee wants to make a motion to that effect? He feels that the lumber trucks shouldn't travel over the Briar Creek Blvd bridge. VC Hann states that the best action may be to write a letter to CM Abate about this issue and specify that the ROW may not be altered, and that the Town shall have full access to the ROW. VC Hann states that during the semi-secret trail wood delivery he investigated the weight limit but doesn't remember the exact limit.

CM Waite states his biggest concern is safety. The emergency exit is necessary, and it should not be blocked. VC Hann states that after the last restoration, several culverts were crushed, and the Town had to repair them. CM Waite asks if the Town can photograph the areas in question before the work begins. Chair Thompson states he has requested that action from the TM already.

Liaison Smith states that the ROW is an excellent greenway for people traveling from Malabar and Grant/Valkaria to Palm Bay, and should remain open.

**HANN/WAITE move to recommend to Council that the Briar Creek Blvd ROW be maintained, with no tree removal within the 100' ROW without Malabar permission, and that the ROW remain open to emergency traffic during restoration, and that no Lumber trucks travel north over the Briar Creek Blvd bridge.**

**ALL AYES (3-0)**

VC Hann then began discussing his presentation about adding an additional trail.

**HANN/WAITE move to flag a new trail on Saturday 2/19/2022 and begin cutting the trail completely on the Cameron Preserve to connect the yellow trail to the connection of "Root of all Evil" Trail.**

**ALL AYES (3-0)**

Chair Thompson asks how far from the property line should this trail be?

VC Hann states 20-30 feet away should provide the users a nice buffer. Chair states we should provide a wider buffer to shield users from EELs work. Secretary Kohler states that the current EELs plan does not include any work in the area around this trail. VC Hann states if the EELs program grants another entrance from the Cameron Preserve, we could cut a new trail designed for equestrian users.

VC Hann states the first trail day he attended in Malabar was spent cutting Mallika trees from the depression marsh, and he was told by Mr. Cameron that Bald Cyprus trees would be excellent in there. VC Hann has purchased 20 of them and would like to plant them in the preserve.

c. **Next Field Event – TBD**

Chair recommends meeting at 8 am on 2/19/2022 at the Cameron Trailhead. VC Hann states we should just flag the path, trim enough for a walkable area, and then allow the BMBA Trail cutters to do work.

Liaison Smith read the County statute regarding park closures, and does not believe the County can legally close MSS. The scary thing is that they could keep it closed.

CM Waite states it is denying public access to public lands. Commissioner Tobia has proposed to remove several committees and boards, including some of the EELs committees. The timing of all of this is suspicious.

VC Hann states he was confused by Mr. Knight stating at the County Commission meeting that he was unsure if the program would make money, as it is all salaried employees, and grant funded rentals, and a profitable timber sale.

Chair Thompson states we should also discuss the signage of the Cameron Preserve. We should have an entrance from the Al Tuttle Trail.

**8. OLD/NEW BUSINESS**

**a. Board Member Comments**

- Liaison Smith states that new kiosks were installed in Grant/Valkaria Park.
- CM Waite states that we should all be vigilant about the County Commission trying to cut advisory boards. In his experience, when the advisory boards go, the facilities they support usually follow shortly. Also states he will not be able to attend the next meeting, as he is getting married on March 12<sup>th</sup>! Congrats from the board.
- VC Hann agrees with CM Waite about the advisory committees. He feels that this issue has been one of the saddest stories in Brevard government history. The act of closing the trails is coercion. Democracy works best when people question the government.
- Chair Thompson states that he agrees with VC Hann about this being a sad time in Brevard History. Hopefully reason comes to the table soon. Somewhere along the way from the voters referendum,

**b. Staff Reports**

**c. New Business:**

- Next Regular Meeting- March 14<sup>th</sup>, 2022

**9. ADJOURN**

There being no further business to discuss;

**MOTION HANN/WAITE to adjourn. Vote: All Ayes.** The meeting adjourned 7:31 PM.

BY:

\_\_\_\_\_  
Drew Thompson Chair

3/14/2022

Date Approved: as presented:

\_\_\_\_\_  
Richard W. Kohler, Board Secretary