



REGULAR TOWN COUNCIL MEETING

Monday, June 7, 2021 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 Regular Town Council Meeting of 05/17/2021
Exhibit: Agenda Report Number 4a

Attachments:

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

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
 - d. Audit Report for FY 2019/2020 by James Moore & co., Independent Auditors
Presented by Mr. Zach Chalifour
Exhibit: Agenda Report Number 7d

Attachments:

- **Agenda Report Number 7d** (Agenda_Report_Number_7d.pdf)

- e. Stormwater Master Plan Update by Singhofen & Associates
Exhibit: Agenda Report Number 7e

Attachments:

- **Agenda Report Number 7e(1)** (Agenda_Report_Number_7e_1_.pdf)
- **Agenda Report Number 7e(2)** (Agenda_Report_Number_7e_2_.pdf)

8. STAFF REPORTS
 - a. Manager
 - b. Clerk
 - c. Fire Chief
 - d. Public Works Director - Written Report

Attachments:

- **Agenda Report Number 8d** (Agenda_Report_Number_8d.pdf)

9. PUBLIC COMMENTS

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

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS : 3

a. Second required Public Hearing to Amend the Malabar Zoning Map for approximately 1,716 acres as shown in Exhibit "A" and specifically excluding the parcels listed in the Ordinance. (Ordinance 2021-05)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE ZONING MAP TO MATCH THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FOR ALL PARCELS EXCEPT THE ONES LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a.pdf)

b. Amend Chapter 2 of Code to Require Property Posting for Land Use Issues (Ordinance 2021-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE IV, CREATING A NEW SECTION 2-76 OF THE MALABAR CODE OF ORDINANCE RELATED TO ADOPTING ORDINANCES, HOLDING PUBLIC HEARINGS NAD PROVIDING PUBLIC NOTICES, PROPERTY POSTINGS AND LEGAL ADVERTISEMENTS; PROVIDING FOR LIMITED EXCEPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10c

Attachments:

- **Agenda Report Number 10b** (Agenda_Report_Number_10b.pdf)

c. Road Improvement Waiver Request - South 200 feet of Hunter Lane adjacent to Parcel 325; Applicant Mr. Cranston Gittens

Exhibit: Agenda Report Number 10c

Attachments:

- **Agenda Report Number 10c** (Agenda_Report_Number_10c.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES FOR FIRST READING: 2

RESOLUTIONS: 1

MISCELLANEOUS: 1

a. Amend Chapter 2 of Code to Provide for Emergency Powers (Ordinance 2021-07)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2 OF THE CODE OF ORDINANCE OF THE TOWN CREATING SECTION 2-400 "EMERGENCY POWERS"; PROVIDING FOR THE DESIGNATION OF A TOWN OFFICIAL IN THE EVENT OF AN EMERGENCY DEFINED HEREIN; PROVIDING FOR DEFINITIONS; PROVIDING FOR A DECLARATION OF EMERGENCY BY EXECUTIVE ORDER; PROVIDING FOR THE AUTHORITY OF THE DESIGNATED TOWN OFFICIAL; PROVIDING FOR THE DURATION OF AN EXECUTIVE ORDER FOR A DECLARED EMERGENCY; PROVIDING FOR THE DECLARATION OF A PUBLIC HEALTH EMERGENCY; PROVIDING FOR THE ISSUANCE OR LOCAL EXECUTIVE ORDERS; PROVIDING FOR THE DURATION OF A LOCAL EXECUTIVE ORDER ISSUED FOR A PUBLIC HEALTH EMERGENCY; PROVIDING FOR THE POSTING OF ALL EMERGENCY ORDERS, ORDINANCES AND DECLARATIONS ON THE TOWN'S WEBSITE; PROVIDING LIMITATIONS ON ANY CURFEW ESTABLISHED; PROVIDING FOR REPEAL, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12a

Attachments:

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

b. Budget Amendment FY 2020/2021 (Ordinance 2021-08)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR OF 2020/2021 TO PROVIDE FOR ADDITIONAL FUNDS FROM RESERVES ON DEPOSIT SET ASIDE FOR CAPITAL PARK AND ROAD PROJECTS; PROVIDING FOR EXPENDITURES FOR NEW PLAYGROUND EQUIPMENT AND ROAD PREPERATION FOR THE PAVING OF 1100 FEET OF HUNTER LANE; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12b

Attachments:

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

c. Acceptance of Audit on FY 2019/2020 (Resolution (02-2021))

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2019/2020 BY THE AUDIT FIRM OF JAMES MOORE AND CPA; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 12c

Attachments:

- **Agenda Report Number 12c** (Agenda_Report_Number_12c.pdf)

d. Consideration of Piggyback or RFP for Solid Waste Services - Information presented by ITM Lisa Morrell

Exhibit: Agenda Report Number 12d(1), 12d(2) & 12d(3)

Attachments:

- **Agenda Report Number 12d(1)** (Agenda_Report_Number_12d_1_.pdf)
- **Agenda Report Number 12d(2)** (Agenda_Report_Number_12d_2_.pdf)
- **Agenda Report Number 12d(3)** (Agenda_Report_Number_12d_3_.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

(2) Vacancies on the Trails and Greenways Committee

17. ADJOURNMENT

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

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

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 06/02/2021 at 12:32 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a.

Meeting Date: June 07, 2021

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

SUBJECT: Consent Agenda

BACKGROUND/HISTORY:

4.a. Town Council Regular Meeting Minutes – 05/17/2021

ATTACHMENTS:

- a. Draft Minutes of 05/17/2021

ACTION OPTIONS:

Council Action on Consent Agenda

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MAY 17, 2021 7:30 PM

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

1. CALL TO ORDER:

Council Chair, Mayor Patrick T. Reilly called meeting to order at 7:30 pm. CM White led P&P.

2. ROLL CALL:

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

3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Mayor added a presentation by T&GC Annalie Harvey as 6.d. Then he stood and asked long time PW employee Felix Roque to come to the podium. He read and presented him with a plaque recognizing his 15 years with Malabar before retiring at the end of this month. Staff will have a retirement party for him on the 27th. ITM Morrell took pictures. Felix thanked Council, Staff, and the FD for the recognition.

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg May 3, 2021

4.b. Hunter Lane Paving Cost Update

MOTION: 1st and 2nd were made to approve consent agenda. CM White made a comment about the statement he had made under reports. No changes to minutes were made. **VOTE: All Ayes.**

5. ATTORNEY REPORT: Atty gave update on SB2006 signed into law regarding State declared Emergency Orders (EO). He and ITM Lisa have determined that Malabar needs to provide for local emergency declarations to provide guidance for future administrations. Consensus of Council to direct staff to work on such an ordinance.

6. STAFF REPORTS:

6.a. Town Manager – written, in package. Will answer any questions regarding. SAI will be here on June 7. She gave update on Health First Health Plan insurance and have learned they will honor renewal through 2022. That will give us a little more time to assemble costs and present options to Council. We do have a broker. During the budget process she will discuss this as a Broker is an add on cost. Whether we renew that or not. She has also contacted the owner and broker on the property on Marie St. Wanted to put a back-up offer on the land but wanted approval to walk it first. It is in probate right now. She will check back later this week. The playground fits under the shade structure and also with estimated shipping, delivery and installation can set up the procurement in a two-payment process to cover next year. She is working on a ROW vacate ordinance and also a RV zoning ordinance. Has met with engineering firm to create engineering specs for Rivet Lane paving. She has also printed out the 151-page report on the American Relief Act (ARP) and suggests they set a workshop date to discuss how to allocate some of that funding. She mentioned they are reaching out to potential sponsors for the FallFest. She has also followed up on the movies at the park; there is a license fee to offer movies at the Park, but it would be a great asset to the Town.

6.b. Clerk – We received confirmation from the State DEO that they have approved the Comp Plan Amendment changing the definition of MBC in R/LC to 20%. Also reminded Council that the Town seal on the wall flew over 2 mil miles in Space Shuttle Columbia in 1986 with Bill Nelson who is now the NASA Chief.

6.c. Request Permanent Reservation for Bluegrass Jam at the Sandhill Trailhead – by K.D. “Don” Williams

Don Williams, 4960 Hield. Part of the original Castaway Bluegrass Bunch. They moved after the place was lost due to hurricane. The City of Malabar agreed to allow us to play at the pavilion. He referenced the recent conflict with the use and learned the Town had no record of them having exclusive use. Chair said they are also asking for a waiver of the fee.

CM Vail said the jam is open to the public; he has attended it in the past. It is more of a public outreach than a private use. Mr. Williams said years ago he got it listed in the TGIF, but it had to be submitted weekly and he got busy. They are there every Sunday from 2 to 5. CM White said the procedure is reserve should be available to all persons and upheld. CM Rivet said that if there were a request to reserve the pavilion during that time, could Bluegrass Group reschedule. Yes, he could contact most of regular participants, but some come from further areas.

Franklin reiterated that staff has a reservation policy and there was no mention or record of this. Staff would ask that the Bluegrass Bunch submit paperwork to reserve it for a year at a time, so Town staff has current scheduling and contact information.

MOTION: CM Rivet / CM Vail to approve the exclusive use to the Bluegrass Bunch from 2 to 5 on Sundays for the next year and waive the fee. **VOTE:** 4 to 0.

6.d. Recommendation from T&GC Annalie Harvey to have a Town sponsored Malabar Community Market

Annalie Harvey went over the six components for the Malabar Community Market. Also wanted to have a Town booth there to have CM interact with citizens; and Board members show projects and let citizens know what is going on. Display for local business – promote local businesses. Special event changing every month – organize an art show, an equine day, a Beach summer day with waterslide, pools, and a slushy vendor. Just do it every 4th Saturday from 9 to 2 as more for a community building. They would also like to do the pancake breakfast if possible. She has talked to Town staff regarding liability insurance. Not much going on at the south end of county. Starting with exception to not have one in November and coordinate the Dec one with the tree lighting. Great opportunity. Mayor asked if this is conflict with MCA? She would definitely contact them. Believed they stopped due to COVID.

CM Rivet is in favor of events to coordinate and thinks Council should support. CM Acquaviva, White and Vail also agree. Mayor asked about fee. Since it would be kind of sponsored by the Town, there would be no charge. Staff can work out logistical details. Mayor asked for motion.

MOTION: CM White / CM Acquaviva to support the follow up with staff. Atty Bohne said maybe not with a water slide due to liability but other stuff they support. **VOTE:** All Ayes.

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. (Speaker Card is Required) Five **(5) Minute Limit**

8. **PUBLIC HEARINGS: 3**

8.a. Amend Chapter 13, Malabar Code of Ordinances, Street Improvement (Ord 2021-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13-40; AMENDING SECTION 13-41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS “B-4”, “B-5” and “B-6” TO SECTION 13-41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-46 STANDARDS FOR ROAD IMPROVEMENTS; AMENDING SECTION 13-47 REIMBURSEMENT FOR

EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8.a.

Ord read by title only.

PH opened. No comments. PH closed.

MOTION: CM Vail / CM Rivet to adopt Ord 2021-04.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Excused; CM White, Aye. Motion carried 4 to 0.

8.b. Road Improvement Waiver Request – south 200 feet of Hunter Lane adjacent to Parcel 325; applicant Mr. Cranston Gittens

Exhibit: Agenda Report No. 8.b.

Clerk stated the applicant is not present. She doesn't know what the issue is but will contact applicant. She is asking for a postponement to date certain of June 7th for public hearing and she will not have to re-advertise legal ad. If he cannot make that date she will re-advertise. CM Rivet asked Attorney about agricultural property uses requiring a building permit? Attorney said that is an issue. Right to farm act. The Town's issue is the road access. Attorney clarified that non-residential farm operations do not require building permits. It does not require a tax exemption of Agricultural through the Tax Department.

8.c. First Public Hearing of two required to Amend the Malabar Zoning Map for approximately 1,716 acres as shown in Exhibit "A" and specifically excluding the parcels listed in the ordinance. (Ord 2021-05)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE ZONING MAP TO MATCH THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FOR ALL PARCELS EXCEPT THE ONES LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 8.c.

Ord read by title only.

PH opened. No comments. PW closed.

MOTION: CM Acquaviva / CM Vail to approve first PH reading of Ord 2021-05.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Excused; CM White, Aye. Motion carried 4 to 0.

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

10. ACTION ITEMS:

ORDINANCES for FIRST READING: 1

10.a. Amend Chapter 2 of Code to Require Property Posting for Land Use Issues (Ord 2021-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE IV, CREATING A NEW SECTION 2-76 OF THE MALABAR CODE OF ORDINANCES RELATED TO ADOPTING ORDINANCES, HOLDING PUBLIC HEARINGS AND PROVIDING PUBLIC

NOTICES, PROPERTY POSTINGS AND LEGAL ADVERTISEMENTS; PROVIDING FOR LIMITED EXCEPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Ord read by title only.

MOTION: CM Rivet / CM Vail to approve first reading of Ord 2021-06.

ROLLCALL VOTE: CM Acquaviva, Aye; CM Vail, Aye; CM Rivet, Aye; CM Scardino, Excused; CM White, Aye. Motion carried 4 to 0.

RESOLUTIONS: 0

MISCELLANEOUS: 2

10.b. Surplus of Municipal Owned Property 2540 Johnston Avenue

Exhibit: Agenda Report No. 10.b.

Chair asked ITM to introduce. ITM Lisa explained that before staff can dispose of material bought with public funds, Council must declare it surplus. This parcel was determined to be surplus, and the Town changed the zoning back to RS-10 to match the surrounding area and it is now ready to market. Based on sales of acreage in Malabar she suggested the starting bid could be set at 100K. The buyer would be responsible for all associated costs. The bid could be advertised so that before the bid if accepted it must come before Council again for final acceptance of the bid. Council supported that and asked for local contacts be included since many people in real estate are unfamiliar with GovDeals. The adjacent property owners have already reached out the Town Hall regarding the impending sale. The offering must be open to all.

MOTION: CM Rivet / CM White to confirm the 3.4-acre parcel at 2540 Johnston is surplus and approve listing the property with GovDeals at a starting bid of 100K.

VOTE: All Ayes.

10.c. Select Representative for Mediation Meeting regarding Painted Acres v. Town of Malabar

Exhibit: Agenda Report No. 10.c.

Chair stated his recommendation would be CM Rivet. The tentative date is July 16, 2021.

MOTION: CM Vail / CM Acquaviva to appoint CM Rivet as Town representative for mediation tentatively set for July 16, 2021. Atty Bohne explained to Council that the new Attorney, Doug Noah is the very competent and is fully up to speed on the status. The ultimate approval of any mediation agreement will rest with Council. **VOTE:** All Ayes.

Chair excused Attorney from phone participation in meeting.

11. DISCUSSION/POSSIBLE ACTION: 2

11.a. Status of Contract Discussion with WM – Ms. Dina Reider-Hicks

Exhibit: Agenda Report No. 11.a.

Chair called WM Rep Dina Reider-Hicks

Talona Dr. representing WM. Please allow her to begin by stating the very long relationship WM has held with Malabar. Malabar is unique and requires 70% of roads to be backed down. WM has safety protocols that require a longer process when backing down roads. The time and amount of service that backing down roads require are most significant cost drivers within the Solid Waste Contract. The Malabar franchise uses the CPI index which does not indicate the actual waste hauling costs, just the cost of doing business. The average annual increase is just over 1%, or \$1.50 over six years. In that time, the cost of steel has gone up about 75%. Resin cost have increased 26 to 49% in fuel. Commodity prices lead to market reset. Malabar generates 30% more-yard waste than in similar cities. In 2014 transitioned to carts. It was the hope that the carted service would increase the efficiencies and that has not been realized. At the same time, we want to accept your thoughts.

George Geletko. Provide the highest level of service. Can't find drivers, currently paying \$20/hr. for CDL drivers. In 2006 we began promoting automated services. The WC was running over a mill a year. Cost of goods are not going down. Very strong competition for labor. Prime. What is Prime. Figure how we can provide the level of service. 30% of the people create the additional cost to the rest of the residents. They must use 2 and 3 claw trucks. He is open to any questions. He knows Malabar well.

Discussion: CM Rivet stated their comment of significant increases will require an RFQ. How can we not open it up for bid? They only provide good service when contract is up for renewal. If we are talking 1, 2 or 5 % is different but a "significant" increase screams putting it out to bid. CM White agrees with going out to bid. CM White disagrees with CM Rivet comment about service. He thinks they have provided good service. Mayor agrees. Danny said there is some things we just cannot do. He is used to good service. CM Acquaviva said this whole issue is sad; she understands the automated service with the carts. She gets good service. The sad part is we are in the middle of a bad time and as a resident or representative could not approve a "significant increase" at this time without putting it out for bid. CM Vail had not had any issues with LOS. Malabar is unique. We put empty feed bags and it goes away. We need to go out to bid if the price increase is "significant" but need to remember that our solid waste collection is different from other cities. We are not PB or beachside and we need to get the level of service that will work for Malabar residents. Consider the other options. CM White said we can add it to the tax roll. That might not be an easy sell. We could even consider a subsidy from the Town. CM Rivet said that would still be a cost that the residents are going to pay in the end.

He has talked to people in G-V on narrow dirt roads and they are happy with Waste Pro. WM will bid on it. Go to once a week that would reduce only drop two trucks.

CM Acquaviva – we have always had the back down roads. We have always had dirt roads and narrow, but we have always had a good relationship. As a resident and CM, she can't not support going forward without going out to bid.

CM Acquaviva said consensus to do RFP. Short period. WM would hold contract out to sept 30. If you don't "qualify" the bid process. We know that there are only three or four. Piggyback on another town. Could put out RFP then have it clean and process. WS and presentations. It will be presses for time. 21.16 + .36 recycle. PB, they have negotiated. Bid is expensive. Franchise free. If you give it away or reduce it. You are reducing you GF revenues.

CM Acquaviva asking about piggy backing another contract.

CM Vail if we piggyback it must be the same. She can present the options. Go with RFP until at least 8 weeks. It is close. We can do emergency mtg to award. Do it now. Steve start now. Lisa said she could put an emergency WS later this week. Similar to what we have now. Piggyback what are the options. Danny said the RFP for the same service we now have with an option to do once.

Consensus by Council to bring the options back to Council on June 7 by ITM for possible RFP or piggyback options.

11.b. Discuss Repeal of Reso 17-2020 (face coverings) (CM White)

Exhibit:

Agenda Report No. 11.b.

MOTION: CM White / CM Marisa to repeal/sunset the face coverings policy in Reso 17-2020 effective tonight. CM White said this was at his request and he believes it is time to take down the barriers and get back to normal operations. He feels it is time to sunset the requirement for face coverings and remove these safety guards.

VOTE: All Ayes.

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

13. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: CM Rossman memorial. PB did a great job. Re-emphasize. CM Vail said construction is very busy and may be able to donate. ITM Lisa said that she would recommend that we recognize those that should be memorialized on the wall here at Town Hall now until such time as a formal memorial recognition is recommended by Park and Rec board. Consensus of Council to support.

CM Vail: nothing

CM Rivet: nothing

CM White: thanked staff for cards. SCLC will restart in person meetings. HB 403 regarding home-based businesses will probably be signed by the Governor.

CM Scardino: excused

Mayor: Mayor's B-fast will be on June 18th. Last year, that was his first zoom event after lock down started.

ITM Lisa asked for clarification that the position shields could be removed as well as the request for face coverings. Yes. Take them down.

15. ANNOUNCEMENTS: Openings on T&G Committee.

16. ADJOURNMENT: There being no further business to discuss, and without objection, the meeting was adjourned at 9:45 P.M.

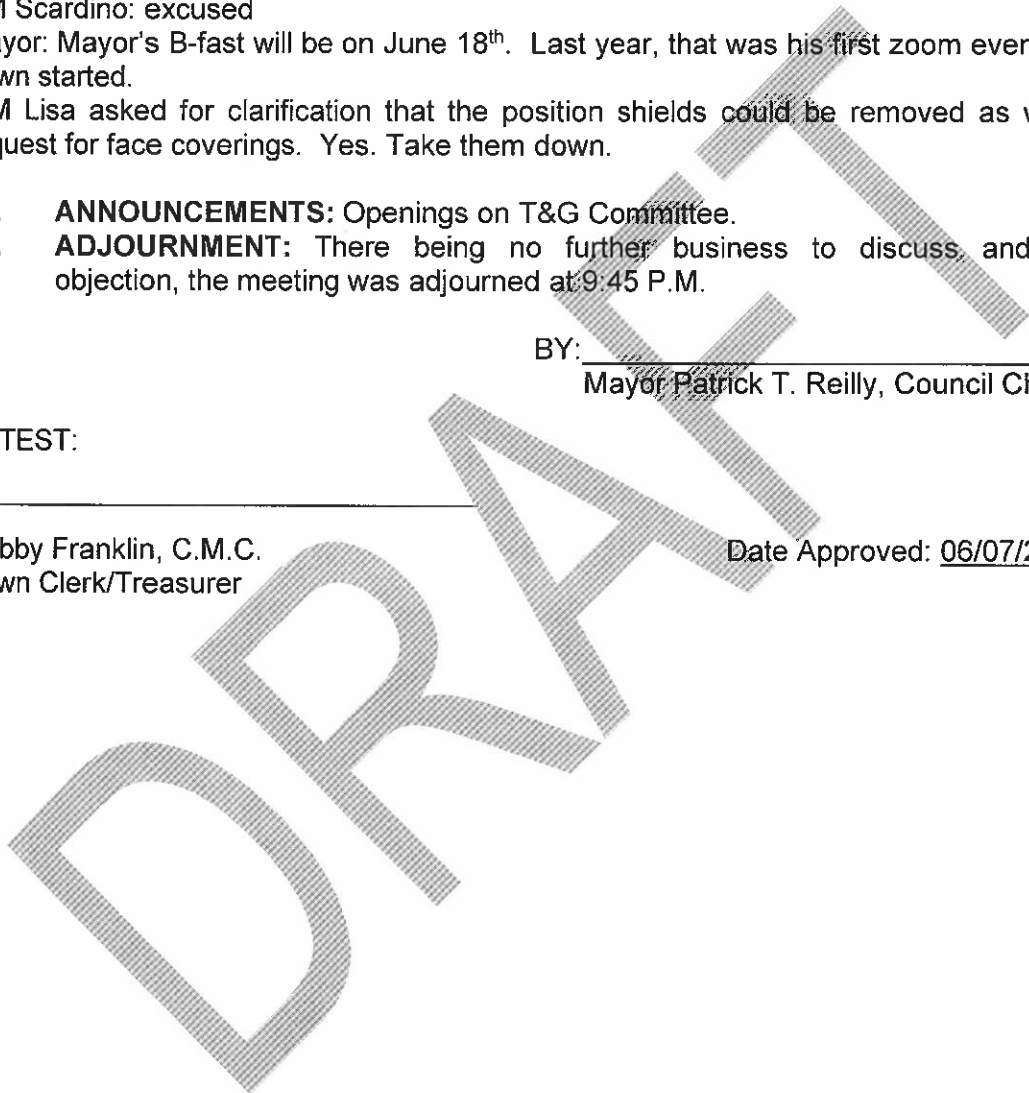
BY: _____

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 06/07/2021



TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 7.d.

Meeting Date: June 07, 2021

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

SUBJECT: Annual Outside Audit of FY 2019/2020 Finances

BACKGROUND/HISTORY:

This is done annually as required by State law and is sent to the State before June 30 each year. It is then posted to the Town's website.

ATTACHMENTS:

PowerPoint presentation by Mr. Zach Chalifour of James Moore & Company

ACTION OPTIONS:

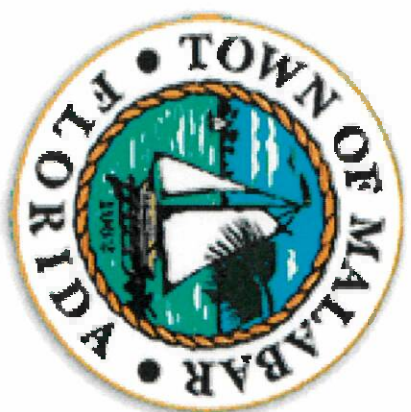
No action at this time

Town of Malabar



Annual Audit for the Year Ended September 30, 2020

Presented by: Zach Chalfour, CPA
June 7, 2021



Providing Tax, Auditing, Accounting & Controllershship, Technology
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Auditors' Reports

- **Independent Auditors' Report (pages 1-3)**
 - Qualified Opinion due to GASB 75 (OPEB)
- **Independent Auditors' Report on Internal Control and Compliance – Government Auditing Standards (pages 33-34)**
 - No material weaknesses
- **Independent Auditors' Management Letter Required by Chapter 10.550, Rules of the Auditor General (pages 35-37)**
 - No prior year comments to be corrected
 - 1 recommendation: 2020-01 Year-End Accounting Adjustments
- **Independent Accountants' Examination Report (page 38)**



General Fund

(Page 11)

<u>Fund Balance</u>	<u>9/30/2020</u>	<u>9/30/2019</u>	<u>9/30/2018</u>
Nonspendable	\$ 177	\$ -0-	\$ 692
Restricted	204,741	29,549	45,336
Committed	29,800	3,742	-0-
Assigned	180,385	215,299	61,891
Unassigned	<u>1,291,616</u>	<u>1,136,169</u>	<u>1,070,189</u>
Total	<u>\$ 1,706,719</u>	<u>\$ 1,384,759</u>	<u>\$ 1,178,108</u>

General Fund (Continued)

Total Assigned/Unassigned Fund Bal.	\$ 1,472,001
CY Expenditures	\$ 1,800,280

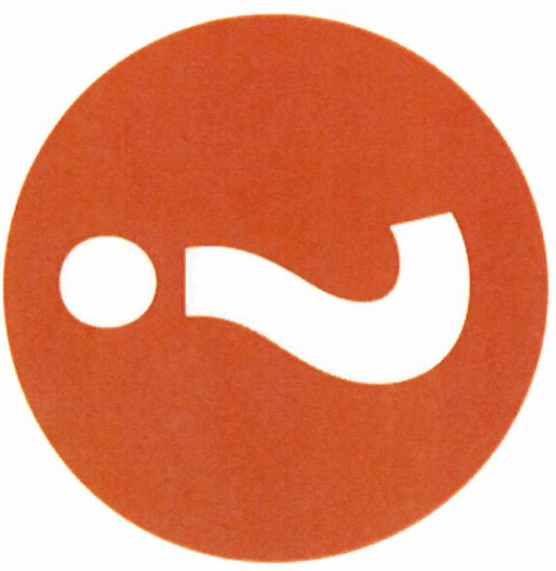
Percentage Assigned/Unassigned Fund
Balance as a percentage of
Expenditures and Transfers out: 81.8%

GFOA Minimum Rec. = 2 Months At least 16.7%

Other Highlights

- Long-term debt
 - \$67,000 repayment on capital leases
 - \$42,000 draw down on new SRF loan
- Net pension liability
 - \$1,626,306 allocated share from Florida Retirement System
 - No budgetary impact; all contributions made

Questions?



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TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 7.e.

Meeting Date: June 07, 2021

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

SUBJECT: Stormwater Master Plan Presentation by Singhofen & Associates

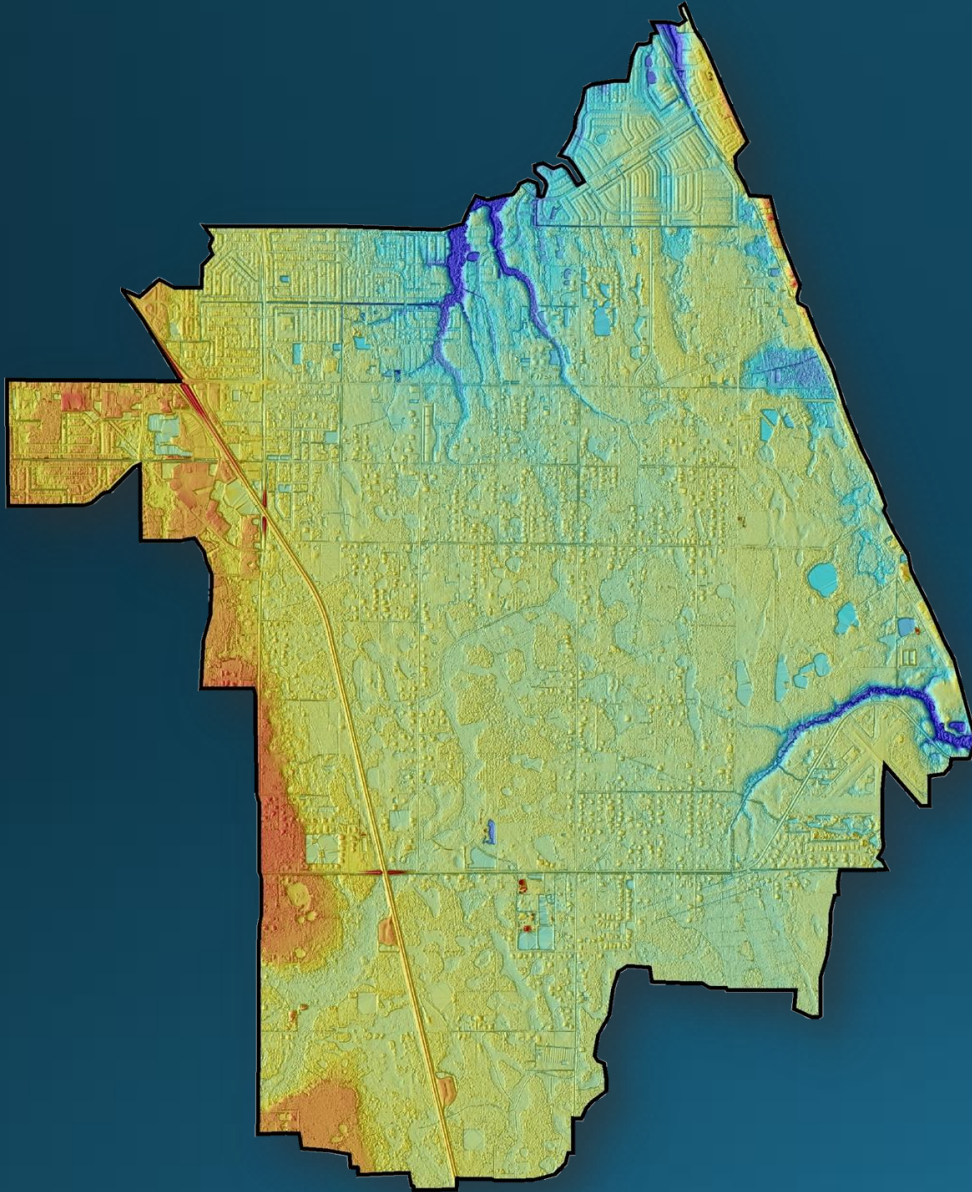
BACKGROUND/HISTORY:

This will be a visual presentation

ATTACHMENTS:

ACTION OPTIONS:

No action at this time



Town of
MALABAR
Florida



June 7, 2021

Presentation for Town Council

Stormwater Master Planning & Design

Project Objectives

1. Create a Stormwater Asset Database

- Live on AGOL for Town use

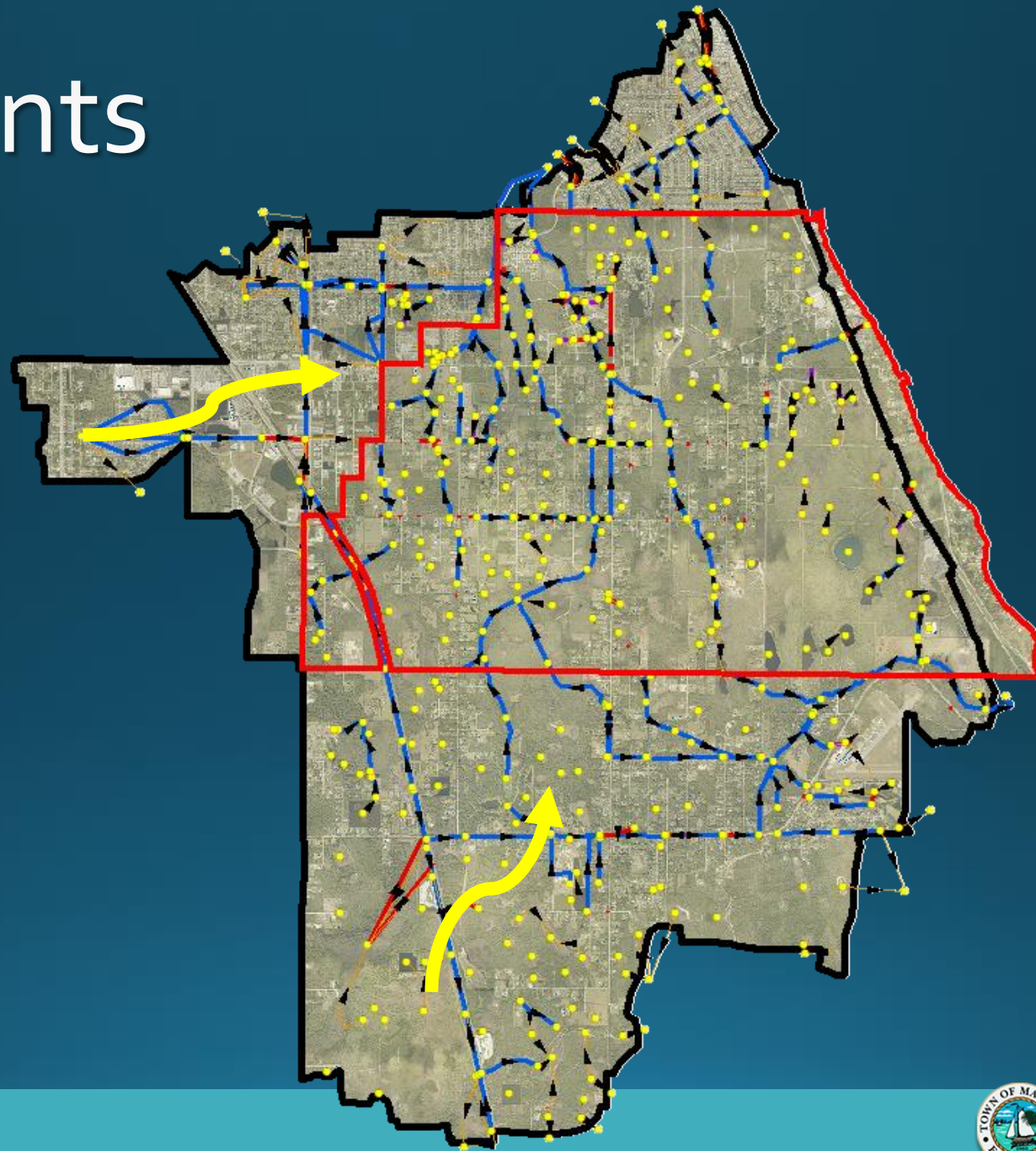
2. Hydrologic & Hydraulic (H&H) Study

- Analyze existing primary drainage system
- Identify problem areas
- Develop and evaluate flood mitigation alternatives

Model Extents

Town: 10.7 mi²

Model: 24.5 mi²



Primary Outfalls

To Melbourne-Tillman Canal

To Turkey Creek

To Lagoon

Goat Creek to IRL



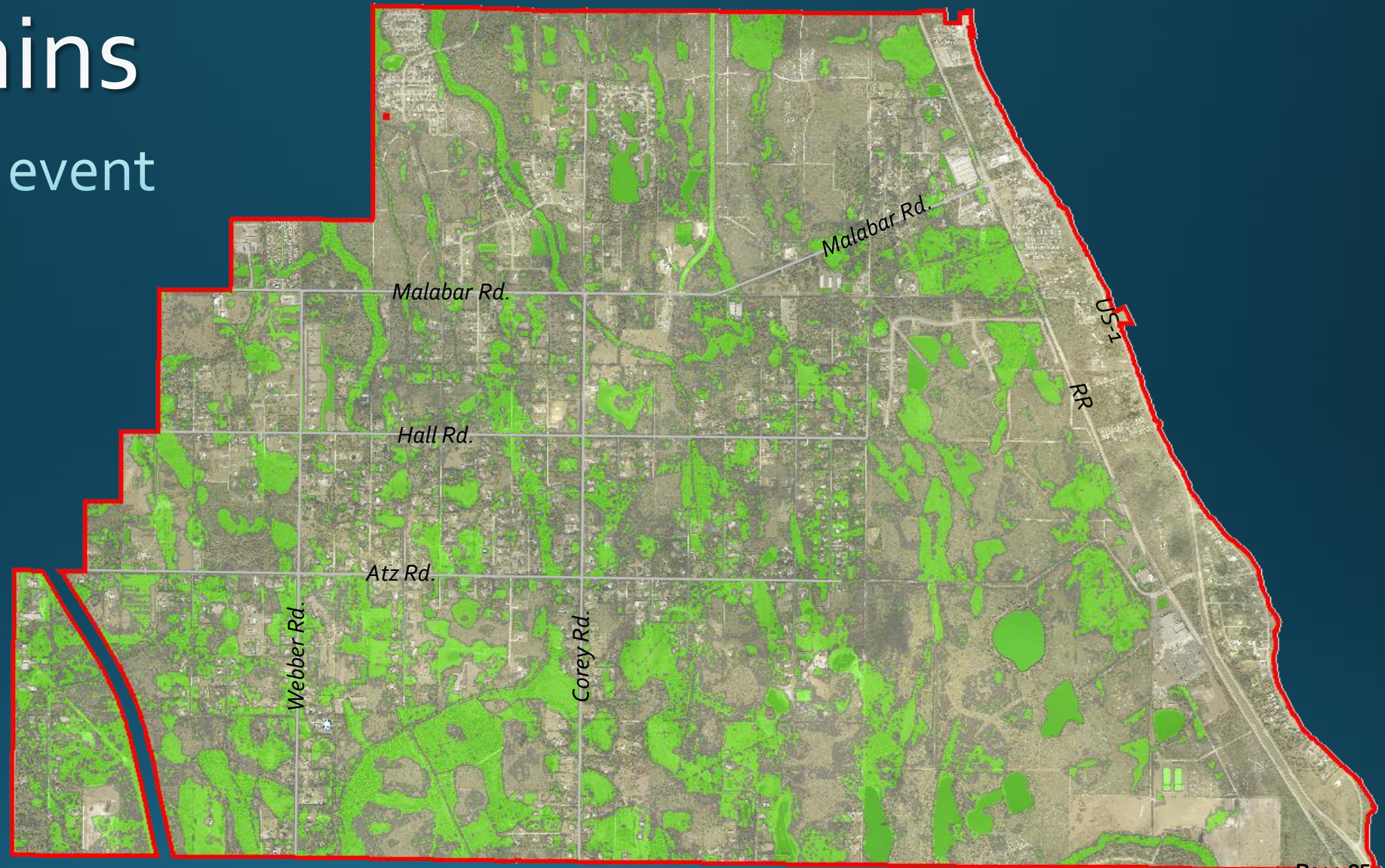
Level of Detail

- Primary Drainage Structures / Large Infrastructure
- Major flow-ways
- Collector Road Ditches and Culverts
- Driveway culverts and secondary drainage not included at the master plan level.



Floodplains

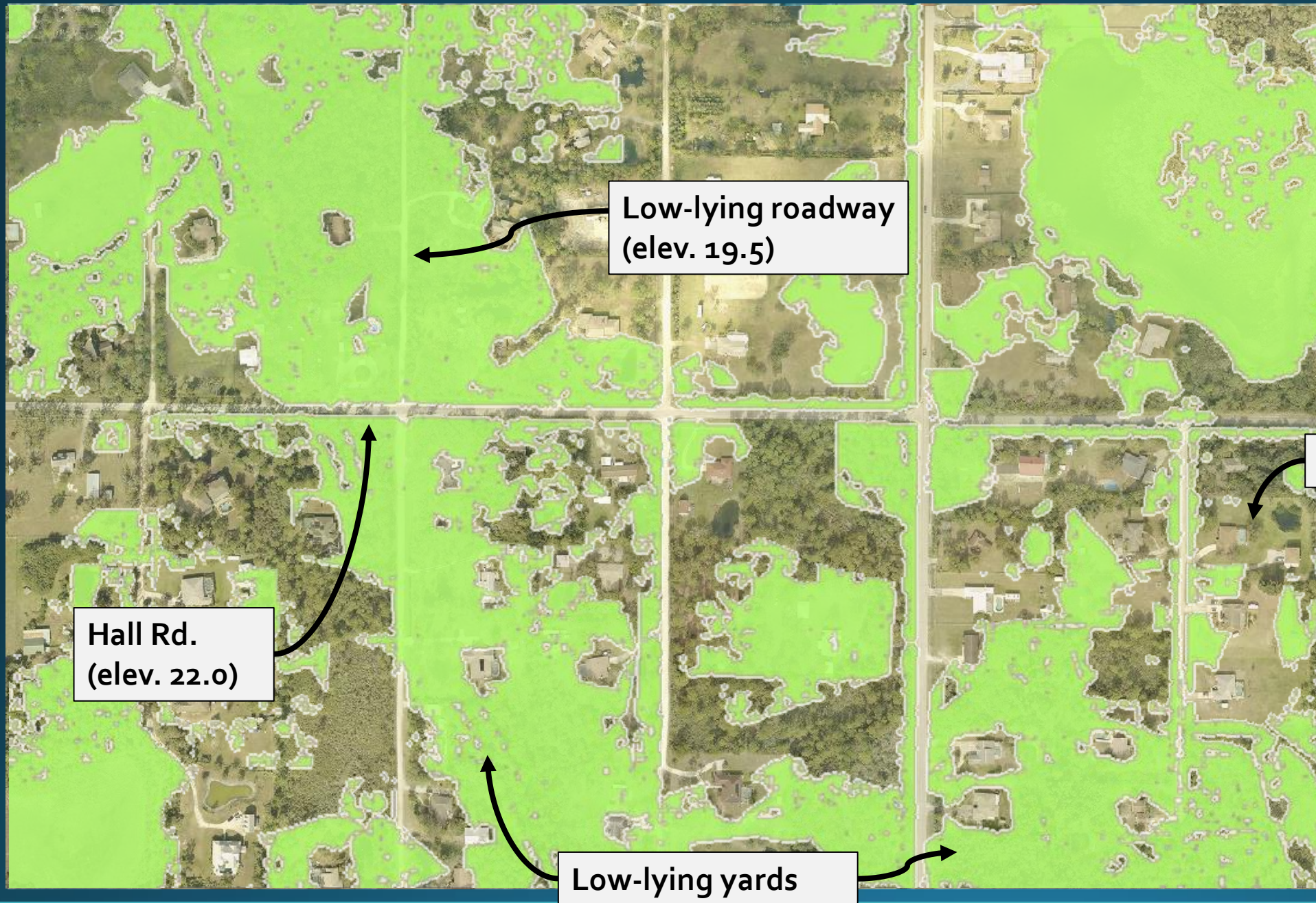
25-year storm event



Primary Findings

- Most roadways are free from flooding during the 10-year or 25-year storm event
 - Roads that do experience flooding are typically low-lying dirt roads with few residences.
 - All collector roads free from flooding up to the 25-year event
- Yard flooding occurs and is expected on many residential properties with low-lying yards.
- No structure flooding was observed based on available terrain data.
 - Surveyed finished floor elevations not available

Example Area

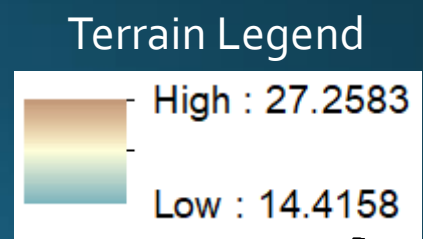


Yards with fill

Hall Rd.
(elev. 22.0)

Low-lying roadway
(elev. 19.5)

Low-lying yards



Design Process

- Identified areas with significant roadway flooding
 - Overall benefit to Town was considered
- Identified any major flow restrictions or “bottlenecks”
- All structures assumed to be operational
- Secondary infrastructure not evaluated

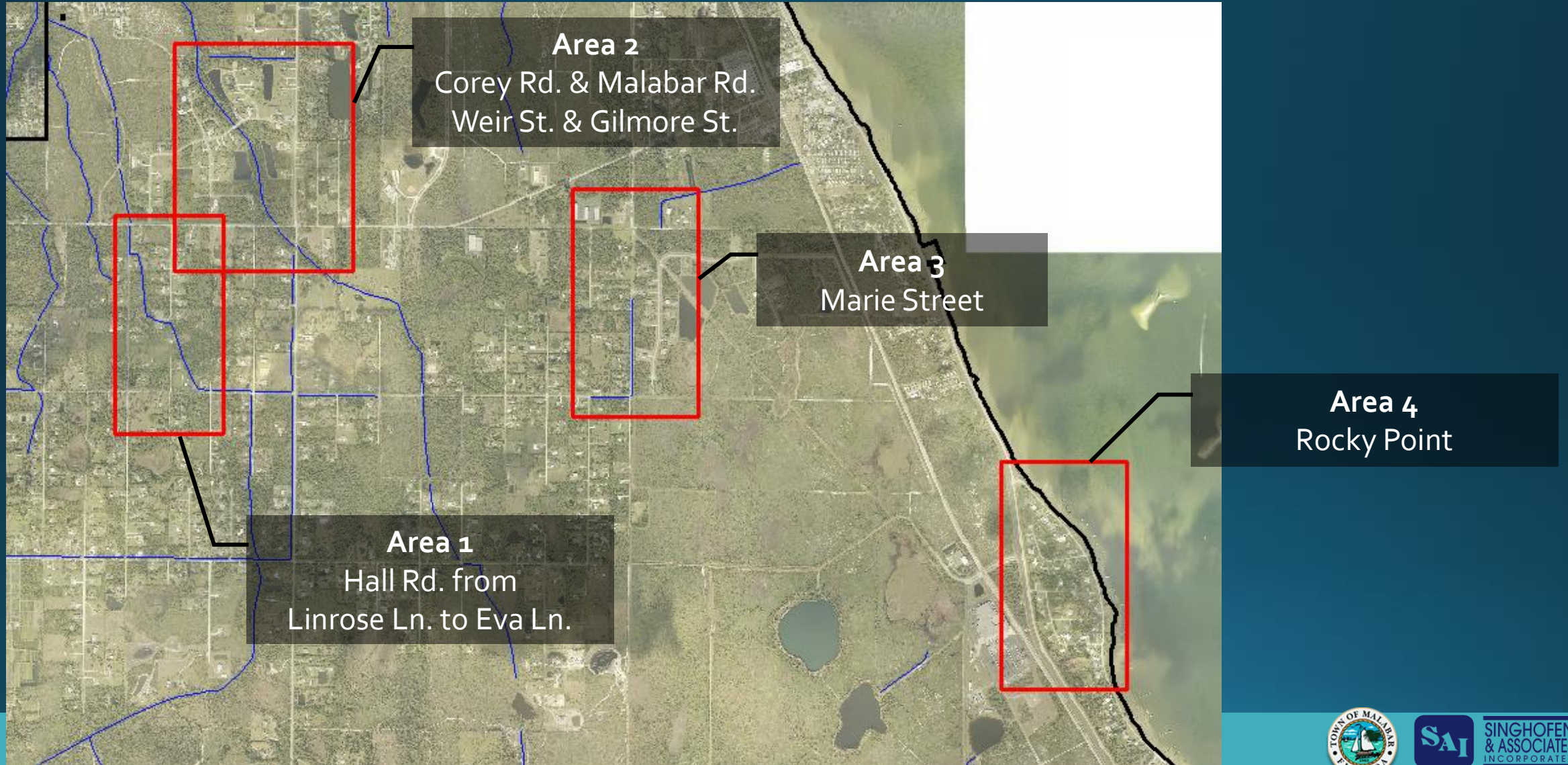
Maintenance

- High Priority
- Several complaints appear to be caused by blocked driveway culverts or overgrown ditches/swales.
 - Determine the source of the sediment
- Maintenance of structures should be a priority.
 - Vacuum Truck to remove silt and debris
 - Clearing the pipe with water without removal of the sediment pushes the problem further downstream.
 - Replace crushed / broken culverts
 - Remove excess vegetation in roadside ditches.



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Design Alternative Overview



Area 1: Hall Road (Linrose to Eva)



Area 1: Hall Road (Linrose to Eva)

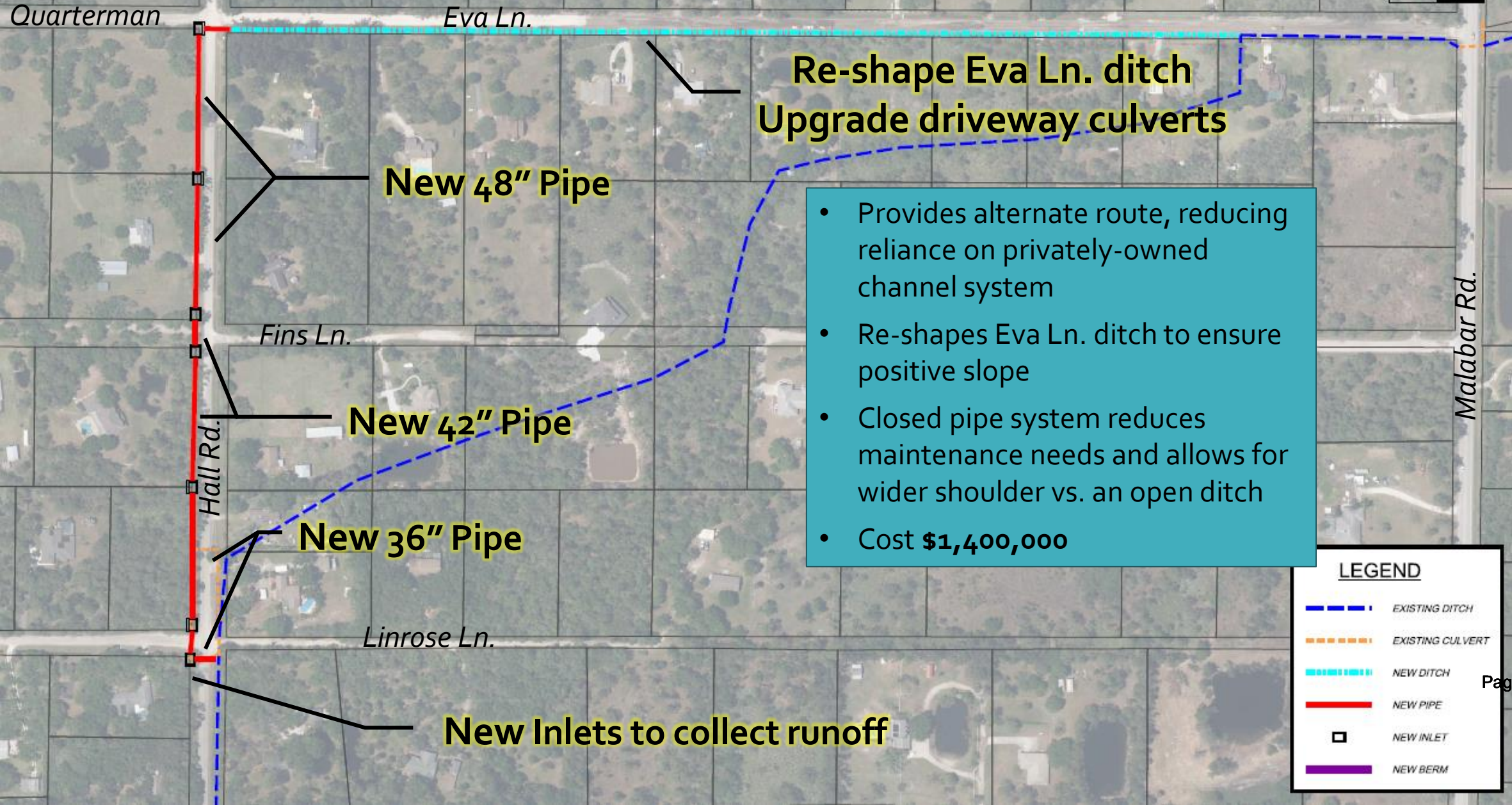


Area relies on drainage through private property

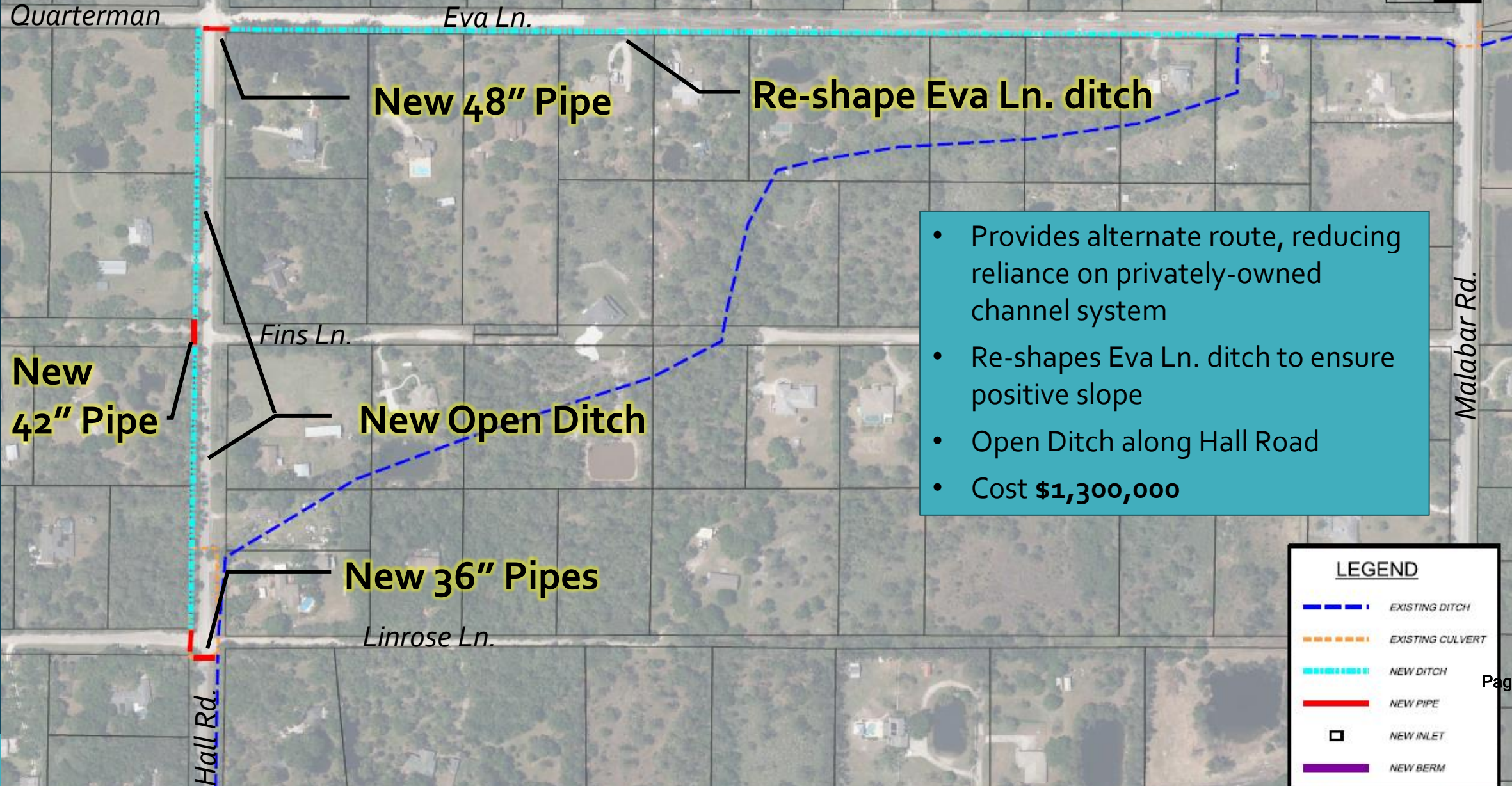
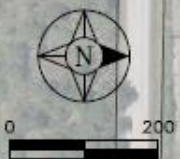
Linrose Ln. flooding



Area 1: Hall Road (Linrose to Eva) – Design Alternative 1



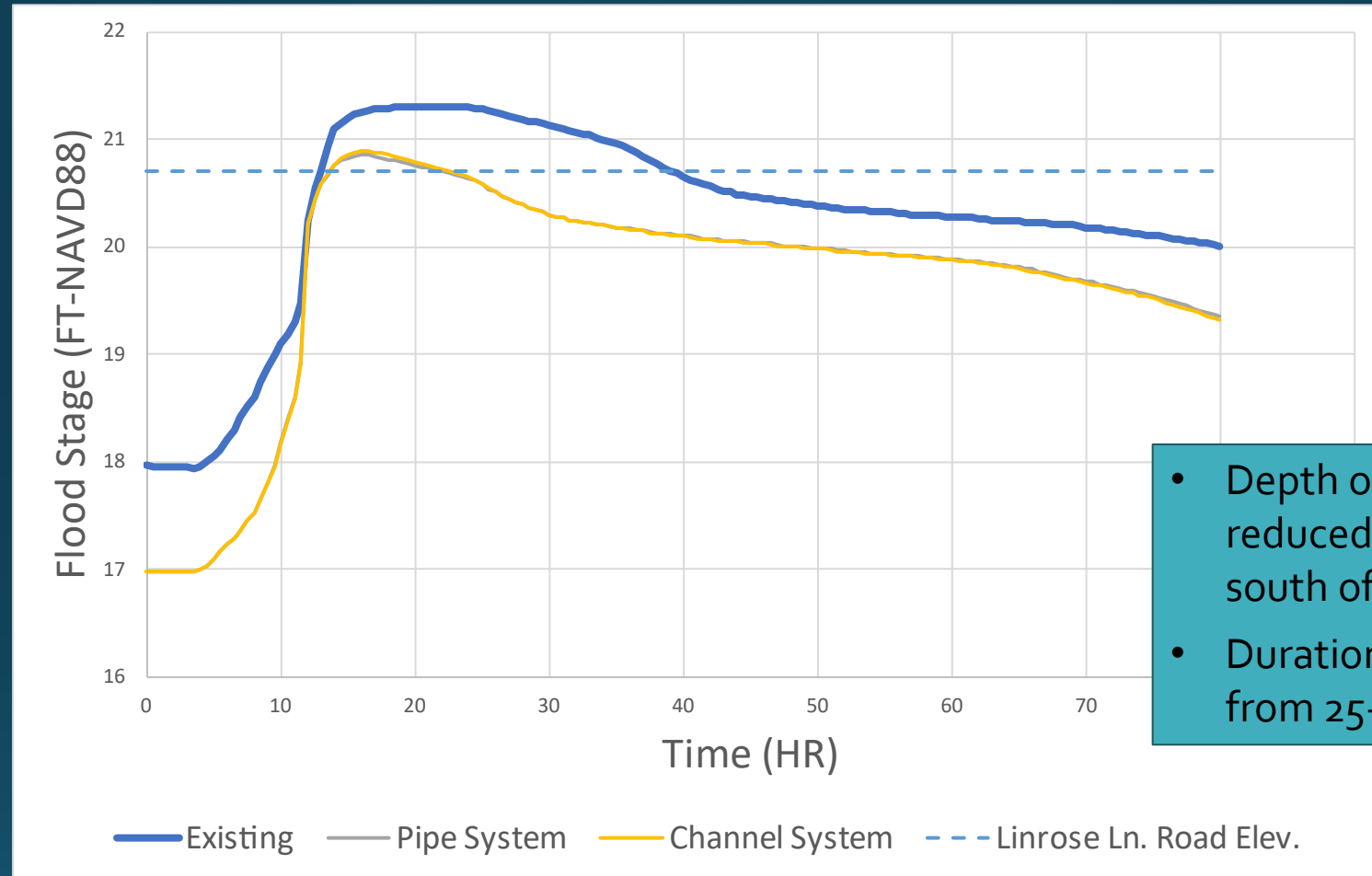
Area 1: Hall Road (Linrose to Eva) – Design Alternative 2



- Provides alternate route, reducing reliance on privately-owned channel system
- Re-shapes Eva Ln. ditch to ensure positive slope
- Open Ditch along Hall Road
- Cost **\$1,300,000**

LEGEND	
	EXISTING DITCH
	EXISTING CULVERT
	NEW DITCH
	NEW PIPE
	NEW INLET
	NEW BERM

Area 1: Hall Road (Linrose to Eva) – Design Alternative 2

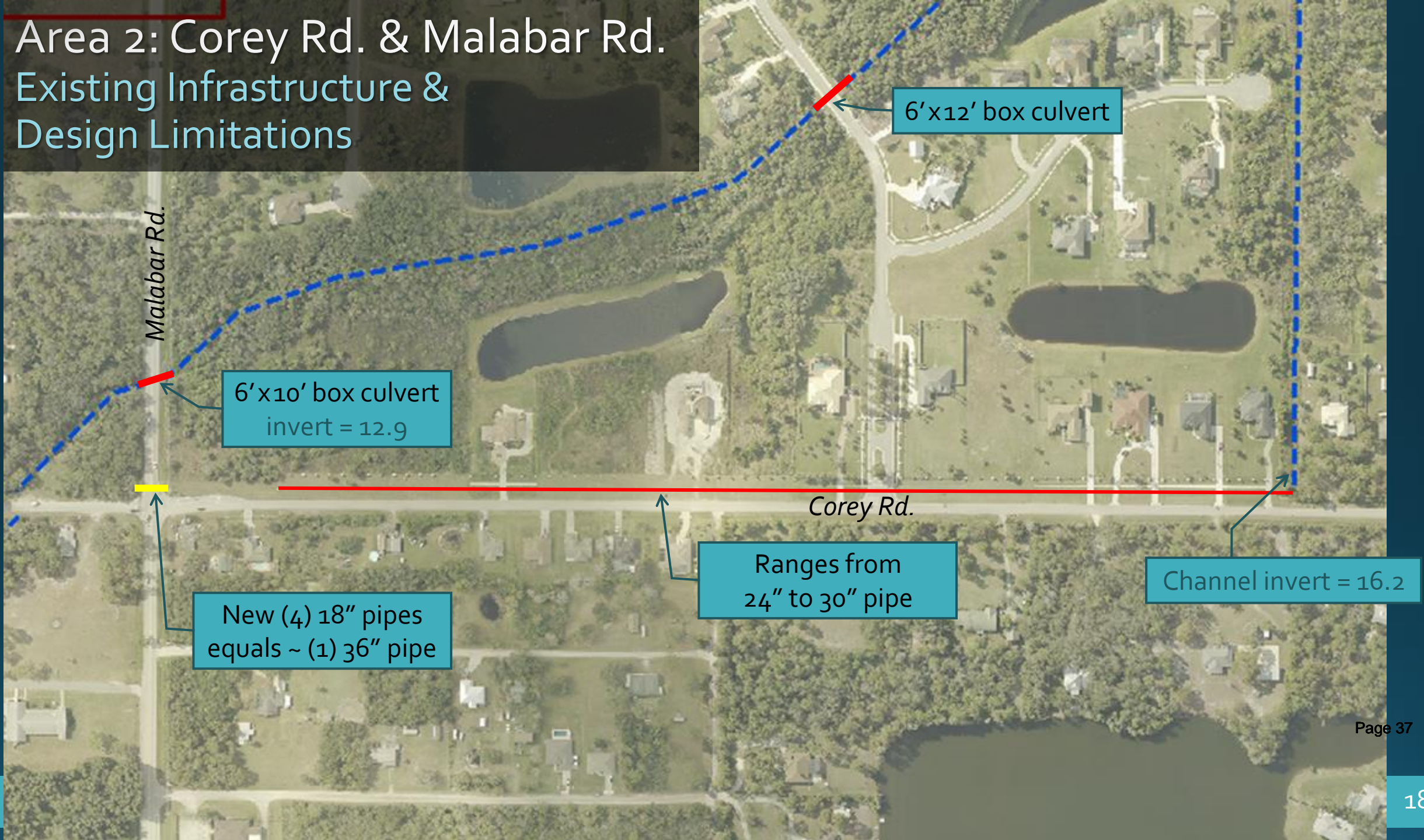


Time vs. Stage at intersection of Hall Rd. & Linrose Ln. – 25-yr event
South side of Hall Road

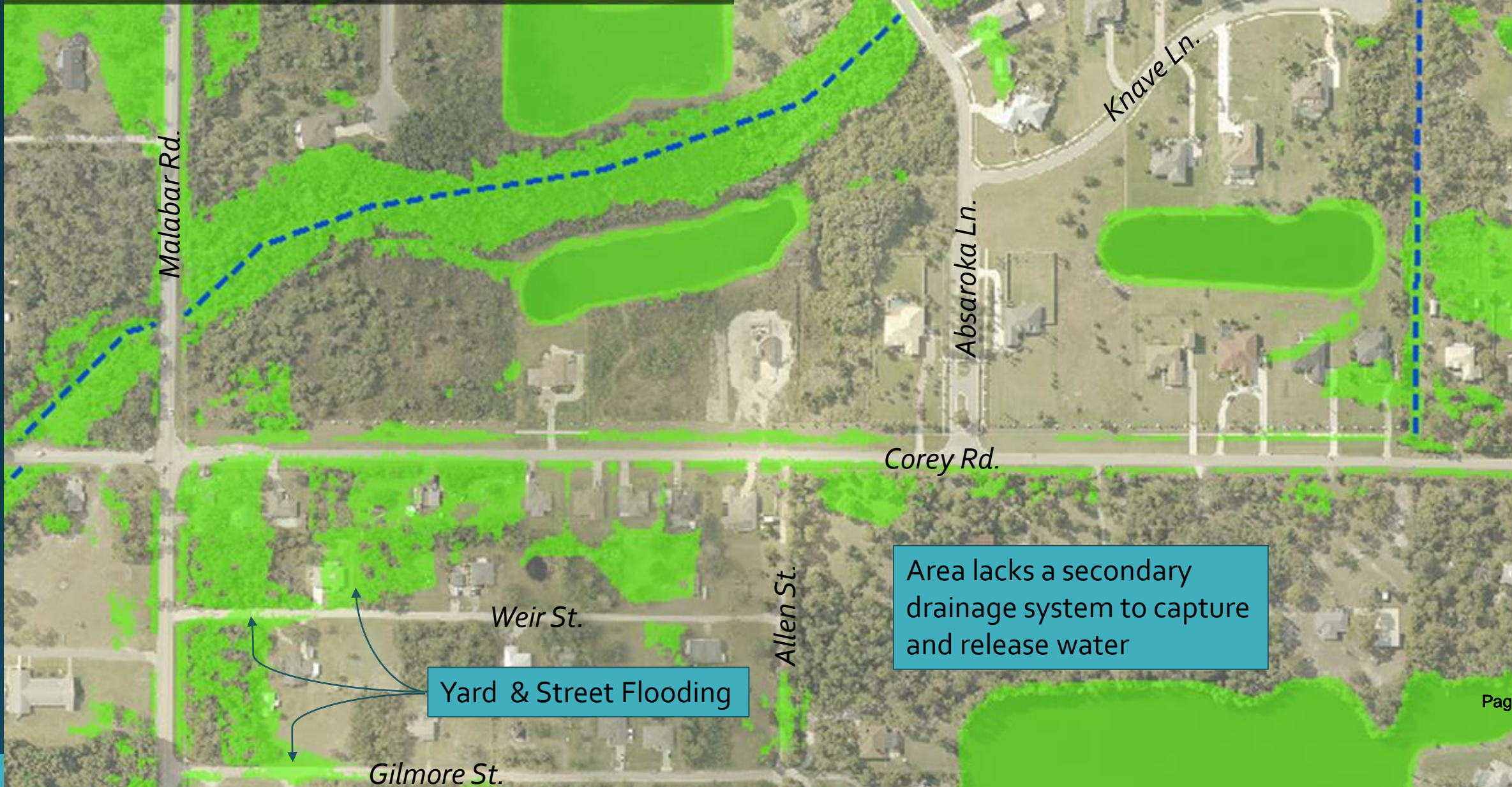
Area 2: Weir Street & Gilmore Street Corey Road & Malabar Road



Area 2: Corey Rd. & Malabar Rd. Existing Infrastructure & Design Limitations



Area 2: Weir St. & Gilmore St.



Malabar Rd.

Knave Ln.

Absaroka Ln.

Corey Rd.

Weir St.

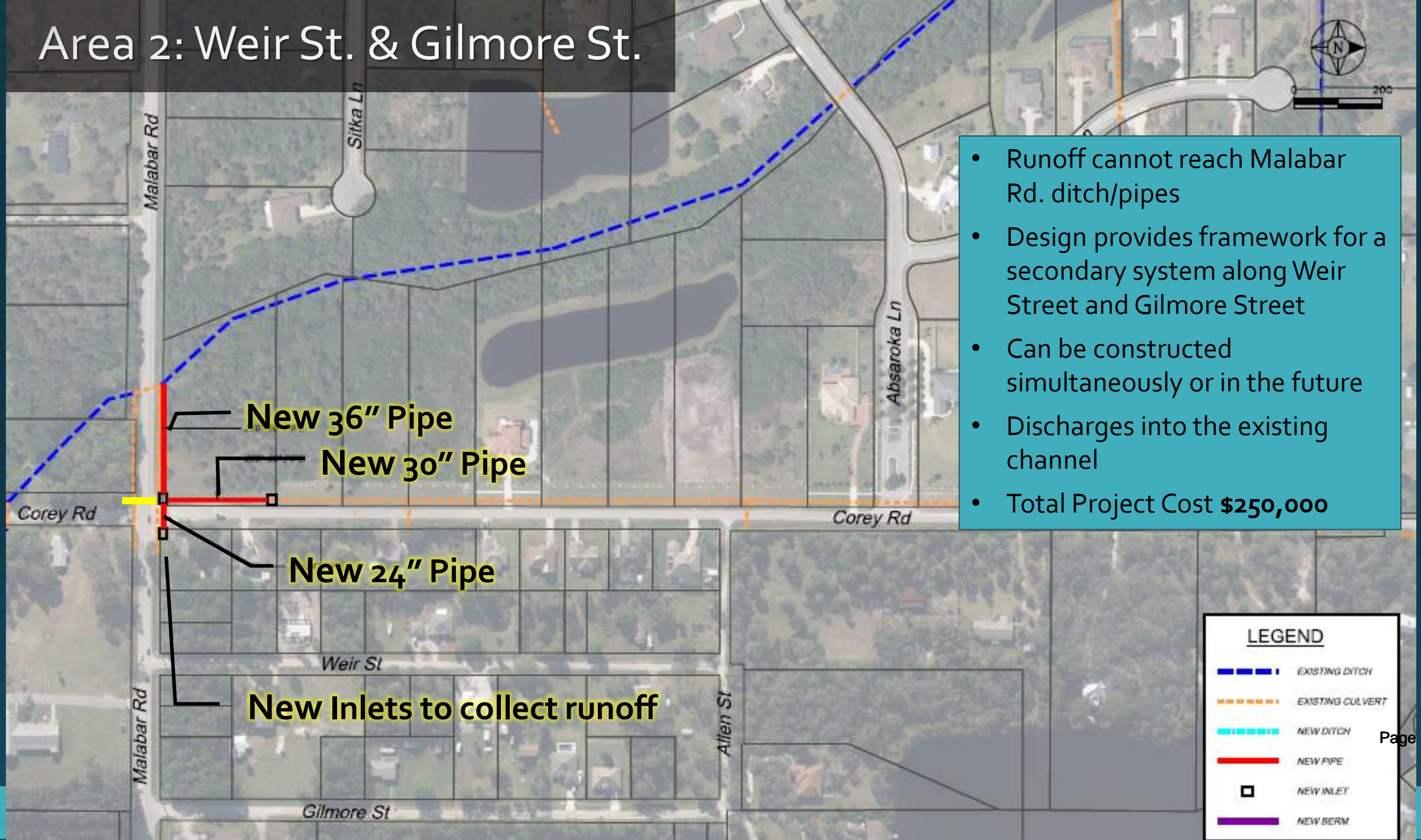
Allen St.

Gilmore St.

Yard & Street Flooding

Area lacks a secondary drainage system to capture and release water

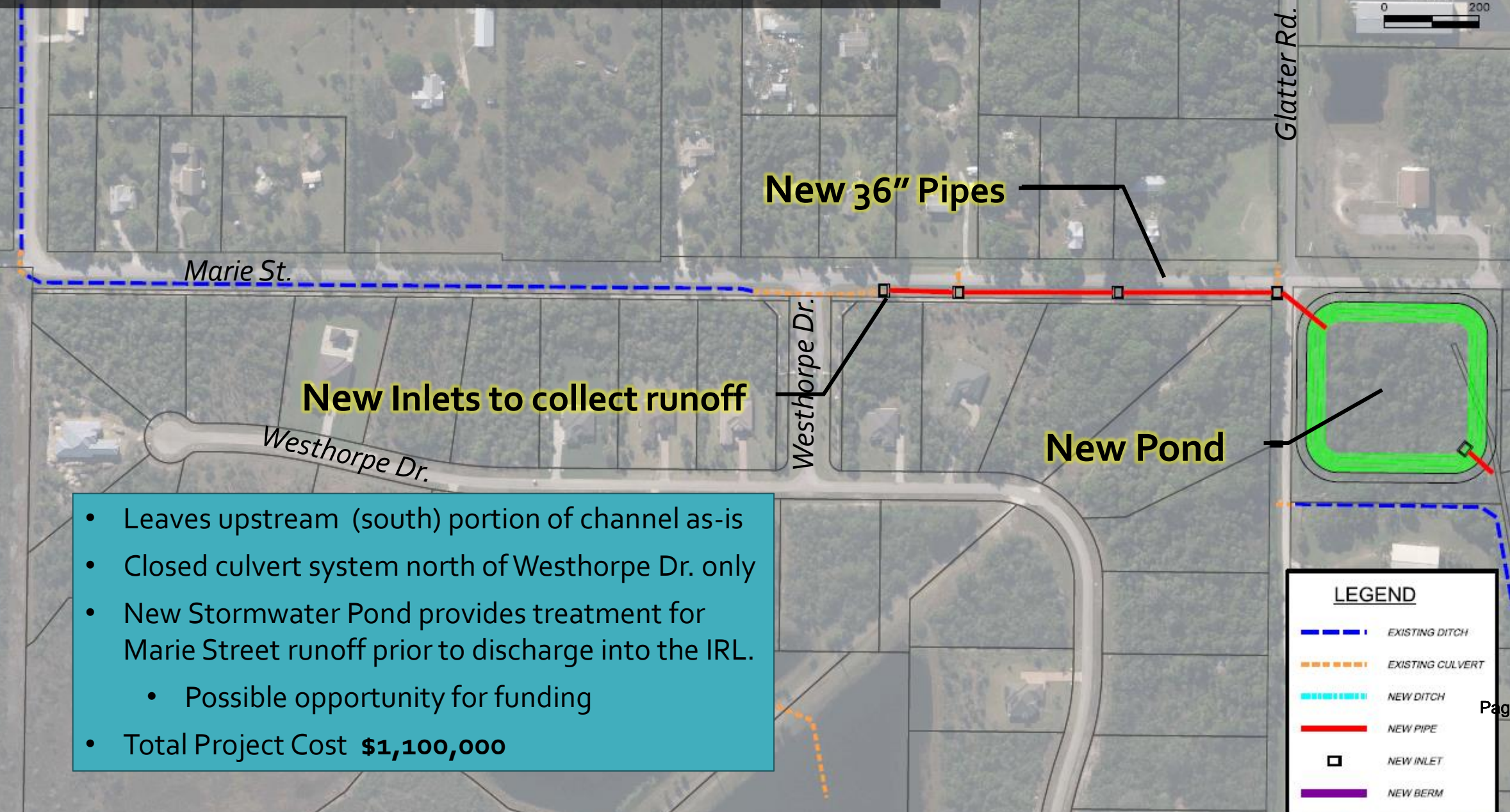
Area 2: Weir St. & Gilmore St.



Area 3: Marie Street



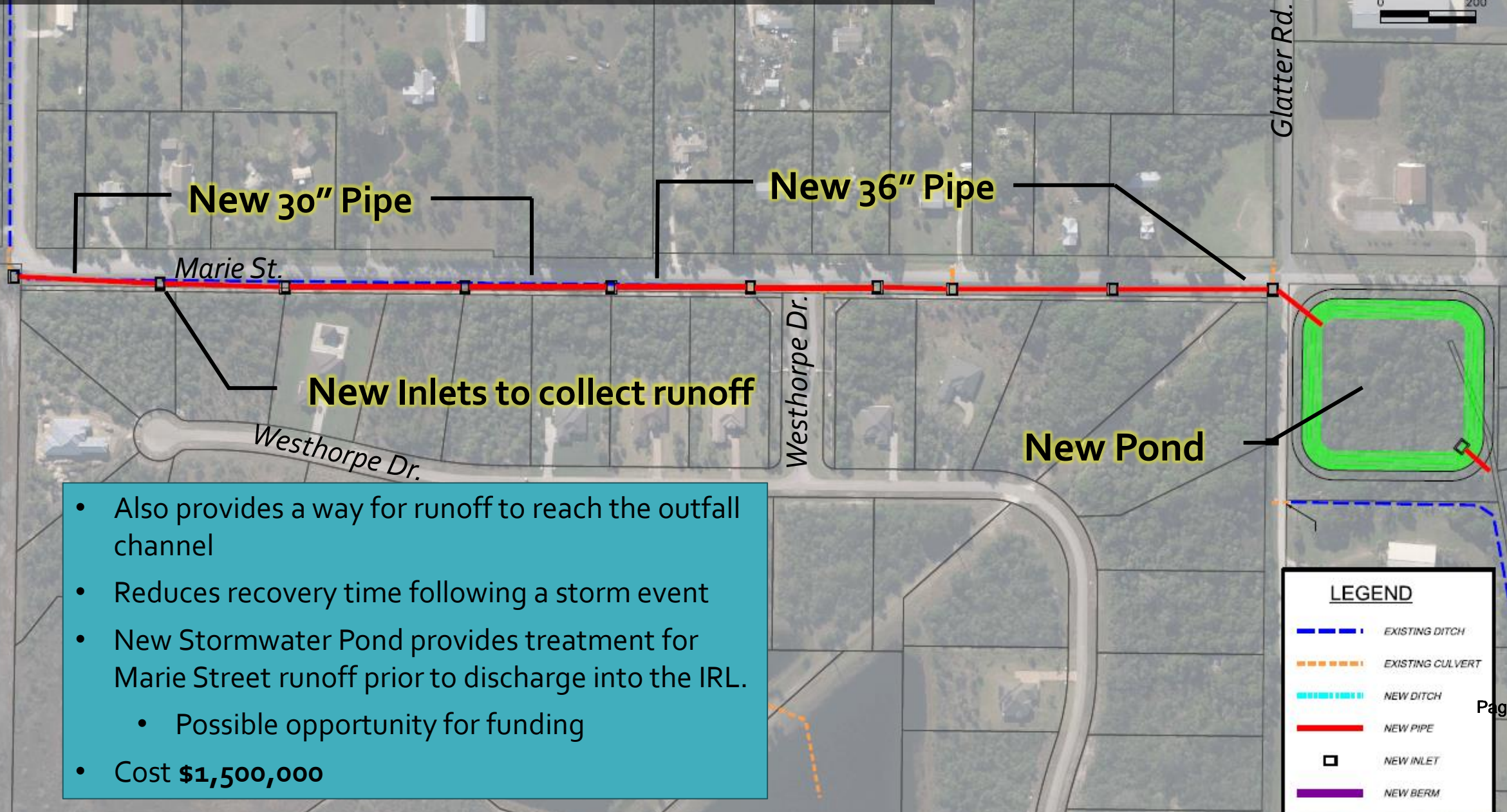
Area 3: Marie Street – Design Alternative 1



- Leaves upstream (south) portion of channel as-is
- Closed culvert system north of Westhorpe Dr. only
- New Stormwater Pond provides treatment for Marie Street runoff prior to discharge into the IRL.
 - Possible opportunity for funding
- Total Project Cost **\$1,100,000**

LEGEND	
	EXISTING DITCH
	EXISTING CULVERT
	NEW DITCH
	NEW PIPE
	NEW INLET
	NEW BERM

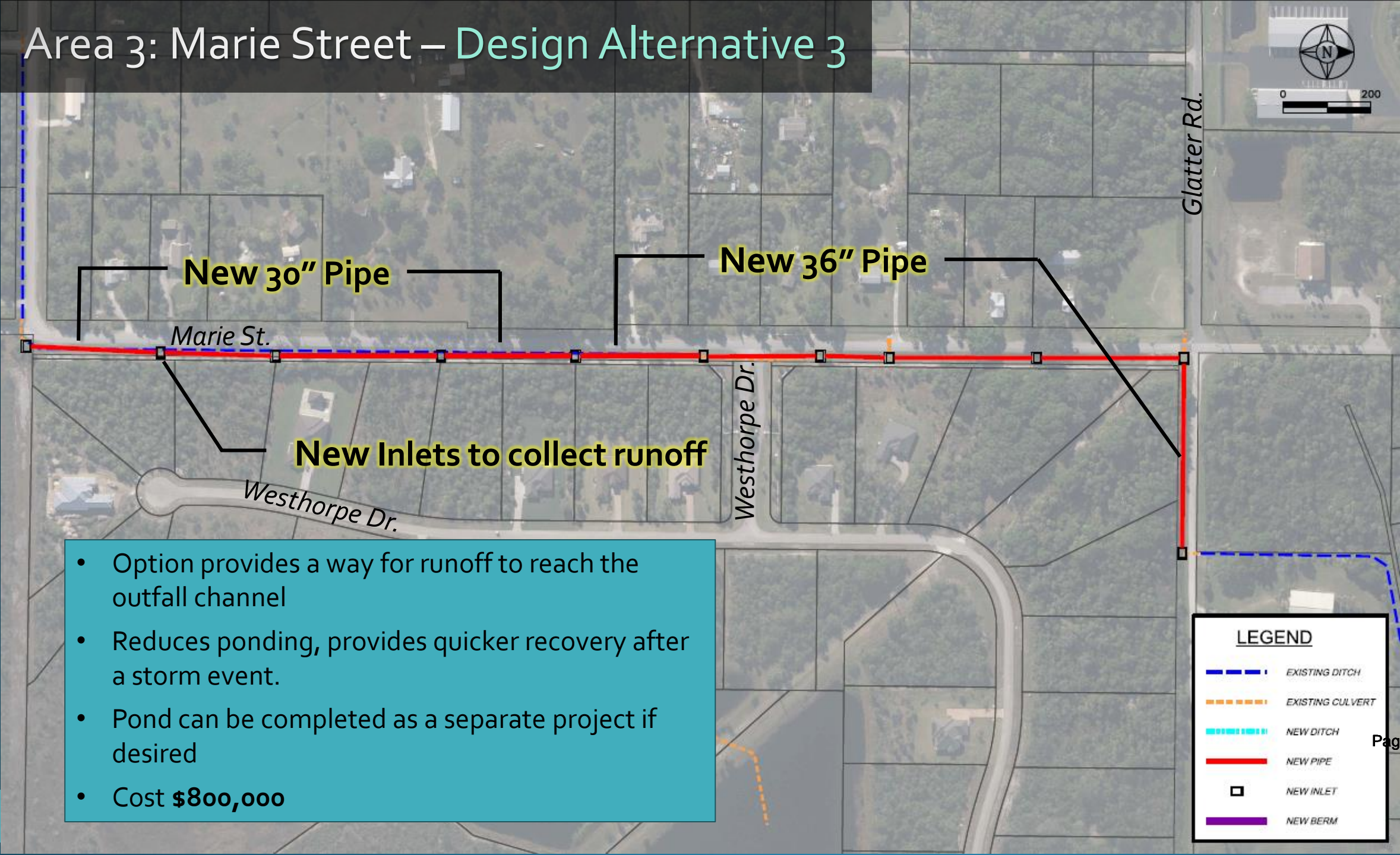
Area 3: Marie Street – Design Alternative 2



- Also provides a way for runoff to reach the outfall channel
- Reduces recovery time following a storm event
- New Stormwater Pond provides treatment for Marie Street runoff prior to discharge into the IRL.
 - Possible opportunity for funding
- Cost **\$1,500,000**

LEGEND	
	EXISTING DITCH
	EXISTING CULVERT
	NEW DITCH
	NEW PIPE
	NEW INLET
	NEW BERM

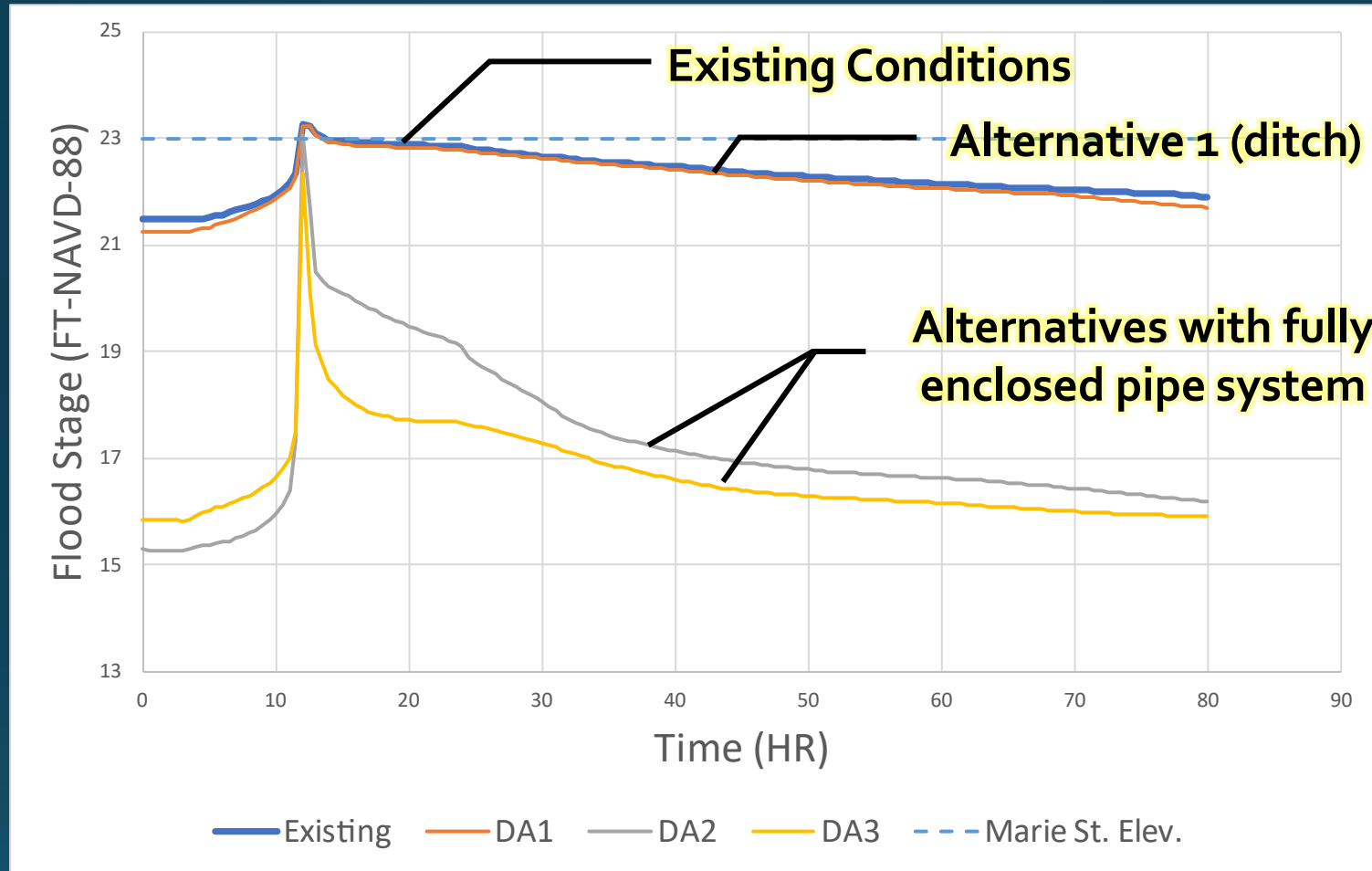
Area 3: Marie Street – Design Alternative 3



- Option provides a way for runoff to reach the outfall channel
- Reduces ponding, provides quicker recovery after a storm event.
- Pond can be completed as a separate project if desired
- Cost **\$800,000**

LEGEND	
	EXISTING DITCH
	EXISTING CULVERT
	NEW DITCH
	NEW PIPE
	NEW INLET
	NEW BERM

Area 3: Marie Street – Design Alternative Recovery Comparison



Time vs. Stage along Marie Rd. at Westhorpe Dr. – 25-yr event
South side of Hall Road

Area 4: Rocky Point



Area 4: Rocky Point



Photos of blocked and/or collapsed driveway culverts throughout Rocky Point neighborhood



Area 4: Rocky Point



Photos of improvements at Huggins Dr.



Photos of outfall at Reef Pl.

Area 4: Rocky Point

- Recommend maintenance throughout neighborhood
 - Driveway culverts
 - High swale inverts
- Small area study recommended if issues persist

Design Summary / Recommendations



High Priority

- Repair / Replace crushed and damaged culverts
- Address blocked pipes
 - VacTruck program to address current blockages – can be contracted out
 - Determine and address the source of the blockages (i.e. dirt road washout)

Medium Priority

- Hall Road (Linrose to Eva): bypass along Hall Rd. to Eva Ln.
 - Piped system recommended because simpler maintenance and long-term lower costs
- Weir Street & Gilmore Street: framework for secondary drainage system
 - Secondary system can be constructed simultaneously or separately as a future project depending on funds. *Pending FDOT project completion

Low Priority

- Marie Street: Piped system to replace stagnant ditch and provide positive outfall. Piped system recommended.
 - Pond can be constructed as a separate project pending funds/grants.

May 2021 Public Works Report

Equipment Update

- Equipment Serviced in March
 - International Dump Truck rear door welded.
 - Sterling Dump Truck oil leak & A/C repaired.
 - John Deere Tractor gas cylinder leak repaired.

See attached pages for all Mowing, Road Grading and Slope Mowing accomplishments for the month.

Miscellaneous Jobs

- Repair Washouts at
 - Rocky Point Road (400 lbs of cement, 1 yard of fill)
 - Quarterman Lane and Atz Rd (1 pallet of sod)
- Repair Potholes at
 - Pine Street
 - Hall and Weber Road (32 bags of patch asphalt)
- Repair Headwalls at
 - Quarterman Lane and Atz Rd
 - 1785 Atz Road
 - Repoured Mitered End (74 Bags of Cement)
 - 1 Pallet of sod
- Work at Malabar Community Park
 - Repaired Message Board
 - Repaired Men's bathroom
 - Repaired Bridge
 - Repaired Fence (2 places)
- Pick up brush at LaCourt and Hall (3 loads)
- Repair Bathroom at Town Hall

Mowing & Weed Eating Checklist May 2021

Sanitation	5-3	5-10	5-17	5-28
Soccer Field				
Baseball Field		5-13		
Drag Infield				
Town Property				
Malabar Park		5-13		5-28
Fire Department		5-14		
Disc Park			5-17	
Trail Park				
Eschenberg Park		5-12		
Huggins Park		5-12		
Public Works Yard				
Marie St. Yard				
Town Hall/ S. RR Ave		5/14		
Town ROWs				
Rocky Point Rd North & South	5-4			
Briar Creek Blvd & Bridge		5/7		
Corey Rd North End	5/3			
Marie St South East Side	5/4			
Marie St North West To Johnsnton				
Glatter Rd @ Malabar Rd				
Glatter Rd East to RR				
Data Managment	5/4			
Marie St Trail North and South Side	5/4			
Quaterman & Atz Rd	5/3			
Booth & Lette Intersection North				
Richard Rd Tillman Canal	5-4			
Bus Stops				
Atz & Corey				
Weber & Old Mission				
Lacourt & Hall				
LaCourt & Atz				
Hall & Corey				
Main Intersections (All Paved Roads w/ Stop sign, 50 Ft Each Direction)				
Corey & Hall				
Corey & Atz				
Weber & Hall				
Weber & Atz				

Road Grading			Month: May 2021		
Road Name	Date	Machine Used	Loads	Materials	Comments
Appleby Lane South	5/3	Box Blade			
Ivey Lane	5/3	Box Blade			
Oakridge Lane North.	5/3	Box Blade			
Linrose Lane North and South	5/3	Box Blade			
Fins Lane	5/3	Box Blade			
Arnold Lane	5/3	Box Blade			
Centre Street	5/4	Box Blade			
Pine Street	5/4	Box Blade			
Garden Street	5/4	Box Blade			
Quarterman Lane	5/10	Box Blade			
Gator Way Lane	5/10	Box Blade			
Duncil Lane North	5/10	Box Blade			
Raulerson Lane	5/10	Box Blade			
Wilson Lane	5/10	Box Blade			
Flashy Lane	5/10	Box Blade			
Richards Lane	5/10	Box Blade			
Candy Lane	5/11	Box Blade			
Billie Lane	5/11	Box Blade			
Hunter Lane North and South	5/11	Box Blade			
Moss Rose Ave	5/12	Box Blade			
Deleware Ave	5/12	Box Blade			
Matthews Lane	5/12	Box Blade			

MacDonald Lane	5/12	Box Blade			
Waring Lane North and South	5/12	Box Blade			
Kelly Lane	5/12	Box Blade			
Kramer Lane	5/17	Box Blade			
Cason Lane	5/17	Box Blade			
Reese Lane	5/17	Box Blade			
Reble Lane	5/17	Box Blade			
Hardway Lane	5/17	Box Blade			
Beran Lane	5/17	Box Blade			
Duncil Lane South	5/17	Box Blade			
Marshall Lane	5/25	Box Blade			
Johnston Ave	5/25	Box Blade			
Nord Street	5/25	Box Blade			
Marie Street North and South	5/25	Box Blade			
McCain Lane North & South	5/25	Box Blade			
Howell Lane North and South	5/25	Box Blade			
Sheflett Lane	5/28	Box Blade			
Kelly Lane	5/28	Box Blade			
Cason Lane	5/28	Box Blade			
TOTALS	8 Days	1 Machine	48 Roads Serviced		

Slope Mowing / Flat Mowing Month of: May 2021

Date	Road Name	Ditch Side (N, S, E, W)	Grass	Brush	Ditcher	Map #
5-3-2021	Corey Road (North End)	East		X		
5-4-2021	Malabar Community Park	West		X		
5-5-2021	Malabar Fire Department	West		X		
5-7-2021	Glatter Lane	North/South	X			
5-7-2021	Elaine Lane	East/West	X			
5-10-2021	Marie Street	East/West	X			
5/11-5/13	Hall Road	North/South	X			
5-13-2021	LaCourt Lane	East/West	X			
5-13-2021	McCain Lane North and South	East/West	X			
5-13-2021	Howell Lane North and South	East/West	X			
5-14-2021	Taylor Lane	East/West	X			
5-14-2021	Rivet Lane	East/West	X			
5-14-2021	Appleby Lane North and South	East/West	X			
5-14-2021	Ivey Lane	East/West	X			
5/17-5/19	Hall Road	North/South	X			
5-19-2021	Oakridge Lane North and South	East/West	X			
5-19-2021	Linrose Lane North and South	East/West	X			
5-19-2021	Arnold Lane	East/West	X			
5-20-2021	Quarterman Lane	East/West	X			
5/20/2021	Eva Lane	East/West	X			
5-25-2021	Sandy Creek Lane	East/West	X			
5-25-2021	Gator Way Lane	East/West	X			
5-25-2021	Linrose Lane.	West	X			
5-26-2021	Duncil Lane North and South	East/West	X			
5-26-2021	Isasa Lane	East	X			
5/26-5/27	Hall Road	North/South	X			
5-27-2021	Richards Lane	East	X			

5-27-2021	Raulerson Lane	West	X			
5-28-2021	Wilson Lane	East/West	X			
5-28-2021	Flashy Lane	East/West	X			
5-28-2021	Weber Road	East	X			
Totals: 16 Days of Work ;37 Roads Completed; 1 Machine used						

**TOWN OF MALABAR
COUNCIL MEETING**

**AGENDA REPORT NO: 10.a.
Meeting Date: June 07, 2021**

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

SUBJECT: Second Reading of Ordinance 2021-05 and second Public Hearing on the amendment of the Town's Zoning Map for approximately 1,716 acres shown on Exhibit "A" and specifically excluding the parcels listed in the ordinance.

BACKGROUND/HISTORY:

This blanket zoning will change all the properties changed when the Future Land Use Map was updated in 2018 and exclude only those five parcels listed in the ordinance as those property owners expressed desire to keep their existing zoning.

The State statute requires a second Public Hearing on any ordinance that provides for municipal wide zoning changes. That has been legally advertised for this meeting.

ATTACHMENTS:

Ordinance 2021-05

Malabar Proposed Zoning Map with exceptions listed in Ordinance 2021-05

ACTION OPTIONS:

Adoption of Ord 2020-05 after second Public Hearing

ORDINANCE 2021-05

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE ZONING MAP TO MATCH THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN FOR ALL PARCELS EXCEPT THE ONES LISTED IN THIS ORDINANCE; PROVIDING FOR THE EXISTING ZONING CLASSIFICATION FOR THOSE PARCELS; PROVIDING ACCESS TO THE NEW ZONING MAP ON THE TOWN WEBSITE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council desires to create a zoning map that reflects the planning horizon adopted in the Comprehensive Plan Future Land Use Map for approximately 1,716 acres within Malabar, primarily along the Malabar Road and Babcock Street corridors and the conservation lands, while providing for exceptions for those property owners that have opposed such zoning change at this time.

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

Section 1. The Town Council adopts the zoning map attached hereto as Exhibit "A" which reflects the adopted planning horizon in the Comprehensive Plan's Future Land Use Map for approximately 1,795 acres within Malabar, primarily along the Malabar Road and Babcock Street corridors and the conservation lands, with exclusions for those opposing such changes.

Section 2. The Town Council has considered the responses from those property owners that desire to retain their existing zoning classification at this time and are identified as the following.

Tax account #: 2851088	Parcel ID: 28-38-31-54-B-52	Size: 12.32 acres
Tax account #: 2851076	Parcel ID: 28-38-31-54-B-4.0	Size: 11.75 acres
Tax account #: 2931413	Parcel ID: 28-37-10-00-548	Size: 1.29 acres
Tax account #: 2931412	Parcel ID: 29-37-10-00-547	Size: 1.29 acres
Tax account #: 2846131	Parcel ID: 28-37-35-00-505	Size: 9.56 acres

Section 2. The Town Clerk is hereby authorized and directed to cause the revision to the Official Town Zoning Map as referenced in Article II of the Land Development Code to show the zoning change as set forth in the attached map and parcel list. The Clerk is directed to make such new map available on the Town's website.

Section 3. The effective date of this ordinance shall be six (6) days following adoption by Council.

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

- Council Member Marisa Acquaviva ____
- Council Member Brian Vail ____
- Council Member Steve Rivet ____
- Council Member David Scardino ____
- Council Member Danny White ____

This ordinance will become effective and considered adopted by the Malabar Town Council six business days from the date of adoption at second reading.

BY:

(seal)

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

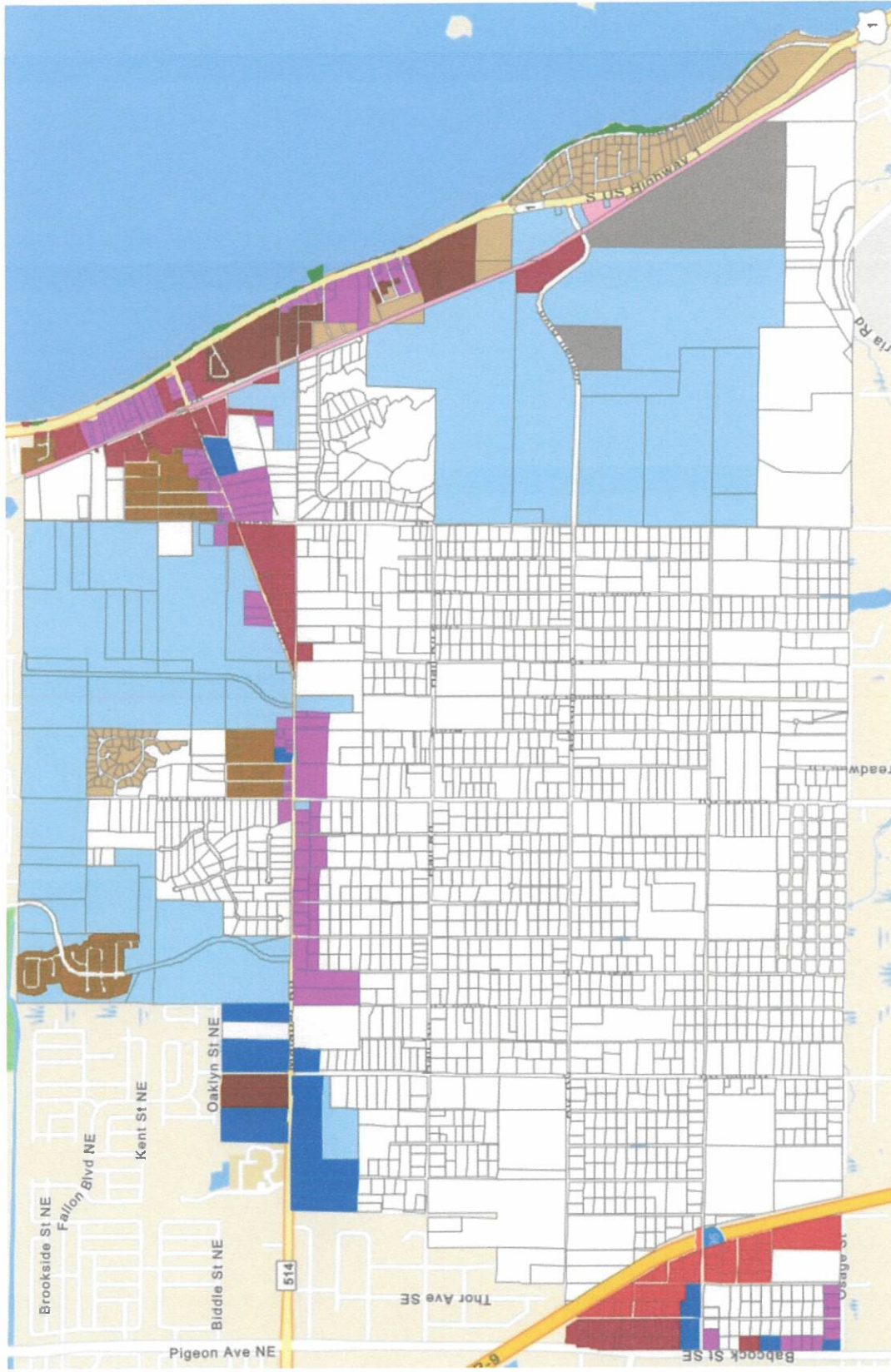
ATTEST:

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

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

P&Z PH: 4/28/2021 vote: 5 to 0
1st Reading: 5/17/2021: vote: 4 to 0 (CM Scardino excused)
2nd Reading: 6/07/2021: see above



Future Zoning Map

- Commercial General
- Commercial Limited
- Coastal Preservation
- Industrial
- Institutional
- Office-Institutional
- Residential Mobile Home
- Residential and Limited Commercial
- Multiple Family HDR
- Rural Residential
- Single Family MDR (RS-10)
- Single Family MDR (RS-15)
- Single Family LDR (RS-21)
- <all other values>



TOWN OF MALABAR

COUNCIL MEETING

AENDA ITEM NO: 10.b.

Meeting Date: June 07, 2021

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

SUBJECT: Ordinance 2021-06 Amend Chapter 2 of Code to Require Property Posting for Land Use Issues. Second Reading.

BACKGROUND/HISTORY:

This is another housekeeping ordinance to have our Code support what we require the applicant to do. When an applicant requests a site plan, rezoning, conditional use, variance, special exception, etc., we ask them to post the property with a sign for 30 days before the issue is discussed at Planning and Zoning.

This amendment would add that requirement to the code. The Public Hearings, legal advertisements and notice to adjacent property owners is already referenced in other sections of the code but this will reference them all in one section.

ATTACHMENTS:

Ord 2021-06

ACTION OPTIONS:

Adoption on second reading of Ord 2021-06

ORDINANCE 2021-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE IV, CREATING A NEW SECTION 2-76 OF THE MALABAR CODE OF ORDINANCES RELATED TO ADOPTING ORDINANCES, HOLDING PUBLIC HEARINGS AND PROVIDING PUBLIC NOTICES, PROPERTY POSTINGS AND LEGAL ADVERTISEMENTS; PROVIDING FOR LIMITED EXCEPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to public notices regarding land use issues; and,

WHEREAS, the Town Council desires to provide for consistent application of notice requirements as provided for in the Town's Code of Ordinances and state law by adopting these procedures; 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 afford all interested parties the ability to voice their views at specified public hearings.

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

SECTION 1. A new section 2-76 is hereby added to Chapter 2, Article IV, of the Code of Ordinances of the Town to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE IV. – PUBLIC NOTICE PROCEDURE

"Section 2-76. Public Hearing Notices.

(A) *Newspaper publication.* Notice of all public hearings with respect to the adoption of ordinances shall be advertised as required by Florida Statutes.

(B) *Courtesy mail out.*

1. All property owners within five hundred (500) feet of property which is the subject of a rezoning, comprehensive plan amendment, conditional use, variance, special exception, road waiver, final site plan approval, vacate and abandonment of road right of way or public easements architectural style exception, preliminary subdivision, or final subdivision plats (*hereafter referred to as a "required notice event"*), shall be transmitted a courtesy notice by mail stating: the date, time, and place of the hearing; the type of request to be considered at the hearing; and the location where the request can be reviewed. If a request involves a public hearing before the Town Planning and Zoning Board and Town Council the mail out notice may cover both such hearings.
2. The applicant is required to provide a radius package from the Brevard County Planning and GIS department that includes the 500' radius map, list of all property owners within that radius, and labels for mailing the courtesy notices. Failure to mail or failure of a

property owner to receive a courtesy notice shall not affect any action or proceedings taken on a subject matter.

3. When a property within this radius is included in a legally constituted property owners', homeowners', cooperative association, or condominium association boundary, a courtesy notice will also be provided to that community association based on the latest contact information available from the Office of the Town Clerk.

(C) Signs posted on the subject property.

1. All properties that are subject to a required notice event shall be posted by the owner/applicant, at their expense, with a sign(s) meeting the following criteria:
 - a. Sign(s) shall have minimum dimensions of 24 inches by 24 inches (24" x 24") for requests related to single family homes. The font shall be a minimum of ¾" in height and be legible from the roadway. The signage shall include the Town logo in color.
 - b. Signs shall have minimum dimensions of 48 inches by 48 inches (48" x 48") for on all commercially zoned properties. The font shall be a minimum of ¾" in height and be legible from the roadway. The signage shall include the Town logo in color.
 - c. Corner properties shall require two (2) signs, one each facing both streets.
 - d. Signage shall be placed as close to the front (and side corner property line on corner lots) as possible, or in other locations approved by the Building Department in order to achieve maximum visibility from the roadway.
 - e. Signs shall include the date, time and place of the public meeting and/or hearing, applicant's name, and the specific request.
 - f. Sign(s) shall be posted thirty (30) days prior to the public hearing at Planning and Zoning Board meeting at which the matter is to be considered and shall remain in place until after the final public hearing on the matter by Town Council. Such signs shall be removed within forty-eight (48) hours of the conclusion of the final public hearing on the matter.
 - g. The Town staff shall provide sign posting instructions to each applicant consistent with this Code.

(D) Limited Exception.

Any matter which is required to meet the requirements of F.S. 166.041(3)(c) is exempt from the provisions of subsections (B) and (C) above and shall follow the procedures in F.S. 166.041(3)(c) as applicable.

(E) Failure to post sign(s).

1. Failure to post the sign(s) within the time frame specified in paragraph 2-76 (C) of this section shall result in the continuance of the public hearing. The matter shall be rescheduled

in accordance with paragraph 2-76 (B) of this section. The applicant shall pay an additional fee equaling one-half (1/2) the initial filing fee.

2. Upon the continuance of the public hearing, failure to post the sign(s) within the time frame specified or to pay the additional fee within three (3) working days of the date of the public hearing is rescheduled, is conclusively considered a withdrawal of the matter and shall be removed from consideration. Nothing herein shall prevent a person from reapplying for a request in compliance with the provisions herein.

Secs. 2-77—2-100. - Reserved.”

SECTION 2. 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 3. 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 4. 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 5. 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 Danny White _____

This ordinance was then declared duly passed and adopted this 7th day of June 2021.

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: 05/17/2021 Vote 4 to 0.

Second Reading:06/07/2021

TOWN OF MALABAR

Tabled on 5/17/21 to this date

COUNCIL MEETING

AGENDA ITEM NO: 10.c.

Meeting Date: June 07, 2021

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

SUBJECT: Request Road Improvement Waiver for 200 feet of Hunter Lane adjacent to Parcel 325, south of Atz Road. Requested by Parcel owner Mr. Gittens.

BACKGROUND/HISTORY:

Update since last meeting: Staff was called out to this location for clearing activity without a permit. A stop work order was issued by the Building Department and a code enforcement notice was sent. The site inspection did not indicate any agricultural use.

The applicant bought this parcels many years ago and has been using it for agricultural purposes. He was able to fence two sides to join existing fences in 2014. He desires now to add a well and an open carport to provide shade for his animals.

The road in currently improved and accepted for 1500' just reaching his parcel. His neighbor to the north at 2665 Hunter Lane permits him to gain access to the parcel through his fence opening, negating the need for road improvement at this time.

He is requesting a postponement to the road improvement requirement until he decides to build a home. He would like to improve the conditions for his agricultural use with the shade structure.

ATTACHMENTS:

Application for Waiver to Road Improvement Requirements with Exhibit A & B
Environmental study done by Toland Environmental Consulting
Legal Ad and Radius Pkg for legal notices to property owners within 500'
Building Permit 6771 for 400LF of fencing in 2014.

ACTION OPTIONS:

Action on Request for Postponement of Road Improvement Requirements if a "Waiver" could be granted with conditions for this applicant.

TOWN OF MALABAR
2725 Malabar Road
Malabar, FL 32950
Tel. 321-727-7764 x 14

CRANSTON • GITTENS @ GMAIL.COM

**RIGHT OF WAY (ROW)
ROAD IMPROVEMENT WAIVER APPLICATION**

This application is separate and in addition to the Road Improvement Application that must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) OPPLETON GITTENS Tel: 321-960-9200

Mailing Address: 1495 DORAL CT. NE PALM BAY, FL. 32905 Email: CRANSTON • GITTENS @ GMAIL.COM

Name of Owner if other than Applicant: _____ Tel: _____

Legal description of property covered by application:

Township 29, Range 37, Section 12, Parcel (A), Road ROW Name HUNTER LANE
SEE ATTACH EXHIBIT

Property Address: 2725 HUNTER LN MALABAR, FL 32950 Zoning classification RR65/AGRICULT

Existing Special Conditions or Conditional Uses Previously Granted: _____

Required ROW dedicated ____ / will be dedicated ____ prior to hearing per Section 13-39 of Road Improvement Code in Chapter 13 of Malabar Code of Ordinances.

Reason for waiver request (state specific hardship or attach correspondence, drawings, etc.).

SEE ATTACH (B) EXHIBIT

Required attachments:

- Hearing fee of \$300.00 for Residential and \$1,500.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership of abutting parcel
- Survey to include Site layout depicting the right-of-way (ROW), roadway width and length subject to waiver request and parcel owned by applicant
- List of property owners (with tax parcel numbers) abutting the road right-of-way involved in the waiver request as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.

Oppleton Gittens
Applicant(s)

03/31/2021
Date

Chapter 13, Malabar Code of Ordinances, Section 13-38(c) provides as follows for waivers:

“(c) Waiver. The Town Council may grant a waiver to the provisions of Section 13-38 (b) (1) and (2).

1. The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (b)(1) and (2). In order to authorize a waiver under this section the Town Council must find the following:

i. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (b) (1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section;

ii. The special conditions and circumstances are not caused in any way by the owner or applicant;

iii. That such waiver will not be injurious or detrimental to the public welfare;

iv. That the waiver granted is the minimum waiver that will make possible the reasonable use of the land;

v. As a condition to the issuance of a waiver the owner of the property for which such waiver is granted shall dedicate the right of way required by section 13-39 of the code, if no such public right of way exists at the time of the granting of a waiver authorized herein, through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed.

2. The owner of the property for which such waiver is granted shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest of the property for which such waiver is granted to pay for the completion of the entire width of the right of way as it existed on the date the waiver is granted by the Town Council through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The Agreement shall provide, in part, that should the owner of the property for which the waiver was granted fail to pay for the completion of the entire width of the right of way through the furthest boundary of the lot of record when it is constructed by another then the Town may reimburse the person who completed the road portion through the furthest boundary of the lot of record of the owner who was granted the waiver and the Town shall be entitled to record a lien against the property for which such a waiver was granted for the cost of the reimbursement and/or the Town may withhold the issuance of any future building permit, development order or development permit, for the property for which such waiver is granted.

3. By way of example, and not by way of limitation, “special circumstances” may include:

i. Environmental conditions, and restrictions exist which prohibit any disturbance of such area and make it impossible to complete the road to the furthest extent of the property; [for example where mitigation is not possible]; or

ii. There exists no dedicated public right of way immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies; or

iii. The property immediately abutting and beyond furthest boundary of the lot of record for which the waiver applies is owned by a governmental agency and is designated as conservation or environmentally sensitive land; or

iv. The property immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies already has existing accepted access through the use of another public or private right of way

4. Town Council may impose additional reasonable conditions and safeguards that it deems appropriate;

5. The Town Council may prescribe a reasonable time limit within which the action for which the waiver is required shall be begun or completed or both.

6. The decision of the Town Council regarding a request for a waiver is final and no reconsideration, rehearing or further appeal to the Town is available.

7. Application Process: Any person owning an interest in any real property may apply to the Town Council for a waiver hereunder. The application shall be accompanied by a fee established from time to time by the Town Council. The application shall be in such form as provided by the Town, and shall contain the following information:

- i. The name of the owner of the particular real property shall be included.
- ii. If the applicant is other than all the owners of the particular property, written consent signed by all owners of the particular real property shall be attached.
- iii. The application shall contain the legal description of the particular real property, accompanied by a certified survey of that portion of the map maintained by the property appraiser reflecting the boundaries of the particular real property.
- iv. The application shall contain the current zoning classification, and any specified conditions or conditional use designation as recorded on the official zoning maps.

8. Public Hearing; Notice Upon receipt of an executed application pursuant to this section, the Town Clerk forthwith shall schedule a hearing on the application before the Town Council. Notice of the time and place of the public hearing shall be given to the applicant at least 15 days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least 15 days prior to the public hearing, to all property owners abutting the road right of way in question. Such notice shall contain the name of the applicant, the legal description of the affected property, and that the owner of the affected property desires a waiver to section 13-38(b)(1) or (2). In addition, a notice containing such information shall be posted at Town Hall and on the Town's website.

Where the property is not owned by the applicant, a notarized letter must be attached giving the consent of the owner/owners to the applicant to proceed with request for waiver.

Please complete only one of the following:

1) I, _____, being first duly sworn, depose and say that I, _____, am the legal representative of the Owner or Lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Signature of Applicant(s) _____ Date _____

Sworn and acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20____ by _____.

Notary Seal _____ Signature of Notary Public _____

Notary Public, State of Florida
Commission No. _____ My Commission Expires _____.

Personally Known _____ OR Produced Identification _____ Type: _____

-----OR-----

2) I, ODDLETON GITTENS, being first duly sworn, depose and say that I, ODDLETON GITTENS, am the Owner of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Oddleton Gittens _____ 03/31/2021
Signature of Applicant(s) Date

Sworn and subscribed before me by means of physical presence or _____ online notarization, this 31 day of March, 2021 by ODDLETON GITTENS.

Notary Seal  _____
Signature of Notary Public Debby K. Franklin

Notary Public, State of Florida
Commission No. GG 959235 My Commission Expires 2/17/2024.

Personally Known OR Produced Identification _____ Type: _____



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2931906
Owners	GITTENS, ODDLETON A
Mailing Address	PO BOX 060742 PALM BAY FL 32906
Site Address	2725 HUNTER LN MALABAR FL 32950
Parcel ID	29-37-12-00-325
Property Use	0009 - VACANT RESIDENTIAL LAND (SINGLE FAMILY, UNPLATTED)
Exemptions	None
Taxing District	34Z0 - MALABAR
Total Acres	1.40
Subdivision	--
Site Code	0001 - NO OTHER CODE APPL.
Plat Book/Page	0000/0000
Land Description	N 200 FT OF S 1200 FT OF W 1/2 OF LOT 21 OF PB 1 PG 165 EX W 25 FT AKA TRACT 89

VALUE SUMMARY

Category	2020	2019	2018
Market Value	\$14,000	\$12,600	\$11,200
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$12,660	\$11,510	\$10,470
Assessed Value School	\$14,000	\$12,600	\$11,200
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$12,660	\$11,510	\$10,470
Taxable Value School	\$14,000	\$12,600	\$11,200

SALES/TRANSFERS

Date	Price	Type	Deed
11/04/2003	\$9,000	QC	5114/2641
04/27/2000	\$3,600	XD	4164/1833

No Data Found

EXHIBIT
A

(A)

Using property as Agriculture until such time to build. Therefore, I am requesting access to my property for Agriculture Purposes. Also, need to put a well and protection for my animals.

I am asking for a waiver of the Road Improvement Requirement until such time, as the parcels adjacent, or south of my parcel, request improvement.

EXHIBIT

2

2 pages

EXHIBIT B

The Carport Company

QUOTE!

945 NW 17th Ave. Ocala, FL 34475
1-866-277-5700/1-877-436-3134 Customer Service/Delivery
1-866-311-0301 To fax an order
www.thecarportcompany.com

Dealer TCC. TCC Invoice# _____ Date 02/25/21.
Name Oddleton Gittens Phone 351/9601200.

Address (where unit will be delivered) _____
City Malabar. State FL. Zip 32950

Type of Structure (circle one): CLASSIC A-FRAME VERTICAL A-FRAME FLAT
Style: OPEN ENCLOSURE BARN SHOP-PORT
Color: MOCHA TAN Trim: MOCHA TAN No Warranty or Premium (10% upcharge)

Anchoring Surface: Concrete Soil Asphalt Other (Add'l fee) _____

Structures are designed to be on level surface and are engineered for soil, concrete or asphalt
Frames are 1' shorter in length than roof coverage

Size:(Ex. 18x20) W <u>18</u> x L <u>26</u>	Price: <u>1620⁰⁰</u>
Leg Height:(ex. 5') <u>7</u>	Price: <u>75⁰⁰</u>
Close Sides: Yes No If yes, 1 side or 2 sides _____	Price: _____
Close Ends: Yes No If yes, 1 end or 2 ends _____	Price: _____
Garage Doors: Size: _____ Qty. _____	Price: _____
Side Headers: Yes No Qty: _____	Price: _____
Walk In Door Yes No <input type="checkbox"/> 36" x 80" Qty. _____	Price: _____
Gable: Yes No If yes, 1 or 2 gables _____	Price: _____
Windows: Yes No If yes, Qty _____	Price: _____
Other: _____	Price: _____

Special Instructions
NEED GENERATOR!

On hold -
Pending outcome
of ROAD imp.
waiver request
Rec'd 3/31/2021.

Retail _____
% TAX _____
JTAL _____
1695⁰⁰
118⁰⁰
18136⁵⁰

Check Schedule	
DEPOSIT (10% of Retail) Check #1	<u>2034⁰⁰</u>
Delivery (15% of Retail) Check #2	<u>2542⁵⁰</u>
MATERIAL BALANCE Check #3 (Grand total-deposit-delivery=material balance)	<u>1356⁰⁰</u>

Delivery Additions	
Fuel S/C	_____
Connect Fee	_____
Extra fees	_____
Total Delivery	_____

kits are for agricultural use only (Unless permitted for other use). The Carport Company of Florida
Company will be responsible for delivery of unit. I have read and completely understand the above
of God or any weather related events. Wind ratings are guide to purchasing a product but are **Page 73**

X _____



Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321.727.7764 (Office) 321.727.9997 (Fax) www.townofmalabar.org

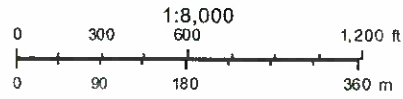
**TOWN OF MALABAR
NOTICE OF
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **May 17, 2021**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: Request a Waiver (postponement) from the road improvement requirement while utilizing the parcel for Agricultural purposes. Applicant is Oddleton (Cranston) Gittens, owner of parcel 29-37-12-00-325.

ROAD IMPROVEMENT WAIVER REQUEST

A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE 200 FEET JUST SOUTH OF THE ACCEPTED PORTION OF HUNTER LANE, SOUTH OF ATZ ROAD UNTIL SUCH TIME AS HE DESIRES TO BUILD A HOME. REQUEST BY ODDLETON (CRANSTON) GITTENS, OWNER OF PARCEL 325 IN SECTION 12, TOWNSHIP 29, RANGE 37.

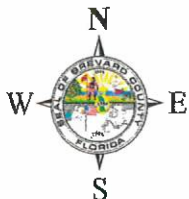
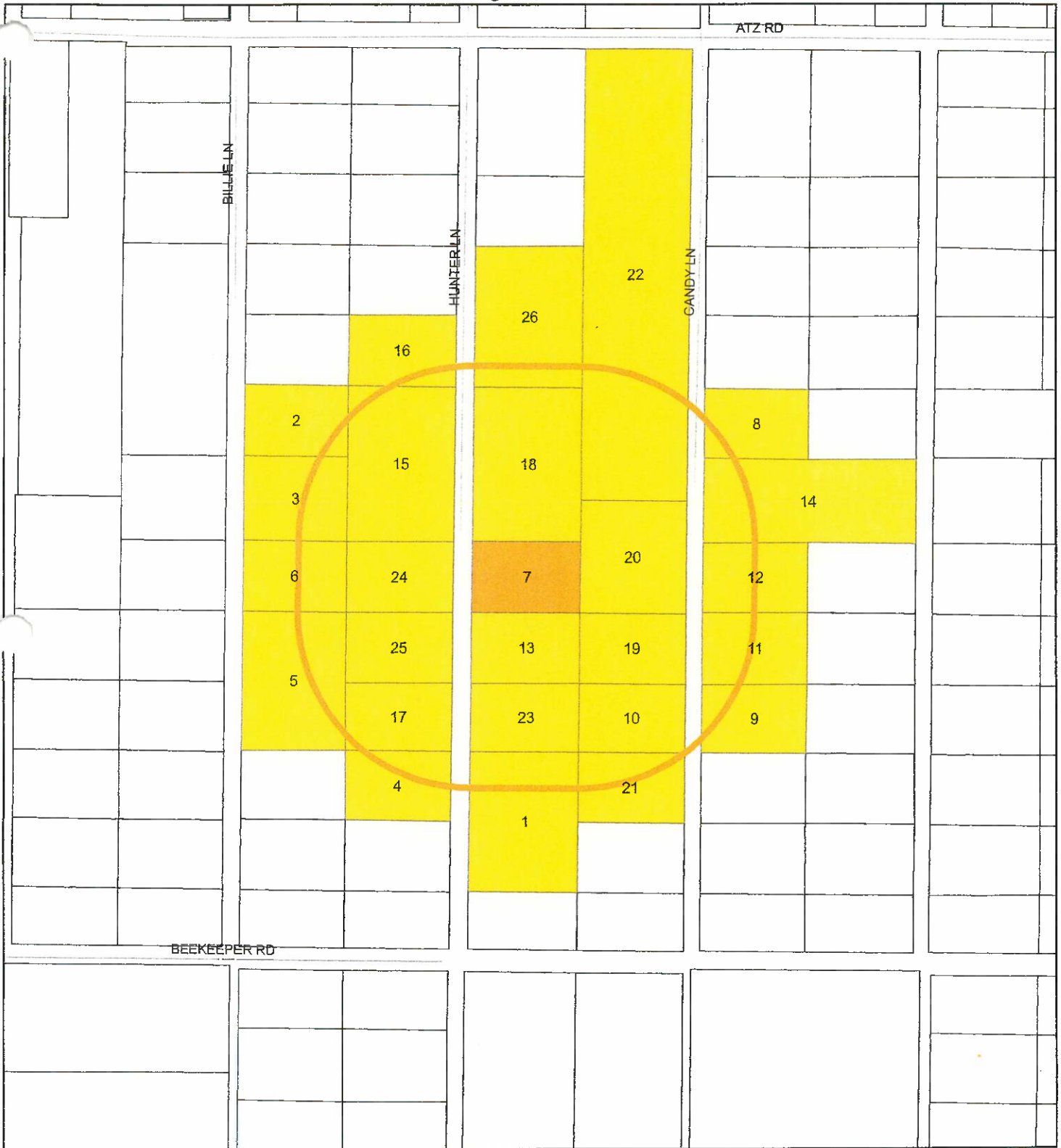
If you received this notice then you are listed as an owner of property, as shown in the records of Brevard County Property Appraiser's office, within 500' of the applicant's requested waiver request. This Notice is provided as required by Malabar Code, Chapter 13, Section 13-38.



RADIUS MAP

GITTENS, ODDLETON A

gittens500







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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

Produced by BoCC - GIS Date: 3/2/2021

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

GITTENS, Oddleton

BARFUS FAMILY REVOCABLE TRUST
6520 BETHEL ST
COCOA FL 32927-4268

DANAHER, PETER J
DANAHER, KAREN
849 SW 12TH AVE
BOCA RATON FL 33486-8427

GITTENS, ODDLETON A
PO BOX 060742
PALM BAY FL 32906-0742

HARDY, KEVIN ROBERT
HARDY, MARIAH PAIGE
625 INDIAN RIVER DR
MELBOURNE FL 32935-6936

HICKS, JAMES C
HICKS, DIANA W
11912 ASH ST
PALM BCH GARDENS FL 33410-

KONATSU, BETTY
KONATSU, MASANOBU
207 E WOODLAWN DR
HARKER HEIGHTS TX 76548-

KOSHINSKI, DAVID ALAN
KOSHINSKI, CANDYCE L
2705 CANDY LANE
MALABAR FL 32950-

MORTENSEN, MARK C
MORTENSEN, MARGARET R
2690 HUNTER LANE
MALABAR FL 32950-

NIAKAROS, ARTHUR
41 SYCAMORE DRIVE
WESTWOOD MA 02090-

PERRY, KEITH
2930 INDIANA ST
MELBOURNE FL 32904-

PRICE, PAUL D
PRICE, NANCY E
2665 HUNTER LN
MALABAR FL 32950-

SACULLES, RINA SHIELLA MIRANDA
700 CARLYLE SE AVE SE
PALM BAY FL 32909-4533

SEIWERT, MICHAEL G
SEIWERT, JULIE B
843 CLIFTON ROAD SE
PALM BAY FL 32909-

SHAW, ERNEST
SHAW, ROSELINE
3287 SE WEST SNOW RD
PORT ST LUCIE FL 34984-

SPRINGWATER HOMES OF FLORIDA INC
435 STAN DR, STE C
MELBOURNE FL 32904-1051

VAN DE GRIFT, JAMES E
VAN DE GRIFT, JAN A
2797 ROSELLEN AVE
MADISON WI 53711-

VEERASAMI, RONALD
VEERASAMI, DARO
116 -13 103RD AVENUE
RICHMOND HILL NY 11419-

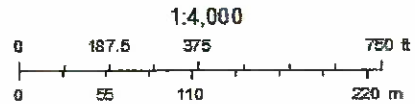
VEERASAMI, SHIVANI
1234 CRAFTSLAND LANE NE
PALM BAY FL 32905-

WELTON, DANIEL JOSEPH III
WELTON, SHERYL ANNE
2635 HUNTER LN
MALABAR FL 32950-3805

Brevard County Property Appraiser



June 17, 2019



2846850
Esri/View Geometry BCRAO

For illustration only. Not a survey. Map lines may not precisely align.
© BCRAO 2015



March 17, 2021
Mr. Oddleton Gittens
1495 Doral Court, NE
Palm Bay, FL 32905

RE: Preliminary Site Inspection
1.4-acre Property located at
2725 Hunter Lane, Malabar, FL 32950
Tax ID: 2931906, Parcel ID: 29-37-12-00-325

Dear Mr. Gittens:

The following is a summary of Toland Environmental Consulting's (TEC) preliminary site inspection of a 1.4-acre study area located at 2725 Hunter Lane, Malabar, Florida whose tax and parcel identification numbers are 2931906 and 29-37-12-00-325, respectively. The property is surrounded to the north by a single-family residence, to the east by undeveloped single family residential property, to the south by undeveloped single family residential property, and to the west by the undeveloped continuation of Hunter Lane (Figure 1).

The purpose of the preliminary site inspection was to identify environmental resources on the site and to evaluate whether consideration needs to be made during the acquisition or conceptual design process to address environmental restrictions on the property's development. To prepare this ecological assessment, TEC reviewed natural resource maps including GIS database coverages of the Brevard County Soil Survey, the National Wetland Inventory, U.S.G.S. Topographic Quadrangle Maps, the 2008 Brevard County Florida Scrub-Jay Occupancy Map, the Florida Fish and Wildlife Conservation Commission's (FWC) Bald Eagle Nest Site Locator Map and other listed species databases.

In addition, on March 10, 2021, TEC ground-truthed, delineated and described the natural communities present within the study area with reference to the Cooperative Land Cover Map, Version 3.3 (CLC) which is the land cover system maintained by FWC and prepared in concert with the Florida Natural Areas Inventory (FNAI) that expands and updates the Florida Department of Transportation's Florida Land Cover Classification System (FLUCCS) last revised in 1999. In its current condition, the site would be classified by CLC as having 0.93 acres of Bare Soil/Clear Cut (CLC Code 1880), 0.24 acres of Mesic Hammock (CLC Code 1120), and 0.23 acres of Hydric Hammock (CLC Code 2232) with a wetland-cut drainage ditch running through it (Figure 2).

The Bare Soil/Clear Cut area was originally Pine Flatwoods and Dry Prairie (CLC Code 1300) prior to being cleared, and it currently consists of a few scattered slash pines (*Pinus elliottii*) and a cleared understory. The understory was cleared originally in 2014 pursuant to an approved land clearing permit approved by the town of Malabar, and the understory was cleared again in 2021 by the owner (Photograph 1).



Photograph 1: Site Interior

The Mesic Hammock consists of Brazilian pepper (*Schinus terebinthifolius*) and cabbage palm (*Sabal palmetto*), with a sparse understory of swamp fern (*Blechnum serrulatum*). Along the western edge, the Mesic Hammock becomes more of a monoculture of Brazilian pepper lacking an understory.

Figure 1: Regional Location



Legend

 Property

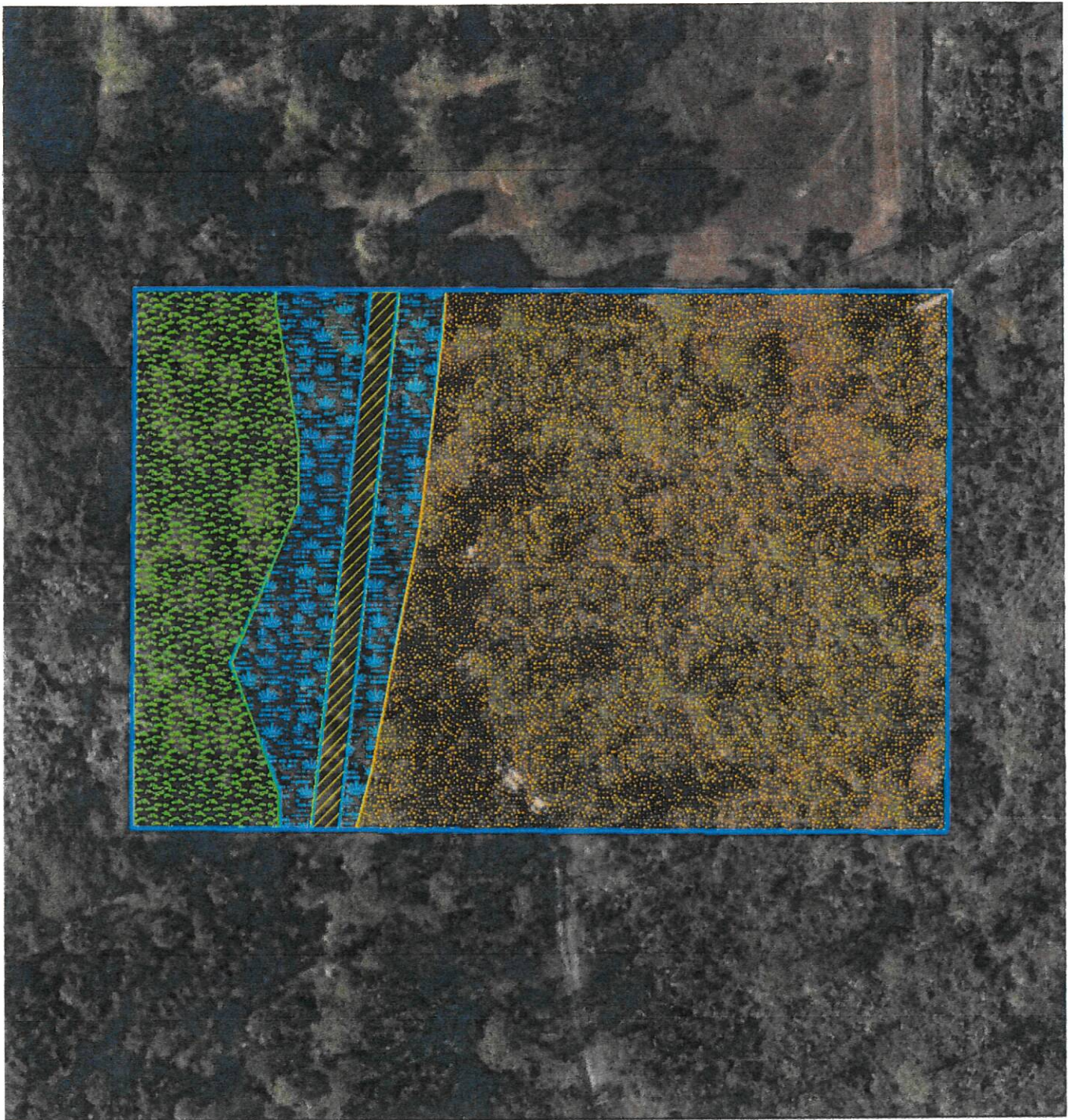


450 225 0 450 Feet



Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

Figure 2: Natural Communities Cover Map



Legend

-  Property
-  Bare Soil/Clear Cut - 1880
-  Mesic Hammock - 1120
-  Hydric Hammock - 2232
-  Wetland-cut Drainage Ditch

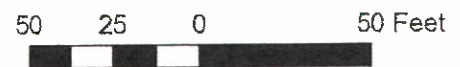


Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

Figure 3: NRCS Soils Map



Legend

-  Property
-  Basinger Sand
-  Myakka Sand

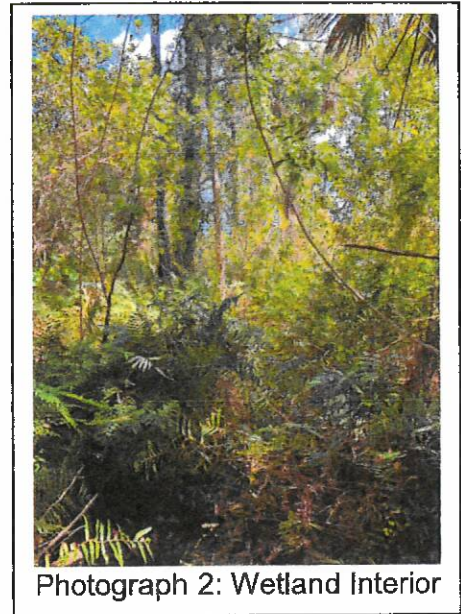


Figure Prepared by Toland Environmental Consulting
Using FDOT 2018 Aerial Imagery

The Hydric Hammock has a canopy of laurel oak (*Quercus laurifolia*), slash pine, melaleuca (*Melaleuca quinquenervia*), wax myrtle (*Myrica cerifera*), and red bay (*Persea palustris*). The understory consists of royal fern (*Osmunda regalis*), swamp fern, saw grass (*Cladium jamaicense*), St. John's wort (*Hypericum fasciculatum*), and perennial fleabane (*Pluchea odorata*), as well as cattails (*Typha spp.*) in the culverted wetland-cut drainage ditch that runs through the middle of the wetland (Photograph 2).

The onsite soils are classified by the National Resources Conservation Service (NRCS) as Myakka Sand and Basinger Sand (Figure 3).

Myakka fine sands are poorly drained soils that are composed of sandy marine deposits. These soils are usually associated with flatwoods on marine terraces. In general, native vegetation associated with this soil series consists of longleaf and slash pine with an undergrowth of saw palmetto, gallberry, wax myrtle and pineland threeawn. The depth to the seasonal high-water table ranges from 6 to 18 inches below land surface for 1 to 4 months during most years. These soils are classified as having no frequency of flooding under normal weather conditions or ponding where water stands in a closed depression on the average more than once every two years or with a greater than fifty percent chance during any given year (NRCS 2019). The vertical conductivity (KSAT) of water moving through the water column is moderately high to high (0.57 to 5.98 in/hr). Within Brevard County, the Florida Association of Environmental Soil Scientists classify Myakka sands as an upland soil.



Photograph 2: Wetland Interior

In Brevard County, Basinger sands may be either a hydric soil or an aquifer recharge soil. Hydric soils form under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile. While on the other hand, aquifer recharge soils are highly permeable soils with permeability rates greater than 20 inches per hour as identified by the Brevard County Soil Survey, 1974. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats. Basinger sands are made up of poorly drained, sandy marine deposits that have formed on flat areas on marine terraces. Basinger sands have exceedingly high vertical permeability rates (KSAT values 19.98 to 39.96 in/hr). Basinger sands can also develop as hydric soils in areas where they are very poorly drained, have a water table at the ground surface during the growing season, and are made up of coarse to fine sands within the first 20 inches of the soil profile. As such, Basinger sand is a soil series that is classified as a hydric soil by the Hydric Soils of Florida Handbook, fourth edition published in 2007 by the Florida Association of Environmental Soil Scientists.

The most western side of property is mapped as freshwater emergent wetlands by the National Wetland Inventory (NWI) and as mixed scrub-shrub wetlands by the St. Johns River Water Management District. TEC confirmed the presence of wetlands in this area in association with a potentially wetland cut drainage ditch which provided hydrology to the adjacent wetland areas (Figure 2). The extension of Hunter Lane resulted in alteration of the area and likely the transfer of fill from ditches to the road-right-of-way resulting in this area being classified as uplands. TEC's wetland delineation was based upon observing wetland vegetation and signs of hydrology, such as adventitious rooting, that indicated that part of the property flooded or had water ponding on it. TEC also reviewed soil samples to confirm the presence of hydric soils, but the soils did not meet the requirements of the Florida Hydric Soil Indicators for Delineation. However, this area meets the proper combinations of wetland vegetation and signs of hydrology to meet the delineation criteria for classification as a wetland according to either Chapter 62-340, Florida Administrative Code or Section 404 of the Clean Water Act (33U.S.C. 1344).

Impacts to wetlands are regulated by the federal, state and local governments through the Clean Water Act, Chapter 62-340, Florida Administrative Code (FAC) and local land development regulations. Recently, the State of Florida assumed part of the federal 404 Wetland Permitting Program (404 Permit) allowing Florida to

issue both the state's Environmental Resource Permit (ERP) and the federal 404 Permit within areas that are not retained for jurisdiction by the US Army Corps of Engineers (ACOE) or federal retained waters. The Applicant's site does not lie within 300-feet of a retained water. Therefore, residential development for this lot would be subject to the jurisdiction of the Florida Department of Environmental Protection issuing permits for both the FDEP and ACOE. FDEP will require mitigation for primary and secondary impacts that cause a loss of functional wetland systems that are isolated and bigger than one-half acre and do not provide habitat for listed species or are connected and larger than 0.1-acres. Primary impacts are direct impacts to wetland areas within an approved jurisdictional line, and secondary impacts are alterations within an average of 25-feet of a wetland jurisdictional line where the 25-feet may be reduced to 15-feet in some areas so long as larger buffers are provided elsewhere adjacent to the jurisdictional line that net in an average 25-foot buffer. The study contains approximately 0.24 acres of isolated wetlands and therefore will require an ERP and 404 Permit exemption from FDEP for any primary or secondary impacts to these wetlands. To issue the permit, FDEP will require that any impacts to wetlands be minimized as much as is reasonably practical and prevented by directing development into uplands whenever possible. The project may be eligible for a general permit issued pursuant to Section 62-330.439 FAC for the construction or maintenance of a culverted driveway or roadway crossing if the state determines that the ditch is a wholly artificial drainage conveyance, the culvert is placed under the roadway, the length of the roadway does not exceed 50 feet and the width does not exceed 75-feet and the slopes are no steeper than a 2:1 grade.

The Town of Malabar will be the local regulating agency for wetland impacts. However, Malabar's land development regulations defer to the permitting requirements of the state and federal agencies and does not duplicate or layer additional wetland protections on these existing regulations.

Bare Soil/Clear Cut and Pine Flatwoods and Dry Prairie could potentially support federal or state species listed as endangered, threatened, or species of special concern including gopher tortoises (*Gopherus polyphemus*), Florida scrub-jays (*Aphelocoma coerulescens*), eastern indigo snakes (*Drymarchon corais couperi*) and bald eagles (*Haliaeetus leucocephalus*). TEC's review of listed species databases indicated the site is not mapped as being potentially occupied by scrub-jays or nests for bald eagles within regulatory protection limits.

As an authorized gopher tortoise agent for the Florida Fish and Wild Conservation Commission (FWC) to survey for gopher tortoises, TEC surveyed 100 percent of all suitable gopher tortoise habitats on the property using the surveying protocols outlined in FWC's Gopher Tortoise Permitting Guidelines as last updated in July 2020. TEC also surveyed the Pine Flatwoods and Dry Prairie to the east of the property to compare gopher tortoise density to assess the likelihood of gopher tortoises occupying the property prior to being cleared. During the site visit, TEC did not observe any gopher tortoises, their burrows or their sign on the property or in the surrounding Pine Flatwoods and Dry Prairie. This is attributed to by the proximity to the wetlands which may make the ground water table too high for gopher tortoises to establish burrow.

If you have any questions or require additional information regarding this initial site inspection, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com).

Sincerely,

Lisa J. Toland

Lisa J. Toland, President

Clare E. Crenshaw

Clare E. Crenshaw, Environmental Specialist

BUILDING PERMIT

PERMIT INFORMATION		LOCATION INFORMATION	
Permit #: 6771	Issued: 6/19/2014	Address: 2725 Hunter Lane Malabar, FL	
Permit Type: BUILDING PERMIT		Township: 29	Range: 37
Class of Work: 250 Fence		Lot(s): 325	Block: Section: 12
Proposed Use: RR65 RURAL RESIDENTIAL		Book:	Page:
Sq. Feet:	Est. Value:	Subdivision: Fl. Indian River Land Co.	
Cost: 1,250.00	Total Fees: 69.00	Parcel Number: 29-37-12-00-00325	
Amount Paid: 69.00	Date Paid: 6/25/2014		
CONTRACTOR INFORMATION		OWNER INFORMATION	
Name: OWNER/BUILDER		Name: Gittens, Oddleton	
Addr:		Address: P.O. Box 060742	
		Palm Bay, FL 32906	
Phone:	Lic: QUAL BUS	Phone: (321)960-9200	
Work Desc: INSTALL FIELD FENCE 4FT HIGH 400 LF ON TWO SIDES AS DESIGNATED ON SURVEY FOR ANIMALS ON VACANT PROPERTY			

APPLICATION FEES			
BUILDING PERMIT	65.00	Surcharge to DCA online	2.00
		Surcharge to DBPR	2.00

INSPECTIONS REQUIRED			
FINAL			

WARNING TO OWNER:
YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

Before building construction is started, approved sanitary facilities for workmen must be provided. It is the responsibility of the permit holder of each phase of work to procure inspections as required and to verify approvals prior to proceeding to the next phase.

In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of Brevard County, and there may be additional permits required from other government entities such as Water Management Districts, State Agencies or the Federal Government. It is the applicants responsibility to secure those permits.

In consideration of the granting of this Permit, the owner and builder agree to construct the structure in full compliance with the Florida Building Code and Zoning regulations of the Town of Malabar, Florida. This permit not refundable after 30 days.

A CERTIFICATE OF OCCUPANCY MUST BE ISSUED BEFORE ANY BUILDING IS OCCUPIED.

Owner/Contractor/Agent	Date	Building Official	Date	Page 85
Permits shall become void if work authorized does not maintain continual approval within six months of the date of the permit.				
FILE _____ APPLICANT _____ COUNTY _____				



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

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

Ad No.: 0004698774
Pymt Method: Invoice
Net Amt: \$83.59

Run Times: 1

No. of Affidavits: 1

Run Dates: 04/22/21

Text of Ad:

Ad#4698774 04/22/2021

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING**
The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, May 17, 2021, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: Request a Waiver from the road improvement requirement while utilizing the parcel for Agricultural purposes. Applicant is Oddleton (Cranston) Gittens, owner of parcel 29-37-12-00-325.

ROAD IMPROVEMENT WAIVER REQUEST
A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE 200 FEET JUST SOUTH OF THE ACCEPTED PORTION OF HUNTER LANE, SOUTH OF ATZ ROAD UNTIL SUCH TIME AS HE DESIRES TO BUILD A HOME. REQUEST BY ODDLETON (CRANSTON) GITTENS, OWNER OF PARCEL 325 IN SECTION 12, TOWNSHIP 29, RANGE 37.

Copies of this application request are available in the Clerk's office for review, Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to wnclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to this topic. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby Franklin, CMC, Town Clerk/Treasurer

TOWN OF MALABAR

COUNCIL MEETING

AENDA ITEM NO: 12.a.

Meeting Date: June 07, 2021

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

SUBJECT: Ordinance 2021-07 Amend Chapter 2 of Code to Establish Emergency Powers First Reading.

BACKGROUND/HISTORY:

This ordinance will create a new section in Chapter 2 of the Code to establish the designation of the person having authority to declare a local emergency, issue executive orders and provide for essential services.

If approved at first reading, it will be legally advertised and set for second reading on June 21, 2021.

ATTACHMENTS:

Ord 2021-07

ACTION OPTIONS:

Action of first reading of Ord 2021-07

ORDINANCE 2021-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN CREATING SECTION 2-400 "EMERGENCY POWERS"; PROVIDING FOR THE DESIGNATION OF A TOWN OFFICIAL IN THE EVENT OF AN EMERGENCY DEFINED HEREIN; PROVIDING FOR DEFINITIONS; PROVIDING FOR A DECLARATION OF EMERGENCY BY EXECUTIVE ORDER; PROVIDING FOR THE AUTHORITY OF THE DESIGNATED TOWN OFFICIAL; PROVIDING FOR THE DURATION OF AN EXECUTIVE ORDER FOR A DECLARED EMERGENCY; PROVIDING FOR THE DECLARATION OF A PUBLIC HEALTH EMERGENCY; PROVIDING FOR THE ISSUANCE OF LOCAL EXECUTIVE ORDERS; PROVIDING FOR THE DURATION OF A LOCAL EXECUTIVE ORDER ISSUED FOR A PUBLIC HEALTH EMERGENCY; PROVIDING FOR THE POSTING OF ALL EMERGENCY ORDERS, ORDINANCES AND DECLARATIONS ON THE TOWN'S WEBSITE; PROVIDING LIMITATIONS ON ANY CURFEW ESTABLISHED; PROVIDING FOR REPEAL, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, Sections 252.46, Florida Statutes, provides authority for municipalities to declare a Local State of Emergency; and,

WHEREAS, On May 3, 2021, Governor DeSantis signed SB 2006 Emergency Management into law effective July 1, 2021: and,

WHEREAS, SB 2006 created regulations in the event of a declaration of a "Public Health Emergency" which must be followed by local governments, while allowing local governments to implement their own processes regarding a situation which is not "Public Health Emergency", for example, hurricanes, fire, flood, or other weather-related emergencies; and,

WHEREAS, the Town Council deems it necessary for the protection of the health, safety, and welfare of the public to adopt regulations regarding any federal, state, or local declared emergency consistent with state law and municipal home rule powers as set forth at Article VIII, Section 2, of the Constitution of the State of Florida; Chapter 166, Florida Statutes; Chapter 252, Florida Statutes; and other applicable controlling law.

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

SECTION 1: Section 2-400, "Emergency Powers" is hereby added to Chapter 2 of the Code of Ordinances of the Town to read as follows:

"Sec. 2-400. -Designation of official in case of an emergency.

(a) *Generally.* It is the intent of the Town to designate the Town Manager to declare a local state of emergency in the event of a natural or manmade emergency, or the imminent threat thereof, and to authorize certain actions relating thereto, when a quorum of the Town Council is unable to meet for any reason on an emergency basis.

(b) *Designation.* Pursuant to Chapter 252, Florida Statutes, which authorizes the waiver of procedures and formalities otherwise required of political subdivisions to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency, when a quorum of the town council is unable to meet for any reason on an emergency basis in relation to the nature of the emergency, the town manager, or his/her designee is empowered to declare a local state of emergency whenever he/she shall determine that a natural or manmade disaster or emergency has occurred or

that the occurrence or threat of one is imminent and requires immediate and expeditious action.

(c) The Town Manager shall perform the function of director of Emergency Management, and may designate others to serve in designated capacities. The Town Manager shall implement, manage, and report to the Town Council on all actions authorized and taken under the provisions of this chapter. In the absence or inability of the Town Manager, the _____ shall perform the functions of director of emergency management.

(d) The Town Manager may appoint a risk and emergency management coordinator whose duties shall include the ongoing planning for and coordination of those actions necessary to comply with national incident management system (NIMS), the Emergency Management Plan of Brevard County and for the creation and maintenance of an effective emergency management response capability.

Sec. 2-401. - Emergency defined.

"Emergency" means any occurrence, or threat thereof, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property as a result of a hurricane or other weather related, fire or flood disaster or emergency.

Sec. 2-402. - Declaration of emergency by Executive Order—Generally.

(a) A state of emergency shall be declared by Executive Order of the Town Manager, or his/her designee. The state of emergency shall continue until the Town Manager, or his/her designee finds that the threat or danger no longer exists or until an emergency meeting of a quorum of the Town Council can take place and terminate the state of emergency by Executive Order.

(b) An Executive Order declaring a state of emergency shall activate the emergency management plan of Brevard County or any emergency management plan of the Town of Malabar which supersedes the emergency management plan of Brevard County and shall be the authority for use or distribution of any supplies, equipment, materials, or facilities assembled or arranged to be made available pursuant to such plans.

(c) Only the Town Council has the authority to provide for penalties for a violation of any Executive Order issued hereunder.

(d) Any emergency ordinances, declarations, and orders adopted by the Town must be available on a dedicated webpage accessible through a conspicuous link on the Town's homepage. The dedicated webpage must identify the emergency ordinances, declarations, and orders currently in effect.

(e) Any emergency ordinances, declarations, and orders adopted by the Town which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

Sec. 2-403. - Authority of designated official.

Upon the declaration of a state of emergency pursuant to this chapter, the person issuing the Executive Order shall have the authority and power to take such action to protect the health, safety, and welfare of the community including the following which shall have the force of municipal law during this emergency including the following:

(1) Establish curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provisions of designated essential services, such as fire, police, emergency medical services (including

the transportation of patients and emergency calls by physicians or other approved medical personnel), and public works services (including utility emergency repairs).

(2) Utilize all available resources of the Town government as reasonably necessary to cope with the disaster emergency, including emergency expenditures not to exceed _____ thousand dollars (\$____,000.00).

(3) Declare certain areas and public facilities of the Town off limits and closed to all nonessential personnel.

(4) Make provisions for the availability and use of temporary emergency housing and the emergency warehousing of materials.

(5) Establish an emergency operating center and employee shelter in addition to or in place of those provided for in the Brevard County's emergency plan.

(6) Declare that during an emergency it shall be unlawful for any person, firm or corporation operating within the town to charge more than the normal, average retail price for any merchandise, goods, or services sold during the emergency. The average retail price as used herein is defined to be that price at which similar merchandise, goods or services were being sold during the ninety (90) days immediately preceding the emergency or a markup which is not a larger percentage over wholesale cost than was being added to wholesale cost before the emergency.

(7) Confiscate merchandise, equipment, vehicles, or property needed to alleviate the emergency. Reimbursement shall be within sixty (60) days and at customary value charged for the items during the ninety (90) days previous to the emergency.

(8) In cooperation with Brevard County emergency management and on behalf of the town, call on law enforcement divisions as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue, and traffic control.

(9) Shall be able to activate the statewide mutual aid system.

(10) Waive the procedures and formalities otherwise required by law pertaining to:

- a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
- b. Entering into contracts.
- c. Incurring obligations.
- d. Employment of permanent and temporary workers.
- e. Utilization of volunteer workers.
- f. Rental of equipment.
- g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
- h. Appropriation and expenditure of public funds.

(11) Suspend all existing laws, ordinances, and rules inconsistent with any rule or order specifically promulgated pursuant to this Chapter during this period of time and to the extent that such conflict exists.

(12) Suspend, toll, or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town's Code of Ordinances and regulations, to the extent necessary to accommodate the emergency.

(13) All actions of the designated town official issuing the Executive Order shall be subject to review, modification, extension, and repeal by the Town Council. Nothing herein is intended to limit the ability of the Town Council to issue any Executive Order or impose additional restrictions, limitations, prohibitions, conditions, or extensions to any issued Executive Order or limit the authority of the Town Council to provide for penalties for a violation of the provisions of any Executive Order issued hereunder.

Sec. 2-404, - Duration of Executive Order.

The duration of any Executive Order for an emergency issued pursuant to the

provision of Florida Statutes, Section 252.38 (3)(a)(5) "affecting only one political subdivision" shall be as provided for in Section 252.38 (3)(a)(5). Any Executive Order not issued pursuant to Florida Statutes, Section 252.38 (3)(a)(5) shall have a duration of a period of sixty (60) days unless extended by the Town Council, if the Town Council determines, in its reasonable discretion, the extension is appropriate considering information obtained from the state and federal government. If extended, a notice of extension will be posted on the Town's website, will be posted on the front door of Town Hall, and will be emailed to any person or entity that has requested in writing such notice.

Sec. 2-405. - Declaration of Public Health Emergency; Issuance of Local Executive Order

a) "Public health emergency" means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters, declared as a public health emergency as declared by the State Health Officer. For purposes of this Chapter a "Public health emergency" is not an "Emergency" as defined herein.

b) For purposes of this section a "Local Executive Order" shall mean an order or ordinance issued or enacted by the Town in response to an emergency pursuant to chapter 252 or chapter 381 of the Florida Statutes that limits the rights or liberties of individuals or businesses within the Town. The term does not apply to orders issued in response to an "Emergency" as defined herein.

c) Upon a declaration of a Public Health Emergency by the State Health Officer the Town Council may issue a Local Executive Order. Such order must be narrowly tailored to serve a compelling public health or safety purpose. Any such order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.

d) A Local Executive Order issued pursuant to a Public Health Emergency shall automatically expire 7 days after issuance but may be extended by the Town Council, as necessary, in 7-day increments for a total duration of not more than 42 days. Upon the expiration of the local executive order, the Town may not issue a substantially similar order during the remaining duration of the Declaration of a Public Health Emergency by the State Health Officer.

e) Any emergency ordinances, declarations, and orders adopted by the Town pursuant to a Public Health Emergency must be available on a dedicated webpage accessible through a conspicuous link on the Town's homepage. The dedicated webpage must identify the emergency ordinances, declarations, and orders currently in effect.

f) Any emergency ordinances, declarations, and orders adopted by the Town which imposes a curfew restricting the travel or movement of persons during designated times must nonetheless allow persons to travel during the curfew to their places of employment to report for work and to return to their residences after their work has concluded.

SECTION 2: All Resolutions or Ordinances in conflict herewith are repealed.

SECTION 3: Severability/Interpretation Clause.

(a) In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 4: The provisions of this Ordinance shall be incorporated into the Town’s Code of Ordinances.

SECTION 5: 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 Danny White	_____

This ordinance was then declared duly passed and adopted this 21 day of June 2021.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

1st Reading: 6/7/2021
2nd Reading: 6/21/21

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b.

Meeting Date: June 07, 2021

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

SUBJECT: FY 2020/2021 Budget Amendment (Ordinance 2021-08) – 1st Reading

BACKGROUND/HISTORY:

It is within normal governmental accounting practices to perform necessary mid-year as well as year-end budgetary amendments. These can be done throughout the year and up to 60 days after the close of the FY.

In this particular Budget Amendment, we are proposing to add additional funds from the unrestricted reserves on deposit to provide for the funds necessary and from the appropriate sources to pay for the new playground equipment and the road improvement preparation for Hunter Lane.

This ordinance will be legally advertised for a Public Hearing to be held at the next meeting for the second reading on 6/21/2012.

FINANCIAL IMPACT:

Amend 2020/2021 Budget by increasing the revenue and expenditure sides by \$250,160.00 for a new total of \$2,600,713.00.

\$45,160.00 funds from Set Aside Reserve Funds for Park Improvements

\$45,000.00 funds from Unrestricted Funds on Deposit

\$160,000.00 funds from Set Aside Reserve Funds for Capital Road Projects

It is anticipated that these funds will be replenished by the sale of surplus land and equipment which will be directed into reserves.

ATTACHMENTS: Ordinance 2021-08

ACTION OPTIONS: Action on 1st reading of Ordinance 2021-08.

ORDINANCE 2021-08

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2020/2021 TO PROVIDE FOR ADDITIONAL FUNDS FROM RESERVES ON DEPOSIT SET ASIDE FOR CAPITAL PARK AND ROAD PROJECTS; PROVIDING FOR EXPENDITURES FOR NEW PLAYGROUND EQUIPMENT AND ROAD PREPARATION FOR THE PAVING OF 1100 FEET OF HUNTER LANE; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council has approved the need for, and the purchase of, replacement playground equipment in the Malabar Community Park using unrestricted funds on deposit to cover the full cost in this budget year.

WHEREAS, the Town Council has approved the Town assuming the additional costs necessary to prepare Hunter Lane properly per engineering and contractual estimates prior to paving the approximate 1,100 feet north of Atz Road to the current road terminus.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA that;

SECTION 1. Total Revenues.

Total revenues in the 2020/2021 Fund 001 General Fund be amended from \$2,350,553.00 to \$2,600,713.00 to reflect the additional \$250,160.00 from unrestricted funds on deposit.

SECTION 2. Total Disbursements.

Total disbursements in the 2020/2021 Fund 001 General Fund be amended from \$2,350,553.00 to \$2,600,713.00 which will provide the additional funds to cover these disbursements:

- \$ 90,160.00 for playground equipment
- \$160,000.00 for Hunter Lane road preparation prior to paving

SECTION 3. Funding Source.

The funds for this Budget Amendment to the FY 2020/2021 budget are from set aside unrestricted reserve funds for Parks and Recreation (\$45,160.00) and the balance from undesignated unrestricted reserves on deposit.

SECTION 4. Conflict.

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

SECTION 5.

This ordinance shall become effective immediately upon its adoption after the second reading and public hearing.

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

Council Member Marisa Acquaviva _____
Council Member Brian Vail _____

Council Member Steve Rivet _____
 Council Member David Scardino _____
 Council Member Danny White _____

This ordinance was then declared to be duly passed and adopted this 21st day of June 2021.

TOWN OF MALABAR

By

Mayor Patrick T. Reilly, Council Chair

First Reading: 6/07/2021 Approved ___ to ___
 Second Reading: 6/21/2021

ATTEST:

Debby K. Franklin, CMC,
Town Clerk/Treasurer

(Seal)

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.c.

Meeting Date: June 7, 2021

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

SUBJECT: Acceptance of the FY 2019 / 2020 Financial Audit (Reso 02-2021)

BACKGROUND/HISTORY:

The audit process for FY 2019/2020 began in October last year and was completed in May. James Moore & Company has performed the independent audit for the last three years and last August Town Council approved the renewal engagement with the firm for Auditing Services through 2023.

Staff has provided all information requested by the audit team to include processes, testing and historical documents.

Once the audit is accepted by Council, it will be placed on the website and sent to the State to meet the deadline of June 30, 2021.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Resolution 02-2021

FY 2019/2020 Financial Report (previously distributed)

ACTION OPTIONS:

Action on Resolution 02-2021 accepting the Audit Report

RESOLUTION 02-2021

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2019/2020 BY THE AUDIT FIRM OF JAMES MOORE AND COMPANY, CPA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, an audit was conducted from October 2020 to May 2021, and all areas of the Town operations were tested; and

WHEREAS, a copy of such Audit Report is attached as Exhibit "A" to this resolution; and

WHEREAS, the Town Council is satisfied that the audit report accurately reflects the financial condition of the Town's finances for the FY ending September 30, 2020.

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 ratifies, confirms, and certifies the annual audit report for the FY 2019/2020 attached to this resolution and identified as Exhibit "A".

Section 3. That a certified copy of this Resolution shall be delivered with the audit report to the State Auditor General per Auditor General Rule 10-558(3).

Section 4. This Resolution shall take effect immediately upon its adoption. This Resolution was moved for adoption by Council Member _____. The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This Resolution was then declared to be duly passed and adopted this 7th day of June, 2021.

TOWN OF MALABAR

By:

Mayor Patrick T. Reilly,
Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to Form and Content:

Karl W. Bohne, Jr., Town Attorney



TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950
(321) 727-7764 OFFICE • (321) 722-2234 FAX
www.townofmalabar.com

May 28, 2021

James Moore & Co., P.L.
121 Executive Circle
Daytona Beach, FL 32114

This representation letter is provided in connection with your audit of the financial statements of the Town of Malabar, Florida (the Town), which comprise the statement of financial position as of September 30, 2020, and the related statements of operations and cash flows for the year then ended, and the related notes to the financial statements, for the purpose of expressing an opinion on whether the financial statements of the various opinion units are presented fairly, in all material respects, in accordance with accounting principles generally accepted for governments in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of May 28, 2021:

Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit engagement dated November 6, 2017, for the preparation and fair presentation of the financial statements of the various opinion units referred to above in accordance with U.S. GAAP.
2. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
4. We acknowledge our responsibility for compliance with the laws, regulations, and provisions of contracts and grant agreements.
5. We have reviewed, approved, and taken responsibility for the financial statements and related notes.
6. We have a process to track the status of audit findings and recommendations.
7. We have identified and communicated to you all previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
8. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
9. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
10. All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
11. We have reviewed and approved the various adjusting journal entries that were proposed by you for recording in our books and records and reflected in the financial statements.

12. The effects of uncorrected misstatements, if any, summarized below and aggregated by you during the current engagement are immaterial, both individually and in the aggregate, to the applicable opinion units and to the financial statements as a whole:
 - None noted.
13. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
14. All component units, as well as joint ventures with an equity interest, are included and other joint ventures and related organizations are properly disclosed.
15. All funds and activities are properly classified.
16. All funds that meet the quantitative criteria in GASB Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, GASB Statement No. 37, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments: Omnibus*, and GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, for presentation as major are identified and presented as such and all other funds that are presented as major are considered important to financial statement users.
17. All components of net position, nonspendable fund balance, and restricted, committed, assigned, and unassigned fund balance are properly classified and, if applicable, approved.
18. Our policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position/fund balance are available is appropriately disclosed and net position/fund balance is properly recognized under the policy.
19. All revenues within the statement of activities have been properly classified as program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
20. All expenses have been properly classified in or allocated to functions and programs in the statement of activities, and allocations, if any, have been made on a reasonable basis.
21. All interfund and intra-entity transactions and balances have been properly classified and reported.
22. Special items and extraordinary items have been properly classified and reported.
23. Deposit and investment risks have been properly and fully disclosed.
24. Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.
25. All required supplementary information is measured and presented within the prescribed guidelines.
26. With regard to investments and other instruments reported at fair value:
 - a. The underlying assumptions are reasonable and they appropriately reflect management's intent and ability to carry out its stated courses of action.
 - b. The measurement methods and related assumptions used in determining fair value are appropriate in the circumstances and have been consistently applied.
 - c. The disclosures related to fair values are complete, adequate, and in conformity with U.S. GAAP.
 - d. There are no subsequent events that require adjustments to the fair value measurements and disclosures included in the financial statements.

Information Provided

27. We have provided you with:

- a. Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements of the various opinion units referred to above, such as records, documentation, meeting minutes, and other matters;
 - b. Additional information that you have requested from us for the purpose of the audit; and
 - c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
28. All transactions have been recorded in the accounting records and are reflected in the financial statements.
 29. We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
 30. We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
 - a. Management;
 - b. Employees who have significant roles in internal control; or
 - c. Others where the fraud could have a material effect on the financial statements.
 31. We have no knowledge of any instances, that have occurred or are likely to have occurred, of fraud and noncompliance with provisions of laws and regulations that have a material effect on the financial statements or other financial data significant to the audit objectives, and any other instances that warrant the attention of those charged with governance, whether communicated by employees, former employees, vendors, regulators, or others.
 32. We have no knowledge of any instances that have occurred or are likely to have occurred, of noncompliance with provisions of contracts and grant agreements that has a material effect on the determination of financial statement amounts or other financial data significant to the audit objectives.
 33. We have no knowledge of any instances that have occurred or are likely to have occurred of abuse that could be quantitatively or qualitatively material to the financial statements or other financial data significant to the audit objectives.
 34. We have taken timely and appropriate steps to remedy fraud, noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that you have reported to us.
 35. We have a process to track the status of audit findings and recommendations.
 36. We have identified and communicated to you all previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
 37. We have provided views on your reported audit findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.
 38. We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
 39. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
 40. There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in accounting, internal control, or financial reporting practices.
 41. The Town has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
 42. We have disclosed to you all guarantees, whether written or oral, under which The Town is contingently liable.
 43. We have disclosed to you all nonexchange financial guarantees, under which we are obligated and have declared liabilities and disclosed properly in accordance with GASB Statement No. 70, Accounting and

Financial Reporting for Nonexchange Financial Guarantees, for those guarantees where it is more likely than not that the entity will make a payment on any guarantee.

44. We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
45. There are no:
 - a. Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
 - b. Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*.
 - c. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62.
 - d. Continuing disclosure consent decree agreements or filings with the Securities and Exchange Commission and we have filed updates on a timely basis in accordance with the agreements (Rule 240, 15c2-12).
46. The Town has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.
47. We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
48. We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB-62. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
49. We agree with the findings of the specialist in evaluating the Pension Plan liability and have adequately considered the qualifications of the specialist in determining the amounts and disclosures used in the financial statements and underlying accounting records. We did not give or cause any instructions to be given to the specialist with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the independence or objectivity of the specialist.
50. We believe that the actuarial assumptions and methods used to measure the pension liability and costs for financial accounting purposes are appropriate in the circumstances.
51. With respect to the required supplementary information accompanying the financial statements:
 - a. We acknowledge our responsibility for the presentation of the required supplementary information in accordance with U.S. GAAP
 - b. We believe the required supplementary information, including its form and content, is measured and fairly presented in accordance with U.S. GAAP.
 - c. The methods of measurement or presentation have not changed from those used in the prior period
 - d. We believe significant assumptions or interpretations underlying the measurement or presentation of the required supplementary information, and the basis for our assumptions and interpretations, are reasonable and appropriate in the circumstances.
52. In order to provide oversight of the financial statement and annual financial report preparation services at an appropriate level, management has performed following functions:
 - a. Reconcile general ledger amounts to the draft financial statements utilizing grouping schedules to be provided by us.

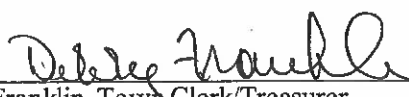
- b. Review all supporting documentation and explanations for journal entries we propose and approve the entries.
 - c. Review the adequacy of financial statement disclosures by completing a disclosure checklist.
 - d. Review and approve schedules and calculations supporting amounts included in the notes to the financial statements.
 - e. Review and approve the cash flow worksheet used in preparing the statement of cash flows.
 - f. Apply analytic procedures to the draft financial statements.
 - g. Perform other procedures as considered necessary by management.
53. With regard to nonaudit services performed by you, we acknowledge our responsibility to:
- a. Assume all management responsibilities;
 - b. Oversee the services by designating an individual (Debby Franklin) who possesses suitable skill, knowledge, or experience;
 - c. Evaluate the adequacy and results of the services performed; and
 - d. Accept responsibility for the results of the services.
54. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, line of credit, or similar arrangements have been properly disclosed.
55. Provisions for uncollectible receivables have been properly identified and recorded.
56. We have reviewed, approved, and taken responsibility for the financial statements, related notes, and the annual financial report and an acknowledgment of the auditor's role in the preparation of this information.

Section 218.415, Florida Statutes, *Local Government Investment Policies*

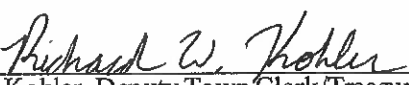
57. We confirm, to the best of our knowledge and belief, the following representations made to you during your examination engagement:
- a. We are responsible for complying with Section 218.415, Florida Statutes, *Local Government Investment Policies*.
 - b. We are responsible for selecting the criteria and have selected the following: Section 218.415, Florida Statutes, *Local Government Investment Policies*.
 - c. We have determined that the criteria are suitable and appropriate for our purposes.
 - d. We are responsible for establishing and maintaining effective internal control over compliance.
 - e. We assert that the Town is in compliance with Section 218.415, Florida Statutes, *Local Government Investment Policies* for the year ended September 30, 2020.
 - f. We have communicated and disclosed to you all known noncompliance.
 - g. We have communicated and disclosed to you all correspondence or other communications we have received from regulatory authorities, internal auditors, and other practitioners regarding possible noncompliance with the specified requirements.
 - h. We have made available to you all records and documentation applicable to compliance with the specified requirements.
 - i. To the best of our knowledge and belief, if applicable, we have disclosed to you all known noncompliance that has occurred subsequent to through the date of this letter that would affect the presentation of the Section 218.415, Florida Statutes, *Local Government Investment Policies*, or your report.
 - j. We represent that your report will be available for general use.

Signed: 

Lisa Morrell, Interim Town Manager

Signed: 

Debby Franklin, Town Clerk/Treasurer

Signed: 

Richard Kohler, Deputy Town Clerk/Treasurer

**TOWN OF MALABAR, FLORIDA
FINANCIAL STATEMENTS
SEPTEMBER 30, 2020**



**TOWN COUNCIL
(AS OF FINANCIAL STATEMENT DATE)**

*Patrick Reilly, Mayor
Grant Ball
Brian Vail
Steve Rivet
David Scardino
Danny White*

TOWN MANAGER

Matthew Stinnett

TOWN CLERK / TREASURER

Debby Franklin

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.d.

Meeting Date: June 7, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Consideration of Piggyback or RFP for Solid Waste Services

BACKGROUND/HISTORY:

Seeking Council's authorization and permission to negotiate an agreement for continuation of solid waste collection services from another government agency competitively bid and contract award for solid waste services.

This request is due to the information provided by Waste Management's presentation at the May 17, 2021 Regular Schedule Town Council meeting stating their significant increase that council directed staff to seek other services: by way of a request for proposal or another agency contract.

Waste Management has extended their termination of services date to October 1, 2021 from the contract designation of August 23, 2021 for collection of solid waste services franchise agreement which includes all residential and commercial properties within the boundaries of the Town. Council needs to be advised of the amount of time and dedication of staff to perform a competitive request for proposal (RFP), requires significant time and additional resources to write the proposal, provide legal advertisement for advertising of the proposal and meeting dates, host a pre-proposal staff, issue any addenda for clarification, provide time extensions based on the number of addendums issued prior to the submittal date. A committee needs to be formed of at least three reviewers to read, rank, ask questions of the submittals or provided oral presentations with prospective proposers, schedule a bid opening meeting, a review of the submittals for completeness and or non-responsiveness determination, a staff comprised committee evaluation team with scoring, and finally an agenda item for Town Council's consideration and award to execute a final contract. Due to the exigent circumstances of the short window of time to perform this task and a complete transition plan for customer's cart deliveries, any new curbside set out instructions, collection dates, and or any new contract terms to customers; it is advised to use another agency contract. Additionally, due to the limited Town staffing, if an RFP were to be sought; council should consider hiring a firm to write and administrate the RFP process as the Town Manager would be the author of the RFP, the administrator of the submittal and actions dates, an evaluator, and the recommending advisor to Town Council for the award; which is not advised for transparency and checks and balances to perform this process. There is a cost to hiring a firm. Attached is a sample RFP that was issued by another agency, Town of Ponce Inlet, which includes the tabulation and initial cost of two submitters, WastePro and Waste Management. It is important to note, in the public records obtained within the tabulation summary within Note 4: "Given there were a number of pricing options requested in RFP, the current level of service pricing was used (WP \$26.91 & WM \$51.80)", there was a significant price difference between the proposals. This agency shared their Request for Proposal, three Addendums, Contract, and RFP Tabulation summary.

Additionally, Town Council is advised of the timelines that can be extrapolated from these documents from the Town of Ponce Inlet with a mandatory pre-proposal meeting on April 1, 2019, Tabulation, an extension for proposal opening by 30 days to May 28, 2019, and scoring processes on June 30, 2019, Contract Negotiations through August 26, 2019 with a commencement date of October 1, 2019 to include a transition plan.

In consideration of utilizing another agency contract, a survey summary is attached that was requested by the Town Clerk and the Interim Town Manager provided a synopsis of the agency, the collector, key contract values, pricing if provided, and expiration terms. In the attached summary, there are three highlighted awards for Grant-Valkaria with WastePro, Ponce Inlet with WastePro, and Palm Bay with Republic; town staff is recommending the use of Grant-Valkaria's existing contract as it has the same level of service offering to customers, reasonable published rates, and adequate time (expires 9/30/26 with 1 7-year renewal) of the contract for rates to contractually negotiated for new cart distribution, and a billing function that could be sought by the Town in the future if approved by public voting methods or the collector could bill on behalf of the town for a small fee that would be included in the rate.

ATTACHMENTS:

- Ponce Inlet RFP for Solid Waste Services & Franchise Agreement.PDF
- Ponce Inlet RFP for Solid Waste Services & Franchise Tabulation.PDF
- Ponce Inlet RFP for Solid Waste Services & Franchise Contract.PDF
- Summary Survey of Area Solid Waste Agreements Other Agency Contracts.PDF
- Grant-Valkaria WastePro Agreement.PDF
- Grant-Valkaria WastePro Renewal.PDF

FINANCIAL IMPACT:

Minimize rate increases to customers while achieving transition timeframes and continue to provide solid waste services for the Town.

ACTION OPTIONS:

Motion to approve the use of other agency contract, WastePro of Florida Inc, awarded and renewed by Town of Grant-Valkaria for solid waste services and franchise agreement and authorize the Town Manager to negotiate a final contract for council consideration within 30 days to expedite continued solid waste services with exigent circumstances due to termination by existing collector of non-renewal on September 30, 2021.

Municipality	Collector	RFP	Contract Executed	Contract Expiration	Contract Duration	Franchise Fee	Level Of Service Awarded	Cart Provisions	Bulk	Yard	Holiday	Billing Provider	CPI/Rate Increases	Initial Residential Rate	Current Residential Rate
Palm Bay	Republic	2019 RFP	10/1/2020	9/30/2030	10 year initial, (2) 2 year renewals	10%	2/1/2001	Contractor Provided 95,65,35 gallon	uni.	uni.	Next Regular Scheduled PickUp Day	City - Utility	Fixed 3%	\$12.30 WM Rate (2019)	\$23.60 - one cart, \$9.72 Second (9/30/2021)
Melbourne	Waste Management	10/1/2016		10/1/2020	9/30/2021, renewable (1) 5 years term (2026)	10% Residential & Commercial	2/1/1	Contractor Provided 96,64,32 size options, issues 2 solid waste and recycle	Scheduled 2 Business Days	Uncontaminated - within 5 days	Next Regular Scheduled PickUp Day	Residential - City (.82 retained per bill/month). Commercial Collector	CPI-U - 3% Max	\$10.70 Waste \$3.21 recycle (2016)	\$11.39 Waste \$3.39 Recycle (2020)
West Melbourne	Waste Management	2011	6/30/2018	9/30/2023	Last renewal - 2 years issued 2/2021	10% Residential & Commercial	2/1/1	Carts Provided 32,64, 96	3-10 Days			Residential - City (.85 retained per bill/month). Commercial Collector	CPI-U, July Annually no more than 4%	\$10.24	12.04 9/2021
Lady Lake	Waste Management		1/16/1992, 9/30/2019	9/30/2024	5 year, Renewable for Additional 5	16% of Commercial	2 sw /2 yard/2 bulky /1 recycle	Contractor Provided 96 Gallon Carts, 18 gallon recycle	2/week	2/week	Next Regular Scheduled PickUp Day	Commercial Collector. Residential - Town (Tax Bill)	Fixed, limited to 5% October 1st annually + Fuel (EIA/DOE)	\$11.19 (2007)	\$11.69 (2016)
Indian Harbour	Waste Management		2005, 2011, 2020, & 1/1/2021	12/31/2025	5 year, Renewable for Additional 5	10%	2/1/1 - Solid Waste at least 3 days apart.	Contractor Provided(3) 96 gall.for S/W, Recycle, Yard	1/week - Special Collection - reported by res. s/w driver	1/week - Bulk yard Waste - reported by res. s/w driver	Next Regular Scheduled PickUp Day	City - 3rd Party City of Melbourne	CPS-WST - Jan 1, Effect Mar 1 annually +Fuel DD10RZ		\$16.03
Satellite Beach	Waste Management	15/16-03	4/5/2016	5/31/2026	10 Years, Renewable for Additional 10	10%, Monthly of Residential & Commercial Revenue. Negotiable of 15% by City notice to Collector	2/1/1 & 1 Clamshell Truck on all Collection Days	(2) 64 Gallons Contractor Provided, Customer may Purchase 3rd (\$70)	Scheduled 3 Business Days	All, Auto, Driver Initiated, 3 Business Days. Customer 5' length, 6" Diameter	Following Day excluding Sundays	City's Billing Agent	June 1st, 90% Collection Compennet + 10% Fuel Component. (CPI-U & Henry Bub Fuel Index)	\$14.38	\$17.58 As of June 1, 2021
Cocoa Beach	Waste Management	IFB/RFP 2014	12/1/2014	12/31/2021, 3 Year Renewal Term	7 years, Renewable for Additional 3	10% or minimum of \$95,000	2/1/1 - Solid Waste at least 3 days apart.	Contractor Provided(1) 96 gall. S/W and (1) 64 gallon Recycle	Scheduled 3 Business Days, Max 3 Cubic Yards, Fee for more	Collect All	Next Regular Scheduled PickUp Day	City	CPI-U annually +Fuel Adjustment Annually if CPI increased 5%	\$11.99 (2015)	

Municipality	Collector	RFP	Contract Executed	Contract Expiration	Contract Duration	Franchise Fee	Level Of Service Awarded	Cart Provisions	Bulk	Yard	Holiday	Billing Provider	CPI/Rate Increases	Initial Residential Rate	Current Residential Rate
Palm Shores	Waste Pro		7/1/2010 & 7/1/2015	1-Jul-20	Renewable every 5 years			Contractor 64 & 18 Gall Recycle	Collect All	Cart no more than 1 Cubic Feet, Calw truck fee under 10 cu yds. 1/2 Fee, Over 10 cu yds. Full fee	Next Regular Scheduled PickUp Day	City - 3rd Party City of Cocoa		\$16.33 (2015)	\$18.97 (2021)
Cape Canaveral	Waste Pro	2009	Renewed 10/1/2014, 5 years, 2nd renewal 10/1/2019	3/19/2024	5 year, Renewable for Additional 5 years	\$100,000 flat start franchise fee, increased annually with CPI	2/1/1 - Solid Waste at least 3 days apart.	Contractor provided (1) 96 Gallon Cart, Customer may purchase up to (4) Contractor Carts - Customer Charged			Next Regular Scheduled PickUp Day	City - 3rd Party City of Cocoa	CPI-U annually January 1st.	\$9.75 (2014)	\$10.50 as of January 2021 - 1 Cart. \$4.72 per add cart. Cubic Yard Fee.
Ponce Inlet	Waste Pro	RFP 2019-06	10/1/2019	9/30/2024	(3) Additional 5 year terms		2/1/1	Option - Manual / Cart. Included 18 gall carts recycle. Carts 95 & 65 gallon contractor approved.	weekly - 12 cubic yards	weekly - 12 cubic yards	Next Regular Scheduled PickUp Day	Town	CPI-G&T July submission annually fro Oct. 1st +Fuel PADD1C. 95 & 5% Calc, not to exceed 5%.		Manual \$26.91. Carted \$28.82 (thru 9/2021 rates)
Grant-Valkaria	Waste Pro	2012	10/1/2012-9/30/2019	9/30/2026	(1) 7 year renewal remaining		2/1/1	Contractor Supplied 64 gallon	Driver initiated with residential solid waste on call		Next Regular Scheduled PickUp Day	Town - Tax Bill	CPI-U + +Fuel DD10RZ	\$16.59 Solid Waste, \$3.14 Recycle (2012)	2020 Tax Bill, \$291 or \$24.25/month
Maitland	Waste Pro	3/29/2013	10/1/2013, 10/12/2020		7 years, 9/30/2020, 2 additional renewable of terms of 3 Year		2/1/1 city reserved option to reduce to 1 solid waster	Contractor, 96 gallon, 65 gallon Recycle		12 cubic yards	Next Regular Scheduled PickUp Day	City	Annually Oct. 1st. Weighted Calc of 90% CPI-U and 10% Fuel PADD1C, max of 4%	12.9 (2013)	



Council
agreed
11-14-18
(RP)

October 17, 2018

Mr. Jason Mahaney
Town Administrator
Town of Grant-Valkaria
1449 Valkaria Road
Grant Valkaria, Florida 32950

RE: Renewal of the Town of Grant-Valkaria Solid Waste and Recyclables Collection Agreement

Dear Mr. Jason Mahaney,

This purpose of this letter is to confirm Waste Pro of Florida, Inc., desire to renew the Solid Waste and Recyclables Collection Agreement for an additional seven (7) year term. Upon execution of this renewal, there shall be one (1) seven (7) year renewal for consideration remaining under this contract.

Waste Pro is excited and appreciative to continue our partnership with the Town of Grant-Valkaria, and respectfully requests consideration of the below stated requests.

Currently Waste Pro is requesting a \$2.00 rate increase. Per home per month.

Currently each year Waste Pro is receiving a recycling processing fee adjustment in correspondence with the Consumer Price Index (CPI) submittal. The recycling processing fee is new to the solid waste industry, has become a permanent fee, with pricing fluctuations. Waste Pro requests to amend the Agreement to include the recycling processing fee language.

Exhibit 2 – Collection Rate Adjustment Schedule, request to delete below ~~strike through~~ and amend to read underlined.

~~The adjusted rates must also include a factor for the recycling revenues. As participation increases, the recycling revenues must be factored into the rate adjustment and shown in the calculations for rate adjustment.~~

The adjusted rates must also include a factor for the recycling revenues as well as any recycling processing fees. Each year Contractor shall submit a report detailing all recycling revenues and processing fees. The report shall be based on April of the preceding year to March of the current year. The total sum shall be divided by the then current number of recycling customers, divided by twelve (12), (number of months of data) with the sum being either added to the cost of recycling or deducted from the cost of recycle pending reported revenues and fees.

Waste Pro appreciates the Town's time and consideration of above requests. Waste Pro desires to continue to provide outstanding service to the residents and business owners of the Town of Grant-Valkaria, through a trusted and valued partnership.



Respectfully,

Daniel Robson
Cocoa Division Manger
DRobson@wasteprousa.com
321-837-0055

SOLID WASTE AND RECYCLABLES COLLECTION AGREEMENT

THIS AGREEMENT made and entered into this 25th day of July 2012, by and between the TOWN OF GRANT VALKARIA, a Florida municipal corporation, hereinafter referred to as the "TOWN", and WASTE PRO OF FLORIDA, INC., a Florida corporation, hereinafter referred to as the "COLLECTOR".

WITNESSETH:

WHEREAS, COLLECTOR has been selected by the TOWN as its exclusive provider of solid waste and recyclables collection services pursuant to a competitive solicitation; and

WHEREAS, the COLLECTOR is qualified to provide such services and willing to do so pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual promises and conditions contained herein, it is mutually agreed between the parties as follows:

SECTION 1. DEFINITIONS. For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The work "shall" is always mandatory and not merely directory.

A. **AGREEMENT:** As used herein the term Agreement shall mean this Solid Waste and Recyclables Collection Agreement and the bid Proposal submitted by the Collector

B. **BULK COMMERCIAL UNIT:** All commercial, non-residential units receiving solid waste collection service at an accessible, centralized location or at a commercial container.

C. **BULK MULTIPLE-FAMILY RESIDENCE:** All trailers and trailer parks and any building or buildings containing more than one (1) permanent living unit or any trailer within a trailer park and receiving solid waste collection service at an accessible, centralized location or at a commercial container.

D. **COLLECTION AREA:** The entire limits of the TOWN as of the effective date of this Agreement and as same may be modified from time to time by annexation or contraction.

E. **COLLECTION CATEGORIES:** A general, inclusive term that includes the specific terms "single-family residence", "individual multiple-family residence", "individual commercial unit", "bulk multiple-family residence" and bulk commercial unit".

F. **COMMERCIAL CONTAINER:** A receptacle for containing solid waste designed for mechanical pickup and provided by the COLLECTOR for use by the customer.

G. COMPACTOR BOXES: Any mechanical compacting container used primarily to compact commercial and residential waste.

H. CONSTRUCTION AND DEMOLITION DEBRIS: Means those substances and materials as set forth in FAC 62-701.200 (27) as may be amended from time to time. The term includes, but is not limited to, material generally considered not to be water soluble, including, but not limited to steel, concrete, glass, brick, asphalt roofing material, pipe, gypsum wall board or lumber from a construction or demolition project or renovation of a structure; clean cardboard, paper, plastic, wood, and metal scraps from a construction project. Contamination of construction and demolition debris with any amount of other types of solid waste will cause it to be classified as other than construction and demolition debris.

I. CUSTOMER: Means the owner, occupant, or other person having control over improved real property within that portion of the COLLECTOR'S service area, and all other persons subscribing to solid waste or recyclable materials collection service provided by the COLLECTOR under the terms of a collection agreement.

J. DIRECTOR: The term "Director" means the Town Administrator or his designee.

K. E-Waste: The term e-waste shall include such items as televisions, computers, laptops (including monitors and keyboards) scanners, printers, fax machines, stereos, radios, VCR's, compact fluorescent tubes and bulbs. Cell phones, household batteries, and rechargeable batteries will be collected through a collection point.

L. GARBAGE: The word "garbage" shall mean every refuse accumulation or deposit of animal, fruit or vegetable matter that attends the manufacture, preparation, use, cooking and dealing in, or storage of edibles, and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gasses or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material defined herein.

M. GARBAGE RECEPTACLE: The term "garbage receptacle" shall mean an automated cart as supplied by the COLLECTOR or a galvanized metal, durable plastic, or other suitable impervious material container supplied by the customer commonly sold as a garbage can, including wheeled containers, of not greater than 50 gallon or less than 5 gallon capacity which shall be free of jagged or sharp edges and shall be watertight and equipped with two (2) handles upon the side or bail by which it may be lifted, and provided with a tight fitting watertight cover suitable to protect the contents from flies, insects, rats and other animals, and which shall not have any inside structures, such as inside bands or reinforcing angles or anything within that would prevent the free discharge of the contents. Such receptacle may include a waterproof bag of a material and construction that can be safely and securely closed. Such waterproof bag shall be of adequate strength to hold the contents when the bag is lifted and of a type and size acceptable to the COLLECTOR and approved by the Director. When utilizing a container supplied by the customer weight shall not exceed 50 pounds.

N. GARDEN TRASH, YARD WASTE or VEGETATIVE WASTE: The terms "garden trash", "yard waste", or "vegetative waste" are synonymous and shall mean any vegetative matter generated from improved real property such as leaves, grass or shrubbery cuttings from the care of lawns or landscape maintenance. Such term does not include large quantities of sod, dirt, and trash from land clearing or other materials requiring special handling. "Bulk yard waste" shall mean any quantity of yard waste which exceeds three (3) cubic yards and which must be removed by a clam shell truck.

O. HAZARDOUS WASTE: The term "hazardous waste" shall mean any solid waste identified by the Department of Environmental Protection as a hazardous waste pursuant to F.A.C. Ch. 62-730. This includes any solid waste which is ignitable, corrosive, reactive, infectious or toxic, and which poses a substantial or potential hazardous to human health and safety, or to the environment when improperly managed.

P. IMPROVED REAL PROPERTY: The term "improved real property" refers to all real property located in the TOWN that generates or is capable of generating solid waste; and, that contains buildings, structures or other improvements designed or constructed for and capable of use for human habitation or human activity or commercial enterprise. Real property becomes "improved real property" following construction completion and the initial issuance of a Certificate of Occupancy.

Q. INDIVIDUAL COMMERCIAL UNIT: Any commercial, non-residential unit receiving curbside solid waste collection service in a normal volume not in excess of an amount capable of being placed in three 32-gallon garbage receptacles twice per week.

R. INDIVIDUAL MULTIPLE-FAMILY RESIDENCE: Any building containing more than one (1) permanent living unit and receiving curbside solid waste collection service from each unit, and all trailers located within trailer parks receiving curbside solid waste collection service from each individual trailer.

S. INDUSTRIAL WASTES: The words "industrial wastes" shall mean the waste products of canneries, slaughterhouses or packing plants, scallop or other seafood processors, condemned food products; agricultural waste products, and other solid waste products generated from industrial processing or manufacturing of a like or similar nature to those enumerated above which because of their volume or nature do not lend themselves to collection and incineration commingled with ordinary garbage and trash or which because of their nature and surrounding circumstances should be for reasons of safety or health disposed of more often than the collection service schedule provided for in this Agreement.

T. JUNK: Any tangible item such as furniture, appliances, bicycles, (excluding, for the purposes of this Agreement; motor vehicles, derelict vessels, and their parts, except up to four tires will be picked up) or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, garden trash, industrial wastes or rubbish.

U. PARKWAY: The term "parkway" is defined as that portion of the street right-of-way paralleling any public thoroughfare between the curb line or paving line and adjacent property line.

V. PERSON: The term "person" shall mean an individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

W. RESIDENTIAL IMPROVED REAL PROPERTY: The term "residential improved real property" shall mean all improved real property used for either a multi-family residence, or a single-family residence, including trailer parks.

X. ROLL-OFF CONTAINER: Any container used for the collection and storage of construction and demolition debris or land clearing debris or other waste approved by the Director that can be picked up and transported on a specially equipped truck to the disposal site. The definition of roll-off does not include a compactor box.

Y. RUBBISH: The word "rubbish" shall mean refuse, accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweepings; and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects.

Z. SINGLE-FAMILY RESIDENCE: Any building or structure designed or constructed for and capable of use as a residence for one family regardless of the type of structure. Such term includes a mobile home or trailer that is erected on a parcel of property owned and offered for sale under the condominium concept of ownership or on a separate parcel of property and not included within the definition of trailer park.

AA. SOLID WASTE: The term "solid waste" means dewatered sludge from a waste treatment works, water supply treatment plant, or air pollution control facility or garbage, rubbish, refuse, or other discarded material, including solid material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Materials not regulated as solid waste pursuant to Florida Administrative Code as amended are: nuclear source or under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; fluids or waste associated with natural gas or crude oil exploration or production.

BB. SOLID WASTE FACILITY: The words "solid waste facility" shall mean and include the buildings, land, location, and equipment constructed and maintained by Brevard County to dispose of solid waste within the County.

CC. SPECIAL COLLECTION SOLID WASTE: The term "special collection solid waste" shall include the following types of solid waste for the following types of designated customer categories:

- (1) Single-family residence and individual multiple-family residence: Any type of solid waste not reasonably capable of being placed in a garbage receptacle. This includes normal household furnishings, appliances, and other bulk items.

(2) Individual commercial unit: Any type of solid waste not reasonably capable of being placed in a garbage receptacle or any item not reasonably capable of being reduced in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. This includes normal household furnishings, appliances, and other bulk items.

(3) Bulk commercial unit and bulk multiple-family residence: Any type of solid waste not reasonably capable of being placed in a commercial container, or any pickup of a commercial container on a frequency in excess of that normally established for the customer or any solid waste placed in garbage receptacles at an accessible centralized location not in conformity with the requirements specified above in Section CC(1) for a single-family residence.

(4) One collection day per week shall be designated for the collection of Special Collection Solid Waste as defined above.

DD. CURBSIDE RECYCLING: The collection of recyclable materials from single-family residences, individual multiple-family residences, bulk multiple-family residences, individual commercial units and bulk commercial units at curbside or at the designated collection point for recyclable materials.

EE. PARTICIPATION RATE: The total number of residences that place any recyclable materials at the curb for the COLLECTOR to pick up during a four (4) week period divided by the total number of residences having the opportunity to place recyclable materials at the curb. A four (4) week period is considered to be a one (1) month period for the purpose of calculating participation rates.

FF. RECYCLABLE MATERIAL: Any material which can be recovered from the solid waste stream and reused in manufacturing, agriculture, power production or other processes and which, for the purpose of this Agreement, shall include at a minimum the following:

- Newspapers - (Daily newspapers, phone books, or magazines)
- Glass Jars and Bottles - (Clear, brown and green glass, food and beverage bottles)
- Plastic Bottles - (All Plastic BOTTLES where the neck of the bottles is smaller than the base.) No motor oil, antifreeze, pesticide, pool chemicals or other hazardous material bottles.
- Aluminum and Metal Cans - (Soft drink, beer, food and pet food cans.)
- The Director reserves the right to add or delete other materials to the list of Recyclable Materials that shall be collected by COLLECTOR.
- By way of illustration, and not by limitation, the following items are acceptable recyclable materials:

BROWN PAPER BAGS

CATALOGUES

CEREAL BOXES

ENVELOPES
ENVELOPES WITH WINDOWS
GLOSSY PAPER
SHREDDED PAPER
JUNK MAIL
MAGAZINES
OFFICE PAPER
PHONE BOOKS
SODA & BEER CARTONS
TOILET PAPER & PAPER TOWEL ROLLS
TV GUIDES
NEWSPAPER & INSERTS
FLATTENED CARDBOARD
ASEPTIC PACKAGING
STEEL & ALUMINUM CANS
ALUMINUM FOIL
ALUMINUM BAKEWARE
EMPTY AEROSAL CANS
GREEN, BROWN & CLEAR DRINK BOTTLES
PLASTIC BOTTLES # 1 through # 7

GG. RECYCLING CONTAINER: A container or bin supplied by the COLLECTOR, used for storing and collecting recyclable materials and identifying the recyclable materials at the collection point or any other additional container approved by the COLLECTOR.

HH: RECYCLING PROGRAM: The program designated by the TOWN for meeting the solid waste reduction goals as mandated by the Solid Waste Management Act of 1988 and any subsequent amendments thereto.

II. SET-OUT RATE: The total number of residences placing recyclable materials at the designated collection point on a given collection day divided by the total number of residences having the opportunity to place recyclable materials at the curb.

JJ. CONSUMER PRICE INDEX (CPI): A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, "All Urban Consumers, U.S. All Items 1982-84=100", as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics.

SECTION 2. AREA AND TERM.

A. The COLLECTOR shall have the sole and exclusive right and duty to collect all solid waste as provided under the terms and provisions of this Agreement within the jurisdictional limits of the TOWN.

B. Subject to the termination provisions contained in SECTION 10 of this Agreement, the term of this Agreement shall be effective on October 1, 2012 and extend until September 30, 2019, with renewal for 2(7) seven year periods at the mutual agreement of the TOWN and COLLECTOR.

SECTION 3. DUTY OF THE COLLECTOR.

A. With the exception of the solid waste defined as special collection solid waste, the COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, rubbish and garden trash placed by a customer at the collection point set forth in SECTION 6 hereof, from each single-family residence, individual multiple family residence and individual commercial unit within the subject service area not less often than two (2) times per week with collections at least three (3) days apart. It is intended that all such solid waste be picked up and delivered to the disposal site each collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of collection at least ten (10) days prior to an alteration in said schedule.

B. The COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, garden trash, and rubbish generated by a customer, from a bulk multiple-family residence and a bulk commercial unit and placed in a commercial container located at the designated collection point or in cans placed at a centralized location. The size and type of a commercial container including compactor boxes and the frequency of collection for each residence or unit shall be established by the COLLECTOR in consultation with the customer and shall be subject to approval by the Director in the event of a dispute. Provided, however, that the frequency of collection shall not be less than two (2) times per week with collections at least three (3) days apart.

C. The COLLECTOR shall pick up and deliver to the solid waste disposal facility Special Collection Solid Waste generated from a single-family residence, individual multiple-family residence and bulk multi-family residence of a customer and placed at the applicable collection point one (1) time per week.

D. The COLLECTOR shall pick up and deliver to the solid waste disposal facility all special collection solid waste generated from an individual commercial unit and a bulk commercial unit placed at the applicable collection point one (1) time per week.

Rates for the collection of individual commercial and bulk commercial special collection solid waste shall be negotiated between the customer and the COLLECTOR.

E. The COLLECTOR shall not be required to furnish collection services on the following specified holidays: Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and

Christmas Day. The COLLECTOR shall notify all customers whose normal collection day falls upon such holidays that no collection service will be provided on such day and the date of the next normal collection day at least ten (10) days and not more than thirty (30) days prior to said holiday. Said notice shall be in the form of an advertisement in a newspaper of general circulation published within the COUNTY. Notwithstanding the other provisions of this Agreement, the COLLECTOR shall not be required to collect rubbish or garden trash during the first scheduled collection day following such holidays, unless rubbish and garden trash is placed in containers.

F. The COLLECTOR shall be prepared to provide all commercial containers required in the collection of solid waste within the service area and shall maintain such containers in a clean and operable condition including an acceptable appearance according to standards maintained from time to time by the Director. The COLLECTOR shall provide at a minimum, containers of two (2), three (3), four (4), six (6), and eight (8) cubic yards for use as commercial containers or carts as specified in the RFP.

G. The COLLECTOR shall supply the residential carts for automated service for both solid waste and recycling. The Customer will have a choice in size of the carts provided by the collector. A 64 gallon cart will be the default size for solid waste carts and 64 gallon carts will be the default size for recycling carts if the Customer does not choose a size.

SECTION 4. STANDARDS OF COLLECTION AND OPERATION.

A. The COLLECTOR shall provide sufficient equipment to maintain regular schedules of collection and to promptly and efficiently perform its duties under this Agreement. The Director shall have the authority to inspect the vehicles on such inventory list and reject a given vehicle for health or safety reasons and require a suitable replacement. The COLLECTOR shall attach to such inventory a copy of each contract, lease, or other document that encumbers or limits the COLLECTOR's interests in such property. The COLLECTOR may change equipment from time to time and shall revise the inventory and the attachments thereto, however, in no event shall the number of vehicles be less than the number of vehicles shown on the inventory provided by October 1 of each year. The COLLECTOR shall maintain a vehicular fleet during the performance of work under this contract at least equal to that described in the inventory.

B. Equipment is to be maintained in a reasonably clean and safe working condition and be painted uniformly according to standards maintained from time to time by the Director. Equipment shall contain the name of the COLLECTOR, and the truck number or code established by the COLLECTOR printed in letters not less than three (3) inches high on each side of the vehicles. A record shall be kept of the vehicle to which each number is assigned. No advertising shall be permitted on the vehicles.

Each vehicle used for the collection of solid waste shall have a fully enclosed, metal top and shall be water tight to a depth of not less than (12) inches and shall contain metal sides, and use pneumatic tires. However, the Director shall have the authority to waive the requirement of a fully enclosed, metal top in the event of an emergency. As an alternative to

a fully enclosed metal top for use in garden trash collection, said vehicle may be equipped with a cover which may be a net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, and such cover shall be kept in good mechanical order and used to cover the load in traveling to, from and during the loading operation or when parked if the contents are likely to be scattered if not covered.

Vehicles shall not be overloaded so as to scatter solid waste, but when solid waste is scattered from a COLLECTOR'S vehicle for any reason, it shall be the responsibility of the COLLECTOR to immediately pick up such scattered solid waste. Each truck shall be equipped at all times with a shovel and a broom for the collection of spilled refuse.

Vehicles are to be washed thoroughly on the inside and sanitized with a suitable disinfectant and deodorant from time to time in order to be maintained in a clean and sanitary condition and all vehicles are to be washed on the outside at least weekly.

The COLLECTOR'S vehicles are not to interfere unduly with vehicular or pedestrian traffic and vehicles are not to be left standing on streets and alleys unattended.

C. It is recognized that disputes may arise between the TOWN and the COLLECTOR with regard to the collection of certain items due to disputes over the specific language of this Agreement. In such event, the TOWN shall inspect the subject area at the request of the COLLECTOR. The TOWN may from time to time notify the COLLECTOR of the location and nature of solid waste which has not been collected due to dispute between the TOWN and the COLLECTOR; and it shall be the duty of the COLLECTOR to remove all such solid waste within (5) business days from the date of the notice. Should the COLLECTOR fail to remove said solid waste when obligated to do so pursuant to this Agreement, the TOWN will remove the solid waste and the costs incurred by the TOWN shall be assessed against the COLLECTOR. In the event the COLLECTOR disagrees with the decision of the Director he shall have the right to appeal such decision to the Town Council and the decision of the Council shall be final.

D. Commercial containers furnished by the COLLECTOR to the customer shall be approved by the Director and shall have lettering not less than one and one-half (1 ½) inches high indicating the identification of the COLLECTOR and following words: "Keep Lids Closed". The COLLECTOR shall close the lids on commercial containers upon removal of solid waste.

E. The COLLECTOR shall make collections with a minimum of noise and disturbance to the occupant of the building and shall not collect from residential collection points prior to the hour of 6:00am nor after the hour of 9:00pm, except the week following holidays and during TOWN designated emergency times. Garbage receptacles and other containers shall be handled carefully by the COLLECTOR and shall be thoroughly emptied and then returned and placed at least three (3) feet from the edge of the pavement where possible, standing upright and with covers securely in place. Any solid waste spilled or scattered by the COLLECTOR shall be immediately picked up.

F. The direction and supervision of solid waste collection shall be by competent and qualified personnel and the COLLECTOR shall devote sufficient personal time and

attention to the direction of the operation to insure performance of his obligations and duties as specified under the provisions of this Agreement.

The COLLECTOR shall cooperate with authorized representatives of the TOWN in every reasonable way in order to facilitate the progress of the work contemplated under this Agreement.

The COLLECTOR shall provide, at his own expense, a suitable office located within Brevard County and shall maintain office hours from 8:00am to 5:00pm Monday through Friday and 8:00 am to 12:00 noon on Saturday. In addition, the COLLECTOR shall designate a representative for emergency and complaint calls during the entire week excluding the hours from 5:00pm Saturday through 8:00am Monday.

G. Employees collecting solid waste will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, or crossing property to neighbor's premises unless residents or owners of both such properties have given permission.

Care should be taken to prevent damage to property, including flowers, shrubs and other plantings. The COLLECTOR shall not be responsible for cleaning up unsanitary conditions about the solid waste containers caused by carelessness of the customer.

Care shall be taken by employees to prevent damage to containers by unnecessarily rough treatment. The COLLECTOR shall report to the Director all situations which prevent or hinder the collection of solid waste on any premises.

H. The COLLECTOR may change the scheduled days for collection and/or routes only after informing the Director and authorized by the Council. In the event the COLLECTOR makes a change in routes or schedules that alters the day of pickup for any service, the COLLECTOR shall, at its expense, notify each affected Customer by mail or other manner not less than one week prior to the change. The TOWN reserves the right to deny the COLLECTOR'S vehicles access to certain streets, alleys and public ways where it is in the interest of the general public to do so because of conditions of the streets or bridges or the nature of development of the general area. The COLLECTOR may request and the Director may declare certain streets, alleys and public ways closed for the purpose of collection vehicle operation because of dangers, inadequate clearance, poor road conditions and others. When these closures occur, the COLLECTOR shall supply other types of solid waste collection service acceptable to the Director. Notice shall be given by the Director prior to such denial so as not to unduly interfere with the COLLECTOR's normal operations.

I. The COLLECTOR shall provide backdoor solid waste receptacle pickup from single family residences for customers who are physically disabled and unable, and have no other means, to place their receptacles at the collection point as specified in SECTION 6. The customer shall provide the COLLECTOR with appropriate evidence that they are unable to place their receptacles at the collection point. The type of evidence required shall be determined by the Director.

J. The residential collection driver will notify dispatch of a bulk yard waste pick up requirement and shall also identify the location of such pick up.

SECTION 5. COMPLAINTS.

A. The COLLECTOR shall perform a service of high quality and keep the number of legitimate complaints to a minimum. The COLLECTOR will utilize the Track EZ system for registering complaints and requests for service. The Track EZ will be enabled through the Town's web site and staff at Town Hall will be trained on the program to be capable of accessing all complaints.

SECTION 6. DUTY OF CUSTOMERS.

A. All garbage and rubbish and all grass cuttings, leaves, small clippings and trimmings generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in one or more garbage receptacles, plastic bags or other containers which are acceptable to the COLLECTOR and approved by the Director and placed at the applicable collection point on the designated collection day. All other solid waste shall be stacked in uniform direction at the applicable collection point and shall include only items in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. Any special collection solid waste shall be placed at the collection point on the collection day for special collection solid waste.

B. All solid waste generated from a bulk commercial unit or a bulk multiple-family residence, other than special collection solid waste, shall be placed by the customer in a commercial container located at the applicable collection point, or in garbage receptacles located at the applicable collection point, on the designated collection day.

C. The customer shall place all solid waste at the following collection points for the specified categories of property:

(1) Single-family residence: At a point within the parkway abutting such residence no farther than five (5) feet from the curb line or paving line, or, in the case no parkway exists which abuts the customer's property, at a point no greater than five (5) feet from curb line or paving line of the nearest public street, or, in the case of the existence of a drainage ditch, at a point within said dimensions adjacent to the nearest driveway.

(2) Individual commercial unit and individual multiple-family residence: At those points designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer.

(3) Bulk multiple-family residence and bulk commercial unit: At a point designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer. In the event of a dispute between the COLLECTOR and a customer regarding the location of the collection point in the COLLECTOR's decision shall be subject to approval by the Director.

- (4) Island residence: At a point on First Street near the First Street boat ramp.

SECTION 7. HAZARDOUS WASTE.

A. No customer shall place or deposit hazardous or infectious waste at any solid waste collection point or in any other place where it might reasonably be expected to be collected by COLLECTOR.

B. The COLLECTOR shall not dispose of hazardous or infectious waste at any Brevard County solid waste disposal facility. The COLLECTOR shall refuse to collect solid waste from a customer if the COLLECTOR believes that such solid waste contains hazardous or infectious waste. If the COLLECTOR believes that a customer is depositing hazardous waste for collection, the COLLECTOR shall immediately notify the Director.

C. The Director shall have the authority to inspect the waste being deposited by a customer at any time to determine whether such waste contains hazardous waste, and, to take whatever action he deems necessary to insure that the customer ceases the placement of hazardous waste into the Brevard County Solid Waste Disposal System. Such an inspection shall be required upon receipt of notice from a COLLECTOR pursuant to subsection B of this section.

D. A customer may notify COLLECTOR, by telephone, of a bulk yard waste pick up requirement and the location of such pick up but is not required to provide said notification.

SECTION 8. COMPENSATION TO COLLECTOR; ESTABLISHMENT OF RATES

A. The initial rates for the services of the COLLECTOR pursuant to this Agreement are set forth in Exhibit 1, provided,

B. The charge for the pickup of special collection solid waste generated by a bulk commercial unit and an individual commercial unit shall be negotiated between the COLLECTOR and the customer and billed by the COLLECTOR.

C. It is mutually understood between the parties that each customer shall have the right to purchase his own commercial container rather than rent same from the COLLECTOR provided that the container is compatible with COLLECTOR's collection equipment.

D. The COLLECTOR shall bill each commercial customer for collection services based on the rate, charge or fee for each customer as established under this section of this Agreement. In the event of a dispute between the COLLECTOR and customer as to a rate, fee or charge, or as to a charge for additional or special collection pickup, the Director shall arbitrate and resolve the dispute.

E. The TOWN shall bill each residential customer for collection services based on the rate, charge for each customer as established under this section of this Agreement annually on the tax bill.

E. The rates and charges set above Exhibit 1: shall be adjusted annually and computed pursuant to the mathematical formula provided as Exhibit 2 (Collection Rate Adjustment).

F. The COLLECTOR may petition the TOWN to adjust COLLECTOR's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefore. The TOWN shall be entitled to audit the COLLECTOR's financial and operational records directly related to the Contractor's request in order to verify the increase in costs and the reasons therefore. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect. The TOWN will only bill for annual collection on the tax bill.

"Change in Law" means (i) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Agreement, which in the case of either (i) or (ii) establishes requirements affecting the COLLECTOR's operation under this Agreement more burdensome than the requirements that are applicable to COLLECTOR and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, state or local entity imposes a fee, charge or tax after the date of this Agreement that applies to COLLECTOR's operations per se, such fee, charge or tax shall be treated as a Change in Law.

The COLLECTOR's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The TOWN may request from the COLLECTOR, and the COLLECTOR shall provide, such further information within its possession as may be reasonably necessary in making its determination. The TOWN shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the TOWN. The TOWN shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

G. In the event disposal charges for the TOWN's waste are increased, the COLLECTOR shall notify the TOWN of such increase and propose an appropriate rate adjustment to adequately compensate COLLECTOR for such increase. The TOWN may request information from the COLLECTOR to substantiate such rate increase. After receipt of same, the TOWN shall promptly consider such request and shall accept or reject same within 30 days of receipt of such request and supplemental information. The TOWN shall not unreasonably deny the rate adjustment. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect. The TOWN will only bill for annual collection on the tax bill.

H. The COLLECTOR shall be required, if requested by the customer, to furnish a roll-off container or a compactable container; provided, however, such request shall not be granted if the type of solid waste generated requires a greater frequency of pickup than reasonably contemplated by the use of said containers. The rate and rental for such roll-off container and the rental for such compactable container shall be as stated in the RFP and

billed by the COLLECTOR. In the event of a dispute between the COLLECTOR and the customer as to such rate or rental, the Director shall arbitrate and resolve the dispute.

I. Each residential customer will be billed for service annually on the tax bill. Each commercial customer will be billed for one month's service in advance by the COLLECTOR. In no event shall the TOWN be responsible for maintaining commercial customer lists, verifying services or resolving disputed charges. Neither shall the TOWN be responsible for paying for any service rendered by COLLECTOR to any customer. COLLECTOR shall charge for the services rendered solely according to the terms of this Agreement, at the rates set forth in this Agreement, except as they may be adjusted subsequently pursuant to this Agreement. COLLECTOR shall not charge more for such services. If any customer shall fail to make timely payment of invoices submitted by COLLECTOR, then COLLECTOR may, upon fifteen (15) days written notice to such customer, discontinue service to such customer until all delinquent amounts have been paid in full together with a \$50.00 re-establishment of service fee. COLLECTOR shall provide duplicate copies of all such delinquency notices to the TOWN, and shall advise the TOWN at such times as it discontinues service and when it recommences service upon receipt of payment. COLLECTOR shall not deny service to a new customer because a prior customer at the same location has not paid his account in full. The TOWN shall take such steps as are necessary to compel those delinquent accounts to pay all delinquent amounts and the re-establishment fee.

Prior to establishing service with a commercial customer or a customer being billed by the COLLECTOR pursuant to this section, the COLLECTOR may collect a deposit. However, such deposit shall not exceed the normal charge for three month's service to the customer. In addition, any such deposit shall be returned to the customer after twelve (12) months continuous service with no delinquent payments.

Any such customer may pay in advance for the collection services provided pursuant to this Agreement. However, the COLLECTOR shall not require a customer to pay for such collection services more than one (1) month in advance.

The COLLECTOR may impose, in addition to the amount owed (together with interest at 1.5% per month) to the COLLECTOR, a re-connect fee not to exceed the greater of Twenty-five Dollars (\$25.00), or the normal charge for one (1) month's service for a commercial customer, where a commercial customer whose service has been terminated for non-payment wishes to be served by the COLLECTOR again.

There will be no vacancy adjustments for residential customers.

J The TOWN will remit payments to the COLLECTOR in 11 equal payments based on the estimated solid waste residential assessment role and a 12th payment adjusted in accordance to the amount actually collected through the tax collector.

SECTION 9. HURRICANE OR OTHER DISASTER.

A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Director shall grant the COLLECTOR a variance from regular routes and schedules. As soon as practicable after such event, the COLLECTOR shall advise the Director when it is anticipated that normal routes and schedules can be resumed. The

Director shall make an effort through the local news media to inform the public when regular services may be resumed.

B. The COLLECTOR shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster unless the TOWN enters into a written agreement with COLLECTOR specifying the terms and compensation for such services. Should the parties enter into a written agreement and in the event the storm is declared a disaster such that FEMA is authorized to participate in managing the cleanup, the COLLECTOR shall be responsible for the preparation of all documents and forms and support information required by FEMA. Such documents, forms and information shall be submitted to the TOWN by the CONTRACTOR within the time limits established by FEMA for such filings.

C. The parties agree, storms and other disasters, whether named or not, often cause volumes of solid waste to increase measurably once the disaster terminates. Accordingly, once the COLLECTOR resumes normal collection routes after a disaster whether or not it is one declared by FEMA, the COLLECTOR may be entitled to additional compensation for the collection, transportation and/or disposal of solid waste in excess of historical volumes for the period in question as the result of such disaster event. COLLECTOR shall substantiate the additional costs caused by the event by providing documentation and corroboration of increased costs for personnel and labor, equipment, transportation costs (including fuel and additional trip times) and disposal costs as applicable. The TOWN shall have the right to audit such costs.

**SECTION 10. COMMENCEMENT OF AGREEMENT; DISAGREEMENTS;
DEFAULT OF COLLECTOR; NO WAIVER.**

A. COMMENCEMENT OF AGREEMENT: This Agreement shall be effective October 1, 2012.

B. DISAGREEMENTS: To prevent all disputes or litigation, it is understood that all questions rising as to the proper performance and the amount of work to be paid for under this Agreement shall be subject to the decision of the Director subject to the right of the COLLECTOR to appeal to the Board, whose decision shall be final and binding.

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

D. DEFAULT OF COLLECTOR: The COLLECTOR may be held in default of the Agreement in the event the COLLECTOR, after receiving written notice specifying the event of default and the passage of 10 days without cure:

- (1) Fails to perform the collections required by the Agreement and has abandoned the work, or is unable to resume performance within forty-eight hours; or

- (2) Has failed on three or more occasions of three working days duration each in any year, to perform the collections required by the Agreement; or
- (3) Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Agreement, after having received written notice of its obligation to so comply.
- (4) Becomes insolvent or bankrupt, declares bankruptcy or has a receiver or trustee appointed to manage its affairs.

To initiate proceedings under this section, the Director shall first request the Town Council to declare the COLLECTOR in default.

Within three working days after its receipt of such a request, the TOWN shall give notice to the COLLECTOR and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the COLLECTOR may show cause why it should not be declared in default. In the event the COLLECTOR fails to show, to the reasonable satisfaction of the TOWN cause why the COLLECTOR should not be declared to be in default, the Council shall make such declaration.

In declaring the COLLECTOR to have defaulted on the Agreement, the TOWN may also order the COLLECTOR to discontinue further performance of work under the contract and transfer the obligation to perform such work from the COLLECTOR to the Surety on the COLLECTOR'S performance bond and take any other action it deems advisable.

In the event the TOWN secures the performance of work under the Agreement at a lesser cost than would have been payable to the COLLECTOR had the COLLECTOR performed the same, the TOWN shall retain such difference; but in the event such cost to the TOWN is greater, the COLLECTOR and its surety shall be liable for and pay the amount of such excess to the TOWN.

All payments due the COLLECTOR at the time of default, less amounts due the TOWN from the COLLECTOR; shall be applied by the TOWN against damages suffered and expense incurred by the TOWN by reason of such default; any excess shall be paid to the COLLECTOR except as provided in the Agreement.

Notwithstanding the provisions of this section, a delay or interruption in the performance of all or any part of the Agreement resulting from changes ordered in the work, from labor disputes, or, from other causes beyond the COLLECTOR'S control or other Force Majeure event set forth in Section 15, shall not be deemed to be a default and the rights and remedies of the TOWN provided for herein shall not be applicable.

E. **NO WAIVER:** No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement nor affect the right of a party hereto to enforce same. The payment or acceptance of compensation for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

SECTION 11. ADMINISTRATIVE CHARGES.

The following acts or omissions, if not cured within 2 working days after written notice, which includes all forms of written communication including, but not limited to facsimile transmission or electronic transmission (e-mail), shall permit the TOWN to impose administrative charges under this Section. Administrative charges, if any, must be imposed no later than the month following the event's occurrence. Administrative charges will be withheld from the monthly proceeds due to the COLLECTOR with written explanation included in the remittance.

1. Collection of residential solid waste prior to 6:00am or after 9:00pm
\$100.00 each event
2. Legitimate Complaints greater in number than 5% of the residential customers in any one month -- \$50.00 each
3. Failure to clean vehicles and maintain in good working condition.
\$25.00 per vehicle.
4. Failure to pick up "Special Collection Solid Waste" within five (5) business days.
\$100.00 each case on the third day after written notice and \$50.00 each day thereafter until cured.
5. Failure to maintain schedule established and given as a requirement of this Agreement. -- \$100.00 per violation of route schedule.
6. Failure to pick up debris scattered by COLLECTOR. -- \$100.00 each case on the third day after written notice and \$25.00 each day thereafter until cured.
7. Failure to pick up properly prepared Bulk Yard Waste (clam shell pick up) -- \$200.00 each case on the third day after written notice and \$50.00 each day thereafter until cured.
8. Failure to dispose of recyclable materials in a proper fashion -- \$200.00 each load
9. Failure to collect recyclables, solid waste or vegetative waste (garden trash) on schedule -- \$50.00 per stop on the third day after written notice and \$20.00 each day thereafter until cured.

In the event that COLLECTOR disagrees with the imposition of administrative charges by the TOWN, it shall have 10 days after notice of same to protest. COLLECTOR shall serve a written notice of protest on the Director explaining the basis for its protest. Within 15 days, the Director shall determine the protest making specific findings to support its decision. If the COLLECTOR disagrees with the decision, it can utilize the provisions of Section 19 for a final determination.

SECTION 12. INSURANCE AND INDEMNIFICATION.

A. The COLLECTOR shall furnish to the TOWN evidence of insurance coverage for all insurance required under the provisions of this section of this Agreement immediately upon the execution of this Agreement by the parties. Failure of the COLLECTOR to maintain said insurance at any time during the term of this Agreement by the COLLECTOR, shall be construed to be a material breach of the Agreement by the COLLECTOR.

B. The COLLECTOR shall provide and maintain during the term of this Agreement such worker's compensation insurance as required by law for all of its employees employed in connection with the performance of the work provided for under this Agreement.

C. COLLECTOR hereby agrees to protect, defend, indemnify and hold harmless TOWN and its directors, officers, employees and agents from and against any and all claims against any of TOWN and its directors, officers, employees and agents by a third party for loss or damage of any nature or kind arising directly or indirectly from negligence, willful misconduct or breach of laws or any provision of this Agreement of any of COLLECTOR or its agents, servants or independent contractors, except and to the extent that such loss or damage was caused by the negligence, willful misconduct or breach of laws or any provision of this Agreement by any of the TOWN and its directors, officers, employees and agents.

D. The COLLECTOR agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the TOWN, policies of insurance generally known as "public liability policies" insuring the COLLECTOR against any and all claims, demands or causes of action whatsoever for injuries received or damage to property relating to the performance of the duties of the COLLECTOR under the terms and provisions of this Agreement. Such policies of insurance shall insure the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover any and all claims connected with any accident or occurrence that may arise or be claimed to have arisen against the COLLECTOR. The COLLECTOR shall also obtain property damage insurance insuring the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover the claims of any person or persons from a single or specific act that result in alleged damage to property. The COLLECTOR agrees to provide and maintain at all times under this Agreement motor vehicle public liability insurance in an amount of not less than \$300,000 to cover the claims of one person, and \$500,000 per incident.

Said insurance policies shall provide that the TOWN shall be entitled to thirty (30) days written notice of any changes or cancellations in said policies.

A certificate of insurance indicating that the COLLECTOR has coverage in accordance with the requirements of this Agreement, shall be furnished by the COLLECTOR to the Director within ten (10) days from the date of the execution of this Agreement.

SECTION 13. PERFORMANCE BOND.

The COLLECTOR shall provide a COLLECTOR'S performance and payment bond in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) with a surety company acceptable to the TOWN as surety, which bond shall be conditioned that such COLLECTOR shall faithfully perform all of the provisions of this Agreement and pay all laborers, mechanics

and sub-contractors and material men, and all persons who shall supply such COLLECTOR or sub-contractors with provisions and supplies for the performance of this Agreement; and shall perform work or services, or furnish material to any sub-contractor, shall have the same right under the provisions of such bond as if such works, services or material was furnished to the original COLLECTOR, and shall contain appropriate recitations; (1) that it is issued pursuant to this Section of this Agreement; (2) that it shall be construed to meet all the requirements specified herein; and (3) that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void.

SECTION 14. MISCELLANEOUS.

A. The COLLECTOR shall comply with all laws, ordinances, rules and regulations now existing or established or hereinafter established at any time during the term of this Agreement by the TOWN, State Legislature and agencies, and Federal Government.

B. It shall be the responsibility of the COLLECTOR to maintain its books and records in accordance with generally accepted accounting principles. The TOWN shall have the right to audit said books and accounts at any time during normal business hours upon giving reasonable notice not less than 5 working days to the COLLECTOR as to the time and place of such audit.

C. The COLLECTOR shall perform his duties under the terms and provisions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. No part of this Agreement shall in any way be construed or interpreted to constitute the COLLECTOR or any of his agents or employees as the agent, employee or representative of the TOWN.

D. To prevent misunderstanding or litigation, the Director shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the manner of performance, the rate of progress of said work, the interpretation of the Agreement provisions, and the acceptable fulfillment of the Agreement on the part of the COLLECTOR subject to the provisions of Section 19.

E. The COLLECTOR shall furnish the Director with every reasonable opportunity for ascertaining whether or not the duty of the COLLECTOR is being performed in accordance with the terms and conditions of this Agreement. The COLLECTOR shall designate in writing the person to serve as agent between his organization and the TOWN. The TOWN shall have the right to inspect the operations and equipment of the COLLECTOR at any reasonable time upon the giving of reasonable notice and the COLLECTOR shall admit such authorized representatives of the TOWN to make such inspections.

F. No modification or amendment of the terms hereof shall be effective unless written and signed by the parties hereto.

G. The provisions, covenants and conditions to this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

H. Should any terms, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of the Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

I. The terms and conditions of this contract supersede the terms, obligations and conditions of any existing or prior Agreement or understanding, written or oral, between the parties regarding the work to be performed, compensation to be paid, and all other matters contained.

SECTION 15. FORCE MAJEURE. If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

SECTION 16. RECYCLING PROGRAM COLLECTION.

A. COLLECTOR is hereby granted an exclusive franchise to perform curbside recycling collection services within the service area.

B. The COLLECTOR shall pick up all recyclable materials placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence, bulk multiple-family residence, individual commercial unit and bulk commercial unit within the subject service area not less than one (1) time per week and with said collection occurring on a normal solid waste collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of recyclable materials collection at least ten (10) days prior to an alteration of said schedule.

C. The COLLECTOR shall furnish a recycling tote or cart at the COLLECTOR'S expense to all single-family residence and individual multiple-family residences. Said container shall be the property of the COLLECTOR. The customer will have a choice in the size of the cart provided by the COLLECTOR. A 64 gallon cart will be the default size if the customer does not choose a size. 18 gallon totes 64 gallon and 96 gallon carts will be available to the customer.

D. The COLLECTOR shall replace lost recycling containers in an amount up to five percent (5%) of the households served, and all broken recycling containers. Each residence shall not be given more than one (1) replacement within a year at the COLLECTOR'S expense.

E. The COLLECTOR shall remove only recyclable materials placed in the recycling container at the curb from all residences that presently receive regular residential garbage collection. There shall be no limit to the quantity of recyclable materials that will be picked up from each residence.

F. The COLLECTOR will not be required to collect materials that are in violation of this Agreement. The non-recyclable materials in the recycling container will be left in the container at the residence as examples of incorrect materials that should not be placed out for collection. Information will be placed in or on the container by the COLLECTOR explaining why the materials were left.

G. The COLLECTOR shall not in any way break or damage or roughly handle the recycling container and shall empty the container and then return it to the curb or designated collection point.

H. The COLLECTOR shall furnish containers to all bulk multiple-family residences and commercial units serviced by the COLLECTOR at rates agreed to between the parties prior to the initiation of the recyclable materials collection service as provided herein.

I. For providing recycling program collection services as specified hereunder, to all improved residential real property within the TOWN. The COLLECTOR shall be compensated in accordance with Exhibit 1 of this Agreement.

J. COLLECTOR shall retain 100% percent of all proceeds received from the sale of recyclable materials and said revenue shall be credited back to the resident when calculating annual rate increases.

SECTION 17. DUTIES OF THE CUSTOMER; RECYCLING PROGRAM.

A. The customer is responsible for proper care and cleaning of any recycling container provided for use in the program.

B. The recycling program shall be single stream commingled recycling.

C. The customer shall drain off all liquids from recyclable materials prior to deposit in the recycling container. Recyclable glass food and beverage containers shall be rinsed prior to placement in the recycling container. Caps should be removed from all recyclable glass and plastic containers and disposed with the regular household trash. Newspapers shall be free of food or other contaminants when placed in a recycling container.

D. All recyclable materials generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in

the recyclable container. On the designated collection day, said recyclable container shall be placed at the curb that is a normal collection point, but shall be kept separate and apart from regular solid waste.

E. All recyclable materials generated from a bulk commercial unit, or a bulk multiple-family residence, shall be placed by the customer at the collection point described in Paragraph 6(C) (3) of this Agreement.

F. Recyclable materials placed in a recyclable container by a single-family, individual multiple-family, or individual commercial unit, shall not exceed a weight of fifty (50) pounds, including the weight of the container unless the automated cart is being utilized.

G. E- waste shall be collected by the COLLECTOR. There shall be no additional charge for the pick-up of the e-waste.

SECTION 18. DUTIES OF THE COLLECTOR, GARDEN TRASH COLLECTION, BULK YARD WASTE

A. The COLLECTOR shall pickup all properly prepared Garden Trash and Bulk Yard Waste placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence and bulk multi-family residence, not less than one (1) time per week. The COLLECTOR shall notify the customers of the applicable schedule of Garden Trash collection at least ten (10) days prior to an alteration of said schedule.

B. The COLLECTOR shall pick up all properly prepared Garden Trash and Bulk Yard Waste placed on those road medians or common areas of subdivisions, apartments, townhouses or other multi-family units prescribed by the Director, in consultation with the COLLECTOR, not less than one (1) time per week. The schedule for pick up shall be the same as for other residences in the collection area.

C. The COLLECTOR shall only remove Garden Trash and Bulk Yard Waste placed at the curb from all residences that receive regular residential solid waste collection service. There shall be no limit to the quantity of Garden Trash or Bulk Yard Waste that will be picked up from each residence so long as the Garden Trash is prepared as follows: All branches, fronds and other material must be cut into lengths not exceeding four (4) feet in length, twelve (12) inches in diameter, and fifty (50) pounds in weight and separated from other solid waste. All grass cuttings, leaves and small clippings and trimmings shall be containerized in containers which are acceptable to the COLLECTOR and approved by the Director. Garden Trash exceeding the size and weight described in this paragraph will be picked up by a claw truck as Bulk Yard Waste.

D. For providing Garden Trash Collection Service and Bulk Yard Waste as specified herein, to all improved residential real property within TOWN, the COLLECTOR shall be compensated in accordance with Exhibit 1.

SECTION 19. DISPUTE RESOLUTION.

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

(i) Mediation may be commenced by the TOWN or COLLECTOR by the service of a written request for mediation ("Request for Mediation") upon the other party. Such Request for Mediation shall summarize the controversy or claim to be mediated.

(ii) The mediation shall be heard in Brevard County before a single mediator.

(iii) All attorneys' fees and costs of the mediation shall be borne by the respective party incurring such costs and fees.

(iv) If mediation is unsuccessful then the parties are free to file a lawsuit in Brevard County to enforce the provisions herein.

(v) The prevailing party in any litigation to enforce this Agreement, including at all appellate levels shall be entitled to an award of attorney fees.

SECTION 20. RECORD KEEPING AND QUARTERLY REPORTING

A. COLLECTOR shall maintain in its office records of the quantities of (i) Solid waste collected and disposed under the terms of this Agreement, (ii) Recyclables, by type, collected, purchased, processed, sold, donated or given for no compensation, and Residue disposed, and (iii) Yard waste collected, received, purchased, processed, sold, donated or given for no compensation, and Residue disposed. The records shall be compiled into reports and submitted quarterly as stated below.

B. COLLECTOR shall maintain an auditable journal recording each instance that Solid waste, Yard Waste or Recyclables are not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. The journal shall include the reason for non-collection, including but not limited to instances of Hazardous Waste found in the Solid waste, Yard Waste or Recyclables.

C. COLLECTOR's refusal or failure to file (after written notice requesting COLLECTOR to do so) any of the reports required, or to provide required information to TOWN, or the inclusion of any false or misleading statement or representation by COLLECTOR in such report, shall be deemed a material breach of this Agreement, and shall subject COLLECTOR to all remedies, legal or equitable, which are available to TOWN under this Agreement or otherwise.

D. All reports and records required under this or any other Article shall be furnished at the sole expense of COLLECTOR.

E. COLLECTOR shall compile and keep the following information for each month during the quarter and shall deliver a written report thereon, signed by an officer of COLLECTOR, to the Town Administrator on a quarterly basis. Quarterly reports shall be submitted no later than the 28th of the month immediately following the end of the quarter, with the first quarterly report due on or before January 28, 2013. Quarterly reports shall be submitted

in hard copy and shall also be provided electronically in a format and using software acceptable to TOWN.

(a) Solid Waste Data. The average number of daily set-outs, Tons collected and delivered to the Designated Disposal Site, number of service accounts and number of containers distributed by size and Subscriber for each separate Subscriber class and for each free facility service.

(b) Recycling Data. The daily average of gross Tons collected by material type and by route for residential premises, commercial/industrial premises, and for facilities receiving free service; the average number of daily set-outs by route; the total set-outs and Tonnages, by material type and by route for the quarter; the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts; quarterly totals of Recyclables delivered to the Designated Processing Facility; and number of Recyclables containers distributed by size and Subscriber type.

(c) Yard Waste Data. The average daily gross Tons collected by route; the average daily number of set-outs by route; and the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts.

(d) Complaint Log. A copy of the Complaint Log maintained pursuant to Section 5 of this Agreement, including a summary of the type and number of complaints.

(e) Problems and Actions Taken. Narrative summary of problems encountered with collection, disposal, and processing activities and actions taken; report shall indicate the type and number of notification tags left at Subscriber accounts, instances of property damage or injury, poaching or scavenging, significant changes in operation, market factors, publicity conducted, or needs for publicity; description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

(f) Disposal Summaries. Summaries of the net amount of all Solid waste disposed during the reporting period, any fees paid, and where the waste was disposed of, by residential and commercial service sectors. TOWN may review all supporting documentation (which COLLECTOR shall retain) for COLLECTOR's summaries on COLLECTOR's business premises after giving 48 hours written notice of such a request.

SECTION 21 SUPPLEMENTAL INFORMATION FOR AUTOMATED SERVICES

It is understood that automated services for the purpose of this contract refers to customer choice of service.

- (a) All Customers will receive an automated service cart and automated recycling cart supplied by the COLLECTOR.
- (b) COLLECTOR shall supply the solid waste carts with the customers choosing the size of the cart. Size will be limited to one of two standard sizes (64, 96 gallon). The default size for solid waste carts is 64 gallon carts.
- (c) COLLECTOR shall supply the recycling totes or carts with the customers choosing the type and size. Size will be limited to an 18 gallon tote or one of

two standard cart sizes (64, 96 gallon). The default size of the cart will be 64 gallon.

- (d) Customer may continue to utilize their own containers in unlimited quantities for solid waste collection and recycling collection.
- (e) Collection is NOT limited to those items placed within the COLLECTOR supplied carts.
- (f) COLLECTOR will pick up all garbage placed at the appropriate location on collection day regardless of container or lack of container in the case of bulky waste. Bulky waste will be collected one (1) day per week.

SECTION 22 NOTICE All notices required or contemplated by this Contract shall be personally served or mailed postage prepaid and return receipt requested, addressed to the parties as follows:

Collector:
 Division Manager
 Waste Pro of Florida, Inc.
 699 S. Range Road
 Cocoa, FL 32926

Town:
 Town Administrator
 Town Of Grant Valkaria
 PO Box 766
 Grant Valkaria, Florida 32949

Copy to:

IN WITNESS WHEREOF the parties have caused their respective duly authorized representatives to execute this instrument and to affix their corporate seals on the dates shown.

(SEAL)

TOWN OF GRANT VALKARIA

ATTEST: Susanne Krueger
 TOWN CLERK

By: [Signature]

(SEAL)

WASTE PRO OF FLORIDA, INC.

WITNESS: [Signature]

By: [Signature]
Lisa Seymour
 7/27/12

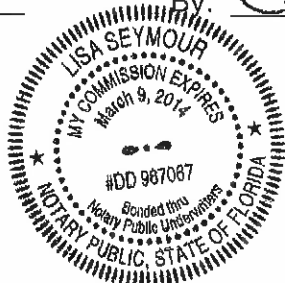


Exhibit 1
SUMMARY OF RATES AND CHARGES

FORM D

RESIDENTIAL PREMISES RATES

This form is for residential premises service for solid waste, recyclables, and yard waste collection, and all other services to be available to residential premises as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1, 2012. These rates will be the contractor's sole compensation for residential premises services. All rates are for 2 times per week collection.

Cart sizes are approximate. Proposers must note any proposed variations. Variations cannot, however, be substantial.

Residential Premises Rates

Service	Rates per household /month	Additional solid waste carts % of single cart rate	Additional customer requested recycling cart
Residential Solid Waste			
Option 1 – automated service – multiple size carts provided by hauler (64,96 gal)	16.59	3%	No Charge
Residential Recycling			
Option 1 – automated service – multiple size carts provided by hauler (64,96 gal) or 18 gallon tote	3.14	22%	No Charge

A residential premise includes once weekly curbside recyclables collection and once weekly yard trash collection.

Residential Breakdown of all inclusive cost

	Option 1
Solid Waste	9.87
White/Bulky Goods	Free
Yard Trash	6.72
Bulk Yard Waste	Free

FORM E-1

COMMERCIAL PREMISES SOLID WASTE COLLECTION SERVICE: CAN, CART AND BIN SERVICE

This form is for commercial premises, multi-family dwellings, and mobile home parks service for solid waste, recyclables, yard waste collection (as appropriate), processing and disposal, billing services, and all other services to be available to aforementioned service units as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1, 2012. These rates will be the contractor's sole compensation for these service units' services.

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

Service Type	Frequency	Rate per Account per Month
32-gallon can (curbside) (If additional can sizes are proposed, please add additional sheets)	1x weekly	\$ <u>15.63</u>
	2x weekly	\$ <u>18.17</u>
32-gallon can (carryout) (If additional can sizes are proposed, please add additional sheets)	1x weekly	\$ <u>25.63</u>
	2x weekly	\$ <u>28.17</u>
36-gallon cart	1x weekly	\$ <u>16.90</u>
	2x weekly	\$ <u>19.65</u>
64-gallon cart	1x weekly	\$ <u>16.90</u>
	2x weekly	\$ <u>19.65</u>
96-gallon cart	1x weekly	\$ <u>16.90</u>
	2x weekly	\$ <u>19.65</u>

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: BIN SERVICE

(If additional bin sizes are proposed, please use table to specify)

Service Type	Frequency	Rate per Account per Month
2 c.y. bin	1x weekly	\$ <u>34.38</u>
	2x weekly	\$ <u>68.76</u>
	3x weekly	\$ <u>103.14</u>
	4x weekly	\$ <u>137.52</u>
	5x weekly	\$ <u>171.90</u>
	6x weekly	\$ <u>206.28</u>
4 c.y. bin	1x weekly	\$ <u>68.76</u>
	2x weekly	\$ <u>137.52</u>
	3x weekly	\$ <u>206.28</u>
	4x weekly	\$ <u>275.04</u>
	5x weekly	\$ <u>343.80</u>
	6x weekly	\$ <u>412.56</u>
6 c.y. bin	1x weekly	\$ <u>103.14</u>
	2x weekly	\$ <u>206.28</u>
	3x weekly	\$ <u>309.42</u>
	4x weekly	\$ <u>412.56</u>
	5x weekly	\$ <u>515.70</u>
	6x weekly	\$ <u>618.84</u>
8 c.y. bin	1x weekly	\$ <u>137.52</u>
	2x weekly	\$ <u>275.04</u>
	3x weekly	\$ <u>412.56</u>
	4x weekly	\$ <u>550.08</u>
	5x weekly	\$ <u>687.60</u>
	6x weekly	\$ <u>825.12</u>
3 c.y. bin	1x weekly	\$ <u>51.57</u>

	2x weekly	\$ <u>103.14</u>
	3x weekly	\$ <u>154.71</u>
	4x weekly	\$ <u>206.28</u>
	5x weekly	\$ <u>257.85</u>

FORM E-2

COMPACTOR AND DEBRIS BOX SERVICE

This form is for compactor, debris box and on-call bin service including collection, processing and disposal, billing services, and all other services to be available to aforementioned service units as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1, 2012. These rates will be the contractor's sole compensation for these service units' services.

COMPACTOR AND DEBRIS BOX SERVICE

Service Type	Frequency	Rate per Account per Month
Compactor Service		
3 c.y.*	1x weekly	\$ <u>157.44</u>
	2x weekly	\$ <u>314.88</u>
	3x weekly	\$ <u>472.32</u>
	4x weekly	\$ <u>629.76</u>
	5X weekly	\$ <u>787.19</u>
4 c.y. *	1x weekly	\$ <u>209.92</u>
	2x weekly	\$ <u>419.84</u>
	3x weekly	\$ <u>629.76</u>
	4x weekly	\$ <u>839.67</u>
	5X weekly	\$ <u>1049.59</u>
5 c.y.*	1x weekly	\$ <u>262.40</u>
	2x weekly	\$ <u>524.80</u>
	3x weekly	\$ <u>787.19</u>
	4x weekly	\$ <u>1049.59</u>
	5X weekly	\$ <u>1311.99</u>
6 c.y.*	1x weekly	\$ <u>314.88</u>
	2x weekly	\$ <u>629.76</u>
	3x weekly	\$ <u>944.63</u>

	4x weekly	\$ <u>1259.51</u>
	5X weekly	\$ <u>1574.39</u>
* Compactor rates do not include leasing or maintenance.		

Industrial Debris Box and Bin Service (incl. C&D; per pull)	
Service Type	Rate
2 c.y. bin**	\$ <u>20.00</u> per pull
3 c.y. bin**	\$ <u>30.00</u> per pull
4 c.y. bin**	\$ <u>40.00</u> per pull
5 c.y. bin**	\$ <u>50.00</u> per pull
6 c.y. bin**	\$ <u>60.00</u> per pull
7 c.y. bin**	\$ <u>70.00</u> per pull
20 c.y.**	\$ <u>285.00</u> per pull
25 c.y.**	\$ <u>285.00</u> per pull
30 c.y.**	\$ <u>285.00</u> per pull
40 c.y.**	\$ <u>285.00</u> per pull
Less than 30 c.y. compactor*	\$ <u>285.00</u> per pull
30 c.y. – 39 c.y. compactor*	\$ <u>285.00</u> per pull
Greater than 40 c.y. compactor*	\$ <u>285.00</u> per pull
* Compactor rates do not include leasing or maintenance.	
** Rates include dropping off box or bin at customer location, retrieving box or bin when requested, hauling waste to, and up to 4 tons of landfill disposal. An additional charge equal to \$ <u>23.66*</u> per ton will apply for disposal in excess of <u>4</u> tons.	
*or current landfill rate	

FORM E-3

SPECIAL CHARGES

All special charges will be effective for the first year of the agreement beginning October 1, 2012. These charges will be the contractor's sole compensation for these services.

Special Service	Charge
Wheel-out service for non-qualifying households	Additional \$ <u>0</u> per month per hh.
On-call bulky waste pick-up for non-qualifying residents	\$ <u>0</u> per cubic yard per event. \$ <u>0</u> freon removal charge per unit.
On-call extra solid waste collection for residential premises	36-gallon cart: \$ <u>0</u> 64-gallon cart: \$ <u>0</u> 96-gallon cart: \$ <u>0</u>
Cart exchange (for requests in addition to 2 x first year free exchange and subsequent 1x annual free exchange; includes delivery fee)	\$ <u>60.00</u> per event.
Call back for collection as a result of set-out after collection time	\$ <u>0</u> per event.
Cart replacement as a result of loss or damage through willful or intentional misuse or abuse	\$ <u>60.00</u> per cart including delivery fee.
Extra Commercial Pick-up:	
32-gallon can	\$ <u>7.81</u> per event
36-gallon cart	\$ <u>7.81</u> per event
64-gallon cart	\$ <u>7.81</u> per event
96-gallon cart	\$ <u>7.81</u> per event
1 1/2 c.y. bin	\$ <u>7.81</u> per event
2 c.y. bin	\$ <u>7.94</u> per event
3 c.y. bin	\$ <u>11.91</u> per event

4 c.y. bin	\$ <u>15.88</u> per event
5 c.y. bin	\$ <u>19.85</u> per event
6 c.y. bin	\$ <u>23.92</u> per event
7 c.y. bin	\$ <u>27.79</u> per event
Key charge: Allowed when container access requires driver to remove lock to empty container.	\$ <u>0</u> per container per month
Enclosure charge: Allowed when collection requires removing a container from an enclosure and replacing it when empty.	\$ <u>0</u> per container per month
Gate service charge: Allowed when collection requires passing through a gate in order to access a container.	\$ <u>0</u> per container per month
Distance charge: Allowed when a container is placed further than 10 feet from where the collection vehicle has access.	\$ <u>0</u> per fifty (50) feet per container per month
Other: Special Collection Solid Waste outside of Container	\$ <u>1.99</u> per issue
Other:	
Other special charges not identified herein are subject to the review and approval of the Town prior to levy.	

Exhibit 2 Collection Rate Adjustment Schedule

The Collection Rate Adjustment for all rates in Exhibit 1 shall be applied on October 1, 2013, and every subsequent October 1 thereafter for the term of this Contract, as described in more detail below. All requests for a collection rate adjustment must be received in writing by the Town by July 1 of each year to be effective on October 1 of each year. The Collection Rate Adjustment shall be calculated in the following manner:

By agreement, the parties have established the Contractor's initial Operating Cost Statement, as described below. For the Contract Year beginning October 1, 2013, the Collection Rate components shall be determined by the weight factors as shown in the Contractor's initial Operating Cost Statement. For every subsequent Contract Year thereafter for the term of this Contract, an Operating Cost Statement will not be required; the components of the Collection rate will be used as the basis for the Collection Rate Adjustment. However, the TOWN reserves the right to require the Contractor to provide an Operating Cost Statement prior to each renewal period in order to recalculate the weight of each cost component, at the TOWN's sole discretion.

The revenues generated from the sale of the recycling materials must be factored into the annual rate adjustments and shown on the collection rate adjustment.

1. The Operating Cost Statement shall be prepared as described in below. Operating costs are for Contractor's collection business in Brevard County.
2. The expenses of operations for the Service Area shall be broken down into one of the following five cost component categories: Labor, Fuel, Vehicle Replacement, Vehicle Maintenance, and Other. Each cost component category is assigned a weighted percentage factor based on that cost component's percentage total of all cost component categories.

The following indexes are used to calculate the adjustment for each cost component category. Each component's adjustment shall become effective on October 1, 2013 and every October 1 thereafter for the term of this Contract.

CPI: The change in the CPI shall be calculated as the percentage change from March of the preceding year to March of the current year.

Fuel and Oil: The change in the average price of diesel fuel for the Lower Atlantic No 2 Diesel Retail Sales by All Sellers (reported by the Energy Information Association as series DDR01Z) will be used to adjust the fuel and oil cost component. The fuel and oil component shall be adjusted effective October 1, 2013, calculated based on the average of each monthly change in series DDR01Z from May of the preceding year to April of the current year.

COST COMPONENT	INDEX	SOURCE
Other than Fuel and Oil	CPI (Unadjusted), US City Average, All Urban Consumers, All Items	CPI detailed report, published by BLS.
Fuel and oil	Series DDR01Z (Average), Lower Atlantic No. 2 Diesel Retail Sales by All Sellers	EIA, published monthly.

If either of these indexes becomes obsolete during the term of this Contract, an alternative, related index may be used, as agreed upon between the Contractor and the Town Administrator.

The percentage weight for each cost component is multiplied times the existing Collection Rate to calculate the cost associated with each component, as shown in the "Weight Applied to Rate" column in the table below. This computation will be performed only once, in order to establish the baseline cost component values, but could be repeated at the sole discretion of the TOWN should the TOWN require of the Contractor an updated Operating Cost Statement at the time of each contract renewal. The percentage change in each index is multiplied times the Collection Rate Component to calculate the Adjusted Rate for each respective portion of the Collection Rate Adjustment. The table below is intended for demonstration purposes only, and should not be interpreted as actual Collection Rate Adjustments.

Collection Rate Adjustment Example-Initial Adjustment

Collection Rate Component	Weight	Weight applied to Collection Rate (\$36.00)	Source	% Change of Index	Adjusted Rate	Change Effective
Other than Fuel and Oil	87.5%	\$31.50	CPI-All Items	1.20%	\$31.88	Oct. 1
Fuel and Oil	12.5%	\$4.50	Series DDR01Z (Average), Lower Atlantic. No. 2 Diesel Retail Sales by All Sellers	3.42%	\$ 4.65	Oct. 1

Collection Rate Adjustment Example -Subsequent Periods

Collection Component	Rate	Actual Rate	Source	% Change of Index	Adjusted Rate	Change effective
Other		\$31.88	Same	2.0%	\$32.52	Oct. 1
Fuel and Oil		\$4.65	Same	2.5%	\$4.77	Oct. 1

The adjusted rates must also include a factor for the recycling revenues. As participation increases, the recycling revenues must be factored into the rate adjustment and shown in the calculations for rate adjustment.

Operating Cost Statement Description

Fuel and Oil:

List all fuel and oil accounts.

Other:

Labor:

List all administrative, officer, operation and maintenance salary accounts.

Vehicle Replacement:

List all Collection and Collection related vehicle depreciation accounts.

List all vehicle lease or rental accounts related to Collection or Collection related vehicles.

Vehicle Maintenance:

List all Collection or Collection related vehicle parts accounts.

Miscellaneous:

List all other expense accounts related to the Contractor's collection business.

Overhead only includes: All insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance expenses; customer billing expenses; office supplies; postage; trade association dues and subscriptions; advertising; employee retirement or profit sharing contributions. Overhead does not include

shared overhead or expenses with affiliated businesses or payments to parent or other affiliated businesses.

The Contractor shall utilize the accrual basis of accounting for expenses.

**Town of Ponce Inlet
Request for Proposals
Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02**

Tabulation - June 3, 2019

RFP Criteria	Maximum Points	Waste Pro (WP)	Waste Management (WM)
Qualifications and Experience	20	17	18
Technical Proposal	25	25	21
Contract Exceptions	5	5	4
Financial Proposals	50	50	26
Total	100	97	69

Note 1: Both WP & WM received a 2-3 point reduction (10-15%) in Qualifications and Experience based upon assessments for liquidated damages within performance history.

Note 2: WM received a 4 point reduction (17%) in Technical Proposal based upon not providing a dual-stream recycling option.

Note 3: WM received a 1 point reduction in Contract Exceptions based upon exception to allow for recycle cost fluctuation.

Note 4: Per RFP formula, Lowest Financial Proposal received 50 points; other proposer points calculated as follows, (total price of the lowest-priced proposal divided by the subject proposer's total price) x 50 points. Given there were a number of pricing options requested in RFP, the current level of service pricing was used (WP \$26.91 & WM \$51.80)

Review Committee Members

Jeaneen Witt, Town Manager

Keith Gunter, Public Works Manager

Valerie Arnaud, Senior Utility Billing
Specialist/Accounting Assistant



TOWN OF PONCE INLET, FLORIDA

REQUEST FOR PROPOSALS

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

RFP No. 2019-02

Publication Date: March 6, 2019

Mandatory Pre-Proposal Meeting: April 1, 2019, 2:00 p.m.

Opening Date/Time: April 29, 2019, 2:00 p.m.

Submit To: Jeaneen Witt, Town Manager

**Town of Ponce Inlet
4300 South Atlantic Avenue
Ponce Inlet, Florida 32127**

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

TOWN OFFICIALS

Gary L. Smith, Mayor

Mary Hoss, Vice-Mayor

Bill Milano, Council Member

Joseph Perrone, Council Member

Lois Paritsky, Council Member

Jeaneen Witt, Town Manager

Keith Gunter, Public Works Manager

Clifford B. Shepard, Town Attorney

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TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

CONTRACT DATA

Contract Title: Solid Waste, Recyclables, and Bulk Waste Collection and Disposal

Contract Number: RFP No.: 2019-02

Contract Owner: Town of Ponce Inlet

Contract Address: 4300 South Atlantic Avenue
Ponce Inlet, FL 32127

Designated Contract Manager:

Jeaneen Witt, Town Manager
Town of Ponce Inlet
4300 South Atlantic Avenue
Ponce Inlet, FL 32127
Phone: 386-236-2150
Fax: 386-322-6717

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

PUBLIC NOTICE OF REQUEST FOR PROPOSALS

The Town of Ponce Inlet, Florida, hereinafter referred to as Town, will receive sealed proposals at the Town Manager's Office, Town of Ponce Inlet, 4300 South Atlantic Avenue, Ponce Inlet, Florida, 32127 until April 29, 2019, at 2:00 p.m., at which time they will be publicly opened for:

"RFP No.: 2019-02, Solid Waste, Recyclables, and Bulk Waste Collection and Disposal"

The Town is soliciting proposals from responsive and responsible proposers for award of an exclusive franchise agreement to provide the following services: (1) collection of residential solid waste, recyclable materials, and bulk waste; (2) processing and recycling/disposal of yard trash and bulk trash (combined referred to as bulk waste).

The RFP can be obtained through DemandStar, downloaded from the Ponce Inlet website at: www.ponce-inlet.org, or by contacting Jeaneen Witt at jwitt@ponce-inlet.org or 386-236-2150.

A **mandatory** Pre-Proposal Meeting is scheduled for 2:00 p.m., April 1, 2019 at the Town of Ponce Inlet, 4300 South Atlantic Avenue, Ponce Inlet, FL 32127.

Proposals must be accompanied by Proposal Security in the amount of \$10,000 as a guarantee that in the event the contract is awarded to the Proposer, it will promptly enter into a contract and furnish the required Insurance certificates and bonds as required by the terms of the RFP. If a Proposer does not receive a contract award, the full amount of these funds will be returned within 45 days in accordance with the Florida Prompt Payment Act.

Any proposals delivered or received after 2:00 p.m. local time on April 29, 2019 will not be accepted under any circumstances. Any uncertainty regarding the time a bid is received will be resolved against the proposer.

In accordance with Florida Statutes, Section 119.071(1)(b)(2), proposals are exempt from public disclosure until such time as town provides notice of an intended award or until thirty days after the opening, whichever is earlier.

The Town reserves the right to reject all or any portions of any bid, to reject all bids, to waive any informality, non-material irregularity or technicality in any bid, to re-advertise for bids, or take any other such actions that may be deemed to be in the best interest of the Town.

Questions concerning this RFP should be sent via **email** to:

Jeaneen Witt, Town Manager
Email: jwitt@ponce-inlet.org

II. INSTRUCTIONS TO PROPOSERS

A. Purpose

The Town of Ponce Inlet, Florida, hereinafter referred to as the “Town,” is soliciting proposals from responsive and responsible Proposers for award of an exclusive Franchise Agreement, herein referred to as “Contract,” to provide the following services:

1. Residential Collection Service, which includes the collection of residential Solid Waste, Recyclable Materials, Yard Trash, and Bulk Trash, delivery of residential Recyclables to the Designated Materials Recovery Facility, and disposal of residential Solid Waste at the Designated Disposal Facility.
2. Processing and disposal of residential Yard Trash and Bulk Trash, combined referred to as Bulk Waste, as described in this Request for Proposals (RFP).

Definitions used throughout this RFP are as defined in the draft Contract provided in Attachment A.

B. Schedule

The following schedule will be followed for this RFP. Firms not in attendance at the pre-proposal meeting shall be considered nonresponsive and shall be disqualified from the RFP process.

- Mandatory pre-proposal meeting2:00 p.m., April 1, 2019
- Deadline for receipt of written questions 2:00 p.m., April 15, 2019
- Proposal due date 2:00 p.m., April 29, 2019

C. Proposal Submittal

Proposals submitted in response to this RFP must be received by the date and time specified above. Proposals received after this date and time shall be returned to the sender unopened and will not be considered.

Proposals must meet the requirements of Section IV of this RFP and must be sealed with the following information clearly printed on the outer wrapping: Proposer’s name and business address and “RFP No. 2019-02: Solid Waste, Recyclables, and Bulk Waste Collection and Disposal.”

Proposals must be mailed or hand-delivered to the following address. Proposals submitted by facsimile or e-mail or in pencil shall not be accepted.

Jeaneen Witt, Town Manager
Town of Ponce Inlet
4300 South Atlantic Avenue
Ponce Inlet, Florida 32127

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

Proposals will be opened at 2 p.m., April 29th, 2019 at Ponce Inlet Town Hall – Council Chambers Building, located at 4300 South Atlantic Avenue, Ponce Inlet, Florida 32127. At that time, only the identity of the Proposers will be read aloud. In accordance with Florida Statutes, Section 119.071, as amended, proposals are exempt from public disclosure until such time as the Town provides notice of an intended award or until thirty (30) days after the opening, whichever is earlier.

Proposers shall be fully acquainted with the conditions relating to execution of work required in this RFP. Proposers are to thoroughly examine the draft Contract provided in Attachment A. Failure of the Proposer to become acquainted with existing conditions and the scope of services will in no way relieve the Proposer of any obligation with respect to its submittal.

All proposals shall remain in effect for a period of one hundred and eighty (180) days after the last day on which proposals must be submitted. Proposers who unilaterally withdraw a proposal without permission of the Town before one hundred and eighty (180) days have elapsed from the date of the opening of proposals may be debarred and are subject to forfeiture of the proposal security.

The Town is not responsible for the Proposers' costs associated with preparation of proposals.

D. Proposal Withdrawal

Proposals may be withdrawn or modified if requested in writing and signed by a person duly authorized to do so and received at the same address to which the proposal was submitted prior to the deadline for submitting proposals.

E. Questions

Any questions or requests for clarification or additional information concerning this RFP should be e-mailed to the Town Manager:

Jeaneen Witt

Email: jwitt@ponce-inlet.org

The RFP number and title should be referenced on all correspondence and in the subject section of the email. **All questions must be received no later than the date and time specified in Section B above.** No questions will be received verbally and/or after the deadline.

F. Addenda

Any modifications, responses to questions, or clarifications to this RFP, if deemed necessary by the Town, will be in the form of addenda posted on DemandStar and the Town Website at www.ponce-inlet.org. Proposers shall not rely upon oral representations or discussions with Town staff, officials, or the Town's consultants.

G. Cone of Silence

A cone of silence is hereby imposed and made applicable to this RFP and in accordance with the Town's Procurement Code. The cone of silence shall become effective from the time this RFP is advertised and shall terminate at the time that the Town Council meets to consider the Town Manager's recommendation as to a final decision regarding a contract award, rejects all responses, or takes other action that ends the RFP process. During the effective time period of the cone of silence, any person or entity that submits a proposal, or that will be subject to evaluation under the terms of this RFP, shall not have any communication with members of the Town Council or the Selection Committee relative to this RFP, except the Town Manager and when it may be required during such presentations or interviews that are part of the RFP process. Proposers who violate the cone of silence shall be subject to automatic disqualification from further consideration.

H. Guarantees

No guarantee or warranty is given or implied by the Town as to a minimum or total amount of services that may or may not be purchased from any resulting contract or award. The quantities and frequencies provided herein are for proposal purposes only and will be used for tabulation and presentation of the proposal. The Town reserves the right to increase or decrease service quantities and frequencies, as deemed necessary to serve the best interests of the Town.

I. Reserved Rights of the Town

1. The Town reserves the right to cancel this RFP or to reject any or all proposals in whole or in part when it is in the best interest of the Town. The Town further reserves the right to waive any informalities or irregularities in any proposals received, to re-advertise the RFP with or without changes in the scope of work, to award a contract in whole or in part, or take any other such actions that may be deemed to be in the best interest of the Town.
2. The Town, at its discretion, reserves the right to inspect any/all Proposer's facilities to determine their capability of meeting the requirements for this RFP and the Contract to be awarded. Also, price, responsibility, responsiveness of the Proposer, financial position, experience, staffing, equipment, materials, references of Proposer, and past history of service by Proposer to the Town and/or with other units of State, and/or local governments in Florida, or comparable private entities, may be taken into consideration in the award of a Contract. If the project involves services or costs based upon a unit price or ongoing services, the Town reserves the right to reduce the level of service within its sole discretion.
3. The Town reserves the right in the event the primary vendor cannot provide an item(s) or service(s) in a timely manner as requested, to seek other sources without violating the intent of this RFP or any Contract awarded.

J. Public Entity Crimes

Pursuant to the provisions of Section 287.133(2)(a), Florida Statutes: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded to perform work as a Contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.”

K. Conflict of Interest

The award of any Contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. Proposers must disclose with their proposals the name of any officer, director, partner, associate, agent, Advisory Board member or client/customer who is also an officer, former officer, or employee of the Town of Ponce Inlet or its agencies.

L. Written Contract

The successful Proposer shall be required to enter into a written Contract with the Town. The Contract shall be prepared by the Town and shall be substantially in the form of the draft Contract provided in Attachment A of this RFP. Revisions may be made to the draft Contract based on exceptions requested by the selected Proposer in its proposal and granted by the Town, the selected Proposer’s proposal, and other terms that may be required by the Town or its Procurement Code and acceptable to the Town Council.

No Work shall be performed or payment due unless a written Contract is fully executed and has been approved by the Town Council. The successful Proposer further understands and agrees that before commencing the work or before recommencing the work after a default or abandonment, the Contractor shall provide to the Town a certified copy of the recorded Payment Bond required hereunder, if any; and that notwithstanding the terms of the Contract or any other law governing prompt payment for construction services to the contrary, the Town shall not make any payment to the Contractor until the Contractor has recorded the Payment Bond, if any, and provided the Town with a certified copy, as required by section 255.05(1)(b), Florida Statutes.

M. Public Records Law

The Town is subject to Chapter 119, Florida Statutes, “Public Records Law.” No claim of confidentiality or proprietary information in all or any portion of a response will be honored unless a specific exemption from the Public Law exists and is cited in the response. An incorrectly claimed exemption does not disqualify the firm, only the exemption claimed.

II. CURRENT SERVICES, FEES, AND TONNAGE

The Town currently has an exclusive franchise agreement with Waste Management Inc. of Florida. The agreement expires September 30, 2019. Maps of the service area, which also note the current residential collection routes and days, are provided in Attachment B. The service area currently includes approximately 1060 residential service units. These estimates are provided for proposal purposes only; the Town makes no guarantee as to the number of customers that will be serviced.

Residential collection service currently includes the following:

- Twice per week manual collection of an unlimited amount of solid waste in customer-provided containers.
- Once per week collection of single-stream recyclable materials in recycling bins provided by Contractor.
- Once per week collection of unlimited amount of bulk waste to occur on each week. Bulk waste consists of yard trash and bulk trash. Yard trash and white goods must be recycled, as well as other materials to the extent practical.
- Collection of construction and demolition (C&D) debris in roll-off containers is not included in the contractor's exclusive services.

Additional services to the Town facilities are required as part of the agreement as listed in Table 1.

Costs for FY 2018/2019 and tonnage data collected for 2018 are shown in Tables 2 and 3, respectively.

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

Table 1: Services at Town Facilities

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

Locations	Address	Service Frequency	# Garbage Carts	# Recycle Carts	Dumpster Size
Ponce Inlet Police Dept	4301 S. Peninsula Dr.	Once weekly	1 dumpster	1 dumpster	6 yards & 4 yards
Ponce Inlet Fire Dept	4680 S. Peninsula Dr.	Once weekly	1 dumpster	1 dumpster	8 yards & 6 yards
Ponce Inlet Public Works Facility	4875 S. Peninsula Dr.	Twice weekly	4	-	95 gal
Ponce Inlet Community Center	4670 S. Peninsula Dr.	Once weekly	1 dumpster	-	6 yards
Ponce Inlet Boat Ramp	4985 S. Peninsula Dr.	Once Weekly	2 dumpsters	-	8 yards
Ponce Preserve	4401 S. Peninsula Dr.	Once weekly	Bulk waste		

Table 2: Residential Service Fee, FY 2018/2019

Monthly Residential Collection Charge per Customer	\$12.31
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Table 3: Tonnage Data for 2018

Solid Waste	810.01 tons
Recyclables	247.45 tons
Bulk Waste	426.41 tons

Table 4: Current Collection Days

Monday & Thursday	Solid Waste collection
Monday	Recyclables collection
Wednesday	Bulk Waste collection

III. SCOPE OF SERVICES

This section provides a brief description of services being sought. Proposers are responsible for carefully and thoroughly reviewing the draft collection agreement (Contract) provided in Attachment A of this RFP, which explains in greater detail the services required of the selected Proposer (Contractor).

A. Contract Term

Contractor shall begin collection services on October 1, 2019. The term of the Contract shall be for a period of five (5) years, thus expiring at the end of the day on September 30, 2024. At the option of the Town, and with the concurrence of the Contractor, the Contract may be renewed for three (3) additional terms of five (5) years under the same terms and conditions as the initial term, including amendments, subject to approval by the Town Council.

B. Residential Collection and Disposal Services

Contractor shall provide Residential Collection Services to all Residential Service Units in the Service Area. The Town is considering and seeking pricing for a variety of service level options for Residential Solid Waste Collection and Residential Bulk Waste Collection, as outlined below. Proposers are required to submit price proposals for all service options. All service level options should be addressed in the same proposal. Residential Collection Service includes the following services:

1. Residential Solid Waste Collection:

Option 1: Twice per week, unlimited collection in customer-provided containers or bags (same as existing service).

Option 2: Once per week, unlimited collection in customer-provided containers or bags.

Option 3: Twice per week collection in Contractor-provided Roll Carts. The standard Roll Cart size would be approximately 95 gallons, with 65-gallon Roll Carts available upon request.

Option 4: Once per week collection in Contractor-provided Roll Carts. The standard Roll Cart size would be approximately 95 gallons, with 65-gallon Roll Carts available upon request.

2. Residential Recyclables Collection – Once per week, in Town-owned and Contractor-maintained Recycling Carts or Bins.

Option 1: Single-stream recycling collection.

Option 2: Dual-stream recycling collection.

3. Residential Bulk Waste Collection – Weekly collection of Bulk Waste, which is a combination of Bulk Trash and Yard Trash.

Option 1: Limit of twelve (12) cubic yards per collection.

Option 2: Limit of eight (8) cubic yards per collection.

In both options, Contractor must pick up the entire amount of bulk waste set forth on residential properties, regardless of whether it exceeds the limits outlined in

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
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above options. If amount exceeds limits established, Contractor shall take digital photographs of the entire pile prior to collection to document the size of the Bulk Waste pile and may separately bill the Town for the additional amount based upon the appropriate proportion of the total bulk waste rate.

Contractor shall deliver Residential Solid Waste to the Designated Disposal Facility and shall be responsible for payment of associated tipping fees. Contractor shall deliver Residential Recyclable Materials to the Designated Materials Recovery Facility. Contractor shall be responsible for processing and recycling/disposal of Residential Yard Trash and Residential Bulk Trash.

C. Service Fees

The service fees set at the commencement of the Contract shall not be adjusted for the first two years of the contract, through September 30, 2021, except for the Solid Waste disposal elements of the residential fees, which shall be adjusted when the tipping fee at the Designated Disposal Facility is adjusted. Service fees shall be adjusted as specified in Sections 12 and 13 of the draft Contract in Attachment A.

The Town will bill and collect payment from Residential Service Units and make payment to the Contractor monthly.

Contractor shall be responsible for paying disposal fees for all Solid Waste collected pursuant to the Contract.

D. Other Terms and Conditions

The draft Contract in Attachment A provides the additional service and payment requirements and responsibilities of the Contractor, as well as other general contract terms and conditions. The final Contract may be modified based on the service option that is selected by the Town.

IV. SUBMITTAL REQUIREMENTS

A. General Instructions

Proposals submitted in response to this RFP must be made in the official name of the firm or individual under which business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the person, partnership, company, or corporation submitting the proposal.

Proposer shall submit one (1) clearly identified original proposal, eight (8) copies of the proposal, one (1) identical electronic copy of the proposal in Microsoft Word or Adobe Acrobat on a flash drive. Should deviations occur, the signed original proposal shall prevail.

All items shall be submitted in a sealed package following the instructions specified in Section I.C of this RFP, *Proposal Submittal*. Proposer's name shall be printed at the top of each page of the proposal.

If your response contains any information deemed confidential, provide an additional CD or flash drive with a redacted version of your response labeled REDACTED.

B. Proposal Content

Proposals shall be organized by numbered sections as outlined below and include the information specified.

1. Qualifications and Experience (20-page limit)

Proposer should clearly and succinctly demonstrate its qualifications and experience to provide the services requested in this RFP, including all services outlined in the draft Contract in Attachment A. At a minimum, this section of the proposal should include the following information:

- a) Firm Background and Experience: Proposer should provide a brief description of the firm's background and history, including the number of years in business, size, services offered, strength, stability, awards, and other recognition.
- b) Service Performance and References: Proposer should demonstrate its relevant experience successfully providing residential solid waste and recyclables collection services within the last five (5) years. Proposer should provide at least four (4) references, preferably public sector customers from Central Florida, for which the Proposer is or has provided services similar to those required herein. Proposer must use the reference forms provided in Section VI of this RFP and should provide any additional, relevant information to demonstrate the quality of its services.
- c) Service Transition History: Proposer should demonstrate its experience with transitioning into providing residential collection service, supplanting another provider. Proposer should provide a complete listing of all transitions of which

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the Proposer has been a part (include both exiting and entering service transitions) in Florida during the last two (2) years. If Proposer does not have transition experience within the State of Florida, then a nationwide transition performance history should be submitted. Proposer must use the transition history form provided in Section VI of this RFP, which may be duplicated as needed. Proposer should provide any additional, relevant information to demonstrate successful ability to transition services. Any omissions within this section may be cause for disqualification at the Town's discretion.

- d) Performance History: Proposer should document its past performance history by providing a description of all criminal actions against the Proposer pertaining to solid waste collection services during the last five (5) years. Proposer should also document all civil actions, losses of service contracts, bid bond claims, performance bond claims, or liquidated damages related to solid waste collection services involving ten thousand dollars (\$10,000) or more per contract per contract year against the Proposer during the last five (5) years. For each such occurrence, Proposer shall provide the name of the claim, arbitration, litigation, or action; name of the claimant; date of alleged occurrence; amount at issue, if applicable; criminal or civil charges alleged, if applicable; and disposition of the claim, arbitration, litigation, or action. Performance history may be limited to Florida; however, if Proposer has no existing service history within the State of Florida, then nationwide performance history should be submitted. If there are no such actions, Proposer should so state. Any omissions within this section may be cause for disqualification at the Town's discretion.
- e) Staff Experience: Proposer shall identify the primary contact person and professional and supervisory personnel who would work on the project. Resumes of each person shall be provided with emphasis on their experience with similar projects.

2. Technical Proposal (20-page limit)

Proposer should clearly and succinctly describe how it will perform the services requested in this RFP and as defined more fully in the draft Contract in Attachment A. The Town is looking for proposals that maintain a high level of customer service while maximizing recycling, efficiency, and cost effectiveness. At a minimum, this section should include the information outlined below. Proposer is encouraged to provide additional information that the Town should consider in accomplishing its objectives.

- a) Collection Services: Proposer should explain how Residential Collection Services will be provided under all service options under consideration. At a minimum, Proposers should describe the primary methods by which Solid Waste, Recyclables, and Bulk Waste will be collected; specify the number of collection staff for each service type; explain proposed routes and schedules; and describe how materials will be handled following collection.

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- b) **Equipment:** Proposer shall provide detailed descriptions of each type (make and model) of vehicle and equipment that it has or will acquire for the delivery of these services. Proposer shall provide the number of each vehicle type and age of each vehicle.
- c) **Transition Management:** Proposer should explain how the transition into providing these services will be managed. Proposer should specifically explain its timeline and procedures for assembly and distribution of Solid Waste Roll Carts should the Town select Option 3 or Option 4 for Residential Collection Services. Solutions for potential issues that may arise should be addressed, such as possible delay in receiving carts, vehicles, acquiring labor, etc.
- d) **Customer Service:** Proposer should explain in detail its customer service procedures, including the number of customer service staff dedicated to this project; location of its customer service office; system and procedures for receiving and resolving customer complaints; and procedures for meeting the complaint reporting requirements specified in the draft Contract.
- e) **Processing and Disposal of Yard Trash and Bulk Trash:** Proposer should identify how Yard Trash and Bulk Trash will be managed, including how they will be collected to ensure that Yard Trash, White Goods, and as much Bulk Trash as possible are recycled; the facility(ies) at which they will be managed; and the final disposition of these materials.
- f) **Organization:** Proposer should include a project organization chart indicating titles and total number of personnel devoted to work conducted pursuant to the Contract. Proposer should identify any subcontractors it intends to employ and describe the specific work that will be performed by each subcontractor.
- g) **Program Promotion:** Proposer should describe any additional activities it would undertake to encourage recycling.
- h) **Financial Capability:** Proposer should document that it has the financial capability to provide the equipment and resources needed to satisfactorily conduct the services requested in this RFP. Proposer should demonstrate that it has available cash or uncommitted line/letter of credit capacity or other identifiable resources for procurement of equipment, facilities, and other initial material and staffing needs for this project.

3. Contract Exceptions

Proposer must describe any and all exceptions it wishes to make to the terms and conditions in the draft Contract provided in Attachment A. If exceptions are not specified for any section of the draft Contract, it will be assumed that section is acceptable to the Proposer should the Proposer be selected for Contract award. The material nature, number, and extent of such exceptions will be taken into consideration as part of the proposal evaluation. The Town shall be under no obligation to accept any exception.

4. Financial Proposal

The Price Form is provided in Section VI of this RFP, as well as in an Excel file. Proposer must complete the entire Price Form (all five spreadsheets/pages) provided in the Excel file. A hard copy should be included in Section 4 of the proposal, with the completed Excel file placed on the CD or flash drive along with an electronic copy of the entire proposal. The final selection of which residential service option to implement will be a policy decision made by the Town, and in its sole discretion, and might not be based solely on price. If there is a discrepancy in the unit and extended prices, the calculated total price based on unit prices shall prevail. Proposers are responsible for checking their calculations. Failure to do so will be at the Proposer's risk, and errors will not release the Proposer from performance of the Contract, if awarded, at the Proposal price.

5. Required Documents

The items listed below should be included in this section. All forms, which are provided in Section VI of this RFP, should be completed, executed, and notarized (if applicable).

- a) Proposer Information
- b) Proposer Confirmation of Qualifications
- c) Addenda Acknowledgement
- d) Certificate of Authority
- e) Drug-Free Workplace
- f) Public Entity Crimes
- g) Non-Collusion Affidavit
- h) Acknowledgement of Conformance with OSHA Standards
- i) Certificate of Insurance or evidence that the insurance can be provided

j) Financial Statements: Proposer must provide previous two (2) years of financial statements, audited preferred, which may be provided in a separate sealed envelope.

k) Proposal Security: Proposer must provide a proposal security in the amount of \$10,000. This proposal security shall be in the form of a bond provided by a surety company authorized to do business in Florida, certified check, cashier's check, irrevocable letter of credit, or alternate form of security acceptable to the Town. The proposal securities of unsuccessful Proposers will be returned upon execution of a Contract with the successful Proposer or upon the RFP process being otherwise terminated. The proposal security of the successful Proposer will be retained until the Contract has been executed, the Proposer has furnished the required certificates of insurance and payment and performance bonds, and the Proposer has made the required payment to the Town, all as set forth in the Contract.

V. PROPOSAL EVALUATION AND CONTRACT AWARD

A. Proposal Evaluation

Selection of a vendor shall be in accordance with this RFP and the Town's Procurement Code. Proposals will be evaluated by a Selection Committee in accordance with the evaluation criteria provided below and the terms of this RFP. The Selection Committee reserves the right to make additional inquiries, request additional information, obtain credit reports, and/or contact other local governments that have contracted with the Proposer. Proposers who do not provide the information requested shall be disqualified from further consideration.

Qualifications and Experience.....	20 points
Technical Proposal	25 points
Contract Exceptions	5 points
Financial Proposal	50 points
Maximum points	100 points

Price will be converted to points, with the Proposer submitting the lowest price for each option receiving 50 points and the other Proposers receiving a prorated score in relation to the lowest-priced proposal for that option. Price will be evaluated using the following formula:

$(\text{Total Price of the lowest-priced proposal divided by the subject Proposer's Total Price}) \times 50 \text{ points}$

For example:

If the Total Price of the lowest-priced proposal is \$100, and the subject Proposer's Total Price is \$110, then the subject Proposer would receive 45 points for price.

$$(100/110) \times 50 = 45$$

After evaluation of all proposals, the Selection Committee may request two (2) or more of the top-ranked firms to make presentations to the Committee regarding their qualifications, approach to the project, and ability to furnish the required services. The Selection Committee will vote on final rankings after the presentations if such are requested. Rankings will be developed for each of the residential service options. The rankings of the Selection Committee are subject to the approval of the Town Administrator and Town Council.

B. Contract Negotiation and Award

The rankings for all service options will be presented to the Town Council. The Council will select the residential service option to implement, which will be a policy decision and might not be based solely on price.

A final Contract will be negotiated by the Town Manager with the top-ranked firm for the selected service option, unless there is an objection from Town Council. If negotiations with the top-ranked firm are not successful, then negotiations will commence with the next-ranked firm, and so forth. The final Contract is subject to the approval of the Town Attorney and Town Manager, and ultimately the Town Council.

The Contract shall be awarded to the responsible Proposer whose proposal is determined to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in this RFP, and who successfully negotiates a Contract with the Town.

VI. REQUIRED FORMS

The forms provided on the following pages should be completed, signed, and notarized (if applicable). The Service Reference and Service Transition History Forms should be included in Section 1 of all proposals, the Price Forms should be included in Section 4 of all proposals, and all other forms should be included in Section 5 of all proposals.

PROPOSER INFORMATION

NAME: _____
ADDRESS: _____
FEIN: _____
LICENSE NUMBER: _____ STATE OR COUNTY: _____
LICENSE TYPE: _____
(Attach copy of license)
LICENSE LIMITATIONS, IF ANY: _____
(Attach a separate sheet, if necessary)
LICENSEE SIGNATURE: _____
LICENSEE NAME: _____

PROPOSER'S SIGNATURE: _____
PROPOSER'S NAME: _____
PROPOSER'S ADDRESS: _____
PROPOSER'S PHONE NUMBER: Office: _____ Cell: _____
PROPOSER'S EMAIL ADDRESS: _____

By: _____
Name of Corporation/Entity

Address of Corporation/Entity

Signature of President or Authorized Principal

By: _____
Title
(If the Proposer is a Corporation, affix corporate seal)

PROPOSER: _____

PROPOSER CONFIRMATION OF QUALIFICATIONS

The Contract will be awarded only to a responsible and eligible Proposer, qualified by experience and capable of providing required insurance, and bonds and in a financial position to do the Work specified within the Request for Proposals, and which can complete the Work within the time schedule specified.

At the time of the Proposal, the Proposer shall hold all Contractor and other qualification certificates and licenses required to be held by the Contractor by Florida Statutes or ordinances of the Town of Ponce Inlet and Volusia County in order to perform the Work which is the subject of this Request for Proposals.

All license, certificate and experience requirements must be met by the Proposer (as opposed to the Subcontractor) at the time of Proposal submission. Proposals submitted by Proposers who do not directly hold required licenses and certificates or who rely on a Subcontractor to meet the license, certificate or experience criteria will be rejected. By executing this Form and submitting its Proposal, Proposer represents that it meets the requirements set forth above, and as set forth in the RFP Documents, and acknowledges and understands that such representation is material and that the Town shall be relying on this representation with respect to a Contract award.

Proposer: _____
Proposer's Name: _____
Proposer's Address: _____

Proposer's Phone Number: _____
Proposer's Email: _____

Contractor's License and License number(s) (attach copies of license(s) required for the work described in this RFP):

[Signatures on next page]

PROPOSER: _____

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State of Florida

County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____ of _____ (Proposer), who is personally
known to me or who has produced _____ as identification and who did (did
not) take an oath.

WITNESS my hand and official seal.

NOTARY Public Records of _____ County, Florida

Notary Signature

Name of Notary Public: (Print, Stamp, or type as Commissioned)

PROPOSER: _____

ADDENDA ACKNOWLEDGEMENT

The Proposer shall acknowledge obtaining all addenda issued to this formal solicitation from the Town’s website or DemandStar by completing the blocks below. Failure to acknowledge all addenda may be cause for rejection of the response.

Addendum No. _____ Date Issued: _____
Addendum No. _____ Date Issued: _____
Addendum No. _____ Date Issued: _____
Addendum No. _____ Date Issued: _____
Addendum No. _____ Date Issued: _____

(Authorized signature) (Date)

(Title)

PROPOSER: _____

DRUG-FREE WORKPLACE

Proposers must certify that they will provide a drug-free workplace. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under Bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction or plea.
- 5) Impose a sanction on (or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community), any employee who is so convicted or takes a plea.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

PROPOSER'S SIGNATURE: _____

PROPOSER: _____

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a)
FLORIDA STATUTES ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
by _____
for _____
whose business address is _____
and (if applicable) its Federal Employer Identification Number (FEIN) is _____

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Para. 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Para. 287.133(1) (a), Florida Statutes, means:
(i) A predecessor or successor of a person convicted of a public entity crime; or
(ii) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Para. 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the

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legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. The statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Signatures on next page]

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By: _____

(Printed Name)

(Title)

Sworn to and subscribed before me this ___ day of _____, 20__

Personally known _____

Or Produced Identification _____
(Type of Identification)

Notary Public - State of _____

Notary Signature

My Commission Expires _____

(Printed, typed, or stamped commissioned name of notary public)

PROPOSER: _____

NON-COLLUSION AFFIDAVIT

State of _____)
) ss:
County of _____)

_____ being first duly sworn deposes and says that:

1. Proposer is the (Owner, Partner, Officer, Representative or Agent) of _____, the Proposer that has submitted the attached Proposal;
2. Proposer is fully informed with respect to the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from bidding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Proposer, firm, or person to fix any overhead, profit, or cost elements of the Proposal or of any other Proposer, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
5. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

[Signatures on next page]

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By: _____

(Printed Name)

(Title)

Sworn to and subscribed before me this ___ day of _____, 20___

Personally known _____

Or Produced Identification _____
(Type of Identification)

Notary Public - State of _____

Notary Signature

My Commission Expires _____

(Printed, typed, or stamped commissioned name of notary public)

PROPOSER: _____

**ACKNOWLEDGMENT OF CONFORMANCE
WITH O.S.H.A. STANDARDS**

TO THE TOWN OF PONCE INLET:

_____, hereby acknowledges and agrees that as Contractor for the Town of Ponce Inlet within the limits of the Town of Ponce Inlet, Florida, we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health regulations, and agree to indemnify and hold harmless the Town of Ponce Inlet, including its Council Members, officers and employees, from and against any and all legal liability or loss the Town may incur due to _____'s failure to comply with such regulations.

ATTEST

CONTRACTOR

BY: _____

Print Name

Date: _____

PROPOSER: _____

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Service Reference #1

Proposer shall complete and submit this form in conjunction with any other relevant material as part of Section 1 of its Proposal.

Municipality/County: _____
Contact (Name/Title): _____
Contact Address: _____
Contact Phone: (____) _____ Contact Email: _____
Term of Current Contract: Start Date: _____ End Date: _____

Residential Collection Service Provided:

Services Provided (check all that apply)	Type of Service	Type of Service (U/S) (U=Universal; S=Subscription)	Number of Units Served	Automated Collection? (check if yes)	Frequency of Collection		
					1x per week	2x per week	Other
<input type="checkbox"/>	Solid Waste			<input type="checkbox"/>			
<input type="checkbox"/>	Recyclables			<input type="checkbox"/>			
<input type="checkbox"/>	Yard Trash			n/a			
<input type="checkbox"/>	Bulk Trash			n/a			

Is asset management for Roll Carts provided? YES NO

Commercial Collection Service Provided: YES NO

Number of commercial Solid Waste customers: _____

Commercial recyclables collection provided: YES NO

Other relevant information:

PROPOSER: _____

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Service Reference #2

Proposer shall complete and submit this form in conjunction with any other relevant material as part of Section 1 of its Proposal.

Municipality/County: _____
Contact (Name/Title): _____
Contact Address: _____
Contact Phone: (____) _____ Contact Email: _____
Term of Current Contract: Start Date: _____ End Date: _____

Residential Collection Service Provided:

Services Provided (check all that apply)	Type of Service	Type of Service (U/S) (U=Universal; S=Subscription)	Number of Units Served	Automated Collection? (check if yes)	Frequency of Collection		
					1x per week	2x per week	Other
<input type="checkbox"/>	Solid Waste			<input type="checkbox"/>			
<input type="checkbox"/>	Recyclables			<input type="checkbox"/>			
<input type="checkbox"/>	Yard Trash			n/a			
<input type="checkbox"/>	Bulk Trash			n/a			

Is asset management for Roll Carts provided? YES NO

Commercial Collection Service Provided: YES NO

Number of commercial Solid Waste customers: _____

Commercial recyclables collection provided: YES NO

Other relevant information:

PROPOSER: _____

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Service Reference #3

Proposer shall complete and submit this form in conjunction with any other relevant material as part of Section 1 of its Proposal.

Municipality/County: _____
Contact (Name/Title): _____
Contact Address: _____
Contact Phone: (____) _____ Contact Email: _____
Term of Current Contract: Start Date: _____ End Date: _____

Residential Collection Service Provided:

Services Provided (check all that apply)	Type of Service	Type of Service (U/S) (U=Universal; S=Subscription)	Number of Units Served	Automated Collection? (check if yes)	Frequency of Collection		
					1x per week	2x per week	Other
<input type="checkbox"/>	Solid Waste			<input type="checkbox"/>			
<input type="checkbox"/>	Recyclables			<input type="checkbox"/>			
<input type="checkbox"/>	Yard Trash			n/a			
<input type="checkbox"/>	Bulk Trash			n/a			

Is asset management for Roll Carts provided? YES NO

Commercial Collection Service Provided: YES NO

Number of commercial Solid Waste customers: _____

Commercial recyclables collection provided: YES NO

Other relevant information:

PROPOSER: _____

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Service Reference #4

Proposer shall complete and submit this form in conjunction with any other relevant material as part of Section 1 of its Proposal.

Municipality/County: _____
Contact (Name/Title): _____
Contact Address: _____
Contact Phone: (____) _____ Contact Email: _____
Term of Current Contract: Start Date: _____ End Date: _____

Residential Collection Service Provided:

Services Provided (check all that apply)	Type of Service	Type of Service (U/S) (U=Universal; S=Subscription)	Number of Units Served	Automated Collection? (check if yes)	Frequency of Collection		
					1x per week	2x per week	Other
<input type="checkbox"/>	Solid Waste			<input type="checkbox"/>			
<input type="checkbox"/>	Recyclables			<input type="checkbox"/>			
<input type="checkbox"/>	Yard Trash			n/a			
<input type="checkbox"/>	Bulk Trash			n/a			

Is asset management for Roll Carts provided? YES NO

Commercial Collection Service Provided: YES NO

Number of commercial Solid Waste customers: _____

Commercial recyclables collection provided: YES NO

Other relevant information:

PROPOSER: _____

Service Transition History

Proposer shall complete and submit this form providing a complete listing of all transitions of which the Proposer has been a part, including both entering and existing contractor transitions in the State of Florida for the past two (2) years, as part of Section 1 of its Proposal. If Proposer does not have transition experience in Florida, then a nationwide transition performance history should be submitted. Proposer is required to provide a self-evaluation of each transition identifying the smoothness of the transition by qualifying the level of service disruption. Because the Contractor is responsible for providing a smooth transition in service to minimize inconvenience to customers, successful transition experience is important to the Town. These forms may be duplicated as needed to ensure a complete history. Any omissions within the service transition history may be cause for disqualification at the Town's discretion.

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

PROPOSER: _____

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

Service Transition History Continued (Page _____ of _____)

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

Municipality/County/State: _____ Date of Transition: _____
Contact Name/Title: _____ Entering Contract Exiting Contract
Contact Phone: _____ This transition had minimal service disruption:
Contact Email: _____ --------------------
Strongly Agree Agree Neutral Disagree Strongly Disagree

Contract Included: *(check all that apply)*
Exclusive Residential No. of units: _____ Exclusive Commercial No. of Customers: _____
Carted Garbage Carted Recycling Conducted Cart A&D

PROPOSER: _____

Conflict of Interest Statement

STATE OF FLORIDA)
) ss
County of _____)

Before me, the undersigned authority, personally appeared _____, who was duly sworn, deposes, and states:

1. I am the _____ of _____ with a local office in _____ and principal office in _____.

2. The above named entity is submitting a Request for Proposal for the Town of Ponce Inlet project described as **RFP-2019-02 - Solid Waste, Recyclables, and Bulk Waste Collection and Disposal**.

3. The Affiant has made diligent inquiry and provides the information contained in this Affidavit based upon his own knowledge.

4. The Affiant states that only one submittal for the above project is being submitted and that the above named entity has no financial interest in other entities submitting Proposals for the same project.

5. Neither the Affiant nor the above named entity has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in connection with the entity's submittal for the above project. This statement restricts the discussion of pricing data until the completion of negotiations and execution of the Contract for this project.

6. Neither the entity nor its affiliates, nor any one associated with them, is presently suspended or otherwise ineligible from participating in contract lettings by any local, state, or federal agency.

7. Neither the entity, nor its affiliates, nor any one associated with them have any potential conflict of interest due to any other clients, contracts, or property interests for this project.

8. I certify that no member of the entity's ownership, management, or staff has a vested interest in any aspect of or Department of Town of Ponce Inlet.

9. I certify that no member of the entity's ownership or management is presently applying for an employee position or actively seeking an elected position with Town of Ponce Inlet.

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

10. In the event that a conflict of interest is identified in the provision of services, I, on behalf of the above named entity, will immediately notify Town of Ponce Inlet in writing.

DATED this _____ day of _____, 20____.

Signature of Affiant

Typed/Printed Name of Affiant

Title

Sworn to and subscribed before me this _____ day of _____, 20____.

Personally known _____ or produced identification _____ (type of identification).

Notary Public - State of _____

My commission expires _____

(Printed typed or stamped commissioned name of notary public)

Compliance with the Public Records Law

Upon award recommendation or thirty (30) days after receiving, submittals become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Proposers must invoke the exemptions to disclosure provided by law in the response to the solicitation, and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary. The submission of a Proposal authorizes release of your firm's credit data to Town of Ponce Inlet.

If the company submits information exempt from public disclosure, the company must identify with specificity Town which pages/paragraphs of their Proposal package are exempt from the Public Records Act, identifying the specific exemption section that applies to each. The protected information must be submitted to the Town in a separate envelope marked accordingly.

By submitting a response to this solicitation, the company agrees to defend the Town in the event we are forced to litigate the public records status of the company's documents.

Company Name: _____

Authorized representative (printed): _____

Authorized representative (signature): _____

Date: _____

Americans with Disabilities Act Affidavit

The undersigned Contractor swears that the information herein contained is true and correct and that none of the information supplied was for the purpose of defrauding the Town.

The Contractor shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to comply with the rules, regulations and relevant orders issued pursuant to the Americans with Disabilities Act (ADA), 42 USC s. 12101 et seq. It is understood that in no event shall the Town be held liable for the actions or omissions of the Contractor or any other party or parties to the Contract for failure to comply with the ADA. The Contractor agrees to hold harmless and indemnify the Town, its agents, officers or employees from any and all claims, demands, debts, liabilities or causes of action of every kind or character, whether in law or equity, resulting from the Contractor's acts or omissions in connection with the ADA.

Contractor _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Affix Corporate Seal

STATE OF)
) ss
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ (firm), on behalf of the firm. He/She is personally known to me or has produced _____ identification.

Print name _____

Notary Public in and for the County and State Aforementioned

My commission expires: _____

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
Exclusion – Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510 Participants responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722 – 4733).

***** BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT 2 PAGES *****

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by and Federal department of agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attached an explanation to this proposal.

Organization Name

**RFP-2019-02 - Solid Waste, Recyclables,
and Bulk Waste Collection and Disposal**

Names and Titles of Authorized Representative(s)

Signature(s)

Date

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The Certification in this clause is material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department of agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, ineligible, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, “voluntarily exclude”, as used this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining copy of these regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titles “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions”, without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a perspective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to required establishment of a system of records in order to render in good faith and certification required by this

TOWN OF PONCE INLET, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 2019-02

clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction may pursue available remedies, including suspension and/or debarment.

STATEMENT OF NO RESPONSE

Recipients of this solicitation may elect not to respond. The Town is interested in learning the reasons(s) for non-response. If you elect **not** to respond with an offer to this solicitation, the Town requests that the reason(s) be indicated below and this form returned to:

Jeaneen Witt, Town Manager
Town of Ponce Inlet
4300 South Atlantic Avenue
Ponce Inlet, FL 32127
or
Email: jwitt@ponce-inlet.org

REASONS

1. _____ Do not offer this product/service or equivalent.
2. _____ Schedule would not permit.
3. _____ Insufficient time to respond to solicitation.
4. _____ Unable to meet specifications/scope of work.
5. _____ Specifications "too tight" (i.e. geared to specific brand or manufacturer).
6. _____ Specifications not clear.
7. _____ Unable to meet bond and/or insurance requirements.
8. _____ Solicitation addressed incorrectly, delayed in forwarding of mail.
9. _____ Other (Explanation provided below or by separate attachment).

Explanation: _____

The Town may delete the names of those persons or businesses who fail to respond to three (3) solicitations, who fail to return this Statement, or as requested.

Desire to receive future Town solicitations? Yes No

COMPANY: _____
NAME: _____ TITLE: _____
ADDRESS: _____
TELEPHONE: (____) _____ DATE: _____

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



**Agreement
Between**

Town of Ponce Inlet

and

Waste Pro of Florida, Inc.

Approved: August 22, 2019

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Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement

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

Town of Ponce Inlet, Florida

This Contract is made and entered into this 26th day of August, 2019, between the Town of Ponce Inlet, a municipal corporation of the State of Florida, Volusia County, Florida, hereinafter referred to as "TOWN," and Waste Pro of Florida, Inc. authorized to do business in the State of Florida, hereinafter referred to as "CONTRACTOR."

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

SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

- A. **Effective and Commencement Dates.** The Effective Date of this Contract is the date this Contract is executed and signed by both the TOWN and CONTRACTOR. The Commencement Date is the date that Collection services required pursuant to this Contract commence, or October 1, 2019.
- B. **Initial Term.** The term of this Contract shall be for a five (5) year period beginning on the Commencement Date, October 1, 2019, and terminating September 30, 2024.
- C. **Renewal Option.** This Contract shall automatically renew for up to three (3) additional five (5) year periods unless either party provides the other party with written notice of non-renewal at least one (1) year prior to the conclusion of any Contract term.

SECTION 2. DEFINITIONS

For the purpose of this Solid Waste, Recyclables, and Bulk Waste Collection and Disposal Agreement, hereinafter referred to as "Contract," the definitions contained in this Section shall apply unless otherwise specifically stated or otherwise in conflict with Florida law. If a word or phrase is not defined in this Section, the definition of such word or phrase as contained in the TOWN Code shall control except where preempted by Florida law, in which case Florida law shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

- A. **Active Utility Billing Account** means any property with a water meter paying at least the minimum monthly water service charge.
- B. **Biohazardous or Biomedical Waste** means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics, hospitals, and other facilities processing waste that may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.
- C. **Bulk Trash** means those wastes that may require special handling and management and which by reason of bulk, shape, or weight cannot be placed in a Container. Bulk Trash includes, but is not limited to, furniture and fixtures, mattresses, White Goods, equipment, and any and all household goods that are customary to ordinary housekeeping operations of a Residential Service Unit. Bulk Trash must be generated by the customer at the Residential Service Unit at which the Bulk Trash is placed for Collection. Bulk Trash does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.
- D. **Bulk Waste** means the combination of Bulk Trash and Yard Trash. Bulk Waste must be generated by the customer at the Residential Service Unit at which it is placed for Collection. Bulk Waste does not include Construction and Demolition Debris, Contractor-Generated Waste, or Exempt Waste.

Town of Ponce Inlet, Florida
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- E. **Business(es)** means all retail, professional, wholesale, agricultural, industrial facility, or any other commercial enterprises offering goods or services to the public or other businesses; any church, synagogue, mosque, or other house of worship; and any schools or other institutions.
- F. **Certificate of Occupancy** means a document produced by the Town certifying that a newly constructed building has been constructed in compliance with Town specifications and Florida Building Code and is suitable for use.
- G. **Collection** means the process whereby Solid Waste, Recyclable Materials, or Bulk Waste is removed and transported to the facilities designated in this Contract.
- H. **Commencement Date** means the date Collection services pursuant to this Contract commence, or October 1, 2019.
- I. **Compactor** means any container that has a compaction mechanism, whether stationary or mobile.
- J. **Construction and Demolition Debris or C&D Debris** means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project.
- K. **Container** means any container intended for Collection.
- L. **Contract** means this agreement, including all attachments and amendments thereto, between the TOWN and the CONTRACTOR, governing the provision of services as provided herein.
- M. **Contract Administrator** means the Town Manager or designee.
- N. **Contract Year** means the time from the Commencement Date through September 30, 2020 and each year thereafter during the term of the Contract.
- O. **CONTRACTOR** means that person or entity that has obtained from the TOWN a Contract to provide the services set forth herein.
- P. **Contractor-Generated Waste** means Bulk Trash and/or Yard Trash generated by builders, building contractors, privately employed tree trimmers and tree surgeons, landscape services, lawn or yard maintenance services, and nurseries.
- Q. **County** means Volusia County, Florida.
- R. **Designated Disposal Facility** means the disposal facility designated by the TOWN.
- S. **Designated Materials Recovery Facility or Designated MRF** means the facility designated by the TOWN for delivery of all Residential Recyclable Materials collected pursuant to this Contract. The designated facility for collected recycling material will be the Ormond Beach Transfer Station, 600 North Orchard Street, Ormond Beach, FL 32174.
- T. **Dumpster** means any metal container, with a capacity of two (2) or more cubic yards, designed or intended to be mechanically dumped into a loader packer type garbage truck.
- U. **Effective Date** means the date this Contract is executed by both the TOWN and CONTRACTOR.
- V. **Exempt Waste** means Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, construction and demolition waste, tree parts or lumber that is more than four (4) feet in length in its longest dimension, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid

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

batteries, used oil and tires, those wastes under the control of the Nuclear Regulatory Council, Contractor-Generated Waste, and those other materials whose size and/or weight are in excess of that allowed for Bulk Waste as defined herein.

- W. **Hazardous Waste** means any solid waste that is defined as a hazardous waste by the Florida Department of Environmental Protection in the State of Florida Administrative Code, or by any current or future federal, state, or local law.
- X. **Holiday** means a designated holiday on which the CONTRACTOR shall not be required to provide Residential Collection Service or to maintain office hours. For the purposes of this Contract, Holiday shall only mean Christmas Day, New Year's Day, Thanksgiving Day and any day that the landfill closes unless additional Holidays are approved by the Contract Administrator.
- Y. **Non-Collection Notice** means a durable tag, sign, and/or sticker placed on any Container or waste that has been set out for Collection by a customer but is not collectable in accordance with the provisions of this Contract and, therefore, has not been collected by the CONTRACTOR.
- Z. **Recyclable Materials or Recyclables** means those materials that are capable of being recycled and which would otherwise be processed or disposed of as Residential Solid Waste. Recyclable Materials include newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-2, tin and ferrous cans, and other materials added by the TOWN.
- AA. **Recycling Bin** means a rigid rectangular receptacle made of plastic or other suitable substance of no less than eighteen (18) gallons for the Collection of Recyclable Materials.
- BB. **Residence** means any individual living unit in a single-family structure or building intended for, or capable of being utilized for, residential living. For the purposes of this Contract, the term Residence shall include a living unit that adjoins or is part of a building from which a duly licensed Business is conducted or operated.
- CC. **Residential Collection Service** means the Collection of Residential Waste from all Residential Service Units in the Service Area and the delivery of such materials to the facilities designated in this Contract.
- DD. **Residential Customer** means the occupant of the Residential Service Unit that receives Collection services pursuant to this Contract.
- EE. **Residential Service Unit** means any Residence receiving Residential Collection Service pursuant to this Contract.
- FF. **Residential Waste** means Solid Waste, Bulk Waste, and Recyclable Materials generated by Residential Customers and by the Town.
- GG. **Roll Cart** means a wheeled container designed and intended to be used for automated or semi-automated Collection of Solid Waste and/or Recyclable Materials that is a type and size approved by the Town.
- HH. **Roll-off Container** means any open-top Container of a capacity of ten (10) cubic yards or more.
- II. **Service Area** means the municipal limits of the TOWN.
- JJ. **Sludge** means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances, or any other such waste having similar characteristics or effects.

- KK. **Solid Waste** means garbage, rubbish, refuse, trash, or other similar discarded material resulting from domestic, industrial, agricultural, or governmental operations. For the purposes of this Contract, the only things Solid Waste excludes are Recyclable Materials, Exempt Waste, and Residential Bulk Waste.
- LL. **TOWN** means the Town of Ponce Inlet, Florida.
- MM. **Town Council or Council** means the governing body of the Town of Ponce Inlet, Florida.
- NN. **White Goods** means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer at the Residential Service Unit at which the White Goods are placed for Collection.
- OO. **Work Day** means any day, Monday through Saturday, which is not a Holiday as set forth in this Contract.
- PP. **Yard Trash** means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension. Yard Trash must be generated by the customer at the Residential Service Unit at which the Yard Trash is placed for Collection. Yard Trash includes Christmas trees, but does not include Contractor-Generated Waste or Exempt Waste. Yard trash does not include vegetative or bulk material that is generated as the result of a hurricane or other declared disaster event.

SECTION 3. GENERAL DESCRIPTION OF CONTRACTOR'S SERVICES

- A. **Exclusive Contract.** The CONTRACTOR is herein granted an exclusive Contract to provide Residential Collection Service within the TOWN. The CONTRACTOR is not granted the exclusive right to collect C&D Debris. The CONTRACTOR may provide C&D Debris collection services at competitive rates that shall not be controlled by this Contract.
- B. **Services to be Provided.** The CONTRACTOR shall provide Residential Collection Service to all Residential Service Units and to the Town within the Service Area. The CONTRACTOR shall transport and deliver all Solid Waste, Recyclable Materials, and Bulk Waste collected pursuant to this Contract to the facilities designated herein. CONTRACTOR agrees and understands that the Residential Bulk Waste is not required to be containerized in cans or plastic bags. CONTRACTOR further agrees and understands that CONTRACTOR is responsible for collecting any Residential Waste that has spilled or is no longer containerized, unless such spillage is clearly not caused by the CONTRACTOR or an employee of the CONTRACTOR.
- C. **Exempt Waste.** The CONTRACTOR shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such collection and disposal of Exempt Waste are not regulated under this Contract, but if provided by the CONTRACTOR shall be in strict compliance with all federal, state, and local laws and regulations.
- D. **Responsibility for Billing.** The TOWN shall be responsible for the billing and collection of payments for Residential Collection Service. The CONTRACTOR shall be responsible for the billing and collection of payments for providing and servicing extra Residential Roll Carts, special collection services requested and provided to Residential Customers as outlined in Section 5.D of this Contract.
- E. **Payment for Disposal.** The CONTRACTOR shall be responsible for making payment to the Designated Disposal Facility for the disposal of all Solid Waste collected pursuant to this Contract, and shall provide documentation of such payment to the TOWN. If the Designated Disposal Facility requires that a payment bond be posted for disposal of Solid Waste collected pursuant to this Contract, the CONTRACTOR shall be responsible for posting such payment bond.

SECTION 4. TRANSITION IN SERVICE

- A. **Transition Prior to Commencement Date of Service.** The CONTRACTOR is responsible for providing a smooth transition in services to minimize inconvenience to Residential Customers. To accomplish this objective, the CONTRACTOR shall submit to the Contract Administrator, prior to the TOWN's execution of this Contract, a Transition Plan that provides a detailed description of how the CONTRACTOR will plan and prepare for initiating Collection services on the Commencement Date. The Transition Plan must meet the approval of the Contract Administrator. If the Contract Administrator does not approve any part of the Transition Plan, CONTRACTOR shall provide a revised proposed Transition Plan within five (5) Work Days of notification. At a minimum, the CONTRACTOR must address the specific performance requirements listed below in the Transition Plan and accomplish them according to deadlines specified in the TOWN-approved plan. This list is not intended to identify all necessary tasks to be performed by the CONTRACTOR, but to provide a springboard for the CONTRACTOR to develop a comprehensive Transition Plan.
- (1) **Contact List:** List of key transition personnel including, but not limited to, service transition project manager, education and outreach coordinator, and operations director (or similarly titled positions).
 - (2) **Transition Meeting and Call Schedules:** Proposed meeting and call schedules including, but not limited to, meetings with the Contract Administrator, Town staff, and outgoing contractor leading up to the Commencement Date.
 - (3) **Office:** Schedule for setting up an office, installing local telephone number routed to the office, and training staff to begin receiving calls.
 - (4) **Fleet:** Schedule for ensuring that all vehicles are street legal (registered, insured, licensed, and tagged) and providing a vehicle/equipment list and route summary to the Contract Administrator. For all new purchases, CONTRACTOR shall provide a list of vehicles, manufacturer, purchase order, and documentation of anticipated delivery date.
 - (5) **Staffing and Training:** Schedule for obtaining necessary labor and training staff on equipment and routes.
 - (6) **Routing:** Schedule for developing Solid Waste, Recyclables, and Bulk Waste routes, identifying obstacles such as low trees and overhead wires, and conducting dry-runs of collection routes.
- B. **Transition Prior to Expiration of this Contract.**
- (1) Should the TOWN choose not to exercise the renewal option of this Contract or should no renewal options remain, the TOWN anticipates awarding a new contract at least six (6) months prior to the expiration of this Contract or any subsequent renewals. In the event a new contract has not been awarded within such time frame, the CONTRACTOR agrees to provide service to the TOWN for up to an additional one hundred and eighty (180) day period beyond the expiration of the Contract, provided the TOWN requests said services, in writing, at such time. The service rates for this additional period will be adjusted as they normally would on October 1 as specified in Sections 12 and 13 of this Contract.
 - (2) At the expiration of this Contract, the CONTRACTOR shall work with the TOWN and the newly selected hauler to ensure a smooth transition period with no interruption of service, including, but not limited to, compliance with the following performance requirements:
 - (a) Attend coordination meetings with the TOWN and newly selected hauler, as requested.
 - (b) Work with the newly selected hauler to develop a mutually agreeable schedule for removal of CONTRACTOR-owned Containers and placement of newly selected hauler's containers. The schedule shall ensure no interruption in solid waste services.

- (c) Allow the newly selected hauler to purchase or rent for up to ninety (90) days, CONTRACTOR-owned Containers from the CONTRACTOR. The purchase price and/or rental shall be negotiated.
- (3) The TOWN reserves the right to withhold payment to CONTRACTOR for the final month of service until CONTRACTOR has complied with all requirements of this Section.

SECTION 5. RESIDENTIAL COLLECTION SERVICE

A. Residential Solid Waste Collection.

- (1) The CONTRACTOR shall provide Residential Solid Waste Collection to all Residential Service Units in the Service Area two (2) times per week with not less than forty-eight (48) hours or more than seventy-two (72) hours between regularly scheduled pickup days, with the exception of Holidays as set forth herein. Residential Solid Waste Collection shall occur twice per week on Monday and Thursday, unless a modification is approved by the Contract Administrator.
- (2) All Residential Solid Waste shall be properly containerized. All Solid Waste to be hand-lifted is to be placed in customer-provided containers or non-dissolvable plastic garbage bags with a capacity of not more than thirty-two (32) gallons and weighing not more than fifty (50) pounds. Any trash container larger than 32 gallons must be able to be lifted with a mechanical trash container lifting device. If the Town decides to implement carted Collection of Solid Waste, to the extent possible all Solid Waste is to be placed in CONTRACTOR-provided Roll Carts; CONTRACTOR is expected to pick up additional bags, boxes, etc... that may be placed next to Roll Carts. Residential Customers may request the CONTRACTOR to provide and service additional Solid Waste Roll Carts as specified in Section 6.B(4) of this Contract.
- (3) Hours: Residential Collection Service shall be provided commencing no earlier than 7:00 a.m. and terminating no later than 7:00 p.m. The hours and days of Collection may be extended due to extraordinary circumstances or conditions, with the prior written consent of the Contract Administrator.

B. Residential Bulk Waste Collection.

- (1) The CONTRACTOR shall provide Residential Bulk Waste Collection, consisting of Yard Trash and Bulk Trash, to all Residential Service Units in the Service Area. Non-vegetative Residential Bulk Waste Collection shall occur on shall occur on the solid waste collection days and vegetative bulk waste shall occur once per week on Wednesday, unless otherwise approved in writing by the Contract Administrator; large piles of vegetative bulk waste may require multiple days for full collection. Collection is limited to twelve (12) cubic yards per set-out. In a few locations where space is limited (such as cul-de-sacs), one or more Residential Customers may combine their Bulk Waste into a single large pile. The TOWN will work with the residents and CONTRACTOR to identify these locations.
- (2) If Bulk Waste exceeds the twelve (12) cubic yard limit, the CONTRACTOR will treat any amount above the twelve (12) cubic yard limit as a special collection service in accordance with Section 5.D(2).
- (3) The CONTRACTOR may collect Bulk Trash and Yard Trash in the same vehicle or in separate vehicles but shall collect such material in such a way that Yard Trash can be separated for recycling. Residents are asked to place non-containerized Yard Trash separate from Bulk Trash into an unobstructed pile to permit the CONTRACTOR to collect such Yard Trash with a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required. Collection of Yard Trash using a grapple or clam truck may be on the same Collection day as Collection of Bulk Trash. Collection of Bulk Trash may use a grapple or clam truck, although at times hand collection, or an alternative method of collection, may be required.

- (4) The CONTRACTOR shall collect White Goods so that they can be recycled. Residents are asked to place White Goods adjacent to other Bulk Trash but separate so as not to be obstructed. Even if residents fail to separate their White Goods, CONTRACTOR shall still utilize its best efforts to recycle commingled White Goods collected.

C. Residential Recyclables Collection.

- (1) The CONTRACTOR shall provide Residential Recyclables Collection to all Residential Service Units in the Service Area. This service shall be provided once every week on Tuesday, unless a modification is approved in writing by the Contract Administrator.
- (2) Residential Recyclables shall be collected in a single stream, meaning that paper and commingled containers may be placed in the same 18 gallon recycle bin. All Recyclables are to be placed in 18 gallon recycle bins. Residential Customers may request the CONTRACTOR to provide and service additional recycle bins as specified in Section 6.C(2) of this Contract.
- (3) Contractor and City shall mutually agree on any additions or deletions of recyclable types to be collected. The addition of items shall be at no additional cost to the TOWN unless the CONTRACTOR can document that the addition of such items substantially impacts the cost of providing Residential Collection Service.

D. Residential Special Collection Service.

- (1) For an additional fee, Residential Customers may request special collection service from the CONTRACTOR that exceeds the base-level services outlined herein. CONTRACTOR shall be responsible for invoicing and collecting payment from Residential Customers for special collection services outside the scope of this contract. The TOWN is not liable for a Residential Customer's failure to remit payment to CONTRACTOR for any special collection service provided.
- (2) Bulk Waste in excess of twelve (12) cubic yard limit. If a Residential Customer places more than twelve (12) cubic yards of Bulk Waste curbside for Collection, the CONTRACTOR shall collect all Bulk Waste and shall invoice the Customer for the amount of Bulk Waste exceeding the twelve (12) cubic yard limit. This per cubic yard amount shall be as approved in the contract between the Town and the CONTRACTOR.
- (3) By noon the business day following each Work Day, the CONTRACTOR shall provide the Town with the residential address associated with any overage of bulk waste to be charged and shall provide digital photographs of the entire pile prior to Collection, to document the size of the Bulk Waste pile.
- (4) No Mixing of Residential Materials.
- (5) The CONTRACTOR shall collect Residential Solid Waste, Bulk Waste, and Recyclable Materials generated in the TOWN separate from any Solid Waste, Bulk Waste, or Recyclable Materials generated in another jurisdiction.
- (6) The CONTRACTOR shall not commingle Residential Recyclable Materials with other Residential Waste.

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

- F. **Dead Animals Collection.** CONTRACTOR shall pickup any dead animals from both streets and right of ways within the Town upon visually observing such or being notified by the Town of the need for said pickup, within four (4) hours of notification, on any day in which they are in Town performing other collections – currently scheduled for Monday – Thursday.

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

- H. **Holidays.** In the event a Residential Customer's normal Collection day falls on a holiday observed by the CONTRACTOR and accepted by the TOWN via this CONTRACT, Collection shall occur on the Residential Customer's next regularly scheduled Collection day.

- I. **Accessibility.** All properly prepared Residential Containers, including Roll Carts, shall be placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and customer, that will provide safe and efficient accessibility to the CONTRACTOR'S collection crew and vehicle. When possible, CONTRACTOR shall work to ensure that Containers, including Roll Carts, are placed in an upright position within three (3) feet of the curb, swale, roadway, or other such location agreed to by the CONTRACTOR and customer, that will help to ensure that no Container or Roll Cart impedes, alters, or prevents the vehicular traffic. In certain instances, properly prepared Residential Waste may be placed in driveway turnout areas to avoid placing it in the traveled roadway. The CONTRACTOR shall report monthly to the Contract Administrator all situations that prevent or hinder Collection on any premises.

- J. **Manner of Collection.**
 - (1) The CONTRACTOR shall provide Residential Collection Service with as little noise and disturbance as possible.
 - (2) CONTRACTOR's employees shall completely empty any Container without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. Roll Carts shall be placed in an upright position with the lid closed. Containers with unattached lids shall be placed either in an upright position with the lid set on top or in an inverted position with the lid placed underneath to help prevent the lid from flying away or if that is impractical directly behind the Container.
 - (3) CONTRACTOR'S employees shall follow the regular walk for pedestrians while on private property. No trespassing by CONTRACTOR'S employees will be permitted or crossing property to the adjoining premises unless the occupant or owner of both properties has given permission. Care shall be taken to prevent damage to property, including flowers, shrubs, and other plantings. CONTRACTOR is responsible for repairs to all damaged property.
 - (4) CONTRACTOR's Collection vehicles shall remain on the right-hand side of the road when providing Residential Collection Service on two-way streets with center stripes. At no time shall collection crews cross to the opposite side of a street with center stripes to retrieve Containers, Roll Carts, or materials that have been set out for Collection. In situations where it is impossible or difficult to turn around to serve a location from the right side of the vehicle, then left-side service is permitted, but only in a manner that ensures the safety of residents and collection workers and only when approved by the Contract Administrator. At no time shall collection workers use the riding steps when the vehicle is backing up, exceeding 10 miles per hour, or traveling more than 0.2 miles.

- K. **Spillage.** The CONTRACTOR shall clean up any Residential Solid Waste spilled from a Container by the CONTRACTOR or its employees or Residential Bulk Waste spilled or scattered by the CONTRACTOR or its

employees prior to proceeding to the next customer, if reasonably possible, but in no event prior to the end of that pick-up day. Care shall be taken by CONTRACTOR'S employees to prevent damage to Containers by unnecessary rough treatment.

- L. **Routes and Schedules.** The CONTRACTOR shall provide the Contract Administrator with schedules for all Residential Collection Service routes in accordance with the Transition Plan and shall always keep such information current. If any changes in the Collection routes occur, the Contract Administrator shall be immediately notified in writing. No permanent change in routes or schedules that will alter the days of Residential Waste Collection may be made without the prior written consent of the Contract Administrator. In the event a permanent change in routes or schedules that will alter the days of Residential Waste Collection is approved by the Contract Administrator, the CONTRACTOR shall immediately notify the affected Residential Customers, in writing or other manner as approved by the Contract Administrator, not less than two (2) weeks prior to the change.

SECTION 6. RESIDENTIAL COLLECTION CONTAINERS

- A. **Customer-Provided Containers.** Within five (5) Work Days of being notified by a Residential Customer or the TOWN that CONTRACTOR or its employees destroyed the customer's non-TOWN supplied Container, CONTRACTOR shall provide the Residential Customer with a Container of comparable size and quality. CONTRACTOR is not responsible for a replacement Container if it can satisfactorily prove to the Contract Administrator that CONTRACTOR or its employees did not damage the customer's Container. Prior to payment or replacement of the Container, the Residential Customer shall give CONTRACTOR their damaged Container for disposal.

- B. **Purchase and Distribution of Solid Waste Roll Carts.**

If during the term of this Agreement, the TOWN chooses to implement carted Collection of Solid Waste at the onset of any five-year renewal of this agreement, and if such carted Collection of Solid Waste is approved by the CONTRACTOR, this section shall apply.

- (1) Within one hundred and twenty days of the TOWN'S decision to implement carted Collection of Solid Waste, CONTRACTOR shall deliver one (1) Solid Waste Roll Cart to each Residential Customer within the Service Area. After the roll-out, CONTRACTOR shall deliver Solid Waste Roll Carts within five (5) Work Days of notification of a new Residential Customer. Roll Carts must meet the technical specifications provided in Exhibit 5 and be approved by the Contract Administrator. Roll carts shall be delivered with information attached pursuant to Section 11.C.
- (2) The standard Solid Waste Roll Cart shall be ninety-five (95) gallons or similar in size. However, CONTRACTOR shall make sixty-five (65) gallon (or similar in size) Solid Waste Roll Carts available upon request by a Residential Customer. Prior to assembly and distribution of Solid Waste Roll Carts, CONTRACTOR may conduct a survey of Residential Customers to determine which size Solid Waste Roll Cart they prefer. If CONTRACTOR plans to conduct such a survey, the details of such survey shall be included in the Transition Plan and the survey and method of collection of survey data must be approved by the TOWN in advance of its distribution.
- (3) Upon request by a Residential Customer, CONTRACTOR shall exchange a Solid Waste Roll Cart with an alternatively-sized Roll Cart within five (5) Work Days of request for such exchange by the customer or TOWN. CONTRACTOR shall provide one (1) Solid Waste Roll Cart exchange per Residential Customer during the initial Contract term at no charge to the customer or the TOWN. Should a Residential Customer request additional exchanges, CONTRACTOR may charge the Residential Customer no more than one hundred dollars (\$100) per Roll Cart that is exchanged. CONTRACTOR shall track and report exchanges in the asset management database specified in Subsection E below.

- (4) Upon request by a Residential Customer, CONTRACTOR shall provide more than one (1) Solid Waste Roll Cart to accommodate extra materials. CONTRACTOR shall charge Residential Customer for each extra Solid Waste Roll Cart for an additional unit in accordance with Exhibit 1. CONTRACTOR shall provide additional Solid Waste Roll Carts within five (5) Work Days of request by a Residential Customer or the TOWN. CONTRACTOR shall record all extra Solid Waste Roll Carts delivered to Residential Customers in the asset management database and report them monthly to the Contract Administrator. If a Residential Customer desires the Collection of the extra Solid Waste Roll Cart(s), CONTRACTOR shall issue an annual invoice for the Collection that shall be paid directly by the Residential Customer to CONTRACTOR in accordance with the rate schedule provided in Exhibit 1. Such annual invoice shall be prorated based upon the 1st day of the month that Collection commences, and it shall be based upon a calendar year. CONTRACTOR shall send all renewal invoices to the Residential Customers in December of each calendar year. CONTRACTOR shall not be required to collect any extra Solid Waste Roll Cart(s) unless it has been paid to collect same. Residential Customer may cancel its extra Solid Waste Roll Cart(s) Collection at any time, but such cancellation shall only go into effect the next calendar year. Residential Customers who cancel their extra Collection shall not receive a proration for services, nor shall they be able to seek a credit for failure to utilize this service. The TOWN is not liable or responsible for any payment to CONTRACTOR for the failure of payment by a Residential Customer, or for CONTRACTOR's collection of such extra waste.
- (5) If the Town elects to transition to carted Collection of Solid Waste, and if CONTRACTOR approves such transition, within thirty (30) days of such election, CONTRACTOR shall provide a transition plan to the Contract Administrator, which is subject to the approval of the Contract Administrator. The transition plan shall include the information specified below:
 - (a) Cart Procurement: Schedule for purchase and manufacturing of CONTRACTOR-provided Roll Carts for Residential Collection Service including artwork approval by TOWN and prototype delivery. The TOWN retains the right to require acceptable documentation including, but not limited to, purchase orders, delivery schedules, and receipts of payment.
 - (b) Cart Assembly and Distribution (A&D): Schedule for Roll Cart A&D including cart shipment dates, days and hours of operations, and completion of A&D. All Roll Carts shall be delivered to all customers at least two (2) weeks prior to the Commencement Date. An A&D plan shall also be included two (2) weeks prior to the Commencement date identifying A&D contractor, if applicable, and contact information, staging areas, A&D route schedule, number of crews, expected number of carts delivered per crew per day, method of assigning carts to addresses, data points to be collected at time of A&D, and upload frequency of data into central A&D database. CONTRACTOR shall provide a list matching the serial number of each Roll Cart to the specific address to which each Roll Cart has been assigned. After delivery, residents may affix their names and property address onto their assigned Roll Cart.
 - (c) Cart Swaps: Schedule for Roll Cart swaps, including plan for receiving swap requests, initiating exchanges, and maintaining asset management database.

C. Purchase and Distribution of Recycling Bins.

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

five (5) Work Days of request by a Residential Customer or the TOWN. CONTRACTOR shall record all extra Recycling Bins delivered to Residential Customers on the asset management list and report them monthly to the Contract Administrator. Additional Recycling Bins shall be collected at no additional cost to the Residential Customer or the TOWN.

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

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

E. Asset Management List.

- (1) The TOWN will provide the CONTRACTOR with a list of Residential Customers that includes the parcel folio number, address, and number of Residential Service Units on each parcel. CONTRACTOR shall use this list to develop and maintain an asset management database through which CONTRACTOR shall be responsible for reporting and tracking the movement of all Roll Carts used for Residential Collection Service, including deliveries, removals, exchanges, repairs, warranty recovery, and any other information necessary to manage cart assets, subject to TOWN approval. The database shall also specify the route for each Residential Service Unit and shall be in a format that is searchable by the Contract Administrator. The initial database must be populated and transmitted to the Contract Administrator in accordance with the approved Transition Plan. All database adjustments must be made within forty-eight (48) hours of physical inventory exchange and completion of work order. If a cart is swapped out, data for the cart removed and the cart replaced is to be provided. Data fields shall include, but not be limited to the following:
 - (a) Work order number, date, and status
 - (b) Residential Service Unit name/ID and address
 - (c) Parcel folio number (as provided by the TOWN)
 - (d) For each Roll Cart at each Residential Service Unit, the type (Solid Waste or Recycling), size, and serial number
 - (e) Routes on which the Residential Service Unit is serviced
- (2) CONTRACTOR shall provide the Contract Administrator with an updated copy of the asset management database monthly, as well as access upon request.

- F. Ownership of Roll Carts/Bins. Ownership of Roll Carts/Bins provided by CONTRACTOR shall rest with the CONTRACTOR until expiration or termination of this Contract, at which point ownership and warranty transfer shall rest with the TOWN. Should the Contract be terminated early for convenience, the TOWN shall pay the CONTRACTOR a prorated amount for the purchase price of the Solid Waste Roll Carts based on a five (5) year amortization schedule.

SECTION 7. RESIDENTIAL NON-COLLECTION PROCEDURES

- A. In the event Solid Waste contains Exempt Waste, Recyclable Materials are contaminated through commingling with Solid Waste, or other occurrence that would warrant legitimate non-collection by the CONTRACTOR, the CONTRACTOR shall affix a Non-Collection Notice to the Container or waste itself explaining why Collection was not made and explaining proper procedures for setting out Solid Waste, Bulk Waste, and Recyclable Materials. CONTRACTOR shall take digital photographs of the waste or pile to document the reason for non-collection. If the uncollected waste consists of Bulk Waste, CONTRACTOR shall take photographs from at least one (1) side of the pile, at a minimum.
- B. The design and content of all Non-Collection Notices must be approved by the Contract Administrator and the cost of printing and delivery of said notices shall be paid for by the CONTRACTOR.
- C. By the end of each Work Day or in no event later than noon the next Work Day, the CONTRACTOR shall electronically transmit to the Contract Administrator a list of all Residential Service Units at which Collection was not made that Work Day. This list shall include the reasons for the non-collection and the addresses of such non-collection. The CONTRACTOR shall also electronically transmit all digital photographs of the non-collection to the Contract Administrator.

SECTION 8. RESIDENTIAL BULK WASTE PROCESSING

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

SECTION 9. DESIGNATED FACILITIES

- A. Except as set forth below, all Residential Solid Waste collected by the CONTRACTOR shall be transported to, and disposed of, at any facility selected by the Contractor and approved by the TOWN. The designated facility for collected solid waste and bulk waste will be the Volusia County Landfill, 1990 Tomoka Farms Road, Port Orange, Florida 32128-3752.
- B. All Residential Recyclable Materials collected by the CONTRACTOR shall be delivered any facility selected by the Contractor and approved by the TOWN. The designated facility for collected recycling material will be the Ormond Beach Transfer Station, 600 North Orchard Street, Ormond Beach, FL 32174.
- C. Failure to comply with this provision shall result in the levy of liquidated damages as specified in Section 21 of this Contract and may result in the CONTRACTOR being in default under this Contract.

SECTION 10. ADDITIONAL SERVICES

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

Locations	Address	Service Frequency	# Garbage Carts	# Recycle Carts	Dumpster Size
Ponce Inlet Police Dept	4301 S. Peninsula Dr.	Once weekly	1 dumpster	1 dumpster 2 toters	6 yards & 4 yards
Ponce Inlet Fire Dept	4680 S. Peninsula Dr.	Once weekly	1 dumpster	1 dumpster 2 toters	8 yards & 6 yards
Ponce Inlet Public Works Facility	4875 S. Peninsula Dr.	Twice weekly	4	2 toters	95 gal
Ponce Inlet Community Center	4670 S. Peninsula Dr.	Once weekly	1 dumpster	-	6 yards
Ponce Inlet Boat Ramp	4985 S. Peninsula Dr.	Once Weekly	2 dumpsters	-	8 yards
Ponce Preserve	4401 S. Peninsula Dr.	Once weekly	Bulk waste		

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

SECTION 11. RESIDENTIAL RATES AND BILLING

- A. **Customer Billing.** Except as specifically provided herein, the TOWN shall be responsible for the billing and collection of payments for all Residential Collection Service. The CONTRACTOR shall be responsible for directly billing Residential Customers for providing and servicing extra Roll Carts and for providing special collection service as specified in Section 5.D of this Contract.
- B. **CONTRACTOR Invoicing.** The CONTRACTOR shall invoice the TOWN for Residential Collection Services rendered under this Contract no later than the tenth (10th) calendar day of the month following the month such services were rendered. The TOWN shall review the invoice and pay all undisputed portions of the invoice within twenty (20) days of receipt of the invoice. The TOWN may utilize a check, or ACH for making payments. The monthly invoice from and payment to the CONTRACTOR shall be the Residential Service Unit count times the monthly residential rate as shown in Exhibit 1, attached hereto and included herein.

Residential Service Unit Count. No later than September 1st, 2019, the TOWN will provide the CONTRACTOR with an initial list of Residential Service Units within the Service Area. In the event the CONTRACTOR does not agree with the Residential Service Unit count provided by the TOWN, the CONTRACTOR may request that the TOWN and the CONTRACTOR perform a joint physical count of the Residential Service Units in the Service Area. The Residential Service Unit count may be increased or decreased monthly by the Town based upon those units with an active utility billing account, as defined in this contract. No temporary suspension of collection service may be authorized for any customer with an active utility billing account. The CONTRACTOR may request and the TOWN will subsequently provide a list of active utility billing accounts at any time during the contract, at no cost to the CONTRACTOR. If the CONTRACTOR does not dispute the number of Residential Service Units

provided by the TOWN for a given month within 30 days of receipt of said month's payment, the number of Residential Service Unity shall be deemed to be accepted by the CONTRACTOR and CONTRACTOR waives all rights to recourse for its failure to contest the Residential Service Unit count provided by the TOWN.

- C. **Service Rates.** The TOWN shall initially pay the CONTRACTOR for Residential Collection Service in accordance with the rates and generation factors established in Exhibit 1, attached hereto and included herein. The collection elements and Bulk Waste disposal element of the initial service rate shall not be adjusted through September 30, 2021.
- D. **Service Rate Adjustments.** The rates for Residential Collection Service shall be adjusted October 1, 2021, and annually thereafter each Contract Year, as described herein. Any requested adjustments must be submitted to the Town by July 1st of each year for the following fiscal year, beginning with July 1st, 2021. An example of the calculation of such adjustment is provided in Exhibit 2. All rate adjustments shall be reduced to writing and signed by the CONTRACTOR representative identified in Section 27 and the Town Administrator.
- E. **Indexes for Adjusting Rates.** The following indexes shall be used for calculating rate adjustments pursuant to this Contract. If either of these indexes is discontinued or substantially altered, the TOWN shall select another relevant index published by the United States Government or by a reputable publisher of financial and economic indexes.
 - (1) The Consumer Price Index (CPI) used for adjusting rates shall be the Consumer Price Index for Series Id: CUUR0000SEHG02, Garbage and trash collection in U.S. city average, all urban consumers, not seasonally adjusted as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics.
 - (2) The Fuel Index used for adjusting rates shall be the Lower Atlantic (PADD 1C) Ultra Low Sulfur (15 ppm and under) Retail Diesel Prices (Dollars per Gallon) as published by the Energy Information Administration of the United States Department of Energy.
- F. **Collection Element Adjustment.** The collection elements of the Residential Collection Service rates shall be adjusted based on the Consumer Price Index and Fuel Index, as defined in this Section and illustrated in Exhibit 2.
 - (1) Ninety-five percent (95%) of the collection elements of the Residential service rates shall be adjusted based on one hundred percent (100%) of the percentage change in the CPI for February of the previous year and February of the current year, rounded to the nearest hundredth of a percent.
 - (2) Five percent (5%) of the collection elements of the Residential service rates shall be adjusted based on the percentage change in the average monthly Fuel Index for the twelve (12) month period ending February of the previous year and the average monthly Fuel Index for the twelve (12) month period ending February of the current year, rounded to the nearest hundredth of a percent.
 - (3) In no event shall the annual collection element adjustment exceed five percent (5%) of the collection element of the service rate paid by the Town in the previous Contract Year.
- G. **Solid Waste Disposal Element Adjustment.** The Solid Waste disposal element of the Residential service rate shall be adjusted on the effective date of the new rate based on the new tipping fee at the Designated Disposal Facility. The new annual Residential Solid Waste disposal element shall be calculated as follows:

$$\begin{array}{rcl}
 \text{New tipping} & \times & 0.764 \text{ tons/Residential} \\
 \text{fee (\$/ton)} & & \text{Service Unit (Solid Waste} \\
 & & \text{generation factor)} \\
 & = & \text{New Residential Solid Waste} \\
 & & \text{disposal element} \\
 & & \text{(\$/Residential Service Unit)}
 \end{array}$$

Such changes in rate shall be effective October 1st of the next fiscal year. In no event shall the CONTRACTOR utilize any tipping fee, other than the current approved tipping fee, in the preparation of its monthly invoices to

the TOWN; except that in the event the CONTRACTOR is charged a tipping fee that is less than the current approved tipping fee for the disposal of Residential Solid Waste, such lower tipping fee shall be used in the preparation of the monthly invoice to the TOWN. The TOWN may request from the CONTRACTOR such further information as may be reasonably necessary in making its determination.

- H. Bulk Waste Disposal Element Adjustment. The Bulk Waste disposal element of the Residential service rate shall be adjusted based on the new disposal rate at the Designated Disposal. The new annual Residential Bulk and Yard Waste disposal element shall be calculated as follows:

$$\begin{array}{rcl} \text{New tipping} & \times & 0.623 \text{ tons/Residential} \\ \text{fee (\$/ton)} & & \text{Service Unit (Bulk Waste} \\ & & \text{generation factor)} \\ & = & \text{New Residential Bulk Waste} \\ & & \text{disposal element} \\ & & \text{(\$/Residential Service Unit)} \end{array}$$

- I. Generation Factor Adjustments. The generation factors specified in Exhibit 1 that are used to calculate the rates for Solid Waste disposal and Bulk Waste disposal shall be set by July 15, 2021, and shall be adjusted October 1, 2021, and shall then remain constant for the remainder of the Contract term. The generation factors will be adjusted based on the average quantities of Residential Solid Waste and Residential Bulk Waste (not including Bulk Waste that exceeded the 12 cubic yard limit per pickup) collected per Residential Service Unit during the first Contract Year. Regardless of final determination of the average quantities of Residential Solid Waste and Residential Bulk Waste collected per Residential Service Unit during the first Contract Year, the adjusted generation factor for Residential Bulk Waste shall not exceed the FY 2016 level of 4.67 tons per Residential Service Unit per year and the generation factor for Residential Solid Waste shall not exceed the generation factor provided in Exhibit 1 of 1.28 tons per Residential Service Unit per year. The Contractor shall provide monthly documentation demonstrating the accuracy of the tonnage of Residential Solid Waste and Bulk Waste collected in the Town during the first Contract Year. The Solid Waste disposal element and Bulk Waste disposal element shall be calculated based on these adjusted generation factors, as well as the adjustments specified in Sections 12.H and 12.I above. Notwithstanding the CONTRACTOR provided monthly reporting, the TOWN may elect to conduct its own waste management study. The generation factors determined by that study will be the factors used in the CONTRACT.
- J. Contract Preparation and Administration Expenses. The TOWN shall assume all expenses regarding contract preparation and general administration of the contract by TOWN employees.
- K. Recycling Revenues. The TOWN shall retain any revenue generated from the processing and sale of Residential Recyclable Materials after processing and transportations fees are paid.

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

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

SECTION 13. CONTRACTOR'S PERSONNEL

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

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

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

SECTION 14. SPILLAGE AND LITTER

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

SECTION 15. COLLECTION EQUIPMENT

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

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

SECTION 16. OFFICE

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

SECTION 17. SERVICE INQUIRIES, COMPLAINTS, AND PROPERTY DAMAGE

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

CONTRACTOR must return to the service address and collect the missed materials by noon of the following Work Day.

- D. For those complaints related to repair or replacement of Roll Carts, the appropriate subsections of Section 6 of this Contract shall apply.
- E. By noon on the first Work Day of each week, the CONTRACTOR shall e-mail to the Contract Administrator a report of those complaints, related to Collection, that were not resolved in the manner set forth in Subsection C above. This weekly report shall include all information specified in Subsection B above, as well as the status of the disposition of the complaint.
- F. The CONTRACTOR shall be responsible for the prompt repair or replacement, if repair is not adequate, of any damage to public or private property during the provision of Residential Collection Service, and caused by the CONTRACTOR or the CONTRACTOR'S representative. Within twenty-four (24) hours of occurrence, the CONTRACTOR shall provide the Contract Administrator with a full explanation of the disposition of any complaint involving a claim of damage to public or private property as a result of actions of the CONTRACTOR. The CONTRACTOR shall promptly repair any such legitimate damage claim at its sole expense and within an agreed upon time frame, not to exceed one (1) week, as approved by the Contract Administrator. Upon the request of the CONTRACTOR, the Contract Administrator may grant a time extension. Proof of the need for an extension shall be submitted by the CONTRACTOR.
- G. By the end of the first Work Day of each month, the CONTRACTOR shall e-mail to the Contract Administrator a report on any unresolved complaint involving a claim of damage to public or private property as a result of actions of the CONTRACTOR'S employees, agents or subcontractors. This monthly report shall include the name, address and phone number of the complainant, date of occurrence, nature of occurrence and the status of the disposition of the complaint.
- H. CONTRACTOR agrees that it is in the best interest of the TOWN that all Residential Collection Service be provided on the scheduled Collection day. Accordingly, missed Collections will normally be collected in accordance with Subsection C above regardless of the reason that the Collection was missed. However, in the event the CONTRACTOR does not address a missed Collection complaint in accordance with Subsection C because it believes such complaint to be without merit, CONTRACTOR shall immediately notify the Contract Administrator in writing. The Contract Administrator will investigate all disputed complaints and render a final and binding decision.

SECTION 18. RECORDKEEPING AND REPORTING

- A. The Town is subject to Chapter 119, Florida Statutes, "Public Records Law." CONTRACTOR acknowledges the public shall have access at all reasonable times to all documents and information pertaining to TOWN'S contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the TOWN and the public to all documents subject to disclosures under applicable law.
- B. To the extent that CONTRACTOR has been provided access to or has received security sensitive information, as defined by Florida Statutes, Section 119.071 and/or has executed a Confidential Information Acknowledgement and Agreement as part of this Contract, CONTRACTOR shall keep and maintain the security sensitive information as confidential and exempt from public disclosures as required by Florida Statutes.
- C. CONTRACTOR agrees to keep and maintain public records required by the TOWN to perform the service in CONTRACTOR'S possession or control in connection with CONTRACTOR'S performance under this Contract and, upon the request from the TOWN'S custodian of public records, to provide the TOWN with a copy of the requested records or allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure

requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the TOWN.

- D. Upon completion of the Contract, CONTRACTOR agrees, at no cost to TOWN, to transfer to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the service. If the CONTRACTOR transfers all public records to the TOWN upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology system of the TOWN.
- E. CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination for cause of the Contract by TOWN.
- F. The CONTRACTOR shall keep records of the amounts of Residential Solid Waste, Bulk Trash, and Yard Trash disposed; Residential Bulk Trash, Yard Trash, and Recyclable Materials recycled. Such records shall be kept separate and apart from all other records maintained by the CONTRACTOR.
- G. The CONTRACTOR shall file and keep current with the TOWN all documents and reports required by this Contract. All documents and reports submitted to the TOWN by the CONTRACTOR shall be fully transparent. CONTRACTOR shall provide additional information as requested by the Contract Administrator to comply with such requirement for transparency.
- H. By the date specified in the TOWN-approved Transition Plan, CONTRACTOR shall electronically transmit to the Contract Administrator the completed and current Residential Customer list that has been revised to incorporate the Roll Cart asset management database meeting the requirements of Section 6.E. At a minimum, the database shall include all information initially provided by the TOWN, (parcel folio number, address, and number of Residential Service Units on the parcel) and all information specified in Section 6.E (routes on which customer is serviced; size and serial number of Solid Waste (if applicable) and Recycling Roll Carts; size and serial number of all extra Solid Waste and Recycling Roll Carts; work order number, date, status, and any extra service fees billed by the CONTRACTOR for any deliveries, removals, exchanges, repairs, warranty recovery, and any other information necessary to manage cart assets).
- I. At the end of each Work Day or in no event later than noon the next Work Day, the CONTRACTOR shall electronically submit the following to the Contract Administrator, in a format approved by the Contract Administrator:
 - (1) Call Log for all calls received since the previous report, including how such calls were resolved.
 - (2) Record of Residential Customers that placed more than the twelve (12) cubic yard limit of Bulk Waste curbside for Collection during that Work Day.
 - (3) Record of any other non-collection occurrences during that Work Day, the reasons for the non-collection, and the addresses of such non-collection.
 - (4) Full explanation of any complaint involving a claim of damage to public or private property as a result of actions of the CONTRACTOR that occurred within the last twenty-four (24) hours.
 - (5) Full explanation of any occurrences of leakage of fluids from a collection vehicle within the last twenty-four (24) hours, including the location of such leakage, the vehicle at issue, and the remediation measures used to correct same.

- J. By noon on the first Work Day of each week, the CONTRACTOR shall e-mail to the Contract Administrator a report of Collection complaints that were not resolved as required by Section 19.E.
- K. Prior to the fifteenth (15th) calendar day of each month during the term of this Contract, the CONTRACTOR shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall contain the following information:
 - (1) Tonnage of Residential Solid Waste, Residential Bulk Trash and Residential Yard Trash disposed during the previous month. At the Contract Administrator's request, CONTRACTOR shall provide documentation, in the form of scale house tickets, of the tonnage of Residential Solid Waste and Residential Bulk Waste that is disposed each month.
 - (2) Tonnage of Residential Bulk Trash, Residential Yard Trash, and Residential Recyclable Materials recycled during the previous month.
 - (3) List of all Residential Customers charged for special waste collection, including Bulk Waste in excess of twelve (12) cubic yards per set-out, during the previous month. The list shall include the customer's name and address, date service was provided, service that was provided, and fee that was charged.
 - (4) Updated Roll Cart asset management database, as well as the number of new, replacement, or additional Solid Waste Roll Carts and Recycling Roll Carts distributed during the previous month, the date each was requested, and the date each Roll Cart was delivered.
 - (5) Documentation of payment to the Designated Disposal Facility for disposal of Solid Waste during the previous month.
- L. Prior to September 15th of each year during the term of this Contract, the CONTRACTOR shall ensure and certify to the TOWN that all required documents are current and on file with the TOWN. Such documents include, but are not limited to, certificates of insurance, performance bond, route schedules and maps.
- M. In addition to any other requirements of this Contract, the CONTRACTOR shall be required to provide statistical and other pertinent information pertaining to Residential Collection Service as may be requested by the TOWN to monitor compliance with this Contract or to comply with the provisions of Section 403, F.S., as amended, other pertinent laws and regulations, or any interlocal agreements the TOWN has or may enter into during the term of this Contract.
- N. The CONTRACTOR shall mark any information it considers confidential, proprietary, or privileged as such and the TOWN will treat such information accordingly as provided for in Chapter 119, Florida Statutes. If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR's duty to provide public records relating to this Contract, CONTRACTOR shall contact the TOWN's custodian of public records, Russell Muniz, at (954) 434-0008.

SECTION 19. LIQUIDATED DAMAGES

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

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

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|------|--|---|
| (1) | Failure to submit a Transition Plan within thirty (30) days of Contract execution or to revise the Transition Plan within five (5) Work Days of notification by the Contract Administrator without prior approval of the Contract Administrator for such delay in submittal (§4.A) | \$100.00 per day past the due date |
| (2) | Failure to meet the schedule outlined in the TOWN-approved Transition Plan without prior approval of the Contract Administrator for such delay (§4.A) | \$100.00 per incident per day past the due date |
| (3) | Failure or neglect to resolve each valid complaint, including missed Collection, in the timeframe specified (§19) | \$100.00 per each unresolved |
| (4) | Failure to repair damage to public or private property determined caused by the CONTRACTOR or its personnel within the timeframe approved by the Contract Administrator (§19.F) | \$100.00 per incident after the timeframe approved in writing by Contract Administrator |
| (5) | Mixing of materials in violation of §5.E | \$100.00 per occurrence |
| (6) | Failure to comply with hours and days of operation (§5.G and §9.D) | \$250.00 per occurrence per vehicle |
| (7) | Changing Collection routes without proper notification (§5.L) | \$1,000.00 per incident per day |
| (8) | Failure to distribute Solid Waste Roll Carts by date specified in Transition Plan unless otherwise approved by the Contract Administrator (§6B(1)) | \$100.00 per Roll Cart per day past due date |
| (9) | Failure to repair, replace, exchange, or deliver a Roll Cart within the required timeframe (§6) | \$100.00 per Roll Cart |
| (10) | Failure to provide a completed Roll Cart asset management database and to keep such database up to date as specified (§6.E) | \$100.00 |
| (11) | Failure to leave a Non-Collection Notice explaining why all material was not collection (§7) | \$100.00 per occurrence |
| (12) | Failure to collect and process Bulk Waste in a manner that enables, at a minimum, recycling of Yard Trash and White Goods (§5.B and §8) | \$100.00 per Residential Service Unit |
| (13) | Failure to deliver all Residential Solid Waste to the Designated Disposal Facility (§10.A) | \$100.00 per incident |
| (14) | Failure to deliver all Residential Recyclable Materials to the Designated MRF (§10.B) | \$100.00 per incident |
| (15) | Failure to prepare and distribute TOWN-approved public education materials in the timeframe specified (§11.C) | \$100.00 per incident |

- | | | |
|------|--|-------------------------------|
| (16) | Failure to have a vehicle operator properly licensed (\$15.E) | \$100.00 per vehicle per day |
| (17) | Failure to clean up spillage, leakage, or excessive blowing debris with the timeframe specified after notification by Town (§16.B) | \$100.00 per incident per day |
| (18) | Failure to assign scheduled vehicles and equipment on a route day (§17) | \$100.00 per vehicle per day |
| (19) | Failure to submit to the TOWN all plans, reports, records, or other documents in the time required under the provisions of this Contract, including §20, unless otherwise approved by the Contract Administrator | \$250.00 per month |
| (20) | Failure or neglect to complete more than 95 percent of a route (number of missed pickups must be less than 5 percent of total customers on that daily route to be considered more than 95 percent complete) on the regularly scheduled Collection day without justifiable cause (cause that is beyond the control of the CONTRACTOR) or prior approval by the Contract Administrator | \$250.00 per incident |

- B. The Contract Administrator may assess liquidated damages pursuant to this Section at any time during the term of this Contract. The Contractor Administrator shall notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, within ten (10) Work Days of receipt of written notice, CONTRACTOR shall request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims within five (10) Work Days of such meeting. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence. Any liquidated damages assessed by the Town Administrator shall be deducted from the TOWN's next monthly payment to the CONTRACTOR.

SECTION 20. EMERGENCY SERVICE PROVISIONS

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

CONTRACTOR shall substantiate such additional costs for labor, equipment, transportation, and/or disposal in writing. The TOWN shall have the right to audit such costs. The CONTRACTOR shall provide the TOWN with a separate disaster cleanup agreement with specified rates at the commencement of each Contract Year.

- C. In the event of a declared disaster, the rate paid to the CONTRACTOR shall be the rate in the Disaster Cleanup Agreement, attached hereto as Exhibit 4. The TOWN reserves the right to hire additional hauling contractors for debris removal operations after it is determined by the Contract Administrator that additional services are needed and after notice to the CONTRACTOR.

SECTION 21. PERFORMANCE BOND

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

SECTION 22. INSURANCE

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

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

- D. Insurance policies and coverages shall not be affected by any other policy of insurance which the TOWN may carry in its own name.
- E. CONTRACTOR's insurance policies shall be endorsed to provide the TOWN with at least thirty (30) calendar days' prior written notice of cancellation, non-renewal, restrictions, or reduction in coverages or limits. Notice shall be sent to:

Jeaneen Witt, Town Manager
Town of Ponce Inlet
4300 South Peninsula Drive
Ponce Inlet, Florida 32127
- F. All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance.
- G. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against TOWN for payment or assessments in any form on any policy of insurance.
- H. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which TOWN is named as an additional insured shall not apply to TOWN. TOWN shall use its best efforts to provide written notice of occurrence within thirty (30) working days after TOWN's actual notice of such event.
- I. If any of CONTRACTOR's initial insurance expires prior to the completion of the term of this Contract, renewal copies of policies shall be furnished to TOWN at least thirty (30) days prior to the date of their expiration, and TOWN shall be an additional named insured by endorsement on all of CONTRACTOR's renewal policies.
- J. The official title of the owner is Town of Ponce Inlet. This official title shall be used in all insurance policies and documentation.
- K. Notwithstanding any other provisions of this Contract, CONTRACTOR's obligation to maintain all required insurance as specified in this Section of the Contract shall survive the expiration or earlier termination of this Contract.

SECTION 23. INDEMNIFICATION OF TOWN

- A. CONTRACTOR shall indemnify, defend, and hold harmless TOWN, TOWN'S contractors, and the public officials, officers, directors, employees, agents and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the breach of this Contract, violation of applicable law, and the negligent acts or omissions of the CONTRACTOR in the performance of this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property.
- B. CONTRACTOR further agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against TOWN, its officers, agents and employees, on account

of any claims, fees, royalties, or costs for any invention or patent rights or for the infringement of any and all copyrights or patent claimed by any person, firm or corporation.

- C. CONTRACTOR agrees, at CONTRACTOR'S expense, after written notice from the TOWN, to defend any action against the TOWN that falls within the scope of this indemnity as set forth above in Subsections A and B, or the TOWN, at the TOWN'S option, may elect not to tender such defense and may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR. Additionally, if CONTRACTOR, after receipt of written notice from the TOWN, fails to make any payment due under this Contract to the TOWN or fails to perform any obligation required by this Contract, CONTRACTOR shall pay any reasonable attorneys' fees and costs incurred by the TOWN in securing any such payment from CONTRACTOR, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from the TOWN that such amount is due, be made by CONTRACTOR prior to the TOWN being required to pay same, or in the alternative, the TOWN, at the TOWN'S option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse the TOWN for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by CONTRACTOR of written notice from the TOWN that such payment is past due at least twenty (20) days.
- D. It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Contract consists of the promises, payments, covenants, rights and responsibilities contained in this Contract.
- E. The execution of this Contract by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with as set forth in Section 24.
- F. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsections in which contract the subcontractor fully indemnifies the TOWN in accordance with this Contract.

SECTION 24. POINT OF CONTACT

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

SECTION 25. NOTICE

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

As to the TOWN:

Jeaneen Witt, Town Manager Town of Ponce Inlet 4300 South Peninsula Drive Ponce Inlet, Florida 32127	and	Kim McColl, Finance Manager Town of Ponce Inlet 4300 South Peninsula Drive Ponce Inlet, Florida 32127
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As to the CONTRACTOR:

Waste Pro of Florida, Inc. Ken DeForest, Division Manager 925 South Clyde Morris Blvd. Daytona Beach, Florida 32114	and	Waste Pro of Florida, Inc. Tim Dolan, Region Vice-President 3750 St Johns Parkway Sanford, Florida 32771
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Notices shall be effective when received at the address as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice. Electronic transmission is acceptable notice, effective when received; however, electronic transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted electronically must also be mailed as required herein.

SECTION 26. TERMINATION OF CONTRACT

- A. Termination for Cause. The TOWN may cancel this Contract, except as otherwise provided below in this Section, by giving the CONTRACTOR thirty (30) days' advance written notice, to be served as provided in Section 25, upon the happening of any one of the following events:
- (1) The CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
 - (2) By order or decree of a Court, the CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
 - (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) days; or
 - (4) The CONTRACTOR has defaulted by failing or refusing to pay in a timely manner the administrative charges or other monies due the TOWN and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (5) The CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) days of receipt of written notice by TOWN to do so; or
 - (6) In the event that the monies due the TOWN under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the Town Attorney; or

(7) The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide Collection for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4th) Work Day in order to provide interim Contract Collection until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN, except to the extent the failure to provide Collection services is the result of the occurrence of an event of force majeure.

- B. Habitual Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Section, in the event that the CONTRACTOR'S record of performance shows that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the CONTRACTOR, in the opinion of the TOWN, and regardless of whether the CONTRACTOR has corrected each individual condition of default, the CONTRACTOR shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The TOWN shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the TOWN may terminate this Contract upon giving of written final notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice the CONTRACTOR shall cease any further performance under this Contract.
- C. Effective Date of Termination. In the event of the aforesaid events specified in subsections A and B above and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the TOWN'S written notice to the CONTRACTOR and upon said date this Contract shall be deemed immediately terminated and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The CONTRACTOR, for failure to perform, shall reimburse the TOWN all direct and indirect costs of providing interim Residential Solid Waste, Recyclables, and Bulk Waste Collection.

SECTION 27. MODIFICATIONS TO THE CONTRACT

The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make changes in Solid Waste Management legislation and that changes in law may mandate certain changes to this Contract. Should such changes materially alter the obligations of the CONTRACTOR, then the Collection charges established in the Exhibits to this Contract shall be adjusted accordingly. When such modifications are made to this Contract, the TOWN and the

CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required. In addition, TOWN and the CONTRACTOR may approve other changes upon mutual agreement to address any other amendments to this contract. If an agreement cannot be reached, this Contract shall terminate upon one hundred and eighty (180) days of a declared impasse by either party.

SECTION 28. PERMITS AND LICENSES

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

SECTION 29. INDEPENDENCE OF CONTRACT

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

SECTION 30. FORCE MAJEURE

If either party is prevented from or delayed in performing its duties under this Contract by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, or federal government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Contract to the contrary, the term "Force Majeure" does not include, and a party shall not be excused from performance under this Contract for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder.

SECTION 31. EMPLOYEE STATUS

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

SECTION 32. EQUAL OPPORTUNITY EMPLOYMENT

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

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

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

SECTION 33. MEDIATION

In addition to any other remedy provided by law, the TOWN may agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.

SECTION 34. RIGHT TO REQUIRE PERFORMANCE

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

SECTION 35. GOVERNING LAW

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

SECTION 36. CONSENT TO JURISDICTION

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

SECTION 37. LITIGATION

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

SECTION 38. COMPLIANCE WITH LAWS

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

SECTION 39. SEVERABILITY

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

SECTION 40. ASSIGNMENT AND SUBCONTRACTING

- A. **Assignment.** No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the CONTRACTOR without the express written consent of the Town Council. The TOWN shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the CONTRACTOR. Any assignment of this Contract made by the CONTRACTOR without the express written consent of the Town Council shall be null and void and shall be grounds for the TOWN to declare a default of this Contract and immediately terminate this Contract by giving written notice to the CONTRACTOR, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the TOWN under this Contract to the CONTRACTOR shall cease, and the TOWN shall have the right to call the performance bond and shall be free to negotiate with other contractors, the CONTRACTOR, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the CONTRACTOR.

- B. **Subcontracting.** CONTRACTOR shall not employ subcontractors without the advance written permission of the TOWN. CONTRACTOR shall be fully responsible for the services and work provided by a subcontractor under the terms of this Contract. CONTRACTOR agrees that any employee or agent of the CONTRACTOR and any agent/employee of a subcontractor to the CONTRACTOR shall be removed from the TOWN jobsite or TOWN premises upon request by the Town Administrator or designee. Such request will only be issued to remove a person if the Town Administrator or designee has a reasonable basis (as determined in his or her discretion) that the presence of such person on TOWN property or at a TOWN jobsite is not in the best interest of the TOWN, or its employees, guests, visitors or citizens.

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

SECTION 41. MODIFICATIONS

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

SECTION 42. LEGAL REPRESENTATION

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

SECTION 43. FUND APPROPRIATION

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

SECTION 44. PUBLIC ENTITY CRIME

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

SECTION 45. FINANCIAL INTEREST

CONTRACTOR warrants and represents that no elected official, officer, agent, or employee of the TOWN has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no person who acts in the TOWN as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the TOWN, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director, or proprietor of the CONTRACTOR and, further, that no such person, purchasing agent, TOWN elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

SECTION 46. ALL PRIOR AGREEMENTS SUPERSEDED

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

SECTION 47. HEADINGS

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

SECTION 48. EXHIBITS

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

SECTION 49. MOST FAVORED NATIONS PROVISION AND COOPERATIVE PURCHASING

Upon Contractor's execution of a new contract with a neighboring municipality for the provisions of the same terms and conditions provided in this Agreement and the Agreement provides more favorable fees or rates than those provided herein, Contractor will reduce the fees and rates charged to the City herein so as to be equal to or lower than the rates charged the neighboring municipality's Agreement.

Other Towns and Cities of similar size and scope of services may contract for the services provided to the Town of Ponce Inlet under the terms of this Agreement, if the other Town or City determines that the Agreement's use is cost-effective and in the best interest of that Municipality. Upon such request, the Contractor may, at its discretion, provide such services, upon the terms and conditions contained herein.

SECTION 50. AGREEMENT FOR SOLID WASTE DISPOSAL AND RECYCLABLES PROCESSING SERVICES

The parties recognize and agree the tremendous economies of scale and cost savings that could be achieved by having one vendor provide both collection and disposal services. As a direct result of the fact that the TOWN's current waste disposal and recyclables processing services agreement is about to expire, the TOWN has elected to enter into a backup agreement with CONTRACTOR to provide such services. In the event that the TOWN elects to terminate its agreement with its current waste disposal and recyclables processing services provider for cause, or in the event the TOWN or its current waste disposal and recyclables processing services provider elects not to extend its term, CONTRACTOR has agreed to provide such services in accordance with Exhibit "6", which will be executed herewith and which will commence upon thirty (30) days written notice from the TOWN. The TOWN specifically finds CONTRACTOR to be a sole source provider, and it waives any and all procurement code requirements to the contrary.

SECTION 51. MODIFICATION OF TERMS

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

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

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



ATTEST:

Jeanene Witt
Jeanene Witt, Town Manager/Town Clerk

Date: 8/26/19

TOWN OF PONCE INLET, FLORIDA
A municipal corporation

By:

Gary L. Smith
Gary L. Smith, Mayor

Date: 8/26/19

Approved as to form and correctness:

Clifford B. Shepard
Clifford B. Shepard
TOWN ATTORNEY

Date: 8-27-19

WITNESSES:

WASTE PRO OF FLORIDA, INC.

By:

Tom Denton

Beardy H. Bramer

Print Name: Beardy H. Bramer

Print Name & Title: Tom Denton EVP

Date: 9/10/19

Dawn Williams

Print Name: Dawn Williams

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

These rates shall be in effect from October 1, 2019, through September 30, 2021. Rates shall be adjusted starting October 1st of each Contract Year thereafter in accordance with Section 12 herein. An example rate adjustment calculation is provided in Exhibit 3.

Table 1 – Residential Collection Service Rate for Manual Solid Waste Collection

IF TOWN RETAINS MANUAL SOLID WASTE COLLECTION	Generation Factor (tons/unit/year)	Disposal Fee (\$/ton)	Monthly Fee per Service Unit
Solid Waste Collection (2x/week, manual, unlimited)	NA	NA	\$ 16.08
Recycling Collection (1x/week in bins)	NA	NA	\$ 5.09
Bulk Waste Collection (1x/week, 12 cy limit)	NA	NA	\$ 5.74
Monthly Total per Residential Service Unit			\$ 26.91

Bulk Waste Collection in excess of the 12 cubic yard limit shall be invoiced directly to the Customer by the Contractor at \$25 per cubic yard.

Table 2 – Residential Collection Service Rate if TOWN Ever Elects to Transition to Carted Solid Waste Collection

IF TOWN SELECTS CARTED SOLID WASTE COLLECTION	Generation Factor (tons/unit/year)	Disposal Fee (\$/ton)	Monthly Fee per Service Unit
Solid Waste Collection (2x/week in Contractor-provided Roll Cart)	NA	NA	\$ 17.98
Recycling Collection (1x/week in Bin)	NA	NA	\$ 5.09
Bulk Waste Collection (1x/week, 12 cy limit)	NA	NA	\$ 5.74
Monthly Total per Residential Service Unit			\$ 28.81

Bulk Waste Collection in excess of the 12 cubic yard limit shall be invoiced directly to the Customer by the Contractor at \$25 per cubic yard.

EXHIBIT 2

SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENTS

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

Assumptions (for demonstration purposes only):

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

Residential Service Rate	a	b	c	d	e	f	g	h	i
	Rates for Demonstration Purposes Only (\$/unit/month)	95% of Collection Element	CPI (80% of % Change)	5% of Collection Element	Fuel Index (% Change)	New Rate (\$/unit/month)	Formula	5% Cap	Exceeds 5% Cap?
COLLECTION ELEMENTS									
Solid Waste Collection	\$/unit/month \$12.94	\$12.29	1.26%	\$0.65	3.45%	\$13.12	$f = a + (b \cdot c) + (d \cdot e)$	\$13.59	No
Bulk Waste Collection	\$11.83	\$11.24	1.26%	\$0.59	3.45%	\$11.99	$f = a + (b \cdot c) + (d \cdot e)$	\$12.42	No
Recycling Collection	\$3.32	\$3.15	1.26%	\$0.17	3.45%	\$3.37	$f = a + (b \cdot c) + (d \cdot e)$	\$3.49	No
	\$28.09					\$28.47			
DISPOAL ELEMENTS									
Bulk Waste Disposal	See Calculations Below (\$/unit/month) \$12.12	na	1.26%	na	na	\$12.27	$f = a + (b \cdot c)$	\$12.73	No
Solid Waste Disposal	\$4.77	Adjusted only when actual tip fee changes				\$4.77	na	na	na
TOTAL	\$44.98					\$45.51			

Residential Disposal Rates	a	b	c	d
	Tip Fees for Demonstration Purposes Only (\$/ton)	Generation Factor (tons/unit/year)	Rates (\$/unit/month)	Formula
Bulk Waste Disposal	\$39.00	3.73	\$12.12	$c = (a \cdot b) / 12 \text{ months}$
Solid Waste Disposal	\$44.69	1.28	\$4.77	$c = (a \cdot b) / 12 \text{ months}$

**EXHIBIT 3
 TECHNICAL SPECIFICATIONS FOR ROLL CARTS**

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

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

	<ul style="list-style-type: none"> • The lid must be one-piece construction and securely attached to the rear of the wheeled section of the Roll Cart using a rustproof, weather-resistant fastener system. • The lid must be hinged to open to a position of 270 degrees from the closed position and hang open without stressing the lid, body, or tipping over the Roll Cart. • Lids must be designed to be easily removed in the event of damage or failure. Lid latches are not acceptable.
Handle	<ul style="list-style-type: none"> • Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the Roll Cart. • The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.
Wheels/Axle	<ul style="list-style-type: none"> • Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered. • Wheels shall be snap-on or attached in a way that prevents unintended detachment. • Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts. • Each Roll Cart shall be furnished with a minimum 5/8 inch diameter axle with a corrosion-resistant coating that must be securely attached to the body by molded axle retainers. • The wheels and axle must be rated to meet the maximum load requirements of 3.5 pounds per gallon.
Stability	<ul style="list-style-type: none"> • Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.
Color	<ul style="list-style-type: none"> • Color must not be streaked in the finished product and must be colorfast so that the color does not alter significantly with normal use. Painted Roll Carts are unacceptable. • Colors will be specified by the Town. • The final color selection must be approved by the TOWN prior to manufacturing.
Markings	<ul style="list-style-type: none"> • The TOWN must approve all markings. • Sequential serial numbers must be molded, branded, or hot stamped into the front of the body with white color. Such number shall be assigned to a specific property within the TOWN. • An eight to ten (8-10) alpha/numeric serial number shall be used as determined by the TOWN. • A Southwest Ranches logo must be clearly molded, inscribed, or hot-stamped into both sides of the body with the following wording in 1 inch lettering on the lid: <ul style="list-style-type: none"> ○ Property of the Town of Ponce Inlet. ○ Instructions for which side of the Roll Cart must face the street for collection. ○ ANSI and regulatory labeling required.

	<ul style="list-style-type: none"> • Recycling Roll Carts must also have the following markings: <ul style="list-style-type: none"> ○ Recycling logo on both sides of the Roll Cart. ○ In-mold label on the cart lid with program instructions as determined by the TOWN.
<p>Warranty</p>	<ul style="list-style-type: none"> • Roll Carts must be fully (100%) warranted against defects in materials and workmanship for a minimum period of ten (10) years from the date of delivery and be transferrable to the TOWN at the expiration of this Contract. • The warranty must be unconditional and non-prorated providing the TOWN with assurance of full Roll Cart replacement. The warranty must survive the termination of any contract for the manufacture and/or A&D of Roll Carts. • Warranty is understood to include the following coverage: <ul style="list-style-type: none"> ○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body. ○ Damage to the body, the lid, or any component parts through opening or closing the lid. ○ Failure of the lid hinge to remain fully functional and continually hold lid in the originally-designed and intended positions when either opened or closed. ○ Failure of the body and lid to maintain its original shape. ○ Wear through of Roll Cart bottom so that it leaks liquid. ○ Failure of the wheels to provide continuous, easy mobility, as originally designed. ○ Failure of any part to conform to minimum standards as specified.
<p>Asset Management</p>	<ul style="list-style-type: none"> • A manufacturing database must be maintained that includes each Roll Cart's serial number, date of manufacture, location of manufacturer, Roll Cart type, color, and size. • At the time and point of delivery, the date, time, and latitude/longitude of the Roll Cart's delivery must be captured and associated with the manufacturing database and the residential physical address to which the Roll Cart is assigned. • The asset management database, including manufacturing information and A&D information, shall be completed and submitted to the Contract Administrator prior to the Commencement Date and maintained throughout the term of this Contract. • At the termination of this Contract, the asset management database shall be transmitted to the TOWN in an acceptable format.

Exhibit 4

Disaster Cleanup Agreement

Storm Operations

Pre-Storm

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

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

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

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

Pricing

Post Storm Operations – Waste Pro Fleet

- Charges will be:
 - Rear load truck and (1) man crew \$225.00 per hour
 - Additional laborers \$ 45.00 per hour
 - Grapple truck and (1) driver \$180.00 per hour
 - Roll off truck/container with (1) driver \$180.00 per hour

- Waste Pro will cooperate with the City's monitoring contractor to provide documentation of all work activities.
- Billing for storm debris removal service will be on a weekly basis with payment within 30 days of invoice date.
- Disposal charges will be billed to the City.

Post Storm Operations - Extraordinary Services

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