



# REGULAR TOWN COUNCIL MEETING

Monday, April 18, 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 04/04/2022**

Exhibit: Agenda Report Number 4a

**Attachments:**

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

- b. **Change Order 003 to SW Master Plan with S.A.I. adding \$23,415 to address FDEP's requirements**

Exhibit: Agenda Report Number 4b

**Attachments:**

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

- c. **Sole Source purchase of LIFEPAK 15 Monitor/Defibrillator utilizing State and Local Fiscal Recovery Funds (SLFRF)**

Exhibit: Agenda Report Number 4c

**Attachments:**

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

5. ATTORNEY REPORT

6. STAFF REPORTS

- a. Manager

- b. Clerk

7. 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***

## 8. PUBLIC HEARINGS / SPECIAL ORDERS : 2

### a. 2nd Reading of Ordinance 2022-03 - Amend Chapter 2 of Malabar Code of Ordinance Pertaining to Procurement

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8a

#### Attachments:

- **Agenda Report Number 8a** (Agenda\_Report\_Number\_8a.pdf)

### b. 2nd Reading of Ordinance 2022-04 - Amend Article VIII of the Malabar Land Development Code Pertaining to Illicit Discharge

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR AMENDMENT TO THE TITLE OF ARTICLE XIII OF THE MALABAR LAND DEVELOPMENT CODE PROVIDING FOR A REVISED CHAPTER TITLE; PROVIDING FOR A NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGESLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8b

#### Attachments:

- **Agenda Report Number 8b** (Agenda\_Report\_Number\_8b.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

### a. Report by Planning and Zoning Board of the Absence of Meetings by Alternate Member as Required by Code

Removal of Jeff Rinehart and Repeal of Resolution 01-2022

Exhibit: Agenda Report Number 9a

#### Attachments:

- **Agenda Report Number 9a** (Agenda\_Report\_Number\_9a.pdf)

### b. Request by Trails and Greenways Committee for Council to Direct Staff to Research and Prepare a Submittal for Funding Request for Invasive Plant Control within the Cameron Preserve

Removal of Cogan Grass, Melaleuca and Brazilian Peppers, Funding provided by Uplands Program through FFWCC

Exhibit: Agenda Report Number 9b

#### Attachments:

- **Agenda Report Number 9b** (Agenda\_Report\_Number\_9b.pdf)

### c. Request by Trails and Greenways Committee for Council to Authorize

**Staff to meet with Committee Members at the Eagles Nest Trailhead during the workday to measure/mark the proposed Trailhead site for continued land work within the budget**

Exhibit: Agenda Report Number 9c

**Attachments:**

- **Agenda Report Number 9c** (Agenda\_Report\_Number\_9c.pdf)

**10. ACTION ITEMS**

ORDINANCES for FIRST READING: 1

RESOLUTIONS: 0

MISCELLANEOUS: 1

**a. Referendum Question for November 8, 2022 Election: MSTU (Ordinance 2022-05)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING REPEAL AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

**Attachments:**

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

**b. Resuest Approval of Procurement of Used Motor Grader, Surplus of Motor Grader and Tractor**

Exhibit: Agenda Report Number 10b

**Attachments:**

- **Agenda Report Number 10b** (Agenda\_Report\_Number\_10b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

**11. DISCUSSION/POSSIBLE ACTION**

**a. Request by CM Scardino for Council to hold a Workshop to discuss prioritizing Capital Improvement Projects that would expand city water on south side of Malabar Road from Weber Road to the Fire Department and Malabar Community Park**

Exhibit: Agenda Report Number 11a

**Attachments:**

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

## **12. PUBLIC COMMENTS**

General Items (Speaker Card Required)

## **13. REPORTS - MAYOR AND COUNCIL MEMBERS**

## **14. ANNOUNCEMENTS**

(2) Vacancies on the Trails and Greenways Committee

## **15. 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.

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Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on  
04/13/2022 at 3:30 PM

**TOWN OF MALABAR**

**COUNCIL MEETING**

**AGENDA ITEM NO: 4.a.**  
**Meeting Date: April 18, 2022**

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

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**SUBJECT: Meeting Minutes**

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**BACKGROUND/HISTORY:**

Summary of Council actions at the Town Council Regular Meeting Minutes

**ATTACHMENTS:**

- Draft Minutes of RTCM Minutes of 4/04/2022

**ACTION OPTIONS:**

Council Action on Consent Agenda

**MALABAR TOWN COUNCIL  
REGULAR MEETING MINUTES  
APRIL 04, 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 Vail led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

MARY HOFMEISTER, excused

MATT STINNETT

TOWN MANAGER:

LISA MORRELL

SPECIAL PROJECTS MANAGER:

KARL BOHNE

TOWN ATTORNEY:

DEBBY FRANKLIN

TOWN CLERK/TREASURER:

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

**4. CONSENT AGENDA:**

4.a. RTCM Minutes of 3/21/22, 3/29/2022

4.b. Approval to apply for the Volunteer Fire Assistance (VFA) Grants through the Florida Department of Agriculture and Consumers Services, Florida Forest Service to replace Fire Department Turnout Gear

MOTION: CM Vail / CM Scardino approve Consent Agenda. Vote: All Ayes.

**Proclamation: Mayor read and presented Women's Lung Health Week to Mr. and Mrs. Smith**

5. **ATTORNEY REPORT:** update on litigation – sent out letter and resolution – would like to limit the amount of public speaking on this issue.

6. **BCSO REPORT:** now been asked to patrol the area around the scrub sanctuary. Marisa asked if anyone has been cited. He has not been any citations issued.

**7. BOARD / COMMITTEE REPORTS:**

7.a. T&G Committee: Chair Drew Thompson – went over PowerPoint he was going to talk about. Malabar Scrub Sanctuary East and West (total 577 acres) is separated by 100-acre Cameron Preserve under control of Malabar– and that is not closed. Barricade on Briar Creek Blvd. was taken done. Will likely request funds for additional signage to direct you to the Cameron Preserve. During their meeting they made better definition of what was discussed at the last RTCM – trying to make it safe and accessible. CM Acquaviva knows the north Corey trailhead is still being used. You can go through Cameron Preserve to get to Al Tuttle trail. She sees bikes coming out of there without trespassing. Can no longer access this from the Sandhill Trailhead on Marie St. People can still get outside and enjoy the nature.

7.b. Park & Recreation Board: Chair Eric Bienvenu - no

7.c. P&Z Board: Chair Wayne Abare - no

**8. STAFF REPORTS:**

8.a. **Town Manager** – nothing

8.b. **Special Projects Manager** – written

8.c. **Fire Chief** – written

8.d. **PW Director** - written

8.e. **Clerk** – Have received memo from P&Z Secretary that a member has stopped attending and will be on next Council agenda for removal. Printed and placed at your seats the unaudited year to date memo and finance reports by quarter. Have received another petition package for road paving on Kramer Lane. Will have on upcoming agenda.

**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.**

**Lance Supernaw** – representing – one veteran – one roof. His life was featured on a documentary. Idea is to zoning, permitting and tax exemption, with 1200sf homes. Hopes to get your support. 2415 Malabar Road. He wants to put up a park. This is his vision. Marisa asked how many homes. He was hoping to put at least six homes without garages. Mayor suggested they bring the plans to Town staff to start process.

**Gerald Paradis**, purchased 2415 Malabar Road. He reacted immediately. It is only fair to waive the fines and fees. You waived 75%. He said he closed on property on Friday and there was no lien and on Monday there was a lien. It is not fair. He would like to buy 2425 Malabar and resolve the issue with the code violations.

**10. PUBLIC HEARINGS: 0**

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

**11.a. Trails and Greenways Committee Report**

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

Chair stated this is per Council directive at last meeting. T&G Chair went over the buffer they discussed – vegetative, perimeter buffer. Area that does not get reduced in height; 15' is within the EELs plan; within the 20-25' width buffer – no reduction in height; this attempts to define it further. This still fits within the intent for EEL program. Allows for a higher reduction in the center area. Oak trees are preserved, palm trees and make sure we are clear on that we don't want them killed by other means like laser or soot from nearby radiant heat or herbicide since it has been mentioned in some of the recent documents.

CM Rivet read through the clarification and thinks it is completely within his intent on the motion he made at the last meeting. This made it a little more detailed.

**12. ACTION ITEMS:**

**ORDINANCES for FIRST READING: 2**

**12.a. Amend Chap 2 of Malabar Code of Ordinance Pertaining to Procurement (Ord 2022-03)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

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

**MOTION:** CM Vail / CM Rivet to approve first reading of Ord 2022-03.

Discussion: Vail read it and then called TM. Tightens up our standards. Housekeeping.

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

**12.b. Amend Article VIII of the Malabar Land Development Code Pertaining to Illicit Discharge (Ord 2022-04)**



AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA, PROVIDING FOR AMENDMENT TO THE TITLE OF ARTICLE XIII OF THE MALABAR LAND DEVELOPMENT CODE PROVIDING FOR A REVISED CHAPTER TITLE; PROVIDING FOR A NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

**MOTION:** CM Rivet / CM Acquaviva to approve first reading of Ord 2022-04.

Discussion: TM said we had our NPDES audit, and they recommended this language be added. CM Vail said again a housekeeping item.

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

#### **RESOLUTIONS: 2**

##### **12.c. Appoint New Trails & Greenways Committee Alternate Member (Reso 07-2022)**

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

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

**MOTION:** CM Acquaviva / CM Vail to adopt Reso 07-2022.

Discussion: none

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

##### **12.d. Appoint New Trails & Greenways Committee Alternate Member (Reso 08-2022)**

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

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

**MOTION:** CM Rivet / CM Acquaviva to adopt Reso 08-2022.

Discussion: none

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

#### **MISCELLANEOUS: 0**

#### **Chair excuses Attorney**

#### **13. DISCUSSION / POSSIBLE ACTION: 2**

##### **13.a. Extend Council Terms from Two years to Three years (from 3/21/2022)**

**Exhibit:** **Agenda Report No. 13.a.**

CM Acquaviva offered comment; she thinks two years is good because it gives others a chance to run. CM Vail said it would remain two terms for limits so still six years. CM Rivet said one of the



greatest things about local representation is it the closest to the people – that is why we do a better job. Voters should have a chance as often as possible to vote for them. Having elections every two years is a good thing. CM Vail said that was his thinking on the MSTU – keeps the voters involved. CM Acquaviva said she also likes the staggered terms. But she would like more people voting.

Re: single district voting. CM Acquaviva is against this stating we have too small of a budget and all people are affected by Council decisions – not just one district. CM Vail supports single district voting.

Council will discuss this further in the future. Clerk said we must have referendum questions to the Supervisor of Election office by August for the ballot. Atty stated that off years have lower turnout.

**13.b. Discussion of Code Enforcement Lien at 1870 Hall Road (CM Rivet)**

**Exhibit: Agenda Report No. 13.b.**

Atty said give me the word and he will proceed with foreclosure.

CM Rivet said we have a reputation of not really doing code enforcement. Recent legal guidance that we can proceed we should be pursuing.

**MOTION:** CM Scardino / CM Rivet to pursue the foreclosure due to violations on Hall Road.

The violations have been cured but it took three years and repeat Code Enforcement actions. Atty has tried to resolve with the property owner. CM Rivet said this is a first if we proceed. If we have similar situations, we must enforce the Code. CM Rivet who do we want to attract here people who want to avoid the rules or people that want to see their property values protected and rules followed. Mayor asked for process. Atty files foreclosure. The property owner responds, and judge rules and gives person certain amount of time to pay. Then it is sold on the courthouse steps. Atty said this guy is going to fight. Atty has done this in G-V. CM Vail asked for approximate legal costs to proceed. Atty gave estimate of \$1500; could be 5K to 10K; depends on the litigation. Vote: All Ayes.

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

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

- CM Acquaviva: nothing
- CM Vail: noting
- CM Rivet: nothing
- CM Hofmeister: excused
- CM Scardino: nothing
- Mayor Reilly: nothing

**16. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:30 P.M.

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

ATTEST:

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

Date Approved: 04/18/2022

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 4.b.

Meeting Date: April 18, 2022

Prepared By: Matthew Stinnett, Town Manager

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**SUBJECT: Change Order 003 Stormwater Master Plan**

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### **BACKGROUND/HISTORY:**

After submitting our draft Stormwater Master Plan the Town received feedback from Florida Department of Environmental Protection (FDEP) on several elements they would require to be included in the plan if the Town were to seek additional construction funding through the State Revolving Fund (SRF). After review of FDEP's comments Town Staff asked SAI to provide a change order to address the additional required information.

Singhofen and Associates Incorporated (SAI) has provided Change Order 003 (CO-003) which will address most of FDEP's requirements. Including language addressing the social, economic and environmental impacts as well as a few additional alternative designs (or no-build options) for each of the plan's projects. CO-003 also includes a budget for SAI to provide staff and materials for a public engagement meeting where interested members of the public can attend and speak with the engineers directly regarding the planned projects.

The total cost of CO-003 is \$33,155. This would exceed the original project budget by \$23,415 as there is a remaining project budget balance of \$10,000 set aside for surveying that can be applied to this work.

In addition to the FDEP comments that are being addressed by SAI. The Town Council will need to hold a workshop(s) and put together a financial plan to provide funding for accomplishing the projects within the plan. Town Council will also need to approve a resolution adopting the final stormwater plan before submitting to FDEP.

### **ATTACHMENTS:**

SAI Change Order 003

### **FINANCIAL IMPACT:**

\$23,415 in addition to previously approved project budget.

Funding is currently available within the Town's annual stormwater budget for engineering services.

### **ACTION OPTIONS:**

Motion to approve SAI Change Order 003



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## Stormwater Management and Civil Engineering

### Scope of Services Malabar Stormwater Master Plan Change Order Request 003 FDEP SRF Planning Documentation Assistance

February 2022

#### 1.0 OBJECTIVE

Singhofen & Associates, Inc. (SAI) is pleased to submit this Change Order request to the Town of Malabar (Town) to assist the Town in preparing Planning Documentation for FDEP State Resolving Fund (SRF) Construction Loan in accordance with Rule 62-503.700(2) as it relates to the stormwater projects identified in the Stormwater Master Plan prepared by SAI dated September 2021. The work is anticipated to include preparation of a Planning Documentation Report, development of two additional design alternatives, and attendance at two public meetings.

#### 2.0 NEW SCOPE OF SERVICES

SAI shall complete the following tasks as part of the Scope of Services to the Town of Malabar:

##### **TASK 1. Planning Documentation Report**

The objective of this task is to prepare a Stormwater Improvements Plan Report to satisfy the planning documentation requirement of the SRF Construction Loan application. The report will discuss the designs presented in Section 5 (Design Development) of the Stormwater Master Plan report. This section will be expanded on in a separate report to address outstanding items based on comments from FDEP dated 10/25/2021. The level of effort assumed for these tasks is based on the Town of Pompano Beach planning report example provided by the FDEP and received from the Town on 11/19/2021 (*City of Pompano Beach – Stormwater Facility Plan*, August 30, 2013). No changes to the designs presented in the Stormwater Master Plan report are included. This effort is anticipated to include the following:

- a. Construction costs will be updated with 2021 FDOT unit pricing
- b. Incorporation of two additional design alternatives, prepared under **Task 2** below.
- c. Alternative Comparison and Recommendation Matrix
- d. Brief summary of Environmental Effects of the recommended design for each project location (5 total)
- e. Brief summary of Socio-Economic Effects of the recommended design for each project location (5 total)
- f. Brief summary of Cultural Effects of the recommended design for each project location (5 total)
- g. Brief summary of "No Action" consequences to the project area at each project location (5 total)
- h. Brief summary of permitting requirements of the recommended alternative for each project location (5 total). SAI will evaluate the need for permits from the SJRWMD, FDEP, and FDOT for the recommended alternative at each location.
- i. Brief discussion of O&M implications relative to existing conditions for the recommended alternatives. This task assumes that a qualitative narrative and comparison will be acceptable to FDEP. Should O&M costs need to be quantified, the Town will be responsible for providing estimated O&M costs for mowing, pipe cleaning, ditch clearing, and other O&M costs as needed.

## **TASK 2. Design Development**

The objective of this task is to develop two (2) additional design alternatives: One additional alternative for Location 4 (Kelly Road), and one additional alternative for Location 3 (Marie Street). SAI will coordinate with the Town on development of the new alternative. The efforts involved in this task include:

- a. Coordination with the Town on the design alternative at each location
- b. Model revisions to incorporate the two designs.
- c. Preparation of model result tables necessary for inclusion in the Stormwater Improvements Plan report prepared in **Task 1**, above.

## **TASK 3. Public Meetings**

SAI's attendance at two (2) public meetings is included in this task, as discussed below:

- a. Attendance at one (1) open-house styled meeting to allow for public involvement and collect input on the recommended alternatives. SAI will prepare 24"x36" presentation boards for each of the recommended alternatives (total of 5 boards) for display at informational kiosks. SAI will provide up to three (3) personnel to help staff the meeting and will discuss the proposed designs with residents and answer questions. The presentation boards will be submitted digitally to the Town for review prior to printing.
- b. Attendance at one (1) in-person presentation to the Town Council. SAI will provide up to two (2) personnel to attend the presentation. SAI will prepare materials for the meeting in the form of PowerPoint presentation which will be submitted to the Town for review in advance of the meeting.

## **TASK 4. Respond to RAI Comments**

This task includes addressing one (1) round of RAI comments from FDEP. SAI will only address comments related to the Stormwater Improvements Plan report prepared under **Task 1** of this scope. No changes to design alternatives or model efforts are included as part of this task. A written response to comments addressed by SAI will be provided to the Town.

### **3.0 EXCLUSIONS**

This scope does *not* include any of the items listed below. If any are required to satisfy FDEP's requirements, a change order would be required.

1. Full FEMA-level Benefit-Cost Analysis (BCA) (i.e. using FEMA's BCA Toolkits)
2. Revisions or changes to previously developed designs
3. A field environmental assessment by an environmental scientist
4. Development of or discussion of any proposed system of charges, rates, fees, and other collections that will generate the revenues to be dedicated to loan repayment (e.g., user charge rates). It is assumed that this will be the responsibility of the Town. If any user charge rates are proposed, SAI will include information provided by the Town as an appendix in the report to satisfy FDEM's requirements.
5. Development of a capital financing plan. It is anticipated that if one is needed to satisfy FDEP's requirements, it will be the sole responsibility of the Town.
6. Final design and preparation of construction plans.

### **4.0 COMPENSATION**

The compensation to be paid to the CONSULTANT for providing the services described in the above scope of work shall be on a "Fixed Fee" basis. A detailed breakdown of the CONSULTANT's estimated professional fees (including man-hours and rates) are included as **Table 1**. The total cost for this change order is \$36,135.00 plus \$260 in reimbursable expenses, for a total of \$36,395.00. However, there are unused fees from the original scope of work that can be reallocated to this change order. This request includes a redistribution of the fees to allocate unused fees from the original scope of services to this

change order. **Table 2** presents the reallocation of funds included in this change order request. A total of **\$23,415.00** in additional funds is being requested to cover the additional work included in this Change Order.

The CONSULTANT will submit invoices for work performed during each calendar month showing the current month's percent complete on each task. Invoicing will be accompanied by a brief description of the work effort completed during the billing period. Should the Town terminate a task or tasks, the Consultant will be compensated for the work performed up to the date of termination.

#### **5.0 TERMS AND CONDITIONS**

The following terms and conditions apply to this scope of services:

**PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF THE ENGINEER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

**Table 1: SAI Fee Quotation Proposal**  
**Malabar Stormwater Master Plan**  
**Change Order Request 03: FDEP SRF Planning Documentation Assistance**

	Principal / Sr. Project Manager	Program / Project Manager	Sr. Prof. Engineer / Scientist	Prof. Engineer / Scientist	Staff Engineer / Scientist	Sr. GIS Analyst	GIS Analyst	Intern Engineer / Scientist	Admin Support	Total Man Hours By Activity	Total Cost By Activity
	\$ 218.00	\$ 151.00	\$ 185.00	\$ 151.00	\$ 119.00	\$ 120.00	\$ 99.00	\$ 53.00	\$ 75.00		
<b>Labor Expenses</b>											
<b>Task</b>											
<b>1 Planning Documentation Report</b>											
Prepare Report for Planning Documentation Purposes	0	2	4	36	8	4	0	0	0	54	\$ 7,910.00
QC & Formatting	1	2			4				8	15	\$ 1,596.00
<b>Total Planning Documentation Report</b>	<b>1</b>	<b>4</b>	<b>4</b>	<b>36</b>	<b>12</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>69</b>	<b>\$ 9,506.00</b>
<b>2 Design Development</b>											
New Design Alternative at Kelly Road	1	1	2	8	12	0	0	4	0	28	\$ 3,587.00
New Design Alternative at Marie Street	1	1	2	8	12	0	0	4	0	28	\$ 3,587.00
<b>Total Design Development</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>16</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>56</b>	<b>\$ 7,174.00</b>
<b>3 Public Meetings</b>											
Preparation of graphics and comment cards	2	2	0	4	4	16	0	8	4	40	\$ 4,462.00
Attendance at Public Meeting (Open-House Style)	4	0	0	4	4	0	0	0	0	12	\$ 1,952.00
PowerPoint Preparation & Coordination w/ Town PM	2	2	0	16	8	0	0	4	4	36	\$ 4,618.00
Attendance at Public Meeting (Presentation to Town Council)	4	0	0	4	0	0	0	0	1	9	\$ 1,551.00
<b>Total Public Meetings</b>	<b>12</b>	<b>4</b>	<b>0</b>	<b>28</b>	<b>16</b>	<b>16</b>	<b>0</b>	<b>12</b>	<b>9</b>	<b>97</b>	<b>\$ 12,583.00</b>
<b>4 Addressing 1 RAI from FDEP</b>											
Review and Provide written responses to comments	1	4	0	4	0	0	0	0	4	13	\$ 1,726.00
Revise report (prepared under Task 1) to address comments	1	2	0	8	2	0	2	0	2	17	\$ 2,314.00
<b>Total Addressing 1 RAI from FDEP</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>12</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>30</b>	<b>\$ 4,040.00</b>
<b>5 Project Management / Meetings</b>											
PM, Status Reports, Client updates	2	4	0	0	0	0	0	0	4	10	\$ 1,340.00
Misc. Meetings / Meeting Minutes / Coordination	2	4	0	2	0	0	0	0	2	10	\$ 1,492.00
<b>Total Project Management / Meetings</b>	<b>4</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>20</b>	<b>\$ 2,832.00</b>
<b>Total Estimated Labor</b>	<b>7</b>	<b>14</b>	<b>8</b>	<b>54</b>	<b>36</b>	<b>4</b>	<b>0</b>	<b>8</b>	<b>14</b>	<b>242</b>	<b>\$ 36,135.00</b>
<b>Reimbursable Expenses</b>											
Foam Presentation Boards (24"x36") for Public Meeting					\$ 65.00	/board	@	4	boards	=	\$ 260.00
<b>Total Estimated Change Order Cost</b>										<b>=</b>	<b>\$ 36,395.00</b>

**Table 2: SAI Fee Reallocation Table**  
**Malabar Stormwater Master Plan**  
**Change Order Request 03: FDEP SRF Planning Documentation Assistance**

	Original Scope of Work	Change Order #001	New Total w/ CO #001	Change Order #003	New Total w/ CO #003
<b>SAI Fees</b>					
Task 1	\$ 11,440.00	\$ -	\$ 11,440.00	\$ -	\$ 11,440.00
Task 2	\$ 3,480.00	\$ -	\$ 3,480.00	\$ -	\$ 3,480.00
Task 3	\$ 39,280.00	\$ -	\$ 39,280.00	\$ -	\$ 39,280.00
Task 4	\$ 26,344.00	\$ -	\$ 26,344.00	\$ -	\$ 26,344.00
Task 5	\$ 6,665.00	\$ -	\$ 6,665.00	\$ -	\$ 6,665.00
Task 6	\$ 7,218.00	\$ -	\$ 7,218.00	\$ -	\$ 7,218.00
Task 7	\$ 29,596.00	\$ -	\$ 29,596.00	\$ -	\$ 29,596.00
Task 8	\$ 14,466.00	\$ -	\$ 14,466.00	\$ -	\$ 14,466.00
Task 9	\$ 24,124.00	\$ -	\$ 24,124.00	\$ -	\$ 24,124.00
<b>Subtotal</b>	<b>\$ 162,613.00</b>	<b>\$ -</b>	<b>\$ 162,613.00</b>	<b>\$ -</b>	<b>\$ 162,613.00</b>
CO3 Task 1	\$ -	\$ -	\$ -	\$ 9,506.00	\$ 9,506.00
CO3 Task 2	\$ -	\$ -	\$ -	\$ 7,174.00	\$ 7,174.00
CO3 Task 3	\$ -	\$ -	\$ -	\$ 12,583.00	\$ 12,583.00
CO3 Task 4	\$ -	\$ -	\$ -	\$ 4,040.00	\$ 4,040.00
CO3 Task 5	\$ -	\$ -	\$ -	\$ 2,832.00	\$ 2,832.00
Task 9 Credit	\$ -	\$ -	\$ -	\$ (2,980.00)	\$ (2,980.00)
<b>Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 33,155.00</b>	<b>\$ 33,155.00</b>
<b>Reimbursible Costs</b>					
Printing/Shipping	\$ 100.00	\$ -	\$ 100.00	\$ 260.00	\$ 360.00
<b>Subconsultant Fees</b>					
Applied Ecology, Inc.	\$ 37,410.00	\$ 3,172.00	\$ 40,582.00	\$ -	\$ 40,582.00
<b>Optional Tasks</b>					
WGI - Survey	\$ 10,000.00	\$ -	\$ 10,000.00	\$ (10,000.00)	\$ -
<b>Total</b>	<b>\$ 210,123.00</b>	<b>\$ 3,172.00</b>	<b>\$ 213,295.00</b>	<b>\$ 23,415.00</b>	<b>\$ 236,710.00</b>

**\*Notes:**

1. Change Order 2 was related to schedule and no additional fees were associated with that request. It is therefore not included in this table.
2. The Task 9 Credit shown (2,980.00) is related to subtask 9.2 from the original scope of services. This credit will be applied to Task 1 in Change Order 3 at the time of billing.



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 4.c.**  
**Meeting Date: April 18, 2022**

**Prepared By: Michael Foley, Fire Chief**  
**Through: Lisa Morrell, Special Projects Manager**

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**SUBJECT: Sole Source purchase of LIFEPAK 15 Monitor/Defibrillator utilizing funds State and Local Fiscal Recovery Funds (SLFRF)**

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### **BACKGROUND/HISTORY:**

The Fire Department is requesting to purchase Physio-Control LIFEPAK 15 as a lifesaving resource which performs automated defibrillation and monitoring of cardiac or potential cardiac patients. Brevard County Fire Rescue (BCFR) has been using the Stryker Medical (f.k.a. Physio-Control) LIFEPAK 15 since 2016, this device is the preferred defibrillator/ monitor used by BCFR transport units with seamless hand off for patients to area hospitals and direct transmission of the AED collected data from on scene to transport to treatment center and recovery. The Fire Department currently has zero units for automated chest compression life saving equipment.

Additionally, the Town's Medical Physical, Dr. Larisa Dudley, advises positively to the procurement and use of an AED device for more effective and efficient patient care and transfer to the transporting unit.

The American Red Cross advises chest compressions and use if an AED is available is recommended for every cardiac arrest victim. Whether or not a cardiac arrest victim is suspected of having COVID-19, 9-1-1 should be called and, if available, an AED should be used. Studies to date have shown that defibrillation generates respiratory droplets or aerosols, and it is known that prompt use of AEDs save the lives of cardiac arrest victims. In addition, the current methods of automatic external defibrillation use hands-free methods via adhesive pads that allow performance without direct contact with the victim.

### **ATTACHMENTS:**

Stryker Sole Source Letter  
Stryker LikePak 15 AED Quote  
Red Cross COVID-19 Compression Guidance

### **FINANCIAL IMPACT:**

525.3020 SLFRF \$38,412.94

### **ACTION OPTIONS:**

Motion to approve sole source purchase from Stryker Medical located at P.O. Box 93308 Chicago, IL 60673-3308 and utilizing pricing from NASPO ValuePoint Contract OK-SW-300 with State and Local Fiscal Recovery Funds as an eligible Public Health, COVID-19 Mitigation and Prevention, Medical Expense with compliance reporting EC Code 1.6.

April 2022

Stryker is the sole-source provider in the Hospital (hospitals and hospital-owned facilities), Emergency Response Services and Emergency Response Training (paramedics, professional and volunteer fire) markets in the U.S. and Canada for the following products:

- New LIFEPAK® 15 monitor/defibrillators
- New LIFEPAK 20e defibrillator/monitors
- New LIFEPAK CR2 automated external defibrillators
- New LIFEPAK 1000 automated external defibrillators
- New LUCAS® chest compression system
- CODE-STAT™ data review software and service

Stryker is the sole-source provider in all markets for the following products and services:

- RELI™ (Refurbished Equipment from the Lifesaving Innovators) devices
- LIFENET® system and related software
- ACLS (non-clinical) LIFEPAK defibrillator/monitors
- LIFELINKcentral™ Government Campus Solution
- MultiTech 4G and Titan III gateways
- Factory-authorized inspection and repair services which include repair parts, upgrades, inspections and repairs

Stryker does not authorize any third parties to sell these products or services in the markets listed above. We will not fulfill orders placed by non-authorized businesses seeking to resell our products or services. If you have questions, please feel free to contact your local Stryker customer service representative at 800.442.1142.

Sincerely,



Matt Van Der Wende, Vice President, Americas Sales

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Stryker or its affiliated entities own, use, or have applied for the following trademarks or services marks: LIFELINKcentral, LIFEPAK, LUCAS, CODE-STAT, RELI, LIFENET, Stryker. All other trademarks are trademarks of their respective owners or holders. The absence of a product, feature, or service name, or logo from this list does not constitute a waiver of Stryker's trademark or other intellectual property rights concerning that name or logo.

## Emergency Care

11811 Willows Road NE, Redmond, WA 98052 USA | P +1 425 867 4000 | Toll-free +1 800 442 1142 | [stryker.com](http://stryker.com)



# LIFEPAK 15

Quote Number: 10247281

Version: 1

Prepared For: MALABAR FIRE DEPT

Attn:

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep: Amy Wood

Email: amy.wood@stryker.com

Phone Number: (561) 906-5429

Mobile: (561) 906-5429

Quote Date: 04/11/2022

Expiration Date: 07/10/2022

### Delivery Address

Name: MALABAR FIRE DEPT

Account #: 1519638

Address: 1840 MALABAR RD

MALABAR

Florida 32950-3339

### End User - Shipping - Billing

Name: MALABAR FIRE DEPT

Account #: 1519638

Address: 1840 MALABAR RD

MALABAR

Florida 32950-3339

### Bill To Account

Name: MALABAR FIRE DEPT

Account #: 1519638

Address: 1840 MALABAR RD

MALABAR

Florida 32950-3339

### Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	99577-001955	LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order	1	\$27,400.65	\$27,400.65
2.0	41577-000284	Ship Kit -QUIK-COMBO Therapy Cable; 2 rolls100mm Paper; RC-4, Patient Cable, 4ft.; NIBP Hose, Coiled; NIBP Cuff, Reusable, adult; 12-Lead ECG Cable, 4-Wire Limb Leads, 5ft; 12-Lead ECG Cable, 6-Wire Precordial attachment	1	\$0.00	\$0.00
3.0	11577-000004	Station Battery Charger - For the LP15	1	\$1,581.00	\$1,581.00
4.0	21330-001176	LP 15 Lithium-ion Battery 5.7 amp hrs	3	\$398.65	\$1,195.95
5.0	11171-000046	Masimo™M-LNCS® DCI, Adult Reusable SpO2 only Sensor. For use with RC Patient Cable.	1	\$272.00	\$272.00
6.0	11160-000013	NIBP Cuff-Reusable, Child	1	\$20.40	\$20.40
7.0	11160-000018	NIBP Cuff-Disposable Large Adult	1	\$9.35	\$9.35
8.0	11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	1	\$272.00	\$272.00
9.0	11220-000028	LIFEPAK 15 Carry case top pouch	1	\$48.45	\$48.45
10.0	11260-000039	LIFEPAK 15 Carry case back pouch	1	\$69.70	\$69.70
11.0	11996-000091	Electrode EDGE QUIK-COMBO Adult	1	\$30.64	\$30.64
12.0	11996-000090	Electrode EDGE QUIK-COMBO RTS	1	\$39.10	\$39.10
13.0	11996-000162	SmartCapnoLine Plus - Adult/Intermediate patients >44lbs (box of 25)	1	\$273.70	\$273.70



## LIFEPAK 15

Quote Number: 10247281

Version: 1

Prepared For: MALABAR FIRE DEPT

Attn:

Quote Date: 04/11/2022

Expiration Date: 07/10/2022

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep: Amy Wood

Email: amy.wood@stryker.com

Phone Number: (561) 906-5429

Mobile: (561) 906-5429

Equipment Total: \$31,212.94

### ProCare Products:

#	Product	Description	Qty	Sell Price	Total
14.1	78000008	On Site Prevent for LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order	1	\$7,200.00	\$7,200.00

ProCare Total: \$7,200.00

### Price Totals:

Grand Total: \$38,412.94

#### Comments:

NASPO17 contract pricing

Prices: In effect for 90 days

Terms: Net 30 Days

Contact your local Sales Representative for more information about our flexible payment options.

**Capital Terms and Conditions:**

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule. Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency. A copy of Stryker Medical's Acute Care capital terms and conditions can be found at [https://techweb.stryker.com/Terms\\_Conditions/index.html](https://techweb.stryker.com/Terms_Conditions/index.html). A copy of Stryker Medical's Emergency Care capital terms and conditions can be found at <https://www.strykeremergencycare.com/terms>.



[Take a Class / First Aid/CPR/AED Care During COVID-19](#)

# First Aid/CPR/AED Care During COVID-19



The emergence of COVID-19 has raised questions among those who may need or choose to give care in an emergency. This page is meant to inform those who may perform CPR/First Aid care and are not healthcare professionals.

## How Does COVID-19 Spread?

The SARS-CoV2 virus, which causes COVID-19, is thought to spread mainly from person-to-person, between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Some recent studies have suggested that COVID-19 may be spread by



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## **General Guidance for Preventing COVID-19 Transmission During CPR and First Aid**

While there is currently no specific data on COVID-19 transmission while performing CPR or giving first aid, it is reasonable to conclude that chest compressions have the potential to generate respiratory droplets or aerosols and close contact needed for some aspects of first aid may have risk of transmission.

### **Guidance for PPE**

For lay responders and those who may need to provide care to someone suspected to have COVID-19. We recommend wearing PPE as recommended by CDC, this would be wearing respiratory protection using a respirator (e.g. N-95 mask), eye protection, disposable gloves and a disposable isolation gown if possible. Per CDC guidance facemasks are an acceptable alternative when there is shortage of N-95. During the COVID-19 pandemic, for all persons requiring CPR, personal protective equipment (PPE) such as gloves and face mask should be worn, if available. We recognize that for lay responders, CPR and first aid is often performed for household members where there would have already been close contact and exposure.

We recommend placing a face mask or face covering over the mouth and nose of the victim. If only 1 mask is available and it is simple face mask or face covering, we recommend placing it on the victim.

### **Guidance for Performing a Breathing Assessment and Rescue Breaths in Children or Adults**

While CPR with breaths has been shown to be beneficial when compared to compression-only CPR, during the COVID-19





CPR/first aid care provider looks for breathing but does not listen or feel for the victim's breathing, as this will minimize potential exposure.

- We recommend that adult victims of sudden cardiac arrest receive continuous compression-only CPR from their CPR/first aid care provider until emergency personnel arrive. *Note: Compression-only CPR saves lives compared to no CPR.*
- Cardiac arrests that occur after a breathing problem (which is often the case in infants and young children), drowning and drug overdoses may benefit from standard CPR that includes compressions and rescue breaths. *Note: It is recognized that in some of the cases, the victim may also have COVID-19. However, if a lay responder is unable or unwilling to provide rescue breathing with CPR, compression-only CPR should be initiated.*

## Guidance for Compressions

Chest compressions and use if an AED is available is recommended for every cardiac arrest victim. Whether or not a cardiac arrest victim is suspected of having COVID-19, 9-1-1 should be called and, if available, an AED should be used.

## Guidance for AED Application & Use

No studies to date have shown that defibrillation generates respiratory droplets or aerosols, and it is known that prompt use of AEDs save the lives of cardiac arrest victims. In addition, the current methods of automatic external defibrillation use hands-free methods via adhesive pads that allow performance without direct contact with the victim.

- If an AED is available, it should be applied and used consistently with the manufacturer's guidelines while waiting for emergency personnel to arrive.
- If gloves are available, they should be worn.
- The AED device should be cleaned with disinfectant after use.



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illness and are able to recover at home.

## **If a person has symptoms consistent with COVID-19, Stay Home and Call a Health Care Provider**

- Stay at home and call their doctor for medical advice. Older adults and people of any age with serious underlying medical conditions should call a health care provider as soon as symptoms start.
- Avoid public transportation, ridesharing and taxis.
- Separate from other people in the home. As much as possible, stay in a specific "sick room." Use a separate bathroom, if available. Visitors, other than caregivers, are not recommended.
- Limit contact with pets and animals.
- To protect others, wear a **cloth face covering** if they are around other people (e.g., sharing a room or vehicle) and before entering a health care provider's office. If they are **unable to wear** a cloth face covering, caregivers entering your room should wear one.
- **Continue to follow good hygiene practices.**
- Do not share dishes, drinking glasses, cups, eating utensils, towels or bedding with other people in your home. After use, wash items thoroughly with soap and water or put them in the dishwasher.
- In the sick room and designated bathroom: clean and disinfect all surfaces daily. Surfaces that are touched frequently and by multiple people (such as doorknobs, light switches, phones, remotes, sink faucets and toys) should be cleaned and disinfected throughout the day.
- In the rest of the house: Have a healthy household member clean and disinfect all other surfaces daily and high-touch surfaces frequently throughout the day.

**If symptoms are severe, call to get medical attention immediately.**

**Emergency warning signs include:**

- Trouble breathing
- Persistent pain or pressure in the chest



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## Guidance for Cleaning & Disinfection After First Aid Care

While still wearing personal protective equipment, clean and disinfect items that touched the victim. After cleaning, dispose of your personal protective equipment and perform hand hygiene. Surfaces should be cleaned using a detergent or soap and water prior to disinfection.

- For Hard Surfaces:
  - Diluted household bleach solutions, alcohol solutions with at least 70% alcohol and most common EPA-registered household disinfectants should be effective.
  - Products with EPA-approved emerging viral pathogens claims are expected to be effective against COVID-19 based on data for harder to kill viruses. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.). In their absence, products with label claims against human coronaviruses or other viruses should be used according to label instructions.
  
- For Soft or Porous Surfaces
  - For surfaces such as carpeted floor, rugs, and drapes; remove visible contamination if present, and clean with appropriate cleaners indicated for use on these surfaces.
  - After cleaning, wash items as appropriate in accordance with the manufacturer's instructions. If possible, wash items using the warmest appropriate water setting and dry completely or use products with the EPA-approved emerging viral pathogens claims that are suitable for porous surfaces.
  
- For Clothing:
  - Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - If clothing cannot be immediately laundered, store in a sealed disposable bag.



## Guidance for Providers After Caring for Someone Suspected Positive for COVID-19

Providers with contact with persons known or suspected to have COVID-19 should monitor themselves for symptoms, including fever or respiratory symptoms, e.g., cough, shortness of breath, sore throat. If these symptoms occur, they should self-evaluate and immediately contact their healthcare provider.

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# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 8.a.

Meeting Date: April 18, 2022

Prepared By: Lisa Morrell, Special Projects Manager

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**SUBJECT:** 2<sup>nd</sup> Reading of Ordinance 2022-03 Creating Procurement Policies and Regulations within the Code.

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**BACKGROUND/HISTORY:**

This is the second reading of the ordinance creating regulations within our Code based on best management practices.

At the May 2, 2022 RTCM Administrative policies will be presented for staff to follow on day to day operations, in compliance with the procurement code.

**ATTACHMENTS:**

Ordinance 2022-03

**FINANCIAL IMPACT:**

None

**ACTION OPTIONS:**

Council Action on adoption of Ordinance 2022-03.

## ORDINANCE 2022-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the Town Council desires to update the Code of Ordinances relating to purchasing providing procurement steps, approval processes, authority, delegation of duties and responsibilities and codifying them for staff guidance; and,

**WHEREAS**, the Town Council desires to provide for consistent procedures for purchasing for Town needs; and,

**WHEREAS**, it's the intent of the Town Council to supplement the Town Code and state law and to provide a system of due process regarding the procedures herein to provide consistent processes throughout all Town Departments; and,

**WHEREAS**, the Town Council desires to provide authority to the Town Manager for general supervision of the purchasing and contracts duty and shall act as the principal purchasing officer for the Town with the financial process duties of the procurement process assigned to the Town Clerk/Treasurer; and,

**WHEREAS**, the Town Council desires to provide methods of source selection and processes for all purchasing contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. 287.017, or Competitive sealed bidding, electronic auctions/reverse auctions, Competitive sealed proposals (request for proposals), Invitation to negotiate; and

**WHEREAS**, the Town Council desires to provide in these regulations outlines for the advisory selection committee to follow when evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act (CCNA) per F.S. 287.055; and

**WHEREAS**, the Town Council desires to establish purchasing levels based on a specific threshold value for any procurement not required to be conducted pursuant to the terms and conditions of Section 2-106 of this Code, ("Methods of Source Selection") shall be made in accordance with the operation procedures and thresholds for informal small purchases; and

**WHEREAS**, the Town Council desires to provide for specific exclusions and exceptions to bid, proposal or quote requirements to include sole source solicitations; provide for emergency purchase that are not a result of an emergency declaration, cooperative purchasing, purchases from other governmental entities, purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by formal competitive selections process, professional services, owner direct purchase and Waiver of procurement procedures

**WHEREAS**, the Town Council intends to include requirements for bonds and security requirements, insurance requirements, types of contracts and contract administration, specifications for requisition, appeals and remedies, authority to debar or suspend, and ethics in public contracting.

**WHEREAS**, the Town Council intends to include requirements for donations to be approved by Council.

**NOW THEREFORE BE IT ORDAINED** by the Town Council for the Town of Malabar, Brevard County, Florida:

**SECTION 1.** A new Section 2-101 through 2-116 is hereby added to Chapter 2, Article V, Purchasing, of the Code of Ordinances of the Town to read as follows:

**Chapter 2 – ADMINISTRATION**

**“ARTICLE V. PROCUREMENT CODE**

**Sec. 2-101. Title.**

The provisions of this article shall be known as the Town of Malabar Procurement Code.

**Sec. 2-102. Purpose and intent.**

- (a) *General.* This article applies to all purchases of supplies, services, and construction by the Town except as provided herein.
- (b) *Purpose and intent.* The purpose and intent of this article shall be to generally prescribe the manner in which the Town shall control the purchase of materials, supplies, equipment and certain contractual services. This article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
  - (1) To obtain the supplies, services and construction required by Town departments in order for those departments in a cost effective and responsive manner to better serve the Town's residents and businesses;
  - (2) To uphold the highest standards and best practices through the adoption and adherence with the public procurement profession values and guiding principles of accountability, ethics, impartiality, professionalism, service and transparency;
  - (3) To provide fair and equitable treatment of all persons who transact business with the Town;



- (4) To maximize the purchasing value of public funds in the procurement of goods and services;
  - (5) To provide safeguards for the quality and integrity of the Town's maintenance of a procurement;
  - (6) To maintain a high ethical standard for all officers and employees of the Town in connection therewith; and
  - (7) To require all parties involved in the negotiation, performance, or administration of Town contracts to act in good faith.
- (c) *Contracts to which this article is applicable.* This article applies only to contracts solicited or entered into after the effective date of this article. Nothing in this article shall be construed to prohibit the Town from complying with the terms of a grant, gift, or cooperative agreement.
  - (d) *Supplementary general principles of law applicable.* Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this article.
  - (e) *Severability.* If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
  - (f) *Determinations.* Written determinations required by this Code shall be retained in the appropriate official contract file of the Town.
  - (g) *Public access to procurement information.* Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time and shall be available to the public as provided in such statute.
  - (h) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:
    - (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
    - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

**Sec. 2-103. Definitions.**

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless:

- (1) The context in which they are used clearly requires a different meaning; or
- (2) A different definition is prescribed for a particular article or provision.

*Addendum/addenda* means a formal written notification to prospective bidders or proponents which provides clarification of the requirements for a solicitation. Addenda are also used to summarize clarifications made during a pre-bid or pre-solicitation conference. Whenever a potential bidder/proponent requests information or a clarification regarding information that is not clearly referenced in a solicitation document, it is necessary to provide all bidders and proponents with the information in writing, using the addendum document.

*Administrative policy* means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a Town-wide basis. Administrative policies are approved and issued by the Town Manager.

*Advertisement* means a formal announcement of an invitation for a solicitation; usually placed in a newspaper of general circulation or on an Internet website.

*Best and final offer (BAFO)*: In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, services and products to be delivered. Sometimes referred to as BAFO and utilized during the request for proposal method of procurement.

*Best value* means the highest overall value to the Town based on relevant factors that may include, but are not limited to, price, quality, design and workmanship.

*Bid bond* means a bid security in the form of a bid surety, certified check, cashier's check, or cash that ensures that the bidder will be capable of entering into a contract and subsequently provide the required performance and payment bonds within a specified period of time.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

*Business day* means a day, Monday through Friday, excluding any day that is a Town observed holiday.

*Calendar day or "day"* means a consecutive twenty-four-hour period running from 12:01 a.m. to midnight.

*Category one* means the dollar threshold defined by F.S. § 287.017 (1), which may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases made on behalf of the Town of Malabar. In the event that the State of Florida amends the Category one threshold, such change shall be reported to the Town Council and the Town Council shall be required to formally consent to such change prior to such new threshold becoming effective for the Town.

*Change order* means any written alteration or modification to a contract executed by the Town in accordance with the terms of the contract, directing the contractor to make changes due to unanticipated conditions or developments, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking.

*Construction* means the process of building, altering, repairing, improving, or demolishing any public facility, including any public improvements of any kind to real property, including roadways, utilities, infrastructure, and facility site work. Construction does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

*Construction Manager-at-risk* means a construction delivery process allowing the project owner to choose a construction Manager who assumes the risk for construction, rehabilitation, or repair of a public facility at the contracted price as a general contractor and provides consultation to the Town regarding construction during and after the design.

*Consultant's Competitive Negotiations Act (CCNA)* means F.S. § 287.055, as amended, governing the procurement of architectural, engineering, land surveyor and mapping or landscape architect services.

*Contingent or contingency contract* means an agreement whereby the contractor's revenue is generated from a Council, percentage or other fee that is conditional upon the success that a person has in securing a contract or based on performance on a contract.

*Continuing services agreement or contract* means a contract for professional services entered into in accordance with F.S. § 287.055, as amended, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the Town, with no time limitation except the contract must provide for a termination clause.

*Contract* means all types of Town agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction between parties with binding legal and moral force, usually exchanging goods or services for money or other consideration.

*Contract modification* means written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

*Contractor* means any person or business having a contract with a governmental body or that contracts to perform work or services or provides goods or supplies to the Town.

*Contractual services* mean without limitation, the purchase of insurance, printing, gas, electricity, fuel, cleaning services; the purchase, installation, rental repair and maintenance of equipment and machinery, and other personal property; lease or real property and office space, and all other contractual supplies, materials and equipment and services not specifically excluded from the requirements of this article.

*Data* means recorded information, regardless of form or characteristic.

*Debarment* means the disqualification of a person to receive solicitations or the award of contracts by the Town for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

*Design-bid-build* means a construction project delivery method in which the Town sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

*Design-build* means a construction project delivery method in which the Town enters into a single contract for design and construction of an infrastructure facility as defined in F.S. § 287.055, (CCNA) as amended.

*Designee* means a person who is chosen to represent or given the authority to act on behalf of another person of authority.

*Electronic* means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

*Employee* means an individual drawing a salary from a governmental body, whether elected or not.

*Excess supplies (also see surplus property)* mean any tangible personal property having a remaining useful life, but which is no longer required by the Town department in possession of the supplies.

*Governmental body* means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by

statute and any other entity which expends public funds for the procurement of supplies, services or construction.

*Grant* means a contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

*Gratuity* means a gift, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is received.

*Invitation for bid* means a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought. Unless specifically authorized by this Code, no negotiation is permitted, and the contract award is granted to the lowest priced responsive and responsible bid, which conforms to the requirements set forth in the bid document.

*Invitation to negotiate* means a written solicitation for competitive sealed replies to one (1) or more vendors with which to negotiate for the procurement of commodities or services.

*Job order contracting* means a construction delivery method in which the Town awards a term contract agreement that provides for unit pricing for individual tasks of a project to provide construction services based on individual quotations prepared on a project-by-project basis. Unit pricing is normally predicated on the compilation of a task guide reflecting local construction market conditions where contractors bid a general discount or add-on factor.

*Performance bond* means a contract of guarantee, executed subsequent to award by a successful bidder, to protect the Town from loss due to the bidder's inability to complete the contract as agreed. The bond ensures that the project will be able to be completed in the event that the bonded contractor defaults on their contract.

*Person* means any business, individual, union, committee, club, other organization, or group of individuals.

*Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction including, but not limited to all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Professional services* mean services within the scope of a particular area of practice; such as the practice of architecture, landscape architecture, land surveying and professional engineering which are governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act, as amended. Auditing services, which are governed by F.S. § 218.391, and other professions including, but not limited to law, management consulting, medicine, real estate appraising, or other area of expertise.

*Public notice* means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, posting on a bulletin board, electronic or paper mailing lists, and web site(s) designated by the Town and maintained for that purpose.

*Purchase request* means a document whereby a Town department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

*Request for proposal (or competitive sealed proposals)* means a written solicitation for competitive sealed proposals with the title, date and hour of deadline for submittal. The request for proposals is used when it is impractical for the agency to define a detailed scope of work. The request for proposal document is used to solicit proposals from potential providers for goods and services (offerors). Requests for proposals are evaluated on various criteria, which may or may not include price. When used as an evaluation factor, price may not be the primary evaluation factor, but the proposal document shall state the relative importance of price as well as any other evaluation criteria. A request for proposal provides for the negotiation of all terms, including price, prior to contract award; and may include a provision for the negotiation of a BAFO. Requests for proposal may be a single step or a multi-step process.

*Responsible bidder or offeror* means a person, business or contractor who has the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a Town project or purchase.

*Responsive bidder or offeror* means a person, business or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

*Reverse auction* means a procurement method wherein bidders, anonymous to each other, electronically submit real time bids on designated supplies or services.

*Services* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

*Signature* means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

*Single source* refers to a supply source for goods or services to which purchases are directed because of issues related to standardization, warranty, or other factors, even though other competitive sources may be available.

*Sole source* refers to a situation created due to the inability to obtain competition. This situation may result because only one (1) vendor or supplier possesses the unique ability or capability to meet the particular requirements of the user, or situations where only one (1) economically viable source is capable of providing the service or item that the Town seeks to purchase. Sole sources may be characterized by a marketplace where there is only one (1) vendor because items are patented or geographically franchised.

*Specification* means a precise description of the physical or functional characteristics of a product, good or construction item. A description of goods and/or services. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples. May also be known as a purchasing description.

*Supplies* means all tangible property, including but not limited to equipment, materials, and commodities required for ongoing operational Town requirements including but not limited to

equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

*Surplus property* means any tangible personal property or real property no longer having use to the Town. Surplus property includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

*Term contract or agreement* means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s).

*Using agency/department* means any department, division, activity, agency, board, Council, or other unit in Town government that procures commodities, construction, or services which derive their support wholly or in part from Town funds as provided in this article.

*Written or in writing* means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

#### **Sec. 2-104. Reserved.**

#### **Sec. 2-105. Responsibilities and authority.**

- (a) *General.* Except as otherwise provided herein, the Town Manager shall have responsibility for the general supervision of the purchasing and contracts duties and shall perform all duties required and shall act as the principal public purchasing officer for the Town, responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of excess equipment or supplies.
- (b) *Responsibilities and authority.*
  - (1) All purchases of goods and services shall be processed through the Town Clerk/Treasurer and is hereby authorized to promulgate procedures for the requisitioning of supplies and services.
  - (2) For all purchases, the Town Clerk/Treasurer shall verify that the purchase request has sufficient unencumbered funds to cover the purchase, or that a budget amendment or transfer is in process for approval by the Town Manager or designee.
  - (3) The Town Manager or designee shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments and contract renewals up to and equal to the amount of the threshold for purchasing Category one, as defined in the F.S. § 287.017 (1) or less.
  - (4) The mayor shall have the authority to execute all procurement-related, contracts, contract amendments and contract renewals in excess of the threshold for purchasing Category one, as defined in the F.S. § 287.017(3) after Town Council approval. Such execution shall be attested to by the Town Clerk/Treasurer.

#### **Sec. 2-106. Methods of source selection.**

- (a) *General.* Except as otherwise provided by law, this article or by Charter; all contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. § 287.017, as amended, shall be awarded through the use of a formal competitive process identified within this section.
  - (1) *Competitive sealed bidding.*

- a. *Invitation for bid.* An invitation for bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- b. *Public notice.* Adequate public notice of the invitation for bid shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the Town Clerk/Treasurer. The Town Clerk/Treasurer shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, websites designated and maintained for such notification or on a dedicated area on a website maintained by the Town, or through the use of vendor list which may be maintained by the purchasing and contracts division Town Clerk/Treasurer on an ongoing basis. Publications in newspapers of general circulation must be at least one (1) time, with the notice published in the "Legal Notices" section of the newspaper at least ten (10) days prior to the bid opening date. Notices published on websites must be posted immediately upon release of the invitation for bid and remain available to the public until the scheduled bid opening date and time. Said notice shall state the place, date and time of the bid opening. When the projected cost of a Town construction project exceeds the bid threshold set forth in F.S. § 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.
- c. *Bid bonds.* May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.
- d. *Addenda.* After an invitation for bid is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- e. *Bid opening.* The following procedures shall apply to all bid openings:
  - 1. *Sealed.* Bids shall be submitted sealed to the purchasing office and shall be clearly identified in accordance with the terms of the invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.
  - 2. *Copies.* The appropriate number of copies of the bid as required by the invitation for bid shall be required to be submitted prior to bid opening.
  - 3. *Opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Town Clerk/Treasurer deems appropriate, together with the name of each bidder shall be recorded;



4. *Tabulation.* A tabulation of all bids, and each bid shall be open to public inspection in accordance with the Florida Public Records law.
  5. *Late receipt.* No late bids shall be accepted or opened; if received after the date and time called for in the bid notice, late bids shall be returned unopened to the bidder.
- f. *Bid acceptance.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Code. The Town's rights include Rejecting any or all proposals, waiving irregularities in any proposals, accepting or rejecting all or any part of any proposals, waiving any requirements of the request for proposal package, as may be deemed solely by the Town to be in the best interest of the Town.
  - g. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. Mistakes discovered before bid opening may be withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.

After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the Town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident, or
2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids after bid opening, based on bid mistakes, shall be supported by a written determination made by the Town Clerk/Treasurer .

- h. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- i. *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid. In the event all the low responsive and responsible bid for a project exceeds available funds, the Town Manager is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, Town officials may consider other factors that relate directly to the bidder's level

of responsibility pursuant to the requirements of subsection 2-106(a)(1)h of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Bid Evaluation").

- j. *Award to other than low bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the record file.
- k. *Tie bids.*
  - 1. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:
    - (a) A local bidder with a primary business location within the Town of Malabar.
    - (b) A local bidder with a primary business location within Brevard County.
    - (c) A bidder with a primary business location within the State of Florida.
  - 2. The Town may split the award of a contract when it is to the Town's advantage.
  - 3. Where subsections (a)(1)k.1.(a) through 1.(c) of this section is not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the Town Manager or designee and shall be open to the public.
  - l. *No bids received.* If no bids for goods or services are received, the Town Manager shall have the authority to negotiate terms and pricing with firms which provide the goods or services sought.
- (2) *Electronic auctions/reverse auctions.*
  - a. The Town may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid.
  - b. *Public notice.* Adequate public notice of the electronic auction/reverse auction shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
  - c. *Bid bonds.*-May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award. *Addenda.* After an invitation for bid is issued and before the actual occurrence of the electronic auction/ reverse auction, the Town

Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

- e. *Bid submission.* Bid pricing shall be submitted by electronic means in a manner prescribed procedures as prescribed by the Town Clerk/Treasurer.
  - f. *Acceptance, evaluation and award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of subsections (a)(1)f,(1)h, (1)i, (1)j and (1)l of this section. ("Methods of Source Selection, Competitive Sealed Bidding).
- (3) *Competitive sealed proposals (request for proposals).*
- a. When the Town Clerk/Treasurer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered into by the use of the competitive sealed proposal method.
  - b. *Public notice.* Adequate public notice of the request for proposals (RFP) shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
  - c. *Addenda.* After a request for proposals is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
  - d. *Receipt of proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations and shall be open for public inspection in accordance with Chapter 119, Florida Public Records Law, Florida Statutes, as amended.
  - e. *Evaluation factors.* The request for proposals shall state the criteria to be used in the evaluation of the proposals which shall include their relative importance.
  - f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for proposals. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, including any assigned project Manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the Town.
  - g. *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to

award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the evaluation committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.

- h. *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the Town taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. The Town reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the Town.
- i. *Continuing services contracts.* Continuing services contracts are defined as contracts for professional services entered into in accordance with F.S. § 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the Town, with no time limitation except the contract must provide a termination clause. Continuing services contracts shall be awarded using a qualifications-based selection procedure in accordance with F.S. § 287.055.

(4) *Invitation to negotiate.*

- a. *Determination of use.* When the Town Clerk/Treasurer determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that concurrent negotiation with one (1) or more vendors may be necessary for the Town to receive the best value, the Town Clerk/Treasurer may procure commodities and contractual services by competitive sealed replies solicited through an invitation to negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. 287.055, unless expressly permitted by statute.
- b. *Public notice.* Adequate public notice of the invitation to negotiate shall be given in the same manner as provided in subsection 2-106(a)(1)b of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice")
- c. *Addenda.* After an invitation to negotiate is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the invitation to negotiate. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- d. *Receipt of competitive sealed replies by invitation to negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
- e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the invitation to negotiate, and shall select,

based on the ranking, one (1) or more respondents with which to commence negotiations.

- f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the invitation to negotiate. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, or individuals who may possess a level of skill or expertise related to the scope of work.
  - g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The Town may utilize either sequential or concurrent negotiation methods.
    - 1. *Sequential negotiations:* The Town may consider the respondent's statements of qualifications without consideration to price and may select the most qualified respondents as finalists. The Town may conduct interviews with all finalists and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the Town. If an agreement is not reached, the Town may commence negotiations with the successive ranked respondents until an agreement is attained.
    - 2. *Concurrent negotiations:* The Town may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The Town may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the Town.
  - h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the Town considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made.
- (b) *Selection advisory committee.* There is hereby established a selection advisory committee (SAC) for the purpose of evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act, F.S. § 287.055, as may be amended from time to time.
- (1) The SAC members shall be comprised of at a minimum of consist of three (3) voting members and one (1) nonvoting member
    - a. The Town Clerk/Treasurer or their designee, who shall facilitate the committee process, and be a non-voting member;
    - b. Three (3) members shall be appointed by the Town Manager or their designee from a list of recommendations to the Town Clerk/Treasurer received from the director of using department;
  - (2) All meetings of the SAC shall be subject to and held in conformity with the requirements of the Florida Sunshine law, as may be amended.

- (3) All minutes of the meetings of the SAC shall be promptly recorded and the records shall be open to public inspection in accordance with the provisions of Florida's Public Records laws, as may be amended.
- (4) *Selection procedure.*
  - a. The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require presentations by no fewer than three (3) firms regarding their qualifications, approach to the project, and ability to furnish the required services; however, if less than three (3) proposals are received, the SAC may interview those firms' submitting responses. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the SAC shall rank all responses and determine the response that is most advantageous to the Town.
  - b. The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:
    1. The proposer's demonstrated understanding of the Town's requirements and plans for meeting those requirements;
    2. The professional qualifications, related experience and adequacy of the personnel assigned to the project;
    3. The prior experience and references of the proposer;
    4. The prior experience, if any, that the proposer has had with the Town.
    5. All other statutory requirements of the Consultants' Competitive Negotiation Act as applicable to the specific procurement, including whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985.
  - c. Upon reaching consensus on the recommendation by the SAC, the Town shall negotiate with the number one ranked firm, and upon completion of negotiations, shall make a recommendation to the Town Council for contract award. If negotiations are not successful with the number one (1) ranked firm, the Town shall negotiate with the next highest ranked firm.

**Sec. 2-107. Small purchase procedures.**

- (a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of section 2-106 of this Code, ("Methods of Source Selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.
- (b) *Delegation of authority.* The Town Manager may establish operational procedures delegating authority for Town departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the purchasing Category one threshold as defined in the most current version of F.S. § 287.017, as amended.
- (c) Electrical work in excess of the threshold provided pursuant to F.S. § 255.20(1), as amended, shall be competitively bid.
- (d) *Requirements for quotations.* The Town Manager, or designee, or by a department or division, may solicit informal quotations by anyone (1) or more of the following methods:
  - (1) By direct mail or requests to prospective vendors;

- (2) By telephone, facsimile or e-mail;
  - (3) By public notice posting on a Town-maintained public electronic bulletin board or bulletin board at Town Hall;
  - (4) By use of a third-party internet hosting site;
  - (5) By reverse auction.
- (e) *Quotation threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the Town. The Town Manager shall develop procedures for processing quotations within the guidelines established.

\$0.01 — \$2,000	(3) Quotes are highly recommended.
\$2,001 — \$19,999.99	Minimum of three (3) written quotations required.
\$20,000+	Formal process required as prescribed in Sec. 2-106. Methods of source selection.

In the event that fewer than three (3) quotations are received, the Town may consider those quotations received; however, the Town Clerk/Treasurer or designee reserves the right to validate the availability of suppliers for an item or service.

- (f) *Recording.* The Town Clerk/Treasurer shall maintain a record of all small purchases and the quotations submitted in competition thereon, and such records shall also be open to public inspection.
- (g) *Procurement cards.* The Town Clerk/Treasurer shall have the authority to issue Town procurement cards to employees at the request of the department director. The Town Manager shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an administrative policy.
- (h) *Petty cash.* The Town Clerk/Treasurer may promulgate rules and regulations governing petty cash purchases as appropriate
- (i) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the Town orders, contracts for or buys any materials or supplies outside the purview of the Town Charter and/or this Code. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:
  - (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders") is prohibited.
  - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Town Clerk/Treasurer.
  - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
  - (4) Obtaining items available on an existing Town term contract from a supplier that does not hold the contract.
  - (5) Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).

- (6) Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (j) *Change orders.* The Town Manager or designee is authorized to approve and initiate change orders determined in the judgment of the Town Manager or designee to be in the public interest as follows:
  - (1) All change orders decreasing the cost of the contract to the Town; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;
  - (2) All change orders increasing the cost of the contract to the Town, up to the formal competitive purchasing Category one threshold as defined in the most current version of F.S. § 287.017(3), as amended, and approved by the Town Council, provided that sufficient budgeted funds are available.
  - (3) All other change orders must be formally approved by the Town Council before work may be authorized to begin; and no claim against the Town for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.
  - (4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the Town Manager, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.
  - (5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in subsection 6-148(b) "Emergency Procurements" of this Code.

**Sec. 2-108. Exclusions and exceptions to bid and proposal requirements.**

- (a) *Exclusions.* This article shall not apply to:
  - (1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services;; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;
  - (2) Goods purchased with petty cash or Town procurement cards in accordance with the Town's petty cash and procurement card procedures;
  - (3) Items purchased for resale to the general public; for example, supplies for a Town-owned concession area.
  - (4) Purchase of groceries pursuant to local, state or federal emergency declarations;
  - (5) Artistic services or works of art;
  - (6) Travel expenses, hotel accommodations and hotel services pursuant to per diem rates established by General Services Administration (GSA);
  - (7) Town-sponsored events held at venues not owned by the Town;



- (8) Entertainment and entertainment-related services for Town-sponsored events;
  - (9) Purchase of motor vehicle license plates from a governmental agency;
  - (10) Persons or entities retained as "expert consultants" to assist the Town in litigation, or in threatened or anticipated litigation;
  - (11) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
  - (12) Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III;
  - (13) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.
- (b) *Sole and single source procurements*
- (1) A contract may be awarded for a supply, service, or construction item without competition when the Town Manager or a designee determines in writing that there is only one (1) economically feasible source for the required supply, service, or construction item, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.
  - (2) The Town Manager or designee shall conduct negotiations, as appropriate, regarding price, delivery and terms. The Town department requesting a single, or sole source procurement must submit a written request to the Town Manager for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.
  - (3) Sole source purchase requests shall be approved by the Town Council. A record of sole source purchases shall be maintained by the Town and shall list each vendor's name, the amount and type of each contract and a listing of the item(s) procured under each contract.
- (c) *Emergency procurements.*
- (1) Notwithstanding any other provision of this Code, specifically section 2-400 "EMERGENCY POWERS", the Town Manager or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the Town Manager to the Town Council and included in the contract file.
  - (2) The Town Manager is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the Town Manager shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the Town's needs as a result of the emergency and may delegate authority for a department head or other designee to secure emergency proposals. The Town Manager, the Town Clerk/Treasurer, or the designee shall endeavor to secure proposals from at least two (2) separate sources.
  - (3) Any emergency procurement exceeding the award authority of the Town Clerk/Treasurer, or the Town Manager shall be reported to the Town Council in writing

or at a Town Council meeting, no later than ten (10) working days after the determination that the emergency situation has been stabilized and that no further emergency expenditures are required. The Town Manager shall make a full disclosure of all emergency expenditures made pursuant to this section to the Town Council at the next regular meeting of the Town Council.

- (d) *Cooperative purchasing.* When deemed to be in the best interests of the Town, the Town Manager may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one (1) or more governmental units for the procurement of any supplies, services, or construction. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open-ended public procurement term contracts that are made available to other governmental units.
- (e) *Purchases from other governmental entities.* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section, will require approval by the Town Council.
- (f) *Purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by a formal competitive selection process.* The purchase of goods or services under a contract awarded by the United States Government or another governmental or not-for-profit entity by a formal competitive process is authorized provided the Town Manager makes a determination that time, expense and marketplace factors make it financially advantageous for the Town to do so, will require approval by the Town Council.
- (g) *Professional services.* Contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the Town Manager or designee to be in the best interest of the Town, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional services contracts that exceed the threshold established in subsection 2-106(a) of this Code, ("Methods of Source Selection"), will require approval by the Town Council.
- (h) *Owner direct purchase.* A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the Town as an owner direct purchase for incorporation into a public works project as defined in FSS 255.0992(b) and as amended, the contract for which was previously awarded by the Town, which prior award included the cost of such supplies and materials. In such event, the Town shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (i) *Waiver of procurement procedures.* The Town Council may authorize the waiver of procurement procedures upon the recommendation of the Town Manager that it is in the Town's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. § 287.055 or § 255.20, as amended.

**Sec. 2-109. Bonds and security requirements.**

- (a) *Bid security.*

- (1) The Town Clerk/Treasurer may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the Town Clerk/Treasurer or designee shall consider the nature of the solicitation and performance required to protect the Town during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to Town and approved by the Town Clerk/Treasurer.
  - (2) *Amount of security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.
  - (3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.
  - (4) If a bidder is permitted to withdraw its bid before award as provided in subsection 2-106(a)(1)g of this Code, ("Methods of Source Selection, "Correction or Withdrawal of Bids; Cancellation of Awards"), no action shall be taken against the bidder or the bid security.
- (b) *Performance and payment bonds.*
- (1) When a construction contract is awarded in excess of two hundred thousand dollars (\$200,000.00), the following bonds as security shall be delivered to the Town and shall become binding on the parties upon execution of the contract as required in F.S. § 255.05 as may be amended.
    - a. *Performance bond:* Required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.
    - b. *Payment bond:* Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the contractor.
  - (2) *When required.*
    - a. The Town Clerk/Treasurer shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by subsections 2-109 (b)(1) of this Code.
    - b. Performance and payment bonds may also be required, at the discretion of the Town Clerk/Treasurer, for construction work estimated to cost less than the thresholds established by F.S. § 255.05, as amended. Performance and payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to one hundred (100) percent of the contract price or otherwise secured in a manner satisfactory to the Town. The bonds shall be recorded in the public records of Brevard County, Florida.
  - (3) *Reduction of bond amounts.* The Town Clerk/Treasurer shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.
  - (4) In lieu of a performance and payment bond, the Town may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of one hundred (100) percent of the contract price. Such alternate form of security shall be

for the same purpose and shall be subject to the same conditions as a performance and payment bond.

- (c) *Guidelines and standards for surety companies.* The Town Clerk/Treasurer in consultation with the Town Manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the Town on behalf of a contractor.
- (d) *Use of Town forms.* The Town reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the Town. The Town Clerk/Treasurer or designee shall include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

**Sec. 2-110. Insurance requirements.**

The Town Clerk/Treasurer with the concurrence of the Town Manager may establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The Town of Malabar shall be named as an additional insured for any required general liability coverage. From time to time, the Town may require a contractor or consultant to provide the Town with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the Town.

**Sec. 2-111. Types of contracts and contract administration.**

- (a) *General.* Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the Town may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- (b) *Multi-year contracts.*
  - (1) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Town provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.
  - (2) *Use.* A multi-year contract is authorized where:
    - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
    - b. Such a contract will serve the best interests of the Town by encouraging effective competition or otherwise promoting efficiencies in Town procurement.
  - (3) *Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.
- (c) *Contract administration.* The Town Manager shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is

performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.

- (d) *Contingent contracts.* The use of contingent contracts is prohibited.
- (e) *Cancellation due to non-performance.*
  - (1) *Applicability.* This section applies to contracts, procured by the Town and between a person or entity which provide for termination of the contract by the Town for cause and/or for convenience.
  - (2) *Authority.*
    - a. The Town Manager upon consultation with the Town clerk shall have the authority to terminate a contract for cause, in the event of a breach by the contractor, or for convenience, if in the best interest of the Town.
    - b. Nothing in this section shall be construed to restrict the Town Manager upon consultation with the Town Clerk/Treasurer from simultaneously making a determination to terminate a contract under this section and suspending or debaring a contractor.
  - (3) *Notice of decision.* A copy of any decision under this section shall be furnished in writing to the contractor.
  - (4) *Finality of decision.* Any decision under this section shall be final and conclusive upon the contractor.
  - (5) *Other remedies.* Nothing in this section shall limit the Town from pursuing other legal or contractual rights or remedies against a contractor.
  - (6) The contract documents may provide contract cancellation or contractor termination procedures that are different from, or in addition to, those provided in this section. If a contract contains a cancellation or termination clause, that clause rather than this section shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

#### **Sec. 2-112. Specifications.**

- (a) *Maximum practicable competition.* All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the Town by outside sources.
- (b) *Required characteristics.* All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the Town's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the Town Manager or designee.
- (c) *Relationship with user departments.* The Town Manager shall obtain advice and assistance from personnel of user departments in the development of specifications and may delegate to a user department the authority to prepare and utilize its own specifications.

**Sec. 2-113. Procurement of construction and professional design services.**

- (a) *Procurement of construction delivery methods.* Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the Town Manager or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction Manager-at-risk, task order-contracting, fixed price, or other approved methods.
- (b) *Bonds and insurance requirements for construction projects.* The Town shall require bonds and insurance from contractors for construction projects as prescribed in sections 2-109, "Bonds and Security Requirements" and 2-110, "Insurance" of this Code.
- (c) *Professional design services.* Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. § 287.055, as amended, in accordance with the requirements of subsection 2-106(a)(2) of this Code, ("Methods of Source Selection; Competitive Sealed Proposals") utilizing a qualifications based procurement process which shall not permit the use of price as an evaluation factor.

**Sec. 2-114. Appeals and remedies.**

- (a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors holding a Town contract and shall only apply to protests by bidders or offerors when the Town Manager recommends a purchase in excess of the Town's formal competitive threshold as established in subsection 2-106(a) "Methods of Source Selection", "General" of this Code.
  - (1) *Right to protest.* Any actual or prospective bidder or proposer who is aggrieved in connection with a solicitation or award of a bid or contract may protest to the Town Manager in accordance with established procedures detailed in the purchasing manual.
  - (2) *Remedy.* The Town Manager is authorized to settle any protest regarding the solicitation or award of a Town contract, any claim arising out of the performance of a Town contract, prior to an appeal to the Town Council, or the commencement of an action in a court of competent jurisdiction
  - (3) *Stay of procurement.* In the event of a timely protest properly filed, the Town Clerk/Treasurer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Town Manager or Town Council, as appropriate, makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Town.

**Sec. 2.115. Authority to debar or suspend.**

- (a) *Authority.* The Town Manager or designee, after reasonable notice to the person involved and reasonable opportunity for that person or firm to be heard, is authorized to debar a vendor or bidder for cause from consideration for award of contracts. Debarment shall not be for a period of more than three (3) years.
- (b) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:
  - (1) Conviction for the Council of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Town Manager or designee to be so serious as to justify debarment action:
  - a. Deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract; or
  - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
  - c. Refusal to perform a contract after a contract is accepted by the Town and awarded to the vendor.
  - d. Any other cause the Town Clerk/Treasurer determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; and
  - e. Violation of the ethical standards set forth in section 6-156 (Ethics in public contracting).
- (c) *Decision.* The Town Clerk/Treasurer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (d) *Notice of decision.* A copy of the decision under subsection 6-154(c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (e) *Appeal.* A decision under subsection 6-154(c) shall be final unless within ten (10) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the Town Manager.
- (f) *Authority of the Town Manager.* The Town Manager shall have the jurisdiction to review the Town Clerk/Treasurer decision regarding suspension or debarment and decide whether, or the extent to which, the debarment or suspension was in accordance with this section, was in the best interest of the Town, and was fair. such decision by the Town Manager shall be final and conclusive.

**Sec. 2-116. Ethics in public contracting**

- (a) *Standards of ethical conduct.*
  - (1) *Ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the Town employee's or elected official's duties is a breach of a public trust.
  - (2) *Ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a violation of this article.

- (b) *Standards of conduct for employees, public officials and suppliers.*
- (1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by administrative policy of the Town.
  - (2) *Solicitation or acceptance of gifts.*
    - a. No Town official or employee shall solicit or accept anything of value from any vendor or bidder, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the actions of that official or employee would be influenced thereby.
    - b. No bidder, supplier, vendor or contractor shall solicit or provide anything of value to any Town official or employee.
  - (3) *Doing business with the Town.* No Town officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the Town from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. No Town official or employee, acting in a private capacity, shall rent, lease or sell any realty, goods or services to the Town.
  - (4) *Unauthorized compensation.* No Town officer, agent or employee or his or her spouse or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.
  - (5) *Conflicting employment or contractual relationship.* No Town officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the Town; nor personally profit directly or indirectly from any contract, purchase, sale or service between the Town and any person or company through a relationship with any business entity which is doing business with the Town. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the Town.
  - (6) *Contingent fees.* No Town official or employee shall be retained, or shall retain a person, to solicit or secure a Town contract upon an agreement or understanding for a Council, percentage, brokerage or contingent fee.
  - (7) *Confidential information.* No Town official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
  - (8) *Prohibition against lobbying.*
    - a. During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any Town Council members, candidates for Town Council or any employee of the Town. Contact should only



be made through regularly scheduled Council meetings, or meetings scheduled through the Town Clerk/Treasurer for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.

- b. During a formal solicitation process, contact with personnel of the Town of Malabar other than the Town Clerk/Treasurer or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

**Sec. 2.116.1. Surplus tangible property.**

- (a) *Determination that property is surplus.* At least once annually, each department shall review Town inventory and make a determination of Town property that should be classified as surplus; however, at any time during the fiscal year a department may identify property as being surplus.
- (b) *Disposition of surplus property.* The Town Manager shall have the responsibility to dispose of any Town tangible property that exists on the official municipal inventory, that is obsolete, worn out, excess, scrapped, or not cost effective to repair.
  - (1) Using departments shall submit to the Town Manager or designee, at such time and on such forms that may be prescribed, reports showing stock of all supplies which are no longer used, or which have become obsolete, worn out, excess, scrapped or that are not cost effective to repair. The using department may suggest a dollar value per item or per lot of items; however, such suggestion shall not constitute the minimum sale amount.
  - (2) The Town Manager shall have the authority to dispose of surplus property by the method or methods deemed to be most advantageous, convenient and economical to the Town. Methods of disposal of surplus stock may include, but not be limited to the use of competitive sealed bids, public auction, including internet auctions, established markets, sales at posted prices, or trade-in for new equipment, donated pursuant to FSS 273.01(3), as may be prescribed for the individual situation.
  - (3) Property that has been declared surplus that has a book value of greater than five thousand dollars (\$5,000.00) shall be disposed of by authorization of the Town Council.
  - (4) Property which has been declared surplus may be donated to an outside agency at the discretion of the Town Manager or designee. The Town Manager or designee shall report any donations with a book value of greater than five thousand dollars (\$5,000.00) to the Town Council at its next regularly scheduled meeting, .
  - (5) Property which is in a wrecked, inoperative or partially dismantled condition, or which has deteriorated to the point that it has no apparent monetary value or may pose a potential risk to the Town if disposed of through a sale, may be discarded as trash in an environmentally acceptable method, upon receipt of written approval by the Town Manager.
  - (6) In the event that either the competitive sealed bid or public auction methods for disposal are used, notice of a proposed sale of property shall be publicly noticed by advertisement in a newspaper of general circulation within the Town, or by electronic notice published on the Internet at least one (1) week prior to the scheduled sealed

bid or auction. The property shall be available to prospective buyers for inspection in advance of the bid opening or auction.

- (7) Competitive sales of surplus property shall be made to the highest responsive and responsible bidder.
- (c) *Surplus proceeds.* The proceeds from any sale of Town property, less selling expenses if applicable, shall be deposited into the fund which purchased the property.

**Sec. 2-116.2 Surplus real property.**

- (a) *General.* Upon the Town Council's determination that continued ownership of any parcel of real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the Town, the Council shall authorize by resolution the sale or other disposition of such real estate. No sale or conveyance shall be deemed authorized except as provided in the authorizing resolution -
- (b) *Appraisal required.* Prior to the sale or other disposition of any Town-owned real property, an appraisal shall be obtained unless the Town Council finds that, due to exigent or other circumstances, an appraisal would not be in the best interest of the Town. For platted, undeveloped residential property, a recent appraisal of comparable property located in the same vicinity of the subject property may be utilized to satisfy the appraisal requirement. For purposes of this section, a "recent" appraisal shall mean one that was prepared not more than twelve (12) months prior to the proposed date of sale or other disposition.

**Sec. 2-116.3. Acceptance of donations.**

Donations other than sponsorships of Town events, with an estimated value exceeding one thousand dollars (\$1,000.00), shall be approved by the Town Council prior to acceptance.

**SECTION 3. Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 4. Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or Town law, rule, code, or regulations, the more restrictive shall apply.

**SECTION 5. Inclusion in Code.** It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

**SECTION 6. Effective Date.** This Ordinance shall take effect immediately upon passage and 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 \_\_\_\_\_

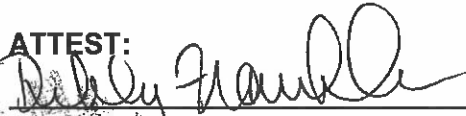
Council Member Mary Hofmeister \_\_\_\_\_

This ordinance was then declared duly passed and adopted this 18th day of April 2022.

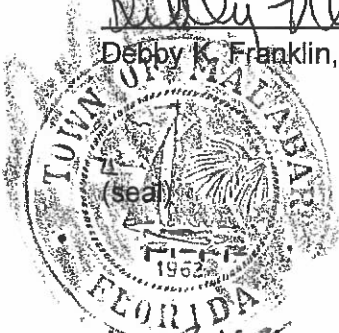
**TOWN OF MALABAR**

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

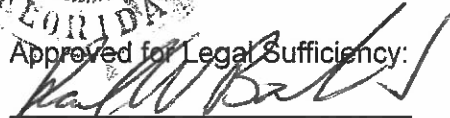
**ATTEST:**

  
\_\_\_\_\_

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



Approved for Legal Sufficiency:

  
\_\_\_\_\_

Karl Bohne, Jr, Town Attorney

First Reading: 04/04/2022 Vote 4 to 0.

Second Reading: 04/18/2022

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 8.b.

Meeting Date: April 18, 2022

Prepared By: Matthew Stinnett, Town Manager

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**SUBJECT:** 2<sup>nd</sup> Reading of Ordinance 2022-04 Regulation of Non-Stormwater Discharges into the Storm Drainage System.

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### **BACKGROUND/HISTORY:**

This is the second reading of the ordinance creating regulations within our Code based on recommendations resulting from the FDEP audit earlier this year.

On February 28, 2022 we received an audit report from the Florida Department of Environmental Protection of our Municipal Separate Storm Sewer System (MS4) NPDES Permit. One of the required improvements was to adopt a regulatory mechanism to specifically prohibit non-stormwater discharges into the storm sewer system. The proposed ordinance will satisfy this requirement.

### **ATTACHMENTS:**

Ordinance 2022-04

### **FINANCIAL IMPACT:**

None

### **ACTION OPTIONS:**

Council Action on adoption of Ordinance 2022-04.

**ORDINANCE NO. 2022-04**

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA, AMENDING THE TITLE OF ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; CREATING CHAPTER 1; PROVIDING FOR A CHAPTER 2; CREATING NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** Article VIII of the Town Land Development Code is hereby amended to read as follows:

**“Article VIII Surface Water, Natural Resources, and Stormwater Management**

**Chapter 1. Surface Water Management (1-8.1 through 1-8.19)**

...

**Chapter 2. Illicit Discharge and Connection (2-8.01 through 2-8-14)**

**Sec. 2-8.01. – Short title, Purpose, Findings and Intent.**

This article shall be known and may be cited as the “Town of Malabar Illicit Discharge Code.

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the Town of Malabar, Florida through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law

This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process

The objectives of this Chapter are:

a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;

b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

**Sec. 2-8.02. – Definitions.**

- a. Authorized Enforcement Agency means the department within the town that is designated by the town manager as having the responsibility to enforce this article, or the town's code enforcement department.
- b. Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- c. Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- d. Construction activity means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.
- e. Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- f. Illicit connection means either:
  - (1) any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
  - (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- g. Illicit discharge or illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 2-8.09 of this article, or discharge to the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits. Illicit discharges are declared a serious threat to the public health, safety, and due to their nature are irreparable or irreversible in nature.

- h. Industrial activities means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14), or amendments thereto, or any unit operation, complex, area, or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.
- i. Municipal separate storm sewer system (MS4) or storm drain system means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.
- j. National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.
- k. Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.
- l. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.
- m. Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- n. Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- o. Receiving bodies of water means any water bodies, watercourses and wetlands into which surface waters flow.
- p. Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- q. Stormwater management system means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.
- r. Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- s. Water body means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

- t. Watercourse means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

**Sec. 2.8.03. – Applicability.**

This chapter shall apply to all water entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Sec. 2.8.04. – Compatibility with other regulations.**

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**Sec. 2-8.05. – Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Sec. 2-8.06. – Control of pollutant contributions from interconnected MS4s.**

Interconnected MS4s, including MS4s not owned by the town, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

**Sec. 2-8.07. – Prohibitions.**

- (a) Illicit/illegal discharges. No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

- (1) petroleum products, including, but not limited to, oil, gasoline, grease;
- (2) solid waste;
- (3) paints;
- (4) steam cleaning waste;
- (5) pesticides, herbicides or fertilizers;
- (6) degreasers, solvents;
- (7) sanitary sewage;
- (8) chemically treated cooling water;
- (9) antifreeze and other automotive products;
- (10) lawn clippings, leaves, branches, etc.;



- (11) animal carcasses;
- (12) recreational vehicle waters;
- (13) dyes;
- (14) construction materials;
- (15) water from a commercial car wash;
- (16) any liquids in quantity or quality that are capable of causing a violation of the town's NPDES stormwater permit; and
- (17) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the town's storm drain system.

(b) Illicit connections.

- (1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the town that results in any discharge in violation of any provision of federal, state, town or other laws or regulations.
- (2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived, regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.
- (3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(c) Violation of permits. Any discharge into the stormwater system of the town in violation of any federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

**Sec. 2-8.08. – Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.**

- (a) Stormwater from areas of any commercial activity, industrial activity, or construction activity shall be controlled, treated, and managed on site using best management practices so as not to cause an illicit or illegal discharge to the town's MS4 or regulated waters.
- (b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the town's land development regulations, shall be properly implemented, installed, operated, and maintained.
- (c) Authorized discharges to the town's MS4 shall be controlled so that they do not impair the operation of the town's MS4 or contribute to the failure of the town's MS4 to meet any applicable local, state, or federal law or regulation.
- (d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

- (e) Any person who has been issued an NPDES permit authorizing discharges to the MS4 shall submit a complete copy of the permit to town engineering department within 30 days after the issuance of a permit.

**Sec. 2-8.09. – Authorized exemptions.**

- (a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described as follows:
- (1) water line flushing;
  - (2) flushing of reclaimed water lines;
  - (3) street cleaning;
  - (4) construction dust control;
  - (5) landscape irrigation;
  - (6) diverted stream flows;
  - (7) rising ground waters;
  - (8) foundation and footing drains;
  - (9) dechlorinated swimming pool discharges;
  - (10) uncontaminated ground water infiltration (as defined at 40 CFR 35.205(20));
  - (11) uncontaminated pumped ground water;
  - (12) discharges from potable water sources;
  - (13) air conditioning condensate;
  - (14) irrigation water;
  - (15) springs;
  - (16) lawn watering;
  - (17) individual residual car washing
  - (18) flows from riparian habitat and wetlands; and
  - (19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.
- (b) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Florida Department of Environmental Protection, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

**Sec. 2-8.10. – Emergency conditions and suspension of MS4 access.**

Notwithstanding any other provisions of this article, whenever the authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or town approved construction plans, town forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency, conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

- (a) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened

discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

- (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

**Sec. 2-8.11. – Inspection and monitoring for compliance.**

Town personnel and town agents shall be granted access for inspection of facilities discharging or suspected of discharging to the town's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the town's MS4, as well as records relating to them, shall be made accessible to town personnel and town agents for this purpose.

**Sec. 2-8.12. – Reporting requirements.**

Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 2-8.07, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the town, the county public safety office, the county health department, and the Florida Department of Environmental Protection.

**Sec. 2-8.13. – Enforcement.**

(a) Notice of violation.

- (1) For any violation which does not involve an illicit discharge, the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:
- a. the performance of monitoring, analyses, and reporting;
  - b. the elimination of illicit connections;
  - c. the issuance of cease and desist orders;
  - d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;

- e. advice as to the possible amount of fines; and
  - f. the implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.
- (b) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the special magistrate or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the special magistrate.
  - (c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, shall be liable to the town for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges. The determination of the reasonableness of such costs shall be brought before the special magistrate, either as an independent hearing or in conjunction with a code enforcement hearing. The determination regarding the reasonableness of the cost of abatement shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment if such amount is not paid within ten days from the date of the special magistrate's decision regarding the abatement costs.
  - (d) Persons responsible for violation of this article shall be liable for all costs incurred by the town in sampling, analyzing and/or monitoring the discharge, together with all state and/or federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.
  - (e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the town's legal recourse, be subject to prosecution before the special magistrate of the town, pursuant to this Code. Each day of violation shall constitute a separate violation.
  - (f) The town may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.
  - (g) In the event of an illicit discharge, the Town shall not be required to send a Notice of Violation and may cause a Hearing to be immediately scheduled before the Special Magistrate with notice of such hearing provided to the violator.
  - (h) The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies. The Town may recover all attorney's fees court costs and other expenses associated with enforcement of this Chapter in court.

**Sec. 2-8.14. – Use of penalty awards.**

Any funds received by the Town as a result of the enforcement of this code which are not used for specific purposes set forth in this code shall be deposited in the stormwater utility fund."

**Section 2. Severability.** The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

**Section 3. Inclusion in Code.** It is the intention of the Town Council of the Town of Malabar that the provisions of this ordinance shall be made a part of the Town of Malabar Code of Ordinances, and the sections may be renumbered to accomplish such intention.

**Section 4. Effective Date.** This ordinance shall take effect 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	_____

This ordinance was then declared duly passed and adopted this 18th day of April 2022.

**TOWN OF MALABAR**

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

**ATTEST:**

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

(seal)

Approved for Legal Sufficiency:

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

First Reading: 04/04/2022 Vote 4 to 0.

Second Reading: 04/18/2022

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 9.a.

Meeting Date: April 18, 2022

Prepared By: Denine Sherear, P&Z Secretary

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**SUBJECT: Removal of Member due to excessive absences**

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**BACKGROUND/HISTORY:**

Malabar Code requires Council to remove or grant a Special Exception when a member is absent for more than 25% of the scheduled meetings.

**ATTACHMENTS:**

- Memo from P&Z Board Secretary 22-BDM-010
- Chapter 2, Article VIII, Section 2-211. General Procedures for all Boards
- Summary of Attendance 2020, 2021, 2022
- Resolution 01-2020

**ACTION OPTIONS:**

Council Action on P&Z Board Recommendation

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** March 31, 2022 22-BDM-010

**To:** Debby Franklin, Town Clerk/Treasurer  
Town Council

**From:** Denine Sherear, Planning & Zoning Board Secretary

**Ref:** Consensus of the P&Z Board- Remove Alternate PZ Member Mr. Jeff Rinehart

---

At the last meeting on March 23, 2022, the consensus of the Planning & Zoning Board was to re-move Alternate PZ Board Member Mr. Jeff Rinehart due to lack of presence at meetings or to call Board Secretary for not being in attendance during regular PZ Board Meetings.

**Sec. 2-211. - General procedures for all boards and committees.**

Citizen participation is vital to a democratic government. The Town of Malabar recognizes the unique contributions made by volunteers and encourages involvement in the policy-making process through service as an advisory board member. Boards and committees are standing bodies established by town ordinance and appointed by the town council to provide ongoing board/committee recommendations to town council on diverse matters of public concern. Included are zoning, municipal planning, parks and recreation, trails and greenways, public art, historic preservation and building codes. Boards handle a variety of issues within a subject range; committees are delegated to consider, report and take action on specific issues, such as trails and greenways. Ad hoc committees are short term with a limited period and have a particular purpose, such as the taxpayer budget review committee or the SpringFest committee. Ad hoc committees are appointed on an as-needed basis and the committee sunsets once the purpose is served. They do not take a special action by council to terminate.

- (a) All appointments, whether regular member appointments, alternate member appointments or appointments to fill any vacancies to any town boards or committees is within the sole and absolute discretion of the town council. Applications for appointment are available in the office of the town clerk and also on the town's website. Completed applications shall be filed with the town clerk. The application shall be given to the respective board or committee for their review and recommendation to the town council. Such board or committee shall rank the applicants in order of preference, including the ranking of any alternates. The town council shall review the recommendation of the respective board or committee and make appointments as the town council desires. Nothing herein is intended to require the town council to accept any recommendation on such appointments from the respective board or committee. All boards and committees shall have five (5) regular members presiding and two (2) alternate members. Both alternates may participate in all discussion but only five (5) members vote. The alternate members shall alternate voting in the absence of a regular board member.
- (b) *Requirements for board/committee membership.* Board members should have the expertise necessary to accomplish the board's objectives; a reputation for integrity and community service; interest or experience in the area of board service desired. All boards shall be comprised of Town of Malabar residents who have lived within the town for a minimum of one (1) year immediately preceding their appointment. All members shall also be registered electors of the town. Most boards require financial disclosure; and if appointed to one (1) of these boards, Section 112.3145, Florida Statutes, requires that you file a Form 1, Limited Financial Disclosure, with the Brevard County Supervisor of Elections within thirty (30) days of your appointment. All appointed members shall also be administered the oath of office by the mayor or presiding officer in the absence of the mayor at the council meeting of their appointment. All board/committee members shall serve without compensation. Any member may be removed from office for cause by the town council upon written charge and public hearing.
- (c) The term of service for all board/committee regular and alternate members begins November 1 and ends October 31. The initial term of appointment will be based on the term remaining for that seat. Upon successful reappointment the renewing term for all boards/committees will be three (3) years. If the appointment is to fill a standing vacancy, the term for all boards/committees will be three (3) years. The terms are staggered for continuity as established by resolution.



(d) *Attendance.* Most boards/committees meet monthly with meeting times varying in length according to agenda items to be addressed. A quorum is three (3) members on all boards except the board of adjustment. Regular attendance is required by regular members and alternates. If a board/committee member's (regular or alternate) absences exceed twenty-five percent (25%) of the scheduled meetings in a fiscal year (Oct. 1—Sept. 30) the board secretary shall send memo to clerk. Clerk will place item on next council agenda for action on termination or special exception. A board member is considered absent if not present for at least seventy-five percent (75%) of a scheduled meeting.

(e) *Vacancies.* The board/committee shall find that a vacancy exists upon:

(1) Receipt of a resignation in writing from one (1) of its members or

(2) Death, removal or disqualification or

(3) Absence in excess of twenty-five percent (25%) of scheduled meetings within a fiscal year (Oct. 1—Sept. 30).

Only council can declare the seat vacated.

(f) Each board/committee shall elect its chair and vice-chair from among its members annually at the first meeting in November. The term will begin on the date of appointment and run for one (1) year. The chair shall set the agenda and facilitate the meeting. The vice-chair shall act in the absence of the chair.

(g) *Reappointments.* Board/committee members whose terms are expiring may submit an application for reappointment no later than September 1. The clerk will place the board appointments on the second meeting agenda in October for council action. Once the appointments are made, the members will take their seat at the first meeting in November. Appointees may be administered the oath of office either at the council meeting when they are appointed or at a subsequent council meeting.

(Ord. No. 14-08, § 1, 6-16-14)

## SUMMARY OF MEMBER PZ ATTENDANCE 2020

Member Name	1	A	C	E	V	
WAYNE ABARE	12	0	12	0	0	
LIZ RITTER	12	0	12	0	0	
GEORGE FOSTER	11	0	12	1	0	
DOUG DIAL	8	0	12	3	1	
MARY HOFMEISTER	9	0	12	3	0	
SUSAN SHORTMAN	11	0	12	1	0	
JEFF RINEHART	12	0	12	0	0	

1= ATTENDED

A= ABSENT (NO SHOW/NO CALL)

C= CANCELLED (MEETING CANCELLED)

E= EXCUSED

V= VIRTUAL (BY PHONE)

## SUMMARY OF MEMBER PZ ATTENDANCE 2021

Member Name	1	A	C	E	V	
WAYNE ABARE	8	0	12	2	0	
LIZ RITTER	10	0	12	0	0	
GEORGE FOSTER	10	0	12	0	0	
DOUG DIAL	8	1	12	1	0	
MARY HOFMEISTER (11/10/2022 OFF)	10	0	9	2	0	
SUSAN SHORTMAN	11	0	12	1	0	
JEFF RINEHART	3	4	12	3	0	
BARB CAMERON (11/10/2021 ON)	1	0	3	0	0	

**SUMMARY OF MEMBER PZ ATTENDANCE 2022**  
**THROUGH 3/23/2022**

Member Name	1	A	C	E	V	
WAYNE ABARE	1	0	5	0	0	
DOUG DIAL	0	0	5	1	0	
GEORGE FOSTER	0	0	5	1	0	
LIZ RITTER	1	0	5	0	0	
SUSAN SHORTMAN	1	0	5	0	0	
BARB CAMERON, ALT	1	0	5	0	0	
JEFF RINEHART, ALT	0	1	5	0	0	

1= ATTENDED

A= ABSENT (NO SHOW/NO CALL)

C= CANCELLED (MEETING CANCELLED)

E= EXCUSED

V= VIRTUAL (BY PHONE)

RESOLUTION 01-2020

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

WHEREAS, Malabar Town Council has been notified of an opening on the Planning and Zoning Board; and

WHEREAS, Malabar Town Council desires to fill this opening by appointment.

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 appointment of Jeff Rinehart as an alternate member of the Planning and Zoning Board for a three-year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Board Chair and the Board Secretary of this appointment.

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 Rivet. This motion was seconded by Council Member Vail and, upon being put to vote, the vote was as follows:

Council Member Grant Ball  
Council Member Brian Vail  
Council Member Steve Rivet  
Council Member Dave Scardino  
Council Member Danny White

Aye  
Aye  
Aye  
Aye  
Aye

This Resolution was then declared to be duly passed and adopted this 14th day of January, 2020.

TOWN OF MALABAR

By: Patrick T. Reilly  
Mayor Patrick T. Reilly, Council Chair

ATTEST

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



Approved as to form and content:

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

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 9.b**  
**Meeting Date: April 18th, 2022**

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

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**SUBJECT:** Request by Trails and Greenways Committee for Council to Direct Staff to Research and Prepare a Submittal for Funding Request for Invasive Plant Control within the Cameron Preserve

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**BACKGROUND/HISTORY:**

- a. At the March 15<sup>th</sup> Trails and Greenways Committee Meeting, the Committee voted to recommend that Council direct Staff to begin work on an application for the Uplands Invasive Exotic Plant Management Program.

**ATTACHMENTS:**

- a. Memo 2022-DTC/T-5
- b. Information from the Uplands Invasive Exotic Plant Management Program
- c. Map of the Cameron Preserve

**ACTION OPTIONS:**

- a. Request Council direct Staff to begin work on an application for the Uplands Invasive Exotic Plant Management Program

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** April 7, 2022 2022-DTC/T-5  
**To:** Town Clerk & Town Manager  
**CC:** Town Council and Mayor Reilly  
**From:** Richard W. Kohler, Deputy Town Clerk/Treasurer  
**Ref:** Trails and Greenways Committee Recommendations

---

At the March 15th Trails and Greenways Committee Meeting, the Committee voted to recommend that Council direct Staff to begin work on an application for the Upland Invasive Exotic Plant Management Program. This program funds projects that improve the habitat conditions for Florida's native plants and animals. It is the hope of the Trails and Greenways Committee that these funds can be used to help remove Cogan Grass, Melaleuca, and Brazilian Pepper Trees. Funds for this program are generated in the Invasive Plant Control Trust Fund, as outlined in F.S. 369.252(4).

After their discussion, Vice Chair Hann made the following motion:

**Recommendation to direct staff to research and prepare a submittal for a funding request for invasive plant control (removal of Cogan Grass, Melaleuca and Brazilian Peppers) within the Cameron Preserve.**

Committee Member Harvey seconded the motion, and it passed unanimously.

This is not a grant. Funding for approved projects is provided by the Uplands Program. If approved, staff will work towards funding for the 22/23 FY.

# UPLAND INVASIVE EXOTIC PLANT MANAGEMENT PROGRAM

## Fiscal Year 2022-2023 Priorities and Procedures for Submitting Proposals

A Guidance Document for Regional Invasive Plant Working Group Liaisons and Applicants

March 2022

Funding for the “Uplands Program” is provided as set forth in Section 369.252(4), Florida Statutes, which reads: “Use funds in the Invasive Plant Control Trust Fund as authorized by the Legislature for carrying out activities under this section on public lands. A minimum of 20 percent of the amount appropriated by the Legislature for invasive plant control from the Land Acquisition Trust Fund shall be used for the purpose of controlling nonnative, upland, invasive plant species on public lands.” Total funding for the Uplands Program in 2021 was \$12million.

The Uplands Program funds projects for the purpose of improving habitat conditions for Florida’s native plants and animals. Since 1997, the Uplands Program has expended \$227,000,000 to treat invasive plant species on 701 public land management areas. The program funded 3,336 projects targeting 4,000,000 acres of public conservation lands that together comprise 10,047,000 acres, or 90% of all conservation land in the state. Over the same period, cooperating agencies contributed over \$57,000,000 in matching funds and in-kind services towards project funding.

### CALL FOR PROPOSALS

- The Uplands Subsection is currently seeking proposals for FY22/23. Applications for projects to control invasive plant species must be submitted to a Working Group by the date specified. Each Working Group has its own schedule, so applicants should contact the designated group liaison.
- All proposed project sites must be designated public conservation land.
- **THIS IS NOT A GRANT.**

Funding for approved projects is provided by the Uplands Program through a fixed price purchase order issued to an approved Contractor, or through a task assignment issued to a government agency under an existing state contract.

Interested applicants can find information related to submitting a proposal in the [Proposal Handbook](#).

### FY22 Program Priorities

These are our priorities *if our budget remains the same as last year. Please be competitive and show your working group why your project cannot wait another year to be funded, the amount of work you’ve already invested, and how valuable the unit is.*

**Initial-** Initial means the first time a unit has been treated by anyone. A new species after initial treatment is still maintenance.

**PRIORITY 1-** Maintenance of most FLEPPC 2019 Category I species, particularly *Lygodium* spp. and cogon grass: \$150,000 cap. To qualify for Priority 1 status, the proposal must be for maintenance control of a project area that has been continually treated for up to four consecutive years but is not yet in a maintenance rotation. EXAMPLE: A species that requires yearly treatment for four consecutive years to achieve maintenance (think cogon or climbing ferns) as compared to a woody species (like Melaleuca or Camphor) that need one treatment in a year and can then move to a two- or three-year rotation. We know most projects have multiple invasives, but these priorities should be for the major problematic species.



**PRIORITY 2-** Maintenance of areas that were treated consecutively for multiple years, are currently in a treatment rotation, and need the next treatment in the upcoming fiscal year: \$150,000 cap.

**PRIORITY 3-** Initial control of some FLEPPC 2021 Category I invasive plant species: \$150,000 cap. Initial means the first time a unit has been treated by anyone. Category II species might also be considered, on a case-by-case basis, but don't get your hopes up.

**PRIORITY 4-** Treatment of areas that were previously treated but maintenance was not kept up, or areas that have been treated that have low invasive densities but could be placed in rotation: \$50,000 cap. Priority 4 proposals may not be funded if it is determined that the infestation level is too low for cost-effective contracted work and treatment, or could be safely delayed for a year or two, or could be managed by in-house staff if herbicides were provided.

*The Herbicide Bank continues to be available for any in-house maintenance control on Public Conservation Land. However, due to major supply chain issues obtaining herbicide may be difficult, slow, or postponed a year.*

### FY23Proposals to the Working Groups

Please submit Ranking, including *Melaleuca* projects, no later than **16 May**. *Melaleuca* treatment projects are for *Melaleuca* only and should be submitted under the Special category in TIERS. These projects are ranked in Tallahassee.

### CLARIFICATIONS

- In TIERS the treatment history table is for the **PROPOSED UNIT** in each scope of work to include: year, unit, acres, funding source, species treatment, funding amount, and whether it was initial or maintenance.
- Unit description should include *only* the acres of the unit to be treated. Please give a range of invasive plant coverage—plant growth can change before the contractors arrive on site; therefore, exact coverage acres should not be used to describe treatment areas.
- Please provide an area map showing the current condition and a 2022/23 invasive plant maintenance plan (*see example next page following*).
- Land managers may submit *multiple* scopes of work for a *single* public conservation land; e.g., *Lygodium* maintenance on burn unit 1, cogon maintenance on burn unit 2, etc. However, proposals including multiple PCLs managed by different agencies are not allowed—unless they are all contiguous and one designated Site Manager is responsible for overseeing the entire project.
- If your proposal includes treating a significant amount of cogon grass, *Scleria microcarpa*, *Scleria lacustris* or *Scleria eggersiana* write the SOW to include **two** treatments of the grass portions only. The two treatments are restricted to the first **three** consecutive years of treatment.

### SPATIAL DATA

For funded projects, before the pre-quote meeting can occur, a shapefile of the final treatment boundary must be provided. Please create polygon treatment units, not points. FNAI is available to assist applicants with the digitizing of their treatment boundaries in ArcMap, QGIS or Google Earth. Please contact Mitch East 850-224-8207 x206 meast@fnai.fsu.edu if you need help.

### Apples to Apples

We will again allow breaking out “small” projects for a separate ranking list. Smalls must meet the following Project Criteria: Page 9

- Estimated project cost is (realistically) no more than \$50,000;
- Property is designated as public conservation land;



- Property is owned by a city, county, or public university;
- Property contains less than 400 acres in its entirety—i.e., not a site/unit contained within a larger PCL managed by the same agency and/or cooperators; and,
- Property is protected from future development in perpetuity (e.g., by deed, easement, or master plan restrictions).

*Potential Ranking Criteria for Small Projects*

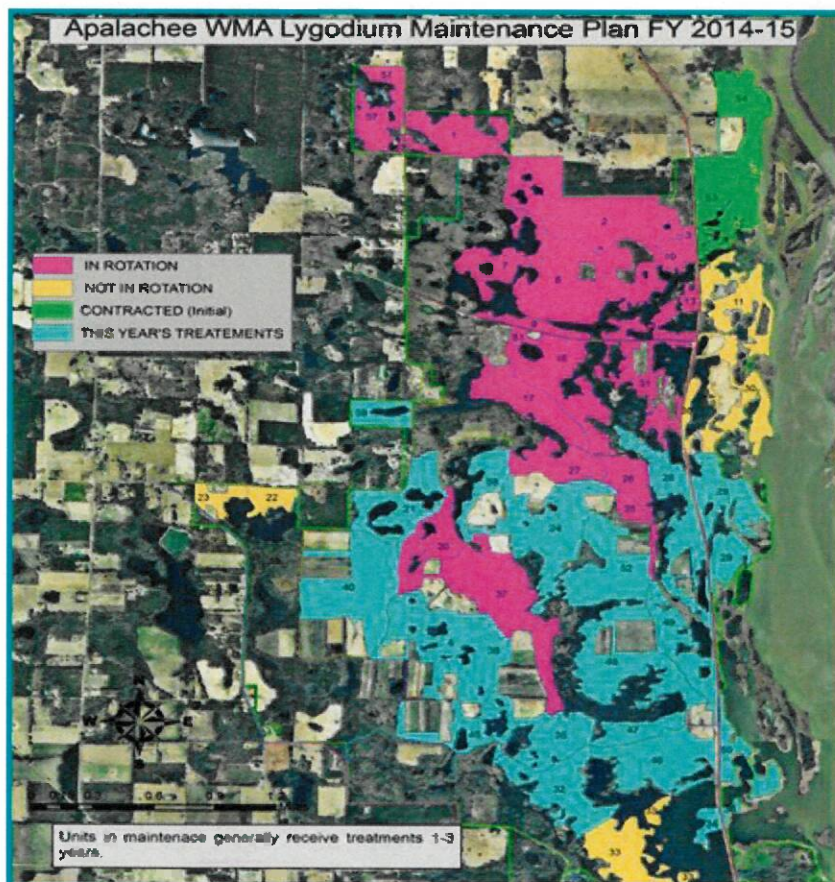
- Project site contains an environmental education facility and/or program.
- Education program includes a curriculum featuring invasive plant identification, native plant alternatives, private landowner training for plant control, workdays or events (e.g., air-potato roundup) that are geared toward increasing community involvement. [Example: # of public outreach events scheduled for the proposal year.]
- Applicant records number of participants in events (as opposed to total visitors) and can show a positive trend [i.e., an increased number of participants as a proxy for outreach effectiveness]. For example, hosting weekly school group visits would get a better score than hosting monthly visits.
- **Applicant demonstrates ability to conduct follow-up treatments.**

**Example: Area Maintenance Plan**

Annual Invasive Plant Management Status Map – This is an annual snapshot of your area as it relates to invasive plant management.

In Rotation = Maintenance condition where the unit has been treated to a condition of maintenance; 2-3-year rotations (like burn rotations).

Not in Rotation = Initial condition or no longer in maintenance condition. Invasive Free = There are no invasive plants in the unit.



# Introduction

## Florida's Upland Invasive Exotic Plant Management Program

**History** • The 1997 Legislature charged the now Invasive Plant Management Section (at the time the Bureau of Invasive Plant Management in the Department of Environmental Protection) with the task of creating a program to bring invasive exotic upland plant species under maintenance control. The Upland Invasive Exotic Plant Management (Uplands) Program was established that same year. Maintenance control is defined by the program as a method for the management of terrestrial invasive plant species in which control techniques are utilized in a coordinated manner on a continuous basis in order to maintain plant populations at the lowest feasible level.

**Strategy** • The previous Uplands program goal to reduce infestations of invasive plants on public conservation land by fifty percent was achieved prior to 2020. Currently, maintenance control on public conservation lands is estimated to be at 74%. The remainder consists of newly acquired areas and areas with extreme access challenges.

The current long-term goal is to continue maintenance where achieved and to expand maintenance overall to 80% by 2030. While eradication of invasive species is the preferred goal, it is not reasonably attainable, except in rare situations. The Uplands Program Strategic Plan sets forth specific strategies to implement the program's long-term goal, including:

- ♦ Implement an integrated management program that uses chemical, mechanical, and biological control technologies, and modify procedures as appropriate to ensure the greatest protection for natural systems.
- ♦ Improve the general public's awareness of the threat to biodiversity from invasive plants by developing a comprehensive education and outreach program.
- ♦ Inventory and monitor the distribution of invasive plant species in real-time and rapidly respond to any early incursions where there is the potential for eradication.

**Funding** • The Uplands Program funds invasive plant control projects on public conservation land, based upon the recommendations from its eleven Regional Working Groups (*see map, Appendix A*). These regional priorities are melded into an efficient and cost-effective statewide control program.

To maximize operational funding of projects, the Uplands Program contracts with private vegetation management companies on a per-acre, lowest quote basis to perform work. The program also contracts on a limited basis with five other government agencies. No funds are

granted to the managing agency; rather, all financial obligations are handled by the Uplands Program.

Funding for the program is provided as set forth in Section 369.252(4), Florida Statutes, which reads: "Use funds in the Invasive Plant Control Trust Fund as authorized by the Legislature for carrying out activities under this section on public lands. A minimum of 20 percent of the amount appropriated by the Legislature for invasive plant control from the Land Acquisition Trust Fund shall be used for the purpose of controlling nonnative, upland, invasive plant species on public lands." Total funding for the program in fiscal year 2022 was \$12 million.

**Results** • During its more than two decades of operation, the Uplands Program has spent \$227 million on 3,336 invasive plant control operations targeting 4 million acres of public conservation land. The program has assisted land managers on more than 701 federal, state, and local managed natural areas that comprise over 10 million acres, or 90% of all conservation land in the state.

Cooperating agencies contributed over \$57 million in matching funds and in-kind services for these projects. The Uplands Program also spent \$12.8 million on invasive plant surveys, research (primarily for biological controls), outreach, and other related activities.

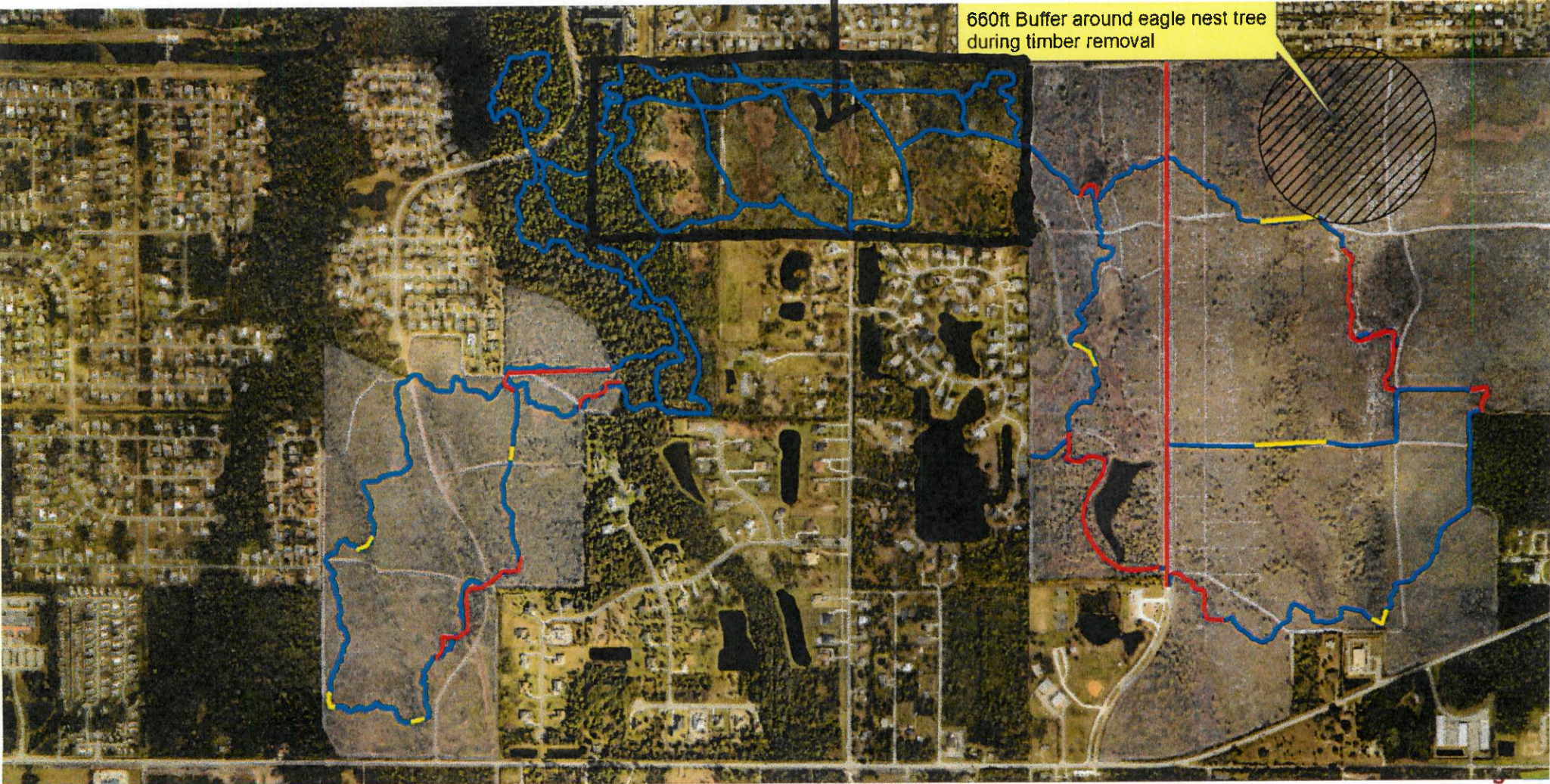




CAMERON  
PRESERVE



# ***EELs Restoration and Trail Map***



660ft Buffer around eagle nest tree  
during timber removal



TOWN OF MALABAR

RTCM 4/18/2022

Agenda Item 9.c.

MEMORANDUM

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**Date:** April 12, 2022 2022-DTC/T-6  
**To:** Town Clerk & Town Manager  
**CC:** Town Council and Mayor Reilly  
**From:** Richard W. Kohler, Deputy Town Clerk/Treasurer  
**Ref:** Trails and Greenways Committee Recommendations

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At the April 11th Trails and Greenways Committee Meeting, the Committee discussed the Eagles Nest Trailhead project. At the end of the last Fiscal Year, a vendor was awarded a contract to perform land clearing activities, and the Committee feels the work was unsatisfactory. It was determined that additional land clearing activities will be necessary before work can commence. Committee Vice-Chair Hann made the following motion:

**Recommend to Council that CM Wilbur, Secretary Kohler, and TM Stinnett meet at the ENT and measure/mark the area to reopen the work order on the land clearing to complete as originally intended, within budgeted funds, and with proper communication with the vendor.**

The motion was seconded by CM Harvey, and passed unanimously.

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 10.a.**

**Meeting Date: April 18, 2022**

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

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**SUBJECT: Referendum Question for November 8, 2022 Election: MSTU (Ord 2022-05)**

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### **BACKGROUND/HISTORY:**

Council adopted Ordinance 2007-05 joining the Brevard County Law Enforcement Municipal Services Taxing Unit (MSTU) in June 2007. MSTU taxes were levied for law enforcement services starting in November 2008. The Table below shows the millage rates for each of the years following and the election results.

<u>Year</u>	<u>rate</u>	<u>Taxes*</u>	<u>ELECTION RESULTS</u>	
			<u>FOR</u>	<u>/ AGAINST</u>
2008	.9097	\$ 76.90	1290 (84.31%)	/ 240 (15.69%)
2009	1.0013	\$ 85.11		
2010	1.1558	\$ 98.24	879 (82.92%)	/ 181 (17.08%)
2011	1.3574	\$115.38		
2012	1.3574	\$115.38	1178 (84.02%)	/ 224 (15.97%)
2013	1.3378	\$113.71		
2014	1.3000	\$110.50	1046 (78.53%)	/ 286 (21.47%)
2015	1.2691	\$107.87		
2016	1.1970	\$101.75	1528 (88.43%)	/ 200 (11.57%)
2017	1.1438	\$ 97.22		
2018	1.0925	\$ 92.96	1416 ( 87.5%)	/ 201 (12.4%)
2019	1.1142	\$ 94.70	Approved by BCCC	
2020	1.0832	\$ 92.72	1757 (88.4%)	/ 230 (11.6%)
2021	1.0482	\$ 89.10		

\*Note: The taxes are based on a Homesteaded Residence Assessed Value of \$85K

After voting to join the MSTU, Council adopted Ordinance 2007-06 that stated that the voters should decide if Malabar remain in the MSTU by putting it on the ballot every two years starting in November 2008.

The Sheriff has attended meetings in the past to explain and provide information on what law enforcement services are provided by the general fund tax such as jail operations, court costs, Canine, Ag and Helicopter Departments and well as Detective services.

The MSTU tax levy provides the additional revenue to fund the patrol and response operations throughout the County.

If approved at first reading the ordinance will be legally advertised for a public hearing and second reading on May 2, 2022.

**FINANCIAL IMPACT:** None for the Town – this is paid by property owners

### **ATTACHMENTS:**

Ordinance 2022-05 for 2022 ballot language

**ACTION OPTIONS:** Council Approval of 1<sup>st</sup> Reading of Ordinance 2022-05.

**ORDINANCE 2022-05**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY FLORIDA; CALLING AND SCHEDULING A PERIODIC ELECTION TO DETERMINE IF THE TOWN SHOULD CONTINUE TO PARTICIPATE IN THE BREVARD COUNTY MUNICIPAL SERVICE TAXING UNIT (MSTU) FOR LAW ENFORCEMENT; PROVIDING FOR THE MANNER IN WHICH SUCH ELECTION SHALL BE CONDUCTED; ESTABLISHING THE FORM OF THE BALLOT FOR SUCH ELECTION; PROVIDING REPEAL AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes, 101.161 provides for the procedures to submit a public measure to a vote of the electors of a municipality and Malabar has followed that procedure in the 2008, 2010, 2012, 2014, 2016, 2018 and 2020 elections with respect to participation in the Brevard County MSTU for Law Enforcement; and

**WHEREAS**, In 2014, the Town Council recommended that the question to electors related to continuing participation in the Brevard County Law Enforcement MSTU be amended before being submitted for a vote of the electors to include the financial impact information of the MSTU to the Town's residents; and,

**WHEREAS**, The Town Council in 2016 directed that the question relating to continued participation in the Brevard County MSTU for Law Enforcement be simplified as it was prior to 2014; and,

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

. . . . .

**SECTION 1.** A referendum election is hereby called and scheduled to be held concurrent with the general election in November 2022, to determine whether the Town of Malabar shall continue participation in the Brevard County MSTU for Law Enforcement as more particularly described in **EXHIBIT A** (attached to this Ordinance) shall be approved by a majority of the votes cast in such election in which the qualified electors residing in the Town shall participate. Such referendum election shall be held and conducted in a manner prescribed by law for all general elections. The place for voting in such referendum election shall be one of the two usual places, based on Precinct, for voting in the Town in the general election to be held in November 2022.

**SECTION 2.** The ballot to be used at such referendum election shall contain a statement of the proposed subject matter of the question and shall provide facilities for qualified electors to vote for or against continued participation in the Brevard County Law Enforcement MSTU.

**SECTION 3.** The Town Clerk is hereby authorized and directed to instruct the Supervisor of Elections of Brevard County to include the above-described question on the ballot for the general election to be held on the 8th day of November 2022.

**SECTION 4.** Notice of the said referendum election in substantially the form shown in **EXHIBIT B** (attached) to this Ordinance shall be published two times in a newspaper of general circulation according to the laws of the State of Florida. The first publication shall be during the fifth week prior to the week in which the referendum election is to be held and the second publication shall be during the third week prior to the week in which the referendum election is to be held. A minimum of five copies of this Ordinance shall be kept on file in the office of the Town Clerk for public inspection upon demand during normal business hours.

**SECTION 5.** If continued participation in the Brevard County Law Enforcement MSTU is not approved by a majority of the votes cast in such referendum election the Town Council shall repeal Ordinance No. 2007-05.

**SECTION 6.** All Ordinances or Resolutions inconsistent or in conflict with this Ordinance are repealed.

**SECTION 7.**

This Ordinance shall become effective five business days after 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	_____

This Ordinance was then declared duly passed and adopted this 2nd day of May, 2022.

**TOWN OF MALABAR**

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

First Reading: 04/18/2022  
Second Reading: 05/02/2022

ATTEST:

\_\_\_\_\_  
Debby K. Franklin  
Town Clerk/Treasurer

(Seal)

Approved as to Form and Content

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



**EXHIBIT A**

**Ballot 2022  
Town of Malabar, Florida**

**Question 1. Continued participation in the Brevard County Law Enforcement MSTU**

Shall the Town continue to participate in the Brevard County Law Enforcement MSTU?

Yes  
 No

Instruction to voters: If you are in favor of the continuing the MSTU with Brevard County for Law Enforcement Patrol Services, mark the space to the left of the word "YES". If you are not in favor of continuing the MSTU with Brevard County for Law Enforcement Patrol Services, mark the space to the left of the word "NO".

**Exhibit B**

**NOTICE OF REFERENDUM ELECTION  
TOWN OF MALABAR, FLORIDA**

Public notice is hereby given that on November 8, 2022; the issue of whether the Town of Malabar shall continue participation in the Brevard County Law Enforcement MSTU will appear on the election ballot as a referendum question.

The Town Council of the Town of Malabar has adopted an ordinance calling the said election on the following questions:

**Question 1.** Shall the Town continue to participate in the Brevard County Law Enforcement MSTU?

The places of voting shall be the First Baptist Church of Malabar, 1665 Malabar Road for Precincts 301 and 328 and Elohim Christian Church, Inc., 2170 Malabar Road, for Precinct 325, 326 and 327 for voting in the Town of Malabar during the general election scheduled on November 8, 2022 and the polls shall be open from 7:00 a.m. to 7:00 p.m. on the said date. All duly qualified electors residing within the Town of Malabar shall be entitled to participate and vote in said referendum election.

The ballot containing the question to be so submitted to the electors shall be in substantially the following form:

**2022 Ballot  
Town of Malabar, Florida**

**Question 1. Continued participation in the Brevard County Law Enforcement MSTU**

Shall the Town continue to participate in the Brevard County Law Enforcement MSTU?

Yes  
 No

Instruction to voters: If you are in favor of the continuing the MSTU with Brevard County for Law Enforcement Patrol Services, mark the space to the left of the word "YES". If you are not in favor of continuing the MSTU with Brevard County for Law Enforcement Patrol Services, mark the space to the left of the word "NO".

For further information regarding this referendum election, contact the Town Clerk of the Town of Malabar. A minimum of five copies of this Ordinance are on file at the office of the said Town Clerk at Town Hall, 2725 Malabar Road, Malabar, Florida, 32950, and are available for inspection upon request during normal business hours.

# TOWN OF MALABAR

## COUNCIL MEETING

AGENDA ITEM NO: 10.b.

Meeting Date: April 18, 2022

Prepared By: Matthew Stinnett, Town Manager

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**SUBJECT: Procurement of Used Motor Grader, Surplus of Motor Grader and Tractor**

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### BACKGROUND/HISTORY:

Public Works currently uses a combination of two tractors a with box blade attachments and a large motor grader to maintain the dirt roads within the Town. The current motor grader is a 2000 CAT 120H and is larger than necessary for many of the Town's smaller dirt roads. The Town was provided with a loaner 2018 Noram 65E while the CAT 120H was being repaired. Public Works has determined that a smaller motor grader would be more effective and efficient on the smaller roads than the mixed use of our current Cat 120H and 2005 John Deer 6415 tractor and box blade.

The dealer is currently offering the Noram 65E for \$149,500 with a 12-month warranty and provided a trade-in offer for the CAT 120H of \$69,000. We estimate that surplus of the John Deer 6415 tractor would net approximately \$25,000. The CAT 120H has also been approved for tire replacement, by trading it in we would avoid this ~\$4,000 expense. The remaining balance of the used Noram 65E would require a budget amendment to be brought forward with Council direction.

Staff is requesting a waiver of formal bid requirements given the local availability and used status of the Noram 65E, based on research we believe the offered price and trade-in is reasonable and in-line with the national market.

### ATTACHMENTS:

Purchase and trade in quote

### FINANCIAL IMPACT:

Reduced future maintenance expenses given the reduced fleet size and newer equipment	
(\$149,500)	cost of used 2018 Noram 65E
\$69,000	trade-in value of 2000 CAT 120H
\$25,000	estimated surplus value of 2005 John Deer 6415
\$4,000	current tire replacement that can be avoided with trade-in of CAT 120H
(\$51,500)	balance to be covered with budget adjustment

### ACTION OPTIONS:

Motion to approve waiver of bid requirements and approval of purchase, trade-in, and surplus pending approval of budget adjustment via a resolution at next meeting.



3401 Oleander Ave  
Ft Pierce FL 34982

**2019 NorAm 65E Motor Grader**

TO: Town of Malabar DATE: 4/11/2022  
 2725 Malabar Rd  
 Malabar FL 32950  
 ATTN: Mr Stinnett Town Manager MUNICIPAL P/O #:  
 Tom Milliore Equipment Manager P/O DATE:  
 PHONE: 321-727-7764 EST DELIVERY DATE: On Site

Thank you for your continued interest in our Used Construction Equipment  
 This quotation lists the machine, trade and a few basic specifications according to your request.

CODE	QTY.	DESCRIPTION	PRICE
Used	1	2019 NorAm 65E Motor Grader	Sell Price \$149,500.00
		900 Hours	
		Enclosed ROPS	
		10' Blade	
		Front Scarifier	
	1	NED 12 Month Used Equipment Warranty * No Deductible - No Travel Time - No Mileage	Included \$0.00
Trade In	1	2000 Caterpillar 120H	Credit \$69,000.00
		Serial #98733703	
		Hours +-5880	
Balance Due			Total \$80,500.00

FOB: Ft Pierce

SENT BY: Lee Lassiter  
 Governmental / Solid Waste Specialist  
 National Equipment Dealers, LLC

DATE: 4/11/2022

QUOTE GOOD THROUGH: 5/11/2022

**SPECIAL NOTES:**

<b>Trade In Equipment</b> - Purchases hereby bargains, sells and conveys unit Seller the above described Trade-In Equipment and certifies it to be free and clear of liens, encumbrances, and security interests except to the extend shown below.		I agree to pay all taxes and other charges and settle for the purchase price as follows:	
		1. Total Cash Price	-
		2. Trade Allowance / Down Pmt	-
		3. Unpaid Cash Payment	-
		4. Sales Tax N/A	-
		5. DOC fees or Charges	-
		6. Total Taxes and Fees	-
		7. Cash Due on Delivery	-
		In the event Buyer fails to pay any portion of the amount identified above, Buyer shall be responsible, and must reimburse Seller, for any costs (including litigation costs and attorney's fees) incurred by Seller collecting the outstanding balance. Any past due amounts owing under this Bill of Sale shall accrue interest at 1 1/2 % per month until the entire balance is paid in full	
Description	Allowance		
1. Trade Allowance	-		
2. Other (Specify)	-		
2a.	-		
3. Cash Down Payment with Order	-		
4. Total Cash and Other Down Payment	-		
5. Total Down Payment	-		

- Title to or ownership of the Property shall not pass from Seller to Buyer, and Seller is not obligated to relinquish possession of the Property, until Seller is paid in full and all funds have cleared. In the event Buyer fails to make immediate payment, Buyer shall be in default under this agreement, and Seller may pursue any available remedy under applicable law. Buyer shall still be responsible for all unpaid rental charges associated with the rental of said Property through the completion of the sale.
- Risk of loss of the Property shall pass to Buyer when Seller notifies Buyer that the Property is available for pick-up or shipment. If Buyer does not furnish shipping instructions, Seller will select the mode of shipping. In that situation, if Seller selects to ship the Property by carrier, risk of loss shall pass to Buyer when Seller makes the Property available to the carrier for shipment. Any charges to ship, load, unload, erect or dismantle the Property, and any demurrage or similar charges, are the sole responsibility of Buyer.
- To the full extent allowed by law, Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all (1) federal, state, municipal and local license fees and taxes of any kind or nature owing from Buyer in connection with the purchase of the Property, including without limitation, any and all excise, personal property, use and sales taxes; and (2) liabilities, obligations, losses, damages, and penalties incurred by, and claims, actions, and suits against, Seller which result from the sale of the Property to Buyer or in connection with Buyer's use, possession, or ownership of the Property.
- If and when Seller receives payment in full, Seller will assign to Buyer Seller's rights under any warranties provided to Seller by an applicable manufacturer or other third party, to the extent Seller has the right to assign such rights. Buyer agrees and understands that Seller makes no warranty regarding the condition of any machines, equipment, parts, and other goods (the "Property"), except as expressly agreed in a writing signed by NED. Seller DISCLAIMS all implied warranties, including the implied warranties of merchantability and fitness for particular purpose. Seller warrants only that (1) Seller is the true and lawful owner of the Property; (2) the Property shall be transferred to Buyer free and clear of all liens and encumbrances; and (3) Seller currently holds the right to transfer ownership of the Property to Buyer pursuant to the terms herein. Without limiting any language in this document, Buyer acknowledges that all used machines, equipment,
- This contract shall be governed by the law of the State of North Carolina. The Mecklenburg and Davidson County, NC courts and the U.S. Western and Middle District courts of NC shall have exclusive jurisdiction over any claim filed in connection with this agreement, and Buyer waives the right to challenge jurisdiction and venue in the aforesaid courts.
- Notice is hereby given that National Equipment Dealers, LLC dba MAY-RHE, LLC has assigned to WTP Exchange, as part of a like-kind exchange, its rights (but not its obligations) to sell the equipment described in this sale agreement.
- Buyer acknowledges receipt of a Seller's standard Terms and Conditions of Sale. Seller's standard Terms and Conditions of Sale are incorporated into this document by reference. This document, including Seller's standard Terms and Conditions of Sale, constitutes the entire contract between the parties and no other verbal or written agreement exists. Seller makes no other representation or warranty apart from that contained herein. To the extent of any conflict between this document and Seller's standard Terms and Conditions of Sale, the conflict shall be resolved by giving Seller the greatest rights, and least responsibilities, reasonably inferable and legally possible.

Order Taken By: \_\_\_\_\_  
 Seller Signature: \_\_\_\_\_

Purchaser Name: \_\_\_\_\_  
 Purchaser Signature: \_\_\_\_\_

# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 11.a.**

**Meeting Date: April 18, 2022**

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

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**SUBJECT: Request by CM Scardino for Council to Hold a Workshop to discuss prioritizing Capital Improvement Projects that would expand city water on south side of Malabar Road from Weber Road east to Fire Department and Malabar Community Park.**

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**BACKGROUND/HISTORY:**

CM Scardino requested this item to be placed on the agenda for Council discussion and a possible workshop.

Malabar has many capital project needs and CM Scardino would like Council discussion on new possible funding sources.

SPM Lisa Morrell is tasked with the expenditures related to projects already selected by Council for use of the Federal funds (SLFRF) (State and Local Fiscal Recovery Fund).

The capital projects CM Scardino is desiring to discuss are in addition to and separate from those.

**FINANCIAL IMPACT:**

**ATTACHMENTS:** none

**ACTION OPTIONS:**

Council Discussion