



# REGULAR TOWN COUNCIL MEETING

Monday, September 11, 2023 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 08/21/2023 RTCM**

Exhibit: Agenda Report Number 4a

**Attachments:**

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

**b. Approve Minutes of 08/21/2023 Council Workshop**

Exhibit: Agenda Report Number 4b

**Attachments:**

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

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS

**a. T&G Committee**

Exhibit: Agenda Report Number 7a

**Attachments:**

- **Agenda Report Number 7a** (Agenda\_Report\_Number\_7a.pdf)

**b. Park & Recreation Board**

Exhibit: Agenda report Number 7b

**Attachments:**

- **Agenda Report Number 7b** (Agenda\_Report\_Number\_7b.pdf)

**c. Planning & Zoning Board**

Exhibit: Agenda Report Number 7c

**Attachments:**

- **Agenda report Number 7c** (Agenda\_Report\_Number\_7c.pdf)

## 8. STAFF REPORTS

- a. Manager
- b. Clerk

## 9. PUBLIC COMMENTS

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

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

## 10. PUBLIC HEARINGS / SPECIAL ORDERS

### a. **Certify Storm Water Roll for Non-Ad Valorem Collection for FY 23/24 (Resolution 08-2023)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING CERTIFICATION OF ANNUAL STORMWATER ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10a

#### **Attachments:**

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

### b. **First Reading - R/LC Code Changes (Ordinance 2023-02)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE III, DISTRICT PROVISIONS; AMENDING SECTION 1-3.1, PURPOSE AND INTENT OF DISTRICTS; AMENDING SUBSECTION "O" R/LC (RESIDENTIAL/LIMITED COMMERCIAL) TO INCLUDE ADDITIONAL LANGUAGE AND TABLE 1-3.1; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10b

#### **Attachments:**

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

### c. **First Reading - Conditional Uses Code Changes (Ordinance 2023-03)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE VI, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AMENDING SECTION 1-6.1, SUBSECTION A, INTENT AND PURPOSE; AMENDING SECTION 1-6.1, SUBSECTION B, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AND AMENDING TABLE 1-6.1(B) – CONDITIONAL LAND USE REQUIREMENTS; ADDING CRITERIA FOR FUNERAL HOMES AND MINI WAREHOUSE/STORAGE; REMOVING REFERENCES TO TRADE AND SKILLED SERVICES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10c

#### **Attachments:**

- **Agenda Report Number 10c** (Agenda\_Report\_Number\_10c.pdf)

### d. **First Reading - Approve Millage Levy for FY 2023/2024 (Ordinance 2023-04)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE MILLAGE RATE OF 4.5000 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN OF MALABAR FOR THE PERIOD FROM

**Attachments:**

- **Agenda Report Number 10d** (Agenda\_Report\_Number\_10d.pdf)

**e. First Reading - Approve Budget for FY 2023/2024 (Ordinance 2023-05)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$4,959,685 FOR THE FOR THE FISCAL PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 10e

**Attachments:**

- **Agenda Report Number 10e** (Agenda\_Report\_Number\_10e.pdf)

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

**12. ACTION ITEMS**

ORDINANCES: 0

RESOLUTIONS: 0

MISCELLANEOUS: 1

**a. Residential Service Rate Adjustment for Solid Waste**

Waste Pro USA

Exhibit: Agenda Report Number 12a

**Attachments:**

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

(1) Vacancies on the Trails and Greenways Committee; (2) Vacancies on the Parks and Recreation Board, (1) Vacancy on the Planning and Zoning Board; and (1) Vacancy on the Board of Adjustment.

**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.

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Contact: Richard Kohler ([townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) 321-727-7764) | Agenda published on 09/06/2023 at 2:52 PM

# TOWN OF MALABAR

## Regular Town Council Meeting

**AGENDA ITEM NO: 4.a**  
**Meeting Date: September 11<sup>th</sup>, 2023**

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Approve Minutes of 8/21/2023 RTCM**

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**BACKGROUND/HISTORY:**

Summary of actions at Town Council Meetings

**ATTACHMENTS:**

- Draft Minutes of the RTCM of 8/21/2023

**ACTION OPTIONS:**

Review

**MALABAR TOWN COUNCIL  
REGULAR MEETING MINUTES  
August 21<sup>st</sup> 2023, 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 7:32 pm. CM Acquaviva led P&P.

**2. ROLL CALL:**

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	DAVID SCARDINO
COUNCIL MEMBERS:	MARISA ACQUAVIVA
	BRIAN VAIL
	JIM CLEVINGER
	MARY HOFMEISTER
TOWN MANAGER:	MATT STINNETT
TOWN ATTORNEY:	KARL BOHNE
SPECIAL PROJECTS MANAGER:	LISA MORRELL
TOWN CLERK:	RICHARD KOHLER

- 3. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** Mayor Reilly requests to add a presentation by the EDC after the consent agenda.

**4. CONSENT AGENDA:**

**4.a. Approve Minutes of 8/07/2023 RTCM**

Exhibit: Agenda Report Number 4a

**MOTION: CM Vail/CM Scardino to approve Consent Agenda as presented.**

**Vote: All Ayes (5-0).**

**Added Presentation: Angela Neal, Economic Development Commission.** Ms. Neal introduced herself and explained that the EDC is hoping to advertise our area as a community. They plan to find a Brand for Brevard County, using the one mission one voice program. They have connected with over 2k residents in Brevard. The goal is to provide outsiders with the complete story of Brevard County, as it is a fantastic community. They hope to promote the brand launch at the end of September. They will provide logo options for review on 9/20/2023. They hope to include the community in this project, so that it sees community support. They have a post card contest, where residents can submit pictures from across Brevard County which will then be made into a postcard. The website for the program is SpaceCoastEDC.org. Mayor Reilly asked how far the survey reviews went? Ms. Neal states they surveyed people from across the country, focusing on areas where Brevard gains talent from, as well as competitive markets. CM Acquaviva asks if "Launching a Legacy" is the brand. Ms. Neal states they are still developing the official brand, but a similar option is being reviewed. CM Vail asks if there will be a website or social media page for this? Ms. Neal states that is part of the plan, but they don't want to be too heavy handed in how they govern it. CM Acquaviva asks if there will be commercials? Ms. Neal states possibly if the program expands, hopefully it will be advertised internationally. Council thanked her for the presentation.

- 5. ATTORNEY REPORT:** None

**6. STAFF REPORTS:**

**6.a. Town Manager – Matt Stinnett** informed Council that he has provided a list of active Code enforcement cases. He states there has been 39 applications for the 2 posted positions. He hopes to set up interviews in the next few weeks. Weber Road is being paved. It is getting 2 inches of asphalt. Mayor Reilly requested dates be applied to the Code Enforcement information provided. CM Hofmeister asks what the difference between open and pending? TM Stinnett states that pending is reported,

and open has had action taken on them. CM Scardino asks if Council should rank them to ensure the worst are addressed first? CM Vail states the number of complaints per violation should be included as well. CM Scardino ask if pictures can be provided. CM Acquaviva states she doesn't feel that is necessary and would be micro managing staff. CM Vail agrees. TM Stinnett explains that some of these will be easy fixes, and some will be a drawn-out process. This is a starting point. CM Vail reiterates that these are all complaint based. CM Acquaviva asks how many cases the Attorney is involved in? He states there are 2. He is hoping to move to summary judgement on one of them soon. CM Hofmeister asks about the boat in the Isasa Lane ROW. TM Stinnett states he will work to prioritize that case.

**6.b. Town Clerk – Richard Kohler** stated that Qualifying for Council Seats #4 & 5 has ended. Council Members Scardino and Hofmeister both met the qualification requirements, and upon approval of qualification will be running unopposed. He also informed Council that Mr. Mark Britt has resigned from his position on the Trails and Greenways Committee.

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

**8. PUBLIC HEARINGS/SPECIAL ORDERS: 0**

**9. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO TOWN APPOINTED BOARDS/COMMITTEES: 1**

**9.a. Trails and Greenways Purchase Request for Bike Repair Station**

Exhibit: Agenda Report Number 9a

Staff: Clerk Kohler states that the Committee has discussed purchasing a purpose-built bike repair stand, which cost from \$775 to \$1,799. The Committee has selected to build their own repair stand, which will be affixed to the Cameron Trail Shelter in the Cameron Preserve. The goal is to provide the tools and equipment required for basic trail maintenance, such as a broken chain or a flat tire. The funds for this project will come from the Trails and Greenways account, 572.4930.

**MOTION: CM Vail/CM Hofmeister to approve purchase request.**

Discussion: CM Acquaviva asks about security. Clerk Kohler states they plan to affix the tools to the CTS using the cables and clamps in the purchase request. Mayor Reilly states the risk of homeless people helping themselves to the supplies. CM Vail states he supports it. CM Acquaviva states she supports it as well.

**VOTE: ALL Ayes (5-0)**

**10. ACTION ITEMS:**

**ORDINANCES for FIRST READING: 0**

**RESOLUTIONS: 1**

**MISCELLANEOUS: 3**

**10.a. Appoint Mark Gunter to the Trails and Greenways Committee (Resolution 07-2023)**

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

Exhibit: Agenda Report Number 10a

**MOTION: CM Scardino/CM Hofmeister to approve Resolution 07-2023**

Discussion: None

**Roll Call Vote: CM Hofmeister, Aye; CM Acquaviva, Aye; CM Vail, Aye; CM Clevenger, Aye; CM Scardino, Aye. Motion Carries 5-0.**

**10.b. Council Qualifies Council Candidates**

Exhibit: Agenda Report Number 10b

Staff: Clerk Kohler states that Malabar Charter 2.06 requires the seated Council to qualify the candidates. As both are running unchallenged, they will be sworn in for new terms on November 9<sup>th</sup>.

**MOTION: CM Vail/CM Acquaviva to qualify the candidates.**

**Vote: All Ayes (5-0)**

**10.c. Engagement Letters for Florida Municipal Loan Council Financing Program (FMLC) and Public Resources Advisory Group, Inc. (PRAG)**

Exhibit: Agenda Report Number 13c

Staff: TM Stinnett states that this program is designed for smaller cities by the Florida League of Cities. At the last workshop, we discussed seeking a loan to accomplish more road paving projects. This program provides assistance in seeking the loans and finding the best deal. There is a small up-front fee, but he feels it will be worth it in the long run.

**MOTION: CM Scardino/CM Vail to authorize the Town Manager to execute the engagement letters and proceed with securing financing for road resurfacing projects.**

Discussion: CM Vail states this is a great program. They do the research and hard work. He feels it is a no brainer. CM Acquaviva states she feels the fee will be well worth it when they secure a good loan. TM Stinnett states there will be a significant cost associated to this. The Town could be looking at 1.7 million in interest payments. CM Vail states he hopes to ensure the increased taxes provide for paving, in the loan payments as well as progressive ad valorem taxes. CM Scardino agrees. Treasurer Morrell provides additional explanation that this will provide future Councils with debt. The engagement letter allows you to shop the market and make a decision. CM Scardino asks if we would be able to renegotiate the contract? Treasurer Morrell states that would be decided in the loan process. CM Acquaviva states she supports it. CM Vail states he agrees.

**Vote: All Ayes (5-0)**

**10.d. Federally Funded Subaward and Grant Agreement (FDEM)**

Exhibit: Agenda Report Number 10.d

Staff: TM Stinnett states that this is how the state disperses FEMA funding. This is required to receive the funds required to repair Rocky Point Road.

**MOTION: CM Scardino/CM Vail to approve and execute the agreement and designate the Town Manager as the authorized agent.**

Discussion: None

**Vote: All Ayes (5-0)**

11. **DISCUSSION/POSSIBLE ACTION: None**
12. **PUBLIC COMMENTS: General Items (Speaker Card Required)**
13. **REPORTS – MAYOR AND COUNCIL MEMBERS**

**CM Acquaviva:** She states she is very thankful for the paving starting along Weber Road.

**CM Vail:** Unfortunately, Dickey Cameron passed away. This Saturday will be a remembrance celebration in Grant.

**CM Clevenger:** None



**CM Hofmeister:** She states that at the Malabar Scrub Sanctuary, a sign has been posted informing people that the Main Concrete Trail have been closed. She believes one should leave something better than they found it, and the County is not in this case.

**CM Scardino:** States that he has noticed traffic is increasing.

**Mayor Reilly:** He informed Council that there will be a controlled burn in the Malabar Scrub Sanctuary. He also informed them that he attended the Florida League of Cities annual conference. One class he attended was AI in Government, and he also attended a Form 6 seminar. He heard of plans to resign in December and be appointed in January. If your term is less than a year, you do not have to file one. He states several people got up and left. Another event he attended was the affordable housing seminar. He asked what the difference was between affordable housing, and low-income housing, but could not get an answer. As of July 1<sup>st</sup>, municipalities must allow affordable housing in commercial land districts, and can build to the max heigh of other buildings in the Town. He has received multiple calls about this project and warns Council to beware.

**14. ANNOUNCEMENTS:** (1) Vacancy on the Planning & Zoning Board; (2) Vacancy on the Parks & Recreation Board; (1) Vacancy on Board of Adjustment; (1) Vacancy on the Trails and Greenways Committee.

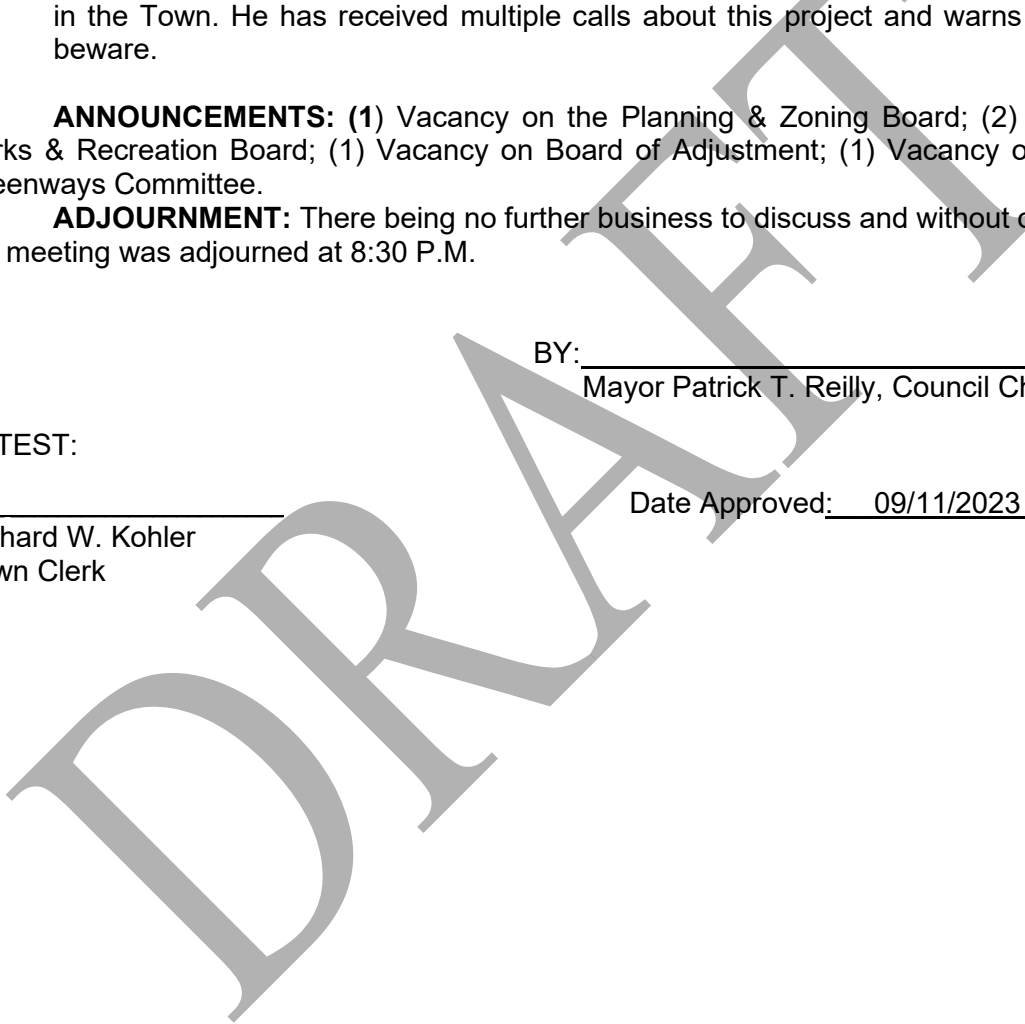
**15. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 8:30 P.M.

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

ATTEST:

\_\_\_\_\_  
Richard W. Kohler  
Town Clerk

Date Approved: 09/11/2023



# TOWN OF MALABAR

## Regular Town Council Meeting

AGENDA ITEM NO: **4.b**  
Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Approve Minutes of 8/21/2023 Council Workshop**

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**BACKGROUND/HISTORY:**

Summary of actions at Town Council Meetings

**ATTACHMENTS:**

- Draft Minutes of the Council Workshop of 8/21/2023

**ACTION OPTIONS:**

Review

**MALABAR TOWN COUNCIL  
TOWN COUNCIL WORKSHOP MINUTES  
August 21<sup>st</sup>, 2023, 7:00 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 7:00 pm. Mayor Reilly led P&P.

**2. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

DAVID SCARDINO

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

JIM CLEVENGER

MARY HOFMEISTER

TOWN MANAGER:

MATT STINNETT

TOWN TREASURER:

LISA MORRELL

TOWN CLERK:

RICHARD KOHLER

**3. WORKSHOP ACTION:**

**a. Draft Budget Presentation**

TM Stinnett began by stating that the budget before you was generated in the new BS&A software. Some accounts were changed for employee benefits. ARPA funds were changed to account for the paving of Weber Road. The property insurance and workers comp are a few thousand dollars above where it is and needs to be increase. In total, he will be adding about 21k. Operational changes include personnel in the Public Works Department. One of the workers will be promoted to manager, and the other two will be promoted to HEO. We will also include two MEO position.

Mayor Reilly noted that 322.1000 has increased. TM Stinnett states that is due to the projected increase in building permits seen this year. He also explained the increase to legal budget and Communication Service Tax.

Mayor Reilly asked if any of Council had any comments on the first page. None heard.

Mayor Reilly asked if any of Council had any comments on the second page. None heard.

Mayor Reilly asked if any of Council had any comments on the third page. None heard.

Mayor Reilly asked if any of Council had any comments on the fourth page. None heard.

Mayor Reilly asked if any of Council had any comments on the fifth page. CM Acquaviva asked about the increase to the property insurance. TM Stinnett states the workers comp and general liability insurance all increased, and we received the increases today.

Mayor Reilly asked if any of Council had any questions on the sixth page. None heard.

Mayor Reilly asked if any of Council had any comments on the seventh page. None heard.

Mayor Reilly asked if any of Council had any comments on the eighth page. None heard.

Mayor Reilly asked if any of Council had any comments on the ninth page. None heard.

Mayor Reilly asked if any of Council had any comments on the tenth page. None heard.

Mayor Reilly asked if any of Council had any comments on the eleventh page. None heard.

Mayor Reilly thanked staff for their great work. Clerk Kohler reminds Council that the first and second public hearing will be held on September 11<sup>th</sup> and September 25<sup>th</sup> respectively.

**4. ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 7:11 P.M.

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

ATTEST:

\_\_\_\_\_  
Richard Kohler, Town Clerk

Date Approved: 09/11/2023

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

### AGENDA ITEM NO: **7.a**

Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT:** T&G Committee Update

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#### **BACKGROUND/HISTORY:**

At the last Trails and Greenways Committee Meeting, the Committee requested Council approve the purchase of a Bike Repair Stand for the Cameron Preserve. Council approved the purchase at the 8.21.23 RTCM. The products have been purchased and received, and plan to be installed at the 9.8.23 & 9.9.23 Trail days, along with the 41 signs approved for purchase at the 7.17.23 RTCM.

#### **ATTACHMENTS:**

- None.

#### **ACTION:**

- None.

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 7.b**  
Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Parks and Recreation Board Update**

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**BACKGROUND/HISTORY:**

The Parks and Recreation Board has not met since their last report to Council.

**ATTACHMENTS:**

- None.

**ACTION:**

- None.

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

**AGENDA ITEM NO: 7.C**

**Meeting Date: September 11th, 2023**

**Prepared By:** Richard W. Kohler, Town Clerk

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**SUBJECT:** Planning & Zoning Board Update

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**BACKGROUND/HISTORY:**

The Planning and Zoning Board has not met since their last report to council.

**ATTACHMENTS:**

a. None

**ACTION OPTIONS:**

a. Review

# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

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

Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: Certify Storm Water Roll for Non-Ad Valorem Collection for FY 23/24  
(Resolution 08-2023)**

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#### **BACKGROUND/HISTORY:**

The certification of the assessment roll for stormwater and the estimated amount to be assessed must be approved by the Town Council in an advertised Public Hearing prior to the collection by the Tax Collector. The certification of the assessment roll and the estimated amount must be approved before Malabar holds the Public Hearings on the overall budget.

#### **ATTACHMENTS:**

- Resolution 08-2023
- Legal Ad for Resolution 08-2023

#### **ACTION:**

- Motion to approve Resolution 08-2023.

#### **FINANCIAL IMPACT:**

- \$133,106.96 from 1,739 parcels as provided by rate resolution adopted by Malabar Town Council and assessment roll provided by the Brevard County Property Appraiser's Office

## **RESOLUTION 08-2023**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING CERTIFICATION OF ANNUAL STORMWATER ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on August 17<sup>th</sup>, 2017, the Town Council of Malabar held a Public Hearing and adopted a stepped increase for the calculation of the annual stormwater utility assessment roll for the operation and maintenance of the Town's Stormwater management Program for the fiscal year beginning October 1<sup>st</sup>, 2023; and

**WHEREAS**, an annual assessment roll has been prepared by Brevard County, a summary of which is attached to and made part of this Resolution by reference and labeled Exhibit "A"; and

**WHEREAS**, a copy of such annual Stormwater Utility Assessment Roll has been sent to the Brevard County Tax Collector for collection in the same manner as ad valorem taxes are collected; and

**WHEREAS**, the Malabar Town Council is satisfied that the annual Stormwater Utility Assessment Roll has been prepared for the fiscal year beginning on October 1<sup>st</sup>, 2023, in conformity with the Schedule of Rates adopted by the Town Council on August 4<sup>th</sup>, 2017, and incorporating the rate increases in the per ERU from \$52.00 to \$64.00 per ERU (Equivalent Residential Unit).

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

**SECTION 1.** The above "WHEREAS" statements are true and correct.

**SECTION 2.** Those Stormwater Utility Assessments imposed during the fiscal year beginning on October 1<sup>st</sup> 2023 shall be billed by the Town of Malabar of its authorized representative, pursuant to the provisions of Section 13.5-8 of the Code of Ordinance, Town of Malabar, and shall be due and payable on November 1<sup>st</sup> of each year,



pursuant to law.

**SECTION 3.** That a certified copy of this Resolution shall be delivered to the Tax Collector of Brevard County, Florida, along with the executed DR-408A.

**SECTION 4.** This Resolution shall take effect immediately upon its adoption. The 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 Jim Clevenger	_____
Council Member David Scardino	_____
Council Member Mary Hofmeister	_____

This ordinance was then declared duly passed and adopted this \_\_\_ day of \_\_\_ 2023.

(Seal)

**TOWN OF MALABAR**

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

**ATTEST:**

\_\_\_\_\_  
Richard W. Kohler, Town Clerk

**Approved for Legal Sufficiency:**

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

# "Exhibit A"



## 2023 Totals for Stormwater Billing

City Code	Count	District - City	Billing Amount
Z	1,739	Malabar	\$133,106.96
	<b>Total: 1,739</b>		<b>\$133,106.96</b>

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

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

August 28, 2023

From: Richard Kohler, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, August 31, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR  
NOTICE OF  
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **September 11, 2023, at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

RESOLUTION 08-2023

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING CERTIFICATION OF ANNUAL STORMWATER ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING FOR AN EFFECTIVE DATE.**

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.

A Daily Publication By:



TOWN OF MALABAR  
2725 MALABAR RD

MALABAR, FL, 32950

Ad#5812163 08/31/2023  
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, September 11, 2023, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

RESOLUTION 08-2023

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING CERTIFICATION OF ANNUAL STORMWATER ASSESSMENT ROLL; ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING FOR AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [wnclerk@townofmalabar.org](mailto: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 these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.

STATE OF WISCONSIN COUNTY OF BROWN:  
Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY**, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

Legal Notices

as published in **FLORIDA TODAY** in the issue(s) dated: or by publication on the newspaper's website, if authorized, on

08/31/2023

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 31th of August 2023, by legal clerk who is personally known to me

*[Signature]*

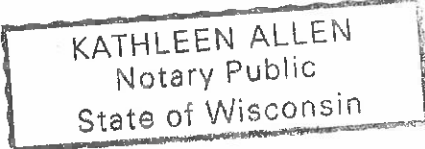
\_\_\_\_\_  
Affiant

*[Signature]*

\_\_\_\_\_  
Notary State of Wisconsin County of Brown

*[Signature]*

My commission expires  
Publication Cost: \$71.65  
Ad No: 0005812163  
Customer No: BRE-6TO207  
This is not an invoice  
# of Affidavits 1



# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

### AGENDA ITEM NO: 10.b

Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: FIRST READING - R/LC Code Change Discussion (Ordinance 2023-02)**

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#### **BACKGROUND/HISTORY:**

From 2015 to 2019, the Town of Malabar discussed, reviewed, and updated its code language for the Residential/Limited Commercial (R/LC) Zoning designation. During the discussion, Table 1-3.1, Permitted Combinations of R/LC Land Uses, was recommended by Planning and Zoning, but not included in the final adoption of the codes. Council reviewed the suggested changes at the 07/17/2023 RTCM and directed Staff to prepare an Ordinance to implement the changes into the code. The Ordinance has been legally reviewed, and legally advertised.

#### **ATTACHMENTS:**

- Ordinance 2023-02
- Legal Ad for Ordinance 2023-02

#### **FINANCIAL IMPACTS:**

- None.

#### **ACTION:**

- Approve First Reading of Ordinance 2023-02

## ORDINANCE 2023-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE III, DISTRICT PROVISIONS; AMENDING SECTION 1-3.1, PURPOSE AND INTENT OF DISTRICTS; AMENDING SUBSECTION "O" R/LC (RESIDENTIAL/LIMITED COMMERCIAL) TO INCLUDE ADDITIONAL LANGUAGE AND TABLE 1-3.1; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the Town of Malabar is seeking to expand the viability of commercial properties in Town; and

**WHEREAS**, a local government agency has the authority to amend their Zoning Codes to better accommodate the needs of the municipality; and

**WHEREAS**, on August 26, 2015, the Malabar Planning and Zoning Board held a publicly advertised meeting to discuss and recommend such amendments to the Town Code; and

**WHEREAS**, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

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

**SECTION 1.** Article III, Section 1-3.1, Subsection "O" of the Town Land Development Code is hereby amended to provide additional language and Table 1-3.1, which shall read as follows:

"O" - R/LC "Residential and Limited Commercial. " The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Rural Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such Development is intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a maximum density up to six (6) units per acre. A building(s) or portions of a building may have residential or commercial uses(s), or a combination of both. Residential/ Limited Commercial activities shall generally cater to the following markets:

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets, and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. Such development is intended to accommodate limited commercial goods and services together with rural residential activities on specific sites designated "R/LC". This residential land use shall permit multiple family residential development, limited commercial development separately where current Infrastructure allows, or as a combination of these uses as regulated by Table 1-3.1 and Table 1-3.3(A).

Residential Dwelling unit(s) shall not exceed commercial use(s) by more than one as regulated by Table 1-3.1.

Commercial use(s) shall not exceed residential dwelling unit(s) by more than one as regulated by Table 1-3.1.

**Table 1 3.1. Permitted Combinations of R/LC Land Uses**

<u>Total Units/ Uses</u>	<u>Residential</u>	<u>Limited Commercial</u>
<u>1</u>	<u>1</u>	<u>0</u>
<u>1</u>	<u>0</u>	<u>1</u>
<u>2</u>	<u>1</u>	<u>1</u>
<u>3</u>	<u>2</u>	<u>1</u>
<u>3</u>	<u>1</u>	<u>2</u>
<u>4</u>	<u>2</u>	<u>2</u>
<u>5</u>	<u>3</u>	<u>2</u>
<u>5</u>	<u>2</u>	<u>3</u>
<u>6</u>	<u>3</u>	<u>3</u>

**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 after the adoption of this Ordinance.

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 Jim Clevenger \_\_\_\_\_
- Council Member David Scardino \_\_\_\_\_
- Council Member Mary Hofmeister \_\_\_\_\_

This ordinance was then declared duly passed and adopted this \_\_\_ day of \_\_\_\_\_ 2023.

**TOWN OF MALABAR**

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

**ATTEST:**

\_\_\_\_\_  
Richard W. Kohler, Town Clerk

(seal)

Approved for Legal Sufficiency:

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

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

Vote: to .  
Vote: to .



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

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

August 28, 2023

From: Richard Kohler, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, August 31, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR  
NOTICE OF  
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **September 11, 2023, at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-02**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE III, DISTRICT PROVISIONS; AMENDING SECTION 1-3.1, PURPOSE AND INTENT OF DISTRICTS; AMENDING SUBSECTION "O" R/LC (RESIDENTIAL/LIMITED COMMERCIAL) TO INCLUDE ADDITIONAL LANGUAGE AND TABLE 1-3.1; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.**

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.



SEP 5 2023 4:11:05

TOWN OF MALABAR  
2725 MALABAR RD

MALABAR, FL, 32950

Ad#5812124 08/31/2023  
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, September 11, 2023, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-02**  
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA: AMENDING THE TOWN'S LAND DEVELOPMENT CODE: AMENDING ARTICLE III, DISTRICT PROVISIONS; AMENDING SECTION 1-3.1, PURPOSE AND INTENT OF DISTRICTS; AMENDING SUBSECTION "O" RALC (RESIDENTIAL/UNLIMITED COMMERCIAL) TO INCLUDE ADDITIONAL LANGUAGE AND TABLE 1-3.1; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7754. Richard Kohler, Town Clerk.

STATE OF WISCONSIN COUNTY OF BROWN:  
Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY**, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

**Legal Notices**

as published in **FLORIDA TODAY** in the issue(s) dated: or by publication on the newspaper's website, if authorized, on

**08/31/2023**

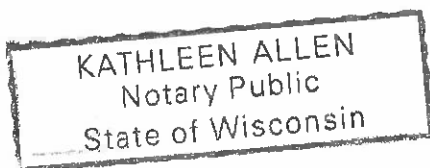
Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 31th of August 2023, by legal clerk who is personally known to me

Affiant

Notary State of Wisconsin County of Brown

My commission expires  
Publication Cost: \$81.60  
Ad No: 0005812124  
Customer No: BRE-6TO207  
This is not an invoice  
# of Affidavits 1



# TOWN OF MALABAR

## REGULAR TOWN COUNCIL MEETING

### AGENDA ITEM NO: **10.C**

Meeting Date: September 11<sup>th</sup>, 2023

Prepared By: Richard W. Kohler, Town Clerk

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**SUBJECT: FIRST READING – Conditional Uses Code Changes (Ordinance 2023-03)**

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#### **BACKGROUND/HISTORY:**

The Planning and Zoning Board reviewed these suggested code changes from March to May of 2023. The Board unanimously recommended to Council that the changes be implemented into the Town Code. At the July 3rd RTCM, Council voted unanimously to direct Staff to draft an Ordinance to incorporate the changes into the Town Code. The goal of the changes is to provide clarity to the code, as well as to place the burden of proof of a conditional use on the applicant. The Ordinance has been legally reviewed, and legally advertised.

#### **ATTACHMENTS:**

- Ordinance 2023-03
- Legal Ads

#### **ACTION:**

- Approve First Reading of Ordinance 2023-03

#### **FINANCIAL IMPACT:**

- None

## ORDINANCE 2023-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE VI, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AMENDING SECTION 1-6.1, SUBSECTION A, INTENT AND PURPOSE; AMENDING SECTION 1-6.1, SUBSECTION B, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AND AMENDING TABLE 1-6.1(B) – CONDITIONAL LAND USE REQUIREMENTS; ADDING CRITERIA FOR FUNERAL HOMES AND MINI WAREHOUSE/STORAGE; REMOVING REFERENCES TO TRADE AND SKILLED SERVICES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, conditional use and special exception use provide greater opportunity for business development in the Town of Malabar; and

**WHEREAS**, the Town of Malabar has a limited number of conditional use and special exception use criteria; and

**WHEREAS**, the Town of Malabar wishes to ensure that the burden of proof for a conditional use is on the applicant; and

**WHEREAS**, the Town Council with the recommendation by the Malabar Planning and Zoning Board on May 10, 2023, seek to allow certain Conditional Use and Special Exception Uses to become more available to its residents; and

**WHEREAS**, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

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

**SECTION 1.** ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA, SUBSECTION (A) of the Town Land Development Code is hereby amended to read as follows:

- A. *Purpose and Intent.* This Section is intended to stipulate general provisions and criteria for considering the approval of conditional uses on specific sites within various zoning districts. Conditional uses shall be permitted only upon a finding that the respective use and proposed site plan satisfies the specific criteria of Section 1-6.1(C) cited herein.

**SECTION 2.** ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA, SUBSECTION (B) of the Town Land Development Code is hereby amended to read as follows:

B. Specific Criteria Regulating Conditional Uses. A conditional use shall be permitted only upon a finding that the proposed conditional use, application, and site plan complies with the criteria herein unless the town determines that the proposed conditional use does not meet the criteria herein provided and the proposed conditional use is adverse to the public's interest. In addition to the site plan criteria of Article VII, an application for a conditional use shall describe the proposed land use characteristics and site plan techniques proposed to mitigate against possible adverse impacts to properties in the immediate vicinity. A conditional use permit applicant has the burden of proof to meet all the applicable requirements for the issuance of a conditional use. The applicant must demonstrate, by substantial competent evidence, that the application and all requirements and conditions for the granting of a conditional use have been met established and that the applicant accepts the conditions as recommended by the Planning and Zoning Board and those subsequently adopted and imposed by the Town Council relating to the conditional use.

1. Characteristics of use described. The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:

a. Scale and intensity. Scale and intensity of use as measured by the following:

- i. Floor area ratio;
- ii. Traffic generation;
- iii. Square feet of enclosed building for each specific use;
- iv. Proposed employment;
- v. Proposed number and type of service vehicles;
- vi. Off-street parking needs; and
- vii. Other specifications and/or characteristics of the proposed use describing the nature, character, and intensity of the use, including

compatibility with existing and anticipated uses within the immediate vicinity.

b. Site improvements. On- or off-site improvement needs generated by the proposed use and not identified in the preceding subparagraph "a.":

- i. On- or off-site facilities required to serve the proposed uses such as utilities, public facilities, roadway or signalization improvements, or other similar improvements, including proposed accessory structures or facilities; and
- ii. Other unique facilities/structures proposed as part of site improvements.

c. On-site amenities. On-site proposed to enhance site and planned improvements. Amenities including mitigative techniques such as open space, setbacks from adjacent properties, screening and buffers, including landscaped berms proposed to mitigate against adverse impacts to adjacent sites.

d. Public facilities. If the conditional use is for a public or semi-public facility, the primary and auxiliary service areas shall be described together with the existing and anticipated network of related facilities accommodating service area needs within the incorporated and unincorporated areas of Brevard County.

2. Criteria for conditional use review and approval. In addition to site plan identified in Article VII, applications for a conditional use shall clearly demonstrate the following:

- a. Land use compatibility. The applicant shall demonstrate that the conditional use, including its proposed scale and intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses and will not adversely impact land use activities in the immediate vicinity.

Similarly, where the use is substantially different from other uses in the district and is not intended to serve the residents in the immediate vicinity, the applicant shall bear the burden of demonstrating that the use is appropriate to the subject site and immediate vicinity and cannot and/or should not be located at an alternative site. In order for a non-residential use to be approved within a residential area, the applicant must demonstrate that a location outside the residential area would not provide for the essential site location needs of the facility or use.

b. Land use consistency. The applicant shall demonstrate that the conditional use is consistent with the Comprehensive Plan and compliant with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.

c. Land use capability. The applicant shall demonstrate that the land is capable of supporting the use, as measured by the following:

b.i. Sufficient site size and adequate site specifications to accommodate the proposed use. The size and shape of the site, the proposed setbacks and buffer areas, the proposed access and internal circulation, and the site design enhancements must be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate site design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

c.ii. Public and semi-public facilities within residential areas. A public or semi-public facility proposed within any type of residential district must provide an essential service to residential dwelling units within the immediate vicinity and the applicant must

demonstrate that alternative sites zoned for non-residential use cannot accommodate the functions of the facility.

- ~~d-iii.~~ iii. Proper use of mitigative techniques. The applicant shall demonstrate that the conditional use and site plan has been designated to incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure are not burdened with adverse impacts detrimental to the general public health, safety and welfare.
- ~~e-iv.~~ iv. Hazardous waste and hazardous emissions. The proposed use shall not generate hazardous waste, hazardous emissions, or require use of hazardous materials in its operations without use of town approved mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall provide for appropriate identification of hazardous waste and hazardous material, regulate its use, storage and transfer consistent with best management principles and practices. No use which generates hazardous waste, hazardous emissions or uses hazardous materials shall be located in the town unless specific location is consistent with the Comprehensive Plan, land development regulations, and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources. Such uses shall be located within a non-residential district.
- ~~f-v.~~ v. Compliance with applicable laws and ordinances. A conditional use application shall demonstrate compliance with all applicable federal, state, county and town laws and ordinances. Where permits are required from governmental agencies other than the town, these permits shall be obtained as a condition of approval.



**SECTION 3.** ARTICLE VI SECTION 1-6.1, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; TABLE 1-6.1(B) CONDITIONAL LAND USE REQUIREMENTS to be amended to read as:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District / Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District / Nonresidential District (feet)	Perimeter Screening Residential District / Nonresidential District (5)	Curb Cut Controls	Other
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)	
Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)	
Enclosed Arcade Amusement Center/Electronic Gaming Establishment	1 Acre	120	Highway 1 and Babcock Street only	100/30	N/A	Type A/C	(7)	
<b>Funeral Homes</b>	<b>2 Acres</b>	<b>250</b>	<b>Paved</b>	<b>100/75</b>	<b>25/20</b>	<b>Type A/C</b>	<b>(7)</b>	
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Hospitals and other Licensed Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes and Related Health Care Facilities	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	
Protective Services	(4)	120	Paved	50/30	25/20	Type A/C	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/C	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C		

Adult Entertainment	1 Acre (8, 9, 10)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US1 / Babcock	100/30	N/A	Type A/C	(7)	(6)
<b><u>Mini Warehouse/ Storage</u></b>	<b><u>4 Acres</u></b>	<b><u>250</u></b>	<b><u>Paved</u></b>	<b><u>100/30</u></b>	<b><u>25/20</u></b>	<b><u>Type A/B</u></b>	<b><u>(7)</u></b>	
Limited Manufacturing Activities	1 Acre	100/150	Arterial / West Railroad Avenue	100/25	25/20	Type A/C	(7)	
Limited Manufacturing Services	1 Acre	100/150	Arterial / West Railroad Avenue	100/25	25/20	Type A/C	(7)	
Marine Commercial Activities	1 Acre	120	US1 / Babcock / West Railroad Avenue	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	
<b><del>Trades and Skilled Services</del></b>	<b><del>1 Acre (8)</del></b>	<b><del>145</del></b>	<b><del>US1 / Babcock / West Railroad Avenue</del></b>	<b><del>100/30</del></b>	<b><del>N/A</del></b>	<b><del>Type A/C</del></b>	<b><del>(7)</del></b>	
Vehicular Services and Maintenance	1 Acre (8)	145	US1 / Babcock / West Railroad Avenue	100/30	N/A	Type A/C	(7)	
Wholesale Trades and Services	1 Acre	145	US1 / Babcock / West Railroad Avenue	50/30	15/10	Type A/C	(7)	
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)	
Vehicular and Other Mechanical	1 Acre (8)	145	US1 / Babcock / West Railroad	100/30	15/10	Type A/C	(7)	

Repair			Avenue				
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)
Community Residential Home							
Level 1 (1 to 6 residents/beds)	1.5 acres	210	Paved	60/30	25/20	Type A/C	(7)
Level 2 (7 to 14 residents/beds)	3 acres	210	Paved	60/30	25/20	Type A/C	(7)
Assisted Care Communities							
I Assisted Living Facility							
Level 1 (1 to 5 residents/beds)	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 2 (6 to 15 residents/beds)	3 acres	210	Arterial	60/30	25/20	Type A/C	(7)
Level 3 (16 or more residents/beds)	5 acres	325	Arterial	100/75	25/20	Type A/C	(7)
II Adult Family-Care Homes							
(1 to 5 residents/beds)	2 acres	210	Paved	60/30	25/20	Type A/C	(7)
III Adult Day Care Facilities	2 acres	210	Arterial	60/30	25/20	Type A/C	(7)

**SECTION 4. 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 5. 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 6.** **Inclusion in Code.** It is the 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 7.** **Effective Date.** This Ordinance shall take effect ninety (90) days after the adoption of this Ordinance.

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 Jim Clevenger \_\_\_\_\_
- Council Member David Scardino \_\_\_\_\_
- Council Member Mary Hofmeister \_\_\_\_\_

This ordinance was then declared duly passed and adopted this \_\_\_\_ day of \_\_\_\_ 2023.

(Seal)

**TOWN OF MALABAR**

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

**ATTEST:**

\_\_\_\_\_  
Richard W. Kohler, Town Clerk

**Approved for Legal Sufficiency:**

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

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

Vote: to .  
Vote: to .

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

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

August 28, 2023

From: Richard Kohler, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, August 31, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR  
NOTICE OF  
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **September 11, 2023, at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-03**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE VI, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AMENDING SECTION 1-6.1, SUBSECTION A, INTENT AND PURPOSE; AMENDING SECTION 1-6.1, SUBSECTION B, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AND AMENDING TABLE 1-6.1(B) – CONDITIONAL LAND USE REQUIREMENTS; ADDING CRITERIA FOR FUNERAL HOMES AND MINI WAREHOUSE/STORAGE; REMOVING REFERENCES TO TRADE AND SKILLED SERVICES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.



TOWN OF MALABAR  
2725 MALABAR RD

MALABAR, FL, 32950

Ad#5812136 08/31/2023  
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, September 11, 2023, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-03**  
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING ARTICLE VI, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AMENDING SECTION 1-6.1, SUBSECTION A, INTENT AND PURPOSE; AMENDING SECTION 1-6.1, SUBSECTION B, CONDITIONAL USE AND SPECIAL EXCEPTION USE CRITERIA; AND AMENDING TABLE 1-6.1(B) - CONDITIONAL LAND USE REQUIREMENTS; ADDING CRITERIA FOR FUNERAL HOMES AND MINI WAREHOUSE/STORAGE; REMOVING REFERENCES TO TRADE AND SKILLED SERVICES; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.  
Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [wnclerk@townofmalabar.org](mailto: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 these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.

STATE OF WISCONSIN COUNTY OF BROWN:  
Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY**, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

**Legal Notices**

as published in **FLORIDA TODAY** in the issue(s) dated: or by publication on the newspaper's website, if authorized, on

**08/31/2023**

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 31th of August 2023, by legal clerk who is personally known to me

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
Notary State of Wisconsin County of Brown

1-7-23

My commission expires  
Publication Cost: \$87.57  
Ad No: 0005812136  
Customer No: BRE-6TO207  
**This is not an invoice**  
# of Affidavits 1

**KATHLEEN ALLEN**  
Notary Public  
State of Wisconsin

# TOWN OF MALABAR

## COUNCIL MEETING

### Agenda 10.d

Meeting Date: September 11, 2023

Prepared By: Lisa Morrell, Treasurer/Special Projects Manager

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**SUBJECT: Adopting the Proposed Ad Valorem Millage Rate for Fiscal Year 2023 / 2024 (Ordinance 2023-04)**

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#### **BACKGROUND/HISTORY:**

The Florida Statutes provides the requirements for local governments on how the annual budget process is approved by each governing body. The process requires the following steps:

1. Announce the FY 2023 / 2024 proposed millage of 4.5000 to levy on property values
2. State this is an increase of 7.86% over the roll-back rate of 4.1721.
3. The final millage rate of 4.5000 % to fund the general fund expenses commencing October 1, 2023, and ending September 30, 2024.

The Malabar Town Manager submitted a balanced budget with a 7.86% percent increase over the rolled back rate to fund the operational costs of the Town, provide for funding for:

- Recalculated personnel costs for the Town portion of employee benefits, federal withholdings, Worker's Compensation and Florida Retirement System (FRS)
- Provides a 5% cost of living adjustment (COLA) to specific employees commencing October 1, 2023.
- Increased the required funding of \$40,000 to the General Fund for General and Property Insurance from the previous year.
- Provided for negotiated pay increases for the collective-bargaining unit of the Fire Department:
  - Lieutenant positions will receive a 6% increase equal to an hourly rate of \$17.24.
  - Driver/Engineer positions will receive an 8% increase equal to an hourly rate of \$13.71.
- Provided for \$199,696 of funding toward capital equipment needs of the Fire Department.
- Provided \$664,000 for the purpose of road maintenance of paved roadways identified in the Capital Improvement Plan.
- Provided funding for Code Enforcement activities and services in the amount of \$10K.

This will be advertised as required by law in the Florida Today newspaper on September 06, 2023

#### **FINANCIAL IMPACT:**

Council directed the millage be set at 4.5000 for ad valorem estimate of \$1,711,539. Whereas the collection of ad valorem taxes is budgeted at a rate 96%, equal to 1,643,077.00.

#### **ATTACHMENTS:**

- Ord. No. 2023-04.
- Legal Ads

#### **ACTION:**

Action on first reading of Ord 2023-04 Town Staff presents to the Town Council a Fiscal Year 23/24 Budget based upon a 4.5000 millage rate for adoption. The proposed 4.5000 millage rate is 7.86% above the roll-back rate of 4.1721.



**ORDINANCE 2023-04**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADOPTING THE MILLAGE RATE OF 4.5000 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Public Hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida; and

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

**SECTION 1.** The Town Council, in regular session duly assembled adopted the millage rate of 4.5000 to be levied for the General Fund upon all real estate and tangible personal property located within the boundaries of the Town of Malabar taxing authority.

**SECTION 2.** The final levy of 4.5000 mills will result in a 7% increase from the rolled back rate of 4.1721.

**SECTION 3.** This final millage rate of 4.5000 is to fund the General Fund expenses for the fiscal year commencing October 1<sup>st</sup>, 2023, and ending September 30, 2024.

**SECTION 4.** This Ordinance shall become effective October 1, 2023, upon its adoption after the second Public Hearing.

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 Jim Clevenger	_____
Council Member David Scardino	_____
Council Member Mary Hofmeister	_____

This ordinance was then declared duly passed and adopted this \_\_\_ day of \_\_\_\_ 2023.

(Seal)

**TOWN OF MALABAR**

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

**ATTEST:**

\_\_\_\_\_  
Richard W. Kohler, Town Clerk

**Approved for Legal Sufficiency:**

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

First Reading: \_\_\_\_\_

Vote: to .

Second Reading: \_\_\_\_\_

Vote: to .

**Memorandum to Newspaper for *Budget*  
Hearing Advertisement**

**MEMORANDUM:**

TO: Display Advertising Manager  
Advertising Department  
Florida Today

FROM: Town Clerk, Rich Kohler  
Town of Malabar

RE: Newspaper Notice

The Town of Malabar is required by law to advertise in a newspaper of

(Name of taxing authority)

general circulation in the county or in its geographically limited insert a notice of its intent to adopt a millage rate and budget.

The enclosed advertisements are to appear in your newspaper **exactly** following the enclosed instructions. Please sign and return a copy to the above taxing authority.

\_\_\_\_\_  
Signature of Display Advertising Manager

\_\_\_\_\_  
Date

Sincerely,

Town Clerk,  
Town of Malabar

cc: Advertising Director  
Attachments

## **Instructions to Newspapers for *Notice of Budget Hearing***

The Town of Malabar is required by law to advertise in a newspaper  
(Name of taxing authority)

of general circulation in the county or in its geographically limited insert a notice of its intent to adopt a final millage rate and budget. A public hearing to finalize the budget and adopt a millage rate will take place not less than two days or more than five days after the day that the advertisement is first published.

-----

Please run the enclosed advertisements **exactly** as instructed below.

1. To appear 09/06/2023 , or as near to this date as possible.  
(First date ad can appear)

However, in no event will the ad appear after 09/08/2023.  
(Latest date ad can appear)

2. The advertisements **cannot** be placed where legal notices and classified advertisements appear.
3. The advertisements **cannot** be combined.
4. The advertisements **must be** adjacent.
5. Forward proof of publication for each advertisement and entire page in which the ad appears, with your statement, by 09/22/23.

(No later than two weeks after ad is published)

**Proof of publication should state each advertisement.**

6. Both ads will run for one day only.
  - A. **Notice of Budget Hearing** (example enclosed)
    1. There is no size requirement.
  - B. **Budget Summary Ad** (example enclosed)
    1. There is no size requirement.
    2. This ad must appear **adjacent** to the **Notice of Budget Hearing**.

**Proof of Publication Affidavit to Be Completed by  
Newspapers for *Notice of Budget Hearing***

**Note: If submitting one proof of publication, it must state each advertisement.**

**AFFIDAVIT OF PROOF OF PUBLICATION**

(s. 50.051, F.S.)

**NAME OF COUNTY**

STATE OF FLORIDA COUNTY OF \_\_\_\_\_:

Before the undersigned authority personally appeared \_\_\_\_\_, who on oath says that he or she is \_\_\_\_\_ of the \_\_\_\_\_, a newspaper published at \_\_\_\_\_ in \_\_\_\_\_ County, Florida; that the attached copy of advertisement, being a **NOTICE OF BUDGET HEARING AND BUDGET SUMMARY** in the matter of \_\_\_\_\_ in the \_\_\_\_\_ Court, was published in said newspaper by print in the issues of \_\_\_\_\_ or by publication on the newspaper's website, if authorized on \_\_\_\_\_ (Date).

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced (type of identification) as identification.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

\_\_\_\_\_  
(Notary Public)

**BUDGET SUMMARY**

Town of Malabar, Florida - Fiscal Year 2023-2024

General Fund 4.5000

<b>ESTIMATED REVENUES</b>	<b>GENERAL FUND</b>	<b>STORMWATER FUND</b>	<b>ENTERPRISE FUND</b>	<b>TOTAL ALL FUNDS</b>
Taxes:				
<b>Millage Per \$1,000</b>				
<b>Ad Valorem Taxes</b> <b>4.5</b>	1,643,077			<b>1,643,077</b>
Sales and Use Taxes	910,207			<b>910,207</b>
Permits, Fees & Special Assessments			205,000	<b>205,000</b>
Intergovernmental Revenue	361,250			<b>361,250</b>
Charges for Service	64,400			<b>64,400</b>
Fines and Forfeitures	500			<b>500</b>
Miscellaneous Revenue	28,600			<b>28,600</b>
Stormwater Non-Ad Valorem		133,107		<b>133,107</b>
Other Sources	66,000			<b>66,000</b>
<b>TOTAL SOURCES</b>	<b>3,074,034</b>	<b>133,107</b>	<b>205,000</b>	<b>3,412,141</b>
Use of Unrestricted Reserves	609,143			609,143
Use of SW Reserve Fund				-
Use of Restrictd Building Department Funds			131,499	131,499
SLFRF Restricted Funding	806,902			806,902
<b>TOTAL REVENUES, TRANSFERS &amp; BALANCES</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>
<b>EXPENDITURES</b>				
General Government	959,192			<b>959,192</b>
Fire Control	978,944			<b>978,944</b>
Propective Inspections	-		336,499	<b>336,499</b>
Streets and Roads	1,123,989			<b>1,123,989</b>
Parks and Recreation	74,260			<b>74,260</b>
Special Events	3,500			<b>3,500</b>
Stormwater Projects	-	133,107		<b>133,107</b>
SLFRF Allocated Projects	1,350,194			<b>1,350,194</b>
<b>TOTAL EXPENDITURES</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>
<b>Transfers Out</b>				
<b>Fund Balance/Reserves/Net Assets</b>	-	-	-	-
<b>Total Appropriated Expenditures, Transfers, Reserves and Balances</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>

The tentative, adopted, and/or final budgets are on file in the office of the above referenced taxing authority as a public record.

# NOTICE OF PROPOSED TAX INCREASE

The Town of Malabar has tentatively adopted a measure to increase its property tax levy.

**Last year's property tax levy:**

A. Initially proposed tax levy .....	\$ 1,545,964
B. Less tax reductions due to Value Adjustment Board And other assessment changes .....	\$ -3,416
C. Actual property tax levy .....	\$ 1,549,380

**This year's proposed tax levy .....**\$ **1,711,539**

All concerned citizens are invited to attend a public hearing on the tax increase to be held on

September 25, 2023  
7:30pm  
at  
Malabar Town Hall  
2725 Malabar Road  
Malabar, Florida

**A FINAL DECISION** on the proposed tax increase and the budget will be made at this hearing.

**Memorandum to Newspaper for *Budget*  
*Hearing Advertisement***

**MEMORANDUM:**

TO: Display Advertising Manager  
Advertising Department  
Florida Today

FROM: Town Clerk, Rich Kohler  
Town of Malabar

RE: Newspaper Notice

The Town of Malabar is required by law to advertise in a newspaper of  
(Name of taxing authority)

general circulation in the county or in its geographically limited insert a notice of its intent to adopt a millage rate and budget.

The enclosed advertisements are to appear in your newspaper **exactly** following the enclosed instructions. Please sign and return a copy to the above taxing authority.

*Tara Hamm*  
Signature of Display Advertising Manager

8/28/23  
Date

Sincerely,

*Rich Kohler*

Town Clerk,  
Town of Malabar

cc: Advertising Director  
Attachments





TOWN OF MALABAR  
2725 MALABAR RD

MALABAR, FL, 32950

Ad#5812151 08/31/2023  
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, September 11, 2023, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-05**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$4,959,685 FOR THE FOR THE FISCAL PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [wncclerk@townofmalabar.org](mailto:wncclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.

STATE OF WISCONSIN COUNTY OF BROWN:  
Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY**, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

**Legal Notices**

as published in **FLORIDA TODAY** in the issue(s) dated: or by publication on the newspaper's website, if authorized, on

**08/31/2023**

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 31th of August 2023, by legal clerk who is personally known to me

Affiant

Notary State of Wisconsin County of Brown

1-2-23

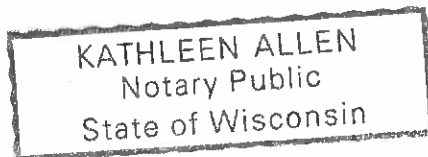
My commission expires

Publication Cost: \$71.65

Ad No: 0005812151

Customer No: BRE-6TO207  
This is not an invoice

# of Affidavits 1



# TOWN OF MALABAR

## COUNCIL MEETING

### Agenda 10.e

Meeting Date: September 11, 2023

Prepared By: Matthew Stinnett, Town Manager

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**SUBJECT: Adopting the Budget for Fiscal Year 2024 (Ordinance 2023-05)**

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#### **BACKGROUND/HISTORY:**

*The TRIM Notice mailed to all property owners in mid-August lists the dates and times for the first Public Hearings on the tentative millages and budgets for all agencies taxing property owners to provide an opportunity to attend and be heard. This meeting date was selected and approved by Malabar Town Council for that notice.*

The Fiscal Year (FY) 2024 balanced budget proposal of \$4,959,685 is the result of public workshops where the Town Council discussed at length varying priorities and strategies for maintaining acceptable service levels for infrastructure and operations.

The proposal denotes the Town Council's consensus to implement funding and expenditures providing for contractual and routine operational costs as well as maintaining and increasing allocations for infrastructure such as roads, stormwater, and capital equipment.

Funding for the budget is comprised from a variety of sources including Ad Valorem Taxes based upon the Brevard County Property Appraiser of property valuation within the jurisdiction of Malabar, State of Florida revenue sources and shares of sales tax and local option gas tax, franchise fees and utility taxes by utility providers, charges for municipal services, fines and forfeitures, miscellaneous revenue, State and Local Recovery Funds, as well as the use of fund balance to provide General Fund services to the Town constituents. The FY24 proposed balanced budget totals \$4,959,685, whereas the portion of General Fund revenues is \$4,606,568.

Additionally, the Town operates a Stormwater Utility and is funded by an annual assessment to property owners and totals \$133,107, for the operational and maintenance needs for stormwater management. The Building Department is self-sustaining and operates independently of the general fund and revenues. The building permitting revenues for Fiscal Year 23/24 are projected to total \$205,000 and use of fund balance for the building department is \$131,499; for a total operating budget of \$336,499. FY24 expenditure increases for this department are primarily due to an additional position and capital equipment intended to reduce reliance on paper records.

The focus of the FY24 General Fund budget is the dedication of the Town Council to maintain paved road surfaces throughout the Town. The Town Council has approved the surficial road conditions and analysis provided during the FY23 budget and provided guidance to Town staff to maintain existing pavement with \$644,000 in funding for FY24. Operational expenditures are primarily impacted by personnel raises and additional positions, material, and contracted service costs. While expenditures for other capital needs compose the remainder of the budget including a continued allocation for the future purchase of a replacement Tender/Tanker apparatus.

#### **FINANCIAL IMPACT:**

Council directed the millage be set at 4.5000 for ad valorem estimate of \$1,711,539. Whereas the collection of ad valorem taxes is budgeted at a rate 96%, equal to 1,643,077.00.

#### **ATTACHMENTS:**

- Ord. No. 2023-05
- Proposed FY24 Budget for first reading and final adoption.
- Legal Ads required by State Statute

#### **ACTION:**

Action on first reading of Ord 2023-05 Town Staff presents to the Town Council a Fiscal Year 23/24 Budget based upon a 4.5000 millage rate for adoption.

**ORDINANCE 2023-05**

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$4,959,685 FOR THE FOR THE FISCAL PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Malabar has set forth the appropriations and revenue estimates for the budget for the period from October 1, 2023, through September 30, 2024; and in accordance with the laws of the State of Florida;

**WHEREAS**, The Town Council has held Public Hearings as required by F.S. 200.065.

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

**SECTION 1.** The Town Council, in regular session duly assembled adopt the tentative Fiscal Year 23/24 Budget of \$4,959,685.00 consisting of \$4,826,578.00 for general fund expenditures and \$133,107.00 in approved expenditures for Stormwater projects funded through non-ad valorem fees.

**SECTION 2.** This budget may be amended during the year, if necessary, by ordinance.

**SECTION 3.** This ordinance shall become effective on October 1, 2023, upon its adoption after the second reading and public hearing.

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 Jim Clevenger \_\_\_\_\_

Council Member David Scardino \_\_\_\_\_

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

This ordinance was then declared duly passed and adopted this \_\_\_\_ day of \_\_\_\_ 2023.

(Seal)

**TOWN OF MALABAR**

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Mayor Patrick T. Reilly, Council Chair

**ATTEST:**

---

Richard W. Kohler, Town Clerk

**Approved for Legal Sufficiency:**

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Karl Bohne, Jr, Town Attorney

First Reading: \_\_\_\_\_

Vote: to .

Second Reading: \_\_\_\_\_

Vote: to .



Town of  
**MALABAR**  
Florida

GL Number	Description	
<b>Fund: 001 GENERAL FUND</b>		
<b>Account Category: Estimated Revenues</b>		
000		
001-000-311.0000	AD VALOREM TAXES	1,643,077.00
001-000-312.4300	LOCAL OPTION GAS TAX	107,759.00
001-000-314.1000	UTILITY TAX - ELECTRICITY	350,000.00
001-000-314.4000	UTILITY TAX - GAS	15,000.00
001-000-315.2000	COMMUNICATIONS SERVICE TAX	115,198.00
001-000-316.1000	BUSINESS TAX RECEIPTS - MALABAR	19,250.00
001-000-316.2000	BUSINESS TAX RECEIPTS - BREVARD COUNTY	700.00
001-000-322.0000	BUILDING PERMITS	205,000.00
001-000-323.1000	FRANCHISE FEE - ELECTRICITY	260,000.00
001-000-323.3000	FRANCHISE FEE - WATER	8,000.00
001-000-323.7000	FRANCHISE FEE - SOLID WASTE	35,000.00
001-000-325.1000	SW ASSESSEMENT	133,107.00
001-000-325.2000	TIFT ALLOCATION REQUEST	66,000.00
001-000-329.5000	OPSA LAND USE	15,000.00
001-000-329.5010	BEAUTIFICATION TRUST FUND	5,000.00
001-000-334.1000	STATE GRANT	25,730.00
001-000-335.1250	STATE REVENUE SHARING	109,190.00
001-000-335.1400	STATE REVENUE SHARING - MOBILE HOME TAX	2,600.00
001-000-335.1500	STATE REVENUE SHARING - ALCOHOL BEV TAX	1,400.00
001-000-335.1800	STATE REV SHARING-LOCAL GOVT 12 CENT TAX	215,140.00
001-000-335.1900	STATE REVENUE SHARING - OTHER GEN GOV	5,500.00
001-000-335.2100	STATE REVENUE SHARING - FIREFIGHTER COMP	990.00
001-000-349.0000	SPECIAL EVENT REVENUE	3,000.00
001-000-349.1000	BACKGROUND CHECK	200.00
001-000-349.2000	PAVING ASSESSMENT	10,000.00
001-000-349.3000	GOLF CART REGISTRATION	250.00
001-000-349.4000	LIEN SEARCHES	5,000.00
001-000-351.0000	FINES/FORFEITURE	500.00
001-000-361.1000	INTEREST EARNINGS	10,000.00
001-000-361.1010	CELL TOWER LEASE INTEREST	10,855.00
001-000-362.0000	CELL TOWER LEASE PRINCIPAL	18,095.00
001-000-365.0000	SALE OF SURPLUS MATERIAL	15,000.00
001-000-366.0000	DONATIONS	100.00
001-000-369.9000	MISCELLANEOUS REVENUE	500.00
001-000-389.9000	PARK & REC FUNDS	45,160.00
001-000-389.9520	USE & OF BD RESTRICTED FUND BALANCE	131,499.00
001-000-389.9530	USE & OF GF FUND BALANCE	563,983.00
001-000-389.9860	SLFR & RESTRICTED FUNDING	806,902.00
Total 000:		4,959,685.00
Estimated Revenues		4,959,685.00

<b>Account Category: Appropriations</b>		
511		
001-511-500.1100	EXECUTIVE SALARIES	57,750.00
001-511-500.1200	REGULAR SALARIES & WAGES	40,000.00
001-511-500.1400	OVERTIME	1,000.00
001-511-500.2100	FICA	7,554.00
001-511-500.2200	RETIREMENT CONTRIBUTIONS - FRS	25,363.00
001-511-500.2300	EMPLOYEE BENEFITS	37,864.00
001-511-500.3114	CONTRACTED SERVICES - SC	2,500.00
001-511-500.4000	TRAVEL & PER DIEM	1,500.00
001-511-500.4010	TRAVEL & PER DIEM - COUNCIL	1,500.00
001-511-500.4020	TRAVEL & PER DIEM - CLERK	1,000.00
001-511-500.4200	POSTAGE & FREIGHT	1,000.00
001-511-500.4500	INSURANCE	350.00
001-511-500.4700	PRINTING & LEGAL ADS	5,000.00
001-511-500.4800	PROMOTIONAL ACTIVITIES	500.00
001-511-500.5200	OPERATING SUPPLIES	1,000.00
001-511-500.5400	BOOKS, SUBSCRIPTION, MEMBERSHIPS	1,500.00
001-511-500.5500	TRAINING, SEMINARS, REGISTRATIONS	3,000.00
Total 511:		188,381.00



Town of  
**MALABAR**  
Florida

GL Number	Description	
<b>Fund: 001 GENERAL FUND</b>		
<b>Account Category: Appropriations</b>		
512		
001-512-500.1100	EXECUTIVE SALARIES	90,300.00
001-512-500.1200	REGULAR SALARIES & WAGES	65,000.00
001-512-500.2100	FICA	11,880.00
001-512-500.2200	RETIREMENT CONTRIBUTIONS - FRS	39,992.00
001-512-500.2300	EMPLOYEE BENEFITS	18,652.00
001-512-500.4000	TRAVEL & PER DIEM	3,600.00
001-512-500.5400	BOOKS, SUBSCRIPTION, MEMBERSHIPS	400.00
Total 512:		229,824.00
513		
001-513-500.1110	EXECUTIVE SALARIES - TREASURER/SPM	100,000.00
001-513-500.2100	FICA	7,650.00
001-513-500.2200	RETIREMENT CONTRIBUTIONS - FRS	13,570.00
001-513-500.2300	EMPLOYEE BENEFITS	29,795.00
001-513-500.3200	AUDITING	22,000.00
001-513-500.5400	BOOKS, SUBSCRIPTION, MEMBERSHIPS	500.00
001-513-500.5500	TRAINING, SEMINARS, REGISTRATIONS	500.00
Total 513:		174,015.00
514		
001-514-500.3100	PROFESSIONAL SERVICES	50,000.00
001-514-500.3110	OTHER SERVICES - EMPLOYMENT/BACKGROUND	5,000.00
001-514-500.3120	PROF SRVS - EXTERNAL LEGAL COUNSEL	10,000.00
Total 514:		65,000.00
515		
001-515-500.3100	PROFESSIONAL SERVICES	3,500.00
Total 515:		3,500.00
519		
001-519-500.2300	EMPLOYEE BENEFITS	4,041.00
001-519-500.2310	OEB LIABILITIES	15,000.00
001-519-500.2400	WORKERS' COMPENSATION	59,157.00
001-519-500.2410	AD&D AND FICD PREMIUM	900.00
001-519-500.3106	PROFESSIONAL SERVICES - CODE ENFORCEMENT	10,000.00
001-519-500.3110	OTHER SERVICES - EMPLOYMENT/BACKGROUND	330.00
001-519-500.3402	OTHER SERVICES - PEST/HERBICIDE	6,800.00
001-519-500.3403	OTHER SERVICES - FACILITY	5,000.00
001-519-500.3404	OTHER SERVICES - JANITORIAL	4,620.00
001-519-500.4000	TRAVEL & PER DIEM	1,500.00
001-519-500.4100	COMMUNICATION SERVICES	9,000.00
001-519-500.4120	COMMUNICATION SERVICES - CELLULAR	3,500.00
001-519-500.4300	UTILITIES - ELECTRIC	17,000.00
001-519-500.4400	RENTALS & LEASES	9,000.00
001-519-500.4501	INSURANCE - PROPERTY & LIABILITY	95,672.00
001-519-500.4600	REPAIRS & MAINTENANCE	4,000.00
001-519-500.4620	SOFTWARE MAINTENANCE	25,000.00
001-519-500.4700	PRINTING & LEGAL ADS	1,800.00
001-519-500.4900	OTHER CURRENT OBLIGATIONS	3,000.00
001-519-500.4920	CONTINGENCY	7,000.00
001-519-500.5100	OFFICE SUPPLIES	1,500.00
001-519-500.5200	OPERATING SUPPLIES	6,000.00
001-519-500.5400	BOOKS, SUBSCRIPTION, MEMBERSHIPS	1,000.00
001-519-500.5500	TRAINING, SEMINARS, REGISTRATIONS	4,152.00
Total 519:		294,972.00
522		
001-522-500.1100	EXECUTIVE SALARIES	55,910.00
001-522-500.1200	REGULAR SALARIES & WAGES	273,269.00
001-522-500.1210	PART TIME SALARIES AND WAGES	21,425.00
001-522-500.1300	HOLIDAY PAY	8,500.00
001-522-500.1400	OVERTIME	8,000.00
001-522-500.1500	SPECIAL PAY	7,500.00



Town of  
**MALABAR**  
Florida

BUDGET REPORT  
Calculations As of 09/30/2023

23-24  
BOARD APPROVED

GL Number	Description	
<b>Fund: 001 GENERAL FUND</b>		
<b>Account Category: Appropriations</b>		
522		
001-522-500.2100	FICA	28,657.00
001-522-500.2200	RETIREMENT CONTRIBUTIONS - FRS	122,840.00
001-522-500.2300	EMPLOYEE BENEFITS	104,183.00
001-522-500.3104	PROFESSIONAL SERVICES - MEDICAL/TESTING	15,262.00
001-522-500.3401	OTHER SERVICES - COUNTY	28,122.00
001-522-500.4600	REPAIRS & MAINTENANCE	25,000.00
001-522-500.4610	REPAIRS & MAINTENANCE - RADIO	1,500.00
001-522-500.4620	SOFTWARE MAINTENANCE	7,500.00
001-522-500.4800	PROMOTIONAL ACTIVITIES	950.00
001-522-500.5100	OFFICE SUPPLIES	700.00
001-522-500.5200	OPERATING SUPPLIES	22,200.00
001-522-500.5201	OPERATING SUPPLIES - FUEL	12,000.00
001-522-500.5400	BOOKS, SUBSCRIPTION, MEMBERSHIPS	500.00
001-522-500.5500	TRAINING, SEMINARS, REGISTRATIONS	3,000.00
001-522-500.6400	MACHINERY & EQUIPMENT	199,696.00
001-522-500.8000	GRANTS	32,230.00
Total 522:		978,944.00
524		
001-524-500.1200	REGULAR SALARIES & WAGES	90,000.00
001-524-500.1210	PART TIME SALARIES AND WAGES	8,906.00
001-524-500.1400	OVERTIME	2,000.00
001-524-500.2100	FICA	7,719.00
001-524-500.2200	RETIREMENT CONTRIBUTIONS - FRS	13,693.00
001-524-500.2300	EMPLOYEE BENEFITS	19,073.00
001-524-500.2400	WORKERS' COMPENSATION	6,178.00
001-524-500.3102	PROFESSIONAL SERVICES - LEGAL	10,000.00
001-524-500.3103	PROF SRVS - BLDG OFFICIAL, PLAN REVIEW	95,000.00
001-524-500.3105	PROFESSIONAL SERVICES - ENGINEERING	15,000.00
001-524-500.3402	OTHER SERVICES - PEST/HERBICIDE	500.00
001-524-500.3403	OTHER SERVICES - FACILITY	1,000.00
001-524-500.3404	OTHER SERVICES - JANITORIAL	800.00
001-524-500.4000	TRAVEL & PER DIEM	1,000.00
001-524-500.4100	COMMUNICATION SERVICES	4,000.00
001-524-500.4300	UTILITIES - ELECTRIC	1,500.00
001-524-500.4400	RENTALS & LEASES	4,000.00
001-524-500.4501	INSURANCE - PROPERTY & LIABILITY	10,630.00
001-524-500.4620	SOFTWARE MAINTENANCE	8,000.00
001-524-500.4700	PRINTING & LEGAL ADS	3,000.00
001-524-500.4900	OTHER CURRENT OBLIGATIONS	5,000.00
001-524-500.5100	OFFICE SUPPLIES	3,000.00
001-524-500.5200	OPERATING SUPPLIES	1,500.00
001-524-500.5500	TRAINING, SEMINARS, REGISTRATIONS	1,000.00
001-524-500.6400	MACHINERY & EQUIPMENT	24,000.00
Total 524:		336,499.00
525		
001-525-500.3010	PA ROCKY POINT	543,292.00
001-525-500.3020	AMERICAN RELIEF PLAN ACT/SLFRF	806,902.00
Total 525:		1,350,194.00
538		
001-538-500.3113	CONTRACTED SERVICES - ENGINEERING	15,000.00
001-538-500.3118	CONTRACTED SERVICES - ROW CULVERT	10,000.00
001-538-500.3405	ILA ADMINISTRATIVE PROIGRAM	10,750.00
001-538-500.4601	SW MAINTENANCE OPERATIONS - 5100	15,000.00
001-538-500.4910	SW PROJECTS	21,687.00
001-538-500.6300	INFRASTRUCTURE	50,000.00
001-538-500.7100	SRF LOAN PAYMENT	10,670.00
Total 538:		133,107.00
541		
001-541-500.1100	EXECUTIVE SALARIES	50,000.00





Town of  
**MALABAR**  
Florida

BUDGET REPORT  
Calculations As of 09/30/2023

23-24  
BOARD APPROVED

GL Number	Description	
<b>Fund: 001 GENERAL FUND</b>		
<b>Account Category: Appropriations</b>		
541		
001-541-500.1200	REGULAR SALARIES & WAGES	158,080.00
001-541-500.1400	OVERTIME	2,000.00
001-541-500.2100	FICA	16,071.00
001-541-500.2200	RETIREMENT CONTRIBUTIONS - FRS	28,508.00
001-541-500.2300	EMPLOYEE BENEFITS	46,630.00
001-541-500.4000	TRAVEL & PER DIEM	500.00
001-541-500.4300	UTILITIES - ELECTRIC	11,700.00
001-541-500.4400	RENTALS & LEASES	1,500.00
001-541-500.4600	REPAIRS & MAINTENANCE	25,000.00
001-541-500.4612	REPAIRS & MAINTENANCE - RR SIGNAL	4,000.00
001-541-500.5200	OPERATING SUPPLIES	7,000.00
001-541-500.5201	OPERATING SUPPLIES - FUEL	18,000.00
001-541-500.5300	ROAD MATERIALS & SUPPLIES	25,000.00
001-541-500.6300	INFRASTRUCTURE	66,000.00
001-541-500.6500	CONSTRUCTION IN PROGRESS	664,000.00
Total 541:		1,123,989.00
572		
001-572-500.4400	RENTALS & LEASES	2,600.00
001-572-500.4600	REPAIRS & MAINTENANCE	15,000.00
001-572-500.4930	OPERATING (T&G_PARK)	10,000.00
001-572-500.5200	OPERATING SUPPLIES	5,000.00
001-572-500.6300	INFRASTRUCTURE	45,160.00
Total 572:		77,760.00
574		
001-574-500.4800	PROMOTIONAL ACTIVITIES	3,500.00
Total 574:		3,500.00
Appropriations		4,959,685.00
Fund 001 - GENERAL FUND:		
TOTAL ESTIMATED REVENUES		4,959,685.00
TOTAL APPROPRIATIONS		4,959,685.00
NET OF REVENUES & APPROPRIATIONS:		0.00

**Memorandum to Newspaper for *Budget*  
Hearing Advertisement**

**MEMORANDUM:**

TO: Display Advertising Manager  
Advertising Department  
Florida Today

FROM: Town Clerk, Rich Kohler  
Town of Malabar

RE: Newspaper Notice

The Town of Malabar is required by law to advertise in a newspaper of

(Name of taxing authority)

general circulation in the county or in its geographically limited insert a notice of its intent to adopt a millage rate and budget.

The enclosed advertisements are to appear in your newspaper **exactly** following the enclosed instructions. Please sign and return a copy to the above taxing authority.

\_\_\_\_\_  
Signature of Display Advertising Manager

\_\_\_\_\_  
Date

Sincerely,

Town Clerk,  
Town of Malabar

cc: Advertising Director  
Attachments

## **Instructions to Newspapers for *Notice of Budget Hearing***

The Town of Malabar is required by law to advertise in a newspaper  
(Name of taxing authority)

of general circulation in the county or in its geographically limited insert a notice of its intent to adopt a final millage rate and budget. A public hearing to finalize the budget and adopt a millage rate will take place not less than two days or more than five days after the day that the advertisement is first published.

-----

Please run the enclosed advertisements **exactly** as instructed below.

1. To appear 09/06/2023 , or as near to this date as possible.  
(First date ad can appear)

However, in no event will the ad appear after 09/08/2023.  
(Latest date ad can appear)

2. The advertisements **cannot** be placed where legal notices and classified advertisements appear.
3. The advertisements **cannot** be combined.
4. The advertisements **must be** adjacent.
5. Forward proof of publication for each advertisement and entire page in which the ad appears, with your statement, by 09/22/23.

(No later than two weeks after ad is published)

### **Proof of publication should state each advertisement.**

6. Both ads will run for one day only.
  - A. **Notice of Budget Hearing** (example enclosed)
    1. There is no size requirement.
  - B. **Budget Summary Ad** (example enclosed)
    1. There is no size requirement.
    2. This ad must appear **adjacent** to the **Notice of Budget Hearing**.

**Proof of Publication Affidavit to Be Completed by  
Newspapers for *Notice of Budget Hearing***

**Note: If submitting one proof of publication, it must state each advertisement.**

**AFFIDAVIT OF PROOF OF PUBLICATION**

(s. 50.051, F.S.)

**NAME OF COUNTY**

STATE OF FLORIDA COUNTY OF \_\_\_\_\_:

Before the undersigned authority personally appeared \_\_\_\_\_, who on oath says that he or she is \_\_\_\_\_ of the \_\_\_\_\_, a newspaper published at \_\_\_\_\_ in \_\_\_\_\_ County, Florida; that the attached copy of advertisement, being a **NOTICE OF BUDGET HEARING AND BUDGET SUMMARY** in the matter of \_\_\_\_\_ in the \_\_\_\_\_ Court, was published in said newspaper by print in the issues of \_\_\_\_\_ or by publication on the newspaper's website, if authorized on \_\_\_\_\_ (Date).

Affiant further says that the newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced (type of identification) as identification.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

\_\_\_\_\_  
(Notary Public)

**BUDGET SUMMARY**

Town of Malabar, Florida - Fiscal Year 2023-2024

General Fund 4.5000

<b>ESTIMATED REVENUES</b>	<b>GENERAL FUND</b>	<b>STORMWATER FUND</b>	<b>ENTERPRISE FUND</b>	<b>TOTAL ALL FUNDS</b>
Taxes:				
<b>Millage Per \$1,000</b>				
<b>Ad Valorem Taxes</b> <b>4.5</b>	1,643,077			<b>1,643,077</b>
Sales and Use Taxes	910,207			<b>910,207</b>
Permits, Fees & Special Assessments			205,000	<b>205,000</b>
Intergovernmental Revenue	361,250			<b>361,250</b>
Charges for Service	64,400			<b>64,400</b>
Fines and Forfeitures	500			<b>500</b>
Miscellaneous Revenue	28,600			<b>28,600</b>
Stormwater Non-Ad Valorem		133,107		<b>133,107</b>
Other Sources	66,000			<b>66,000</b>
<b>TOTAL SOURCES</b>	<b>3,074,034</b>	<b>133,107</b>	<b>205,000</b>	<b>3,412,141</b>
Use of Unrestricted Reserves	609,143			609,143
Use of SW Reserve Fund				-
Use of Restrictd Building Department Funds			131,499	131,499
SLFRF Restricted Funding	806,902			806,902
<b>TOTAL REVENUES, TRANSFERS &amp; BALANCES</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>
<b>EXPENDITURES</b>				
General Government	959,192			<b>959,192</b>
Fire Control	978,944			<b>978,944</b>
Propective Inspections	-		336,499	<b>336,499</b>
Streets and Roads	1,123,989			<b>1,123,989</b>
Parks and Recreation	74,260			<b>74,260</b>
Special Events	3,500			<b>3,500</b>
Stormwater Projects	-	133,107		<b>133,107</b>
SLFRF Allocated Projects	1,350,194			<b>1,350,194</b>
<b>TOTAL EXPENDITURES</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>
<b>Transfers Out</b>				
<b>Fund Balance/Reserves/Net Assets</b>	-	-	-	-
<b>Total Appropriated Expenditures, Transfers, Reserves and Balances</b>	<b>4,490,079</b>	<b>133,107</b>	<b>336,499</b>	<b>4,959,685</b>

The tentative, adopted, and/or final budgets are on file in the office of the above referenced taxing authority as a public record.

# NOTICE OF PROPOSED TAX INCREASE

The Town of Malabar has tentatively adopted a measure to increase its property tax levy.

## Last year's property tax levy:

A. Initially proposed tax levy .....	\$ 1,545,964
B. Less tax reductions due to Value Adjustment Board And other assessment changes .....	\$ -3,416
C. Actual property tax levy .....	\$ 1,549,380

**This year's proposed tax levy .....**\$ **1,711,539**

All concerned citizens are invited to attend a public hearing on the tax increase to be held on

September 25, 2023

7:30pm

at

Malabar Town Hall

2725 Malabar Road

Malabar, Florida

**A FINAL DECISION** on the proposed tax increase and the budget will be made at this hearing.

**Memorandum to Newspaper for *Budget*  
*Hearing Advertisement***

**MEMORANDUM:**

TO: Display Advertising Manager  
Advertising Department  
Florida Today

FROM: Town Clerk, Rich Kohler  
Town of Malabar

RE: Newspaper Notice

The Town of Malabar is required by law to advertise in a newspaper of  
(Name of taxing authority)

general circulation in the county or in its geographically limited insert a notice of its intent to adopt a millage rate and budget.

The enclosed advertisements are to appear in your newspaper **exactly** following the enclosed instructions. Please sign and return a copy to the above taxing authority.

*Tara Hamm*  
Signature of Display Advertising Manager

8/28/23  
Date

Sincerely,

*Rich Kohler*

Town Clerk,  
Town of Malabar

cc: Advertising Director  
Attachments

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

To: [brelegals@gannett.com](mailto:brelegals@gannett.com)

August 28, 2023

From: Richard Kohler, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, August 31, 2023. Please put the heading in **BOLD** font. Please send proof via email to: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR  
NOTICE OF  
PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **September 11, 2023, at 7:30pm**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

ORDINANCE 2023-05

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY,  
FLORIDA ADOPTING THE BUDGET OF \$4,959,685 FOR THE FOR THE  
FISCAL PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024;  
AND PROVIDING FOR AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org) or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.





TOWN OF MALABAR  
2725 MALABAR RD

MALABAR, FL, 32950

Ad#5812151 08/31/2023  
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, September 11, 2023, at 7:30pm, or as soon thereafter as the matter can be heard, for a public hearing on the following topic:

**ORDINANCE 2023-05**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE BUDGET OF \$4,959,685 FOR THE FOR THE FISCAL PERIOD FROM OCTOBER 1, 2023, THROUGH SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE.

Copies of the Code pertaining to this are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to [wnclerk@townofmalabar.org](mailto: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 these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Richard Kohler, Town Clerk.

STATE OF WISCONSIN COUNTY OF BROWN:  
Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Advertising Representative of the **FLORIDA TODAY**, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

**Legal Notices**

as published in **FLORIDA TODAY** in the issue(s) dated: or by publication on the newspaper's website, if authorized, on

**08/31/2023**

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 31th of August 2023, by legal clerk who is personally known to me

Affiant

Notary State of Wisconsin County of Brown

1-2-23

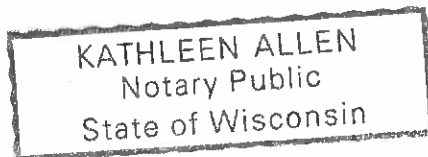
My commission expires

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# of Affidavits 1



# TOWN OF MALABAR

## COUNCIL MEETING

**AGENDA ITEM NO: 12.a**  
**Meeting Date: September 11, 2023**

**Prepared By: Lisa Morrell, ITM/SPM/Treasurer Manager**

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**SUBJECT: Residential Service Rate Adjustment for Solid Waste**

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### **BACKGROUND/HISTORY:**

Pursuant to Section 11. Residential Rates and Billing of the Residential & Commercial Franchise Agreement for Solid Waste, Recycling, Yard Waste, and Bulk Waste Collection Services to WastePro of Florida, the contract requires notice of rate increases to be submitted to Town Council prior to October 1<sup>st</sup> of each year for the following effective date of January 1<sup>st</sup>.

Waste Pro has submitted a notice of increase for both solid waste and recycling service to residential customers that would take effect January 1, 2024.

The current monthly rate for residential solid waste and recycling is \$43.88. Waste Pro has calculated the fuel and collection adjustment pursuant to the contract terms.

### **FINANCIAL IMPACT:**

Residents within the Malabar jurisdiction will have a new monthly rate of \$51.19 per service address, effective January 2024. Waste Pro bills service customers directly, on a quarterly basis

### **ATTACHMENTS:**

Waste Pro notice of increase RE: Fuel/Collection, Fee Adjustment Calculation  
Waste Pro solid waste executed agreement, November 15, 2021

### **ACTION OPTIONS:**

Motion to approve the increase as proposed by Waste Pro of Florida, Inc effective January 1, 2024.



TOWN OF MALABAR

AUG 03 2023

RECEIVED

July 27, 2023

Mr. Matt Stinnett  
Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

Re: Fuel/Collection Component, Fee Adjustment Calculation

Dear Matt:

The attached letter was sent to you previously via email. The contract also states that we are to follow-up by USPS as well.

Please let me know if you have any questions regarding the rate calculation that will go into effect January 1, 2024.

Thank you for your continued patronage.

Sincerely,

Dean Ulrich  
Division Manager  
Waste Pro of Florida, Inc.  
Mobile: (321) 302-0218  
[dulrich@wasteprousa.com](mailto:dulrich@wasteprousa.com)



April 10, 2023

Mr. Matt Stinnett  
Town Manager  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950

Re: Fuel/Collection Component, Fee Adjustment Calculation

Dear Mr. Stinnett:

Waste Pro pursuant to “Section 11. Residential Rates and Billing”, “Subsection C. Service Rate Adjustment” any requested adjustments must be submitted to the Town by October 1<sup>st</sup> of each year for the following January 1<sup>st</sup> fiscal year. Please accept this letter satisfying contractual rate adjustment request submittal requirement.

The fuel, and collection fee calculations are below for your review.

$$\text{Fuel Adjustment} = \frac{(\text{March 2022} - \text{February 2023}) - (\text{March 2021} - \text{February 2022})}{\text{March 2021} - \text{February 2022}}$$

$$50.82\% = \frac{5.057833 - 3.353583}{3.353583}$$

$$\text{Collection Adjustment} = \frac{\text{February 2023} - \text{February 2022}}{\text{February 2022}}$$

$$6.94\% = \frac{575.697 - 538.313}{538.313}$$

$$\text{Adjustment} = (\text{Fuel} * 0.05) + (\text{CPI} * 0.95)$$

$$9.13\% = (50.82 * 0.05) + (6.94 * 0.95)$$

Waste Pro pursuant to “Section 11. Residential Rates and Billing”, “Subsection F. Recycle Processing Fee” Waste Pro is seeking a collection rate adjustment due to the price of recycle processing. The initial recycle processing fee was \$25 per ton, which has been increased to \$60 then \$100 per ton.

Amount of Increase = Current rate minus new rate

$$\$35 = \$60 - \$25$$

Total tons at \$60 is 182.25

$$\$6,378.75 = \$35 * 182.25$$

Total tons at \$100 is 15.29

$$\$75 = \$100 - \$25$$

$$\$1,146.75 = \$75 * 15.29$$

Annual increased cost = (tons \* 60) + (tons \* 75)

$$\$7,525.50 = \$6,378.75 + \$1,146.75$$

Annual household share of increased cost =  $\frac{\text{Annual increased cost}}{\text{Household count}}$

$$\$6.83 = \frac{\$7,525.50}{1,102}$$

Monthly increase to collection =  $\frac{\text{Annual household share of increased cost}}{12\text{-Months}}$

$$\$0.57 = \frac{\$6.83}{12}$$

\$0.57 will be added to the monthly rate for residential service.

Based on the calculations above, the new monthly rate will be \$51.19 per household, effective January 1, 2024. Waste Pro thanks you for your consideration of this matter.

Sincerely,



Dean Ulrich  
Division Manager  
Waste Pro of Florida, Inc.  
Mobile: 321-302-0218  
[dulrich@wasteprousa.com](mailto:dulrich@wasteprousa.com)

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



Agreement  
Between

**Town of Malabar**

and

**Waste Pro of Florida, Inc.**

Approved by Town Council, November 15, 2021

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EXHIBIT 4 DISASTER CLEANUP AGREEMENT



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

Town of Malabar, Florida

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

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

## SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

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

## SECTION 2. DEFINITIONS

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

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

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

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

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

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

### **SECTION 3. GENERAL DESCRIPTION OF CONTRACTOR'S SERVICES**

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

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

#### **SECTION 4. TRANSITION IN SERVICE**

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

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

## **SECTION 5. RESIDENTIAL COLLECTION SERVICE**

### **A. Residential Solid Waste Collection.**

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

### **B. Residential Bulk Waste Collection.**

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

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

C. Residential Recyclables Collection.

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

D. Residential Special Collection Service.

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

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

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

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



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

## **SECTION 6. RESIDENTIAL COLLECTION CONTAINERS**

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

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

C. Purchase and Distribution of Recycling Carts.

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

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

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

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

**SECTION 7. RESIDENTIAL NON-COLLECTION PROCEDURES**

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

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

**SECTION 8. RESIDENTIAL BULK WASTE PROCESSING**

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

**SECTION 9. DESIGNATED FACILITIES**

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

**SECTION 10. ADDITIONAL SERVICES**

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

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

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

#### **SECTION 11. RESIDENTIAL RATES AND BILLING**

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

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

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

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

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

- (1) The Consumer Price Index (CPI) used for adjusting rates shall be the Consumer Price Index for Series Id: CUUR0000SEHG02, Garbage and trash collection in U.S. city average, all urban consumers, not seasonally

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

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

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

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

## **SECTION 13. CONTRACTOR'S PERSONNEL**

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

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

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

#### **SECTION 14. SPILLAGE AND LITTER**

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

#### **SECTION 15. COLLECTION EQUIPMENT**

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

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

#### **SECTION 16. OFFICE**

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

#### **SECTION 17. SERVICE INQUIRIES, COMPLAINTS, AND PROPERTY DAMAGE**

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

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

#### **SECTION 18. RECORDKEEPING AND REPORTING**

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



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

#### **SECTION 19. LIQUIDATED DAMAGES**

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

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

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

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

#### **SECTION 20. EMERGENCY SERVICE PROVISIONS**

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

## **SECTION 21. PERFORMANCE BOND**

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

## **SECTION 22. INSURANCE**

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

Town Manager  
Town of Malabar

2725 Malabar Road  
Malabar, Florida 32950

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

### **SECTION 23. INDEMNIFICATION OF TOWN**

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

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

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

**SECTION 24. POINT OF CONTACT**

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

**SECTION 25. NOTICE**

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

As to the TOWN:

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

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

## SECTION 26. TERMINATION OF CONTRACT

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

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

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

#### **SECTION 27. MODIFICATIONS TO THE CONTRACT**

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

#### **SECTION 28. PERMITS AND LICENSES**

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

#### **SECTION 29. INDEPENDENCE OF CONTRACT**

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

#### **SECTION 30. FORCE MAJEURE**

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



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

### **SECTION 31. EMPLOYEE STATUS**

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

### **SECTION 32. EQUAL OPPORTUNITY EMPLOYMENT**

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

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

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

### **SECTION 33. DISPUTE RESOLUTION**

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

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

**SECTION 34. SERVICE DURING DISAGREEMENT**

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

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

**SECTION 35. GOVERNING LAW**

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

**SECTION 36. CONSENT TO JURISDICTION**

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

**SECTION 37. COMPLIANCE WITH LAWS**

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

**SECTION 38. SEVERABILITY**

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

**SECTION 39. ASSIGNMENT AND SUBCONTRACTING**

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

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

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

#### **SECTION 40. MODIFICATIONS**

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

#### **SECTION 41. LEGAL REPRESENTATION**

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

#### **SECTION 42. FUND APPROPRIATION**

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

#### **SECTION 43. PUBLIC ENTITY CRIME**

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

#### **SECTION 44. FINANCIAL INTEREST**

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

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

**SECTION 45. ALL PRIOR AGREEMENTS SUPERSEDED**

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

**SECTION 46. EXHIBITS**

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

**SECTION 47. MODIFICATION OF TERMS**

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

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

TOWN OF MALABAR, FLORIDA  
A municipal corporation

ATTEST:

By:

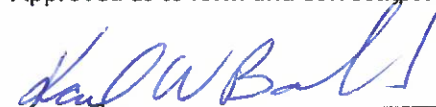
  
\_\_\_\_\_  
Town Manager/Town Clerk

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

Date: 12-2-2021

Date: 12/6/2021

Approved as to form and correctness:


  
\_\_\_\_\_  
Karl W. Bohne, Jr  
TOWN ATTORNEY

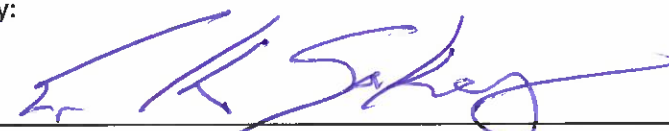
Date: 12/6/2021

WITNESSES:

WASTE PRO OF FLORIDA, INC.

By:

  
\_\_\_\_\_  
Print Name: Kerry M. Salazar

  
\_\_\_\_\_  
Print Name & Title: ERIK SANKEY - RUP

Date: 12-1-21

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**EXHIBIT 2  
SAMPLE CALCULATION OF ANNUAL RATE ADJUSTMENTS**

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

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

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

**EXHIBIT 3  
 TECHNICAL SPECIFICATIONS FOR ROLL CARTS**

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

<b>Construction and Design</b>	<ul style="list-style-type: none"> <li>• Must meet ANSI Standards Z245.30 and AZ245.60 "Type B/G" containers, all rules, regulations, and laws pertaining to this product.</li> <li>• Roll Carts must be produced by a major manufacturer.</li> <li>• 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.</li> <li>• The Roll Cart must be manufactured with a narrow width design to fit through a 30" door opening.</li> </ul>
<b>Size (Capacity)</b>	<ul style="list-style-type: none"> <li>• Three different sized Roll Carts are required with the following capacities:             <ul style="list-style-type: none"> <li>○ Large = 94-96 gallon</li> <li>○ Medium = 64-66 gallon</li> <li>○ Small = 32-36 gallon</li> </ul> </li> </ul>
<b>Materials</b>	<ul style="list-style-type: none"> <li>• Must be rotationally or injection molded using medium to high density 100% recyclable polyethylene.</li> <li>• Minimum resin weight of unassembled Roll Cart, including cart body and lid, must be:             <ul style="list-style-type: none"> <li>○ 30 pounds or greater for large Roll Cart</li> <li>○ 22 pounds or greater for medium Roll Cart</li> </ul> </li> <li>• Resin used in the manufacturing process must contain a minimum of 25% post-consumer recycled material.</li> <li>• All plastic parts must be stabilized against ultraviolet light deterioration with a UV stabilizer additive.</li> </ul>
<b>Body</b>	<ul style="list-style-type: none"> <li>• The body of the Roll Cart must be one piece.</li> <li>• The Roll Cart wall and bottom thickness must be a minimum of .150 inches.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Lid</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>

	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Lids must be designed to be easily removed in the event of damage or failure. Lid latches are not acceptable.</li> </ul>
<b>Handle</b>	<ul style="list-style-type: none"> <li>• Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the Roll Cart.</li> <li>• The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.</li> </ul>
<b>Wheels/Axle</b>	<ul style="list-style-type: none"> <li>• Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered.</li> <li>• Wheels shall be snap-on or attached in a way that prevents unintended detachment.</li> <li>• Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts.</li> <li>• 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.</li> <li>• The wheels and axle must be rated to meet the maximum load requirements of 3.5 pounds per gallon.</li> </ul>
<b>Stability</b>	<ul style="list-style-type: none"> <li>• Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.</li> </ul>
<b>Color</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
<b>Warranty</b>	<ul style="list-style-type: none"> <li>• Roll Carts must be fully (100%) warranted against defects in materials and workmanship.</li> <li>• Warranty is understood to include the following coverage:             <ul style="list-style-type: none"> <li>○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body.</li> <li>○ Damage to the body, the lid, or any component parts through opening or closing the lid.</li> <li>○ 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.</li> <li>○ Failure of the body and lid to maintain its original shape.</li> <li>○ Wear through of Roll Cart bottom so that it leaks liquid.</li> <li>○ Failure of the wheels to provide continuous, easy mobility, as originally designed.</li> <li>○ Failure of any part to conform to minimum standards as specified.</li> </ul> </li> </ul>

## Exhibit 4

### Disaster Cleanup Agreement

#### Storm Operations

##### Pre-Storm

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

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

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

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

#### Pricing

##### Post Storm Operations – TBD Fleet

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



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

Post Storm Operations - Extraordinary Services

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