



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

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May 24, 2023

MEMORANDUM

TO: Morris Richardson, County Attorney

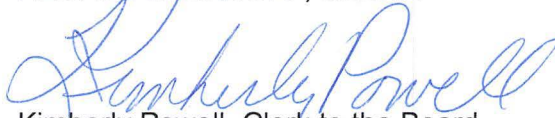
RE: Item F.29., Interlocal Agreement with the Town of Malabar for the Management of the Malabar Scrub Sanctuary

The Board of County Commissioners, in regular session on May 23, 2023, approved and executed the Interlocal Agreement between Brevard County, Florida, and the Town of Malabar, Florida, Regarding the Management of the Malabar Scrub Sanctuary. Enclosed are two copies of the recorded Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

cc: County Manager
Finance
Budget

**INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY, FLORIDA, AND THE
TOWN OF MALABAR, FLORIDA, REGARDING THE MANAGEMENT OF THE
MALABAR SCRUB SANCTUARY**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into the date of last signature below, by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the “County”), and the TOWN OF MALABAR, FLORIDA, a municipality incorporated under the laws of the State of Florida (hereinafter referred to as the “Town.”)

RECITALS:

WHEREAS, the parties desire to enter into this Agreement for the purpose of settling disputes arising out of the management of the Malabar Scrub Sanctuary; and

WHEREAS, the Malabar Scrub Sanctuary consists of approximately 577 acres of land located entirely within the municipal boundaries of the Town; and

WHEREAS, the Malabar Scrub Sanctuary was acquired through the Brevard County Environmentally Endangered Lands Program (hereinafter referred to as the “EEL Program”), with the State reimbursing the County for approximately fifty percent of the purchase price and associated acquisition costs; and

WHEREAS, the EEL Program managed property within the Town encompasses approximately 20% of the total area of the Town; and

WHEREAS, the parcels of land constituting the Malabar Scrub Sanctuary are owned either by the State or the County, with the State owning the majority of the land; and

WHEREAS, the Malabar Scrub Sanctuary contains a scrub ridge which is home to several species, including the Florida scrub-jay, which is listed as a threatened species under the Federal Endangered Species Act, is a Federally-designated threatened species by the Florida Fish and Wildlife Commission, and is protected by the U.S. Migratory Bird Act; and

WHEREAS, the County is responsible for managing the entire Malabar Scrub Sanctuary, including the parcels it owns, as well as the State-owned lands pursuant to a lease agreement and State-approved management plan; and

WHEREAS, in addition to the County’s management of the Malabar Scrub Sanctuary for conservation purposes, members of the public utilize trails located on the property for recreational purposes, including hiking and bicycling; and

WHEREAS, Florida scrub is a shrubland ecosystem characterized by low-growing oak and shrubs with open sandy gaps and few sparse trees, which historically burns in natural wildfires; and

WHEREAS, natural wildfires have long been suppressed on and around the lands comprising the Malabar Scrub Sanctuary, allowing trees to grow large and become fire-resistant, and eliminating the low, open, regularly burned habitat that Florida scrub-jays require to feed, breed, and survive long-term; and

WHEREAS, as part of its management of the Malabar Scrub Sanctuary, the County proposed reestablishing a more natural scrub habitat through mowing, roller chopping, and selective tree removal; and

WHEREAS, on May 17, 2021, the Town issued a permit authorizing the tree removal and land management activities (hereafter the “Land Management Activities”) proposed by the County; and

WHEREAS, on November 17, 2021, the Town-issued permit expired before the County commenced the Land Management Activities; and

WHEREAS, in the time between the Town’s issuance of the permit and its expiration, the Town adopted new regulations, requirements, and fees related to land clearing and tree removal activities; and

WHEREAS, a dispute existed between the Town and County regarding whether the Town’s new regulatory framework was applicable to the County’s Land Management Activities of the Malabar Scrub Sanctuary; and

WHEREAS, on or about January 25, 2022, the County erected barricades preventing entry into the Malabar Scrub Sanctuary; and

WHEREAS, on April 8, 2022, the County filed a lawsuit styled *Brevard County, Florida v. Town of Malabar*, Case No. 05-2022-CA-022983 in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (hereinafter referred to as the “Litigation”) against the Town in order to clarify its ability to perform the Land Management Activities within the Malabar Scrub Sanctuary in accordance with the State-approved management plan; and

WHEREAS, on February 15, 2023, the parties appeared before Judge Paulk on the Town’s motion to abate proceedings in order to comply with the requirements of Chapter 164, Florida Statutes, also known as the Florida Governmental Conflict Resolution Act (hereinafter referred to as the “Conflict Resolution Act”); and

WHEREAS, on March 2, 2023, Judge Paulk ordered the parties to follow the process outlined in the Conflict Resolution Act and abated the Litigation; and

WHEREAS, on April 10, 2023, the Town hosted a conflict assessment meeting between staff from the County and the Town pursuant to section 164.1053, Florida Statutes; and

WHEREAS, on May 1, 2023, the County and the Town held a joint public meeting of their respective governing bodies pursuant to section 164.1055, Florida Statutes, at which meeting a resolution was met between the Board of County Commissioners and the Town Council, subject to the entry into an Interlocal Agreement as provided for in section 164.1057, Florida Statutes; and

WHEREAS, the County and the Town find that it is in their respective best interests, and that it is in the best interest of the public health, safety, and welfare of the citizens of the Town of Malabar and Brevard County, for the dispute regarding the Malabar Scrub Sanctuary to be settled in accordance with the terms and conditions outlined in this Agreement; and

WHEREAS, this Agreement is authorized pursuant to Florida law, including, but not limited to, Chapters 125, 163, and 164, Florida Statutes.

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

1. **Recitals**. The above recitals are true and correct, and are incorporated herein by this reference.
2. **Authority**. This Agreement is entered into in accordance with Chapters 125, 163 and 164, Florida Statutes.
3. **Terms of Agreement – County Obligations**. The County agrees to:
 - a. Immediately remove the barriers erected at the Malabar Scrub Sanctuary. The County satisfied this requirement immediately following the joint public meeting on May 1, 2023.
 - b. Maintain, abandon, and relocate certain trails in accordance with the agreed-upon map attached hereto as *Composite Exhibit A*. The County shall be responsible for the management and relocation of said trails.
 - c. Utilize the maps attached hereto as *Composite Exhibit B* while performing the Land Management Activities contemplated herein to ensure certain

identified trees and perimeter vegetation areas are maintained in the manner agreed upon by the parties.

- d. Comply with all applicable State and Federal permitting requirements.
- e. Provide reasonable notice in writing to the Town Manager in advance of the County's performance of significant Land Management Activities. The County will provide such notice seven days in advance of the Land Management Activities when practicable, however, shorter notice may be provided when necessitated by occurrences outside of the County's control, such as weather events or contractor availability. In cases of emergency, the County shall be entitled to conduct any work it deems necessary and appropriate to protect the public health, safety, and welfare, with or without notice.
- f. Limit the Land Management Activities to property owned and/or managed by the County, unless otherwise provided herein. The County may utilize the unimproved Briar Creek Boulevard right-of-way (the "Town-owned right-of-way") and its connection to Malabar Road within the Malabar Scrub Sanctuary as a fire break for burning operations, maintain a disc-cut fire control line along the side of the dirt road within the right-of-way, and burn vegetation within and along the right-of-way. The County will not conduct the tree thinning, cutting, or removal activities permitted under this Agreement within the Town-owned right-of-way, however, occasional mowing or roller-chopping of underbrush in and on the Town-owned right-of-way may be needed to ensure safe fire operations. The County will not utilize Briar Creek Bridge on the improved portion of Briar Creek Boulevard to access the Malabar Scrub sanctuary with heavy equipment (e.g., tractor trailers, bulldozers, front-end loaders, etc.), though the County may continue to use the bridge for access with typical vehicles (e.g., cars, pick-up trucks and SUVs, fire suppression vehicles). The County will continue to access the improved portion of Briar Creek Boulevard on the north side of Briar Creek Bridge from Port Malabar Boulevard in order to manage properties north of the Briar Creek Bridge.
- g. Be solely responsible for the Land Management Activities at the Malabar Scrub Sanctuary. Nothing herein will be deemed to be a waiver of the County's statutory right/defense of sovereign immunity, or to have increased its limits of liability under section 768.28, Florida Statutes, as may be amended from time to time. The County retains all rights,

defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action under this Agreement for any third parties not a party to this Agreement.

4. **Terms of Agreement – Town Obligations.** The Town agrees to:
 - a. Waive any requirement for the County to obtain a Town permit for the Land Management Activities contemplated herein.
 - b. Waive any permit or tree removal fees for the Land Management Activities contemplated herein.
 - c. Waive any requirement to obtain a tree survey for the Land Management Activities contemplated herein.
5. **Dismissal.** Upon recordation of this fully executed Agreement, the County shall voluntarily dismiss the Litigation, and incorporate this Agreement as an exhibit to its notice of dismissal.
6. **Governing Law; Jury Trial Waiver.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any dispute arising from this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida. **IN THE CASE OF ANY DISPUTE ARISING OUT OF THIS AGREEMENT, ANY TRIAL SHALL BE NON-JURY.**
7. **Interpretation.** Both parties have had the opportunity to consult with legal counsel. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter.
8. **Severability.** If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall nevertheless continue in full force without being impaired.
9. **Further Documents.** The parties shall execute, issue, and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

10. **Notices**. All notices shall be sent via certified mail to the following designated individuals for each party

As to the County
Brevard County Manager's Office
c/o County Manager
2725 Judge Fran Jamieson Way
Suite C-301
Viera, FL 32940

As to the Town
Town of Malabar
c/o Town Manager
2725 Malabar Road
Malabar, FL 32950-4427

11. **Entire Agreement**. This Agreement, including exhibits, appendices, riders, and/or addenda, if any attached hereto, sets forth the entire agreement between the parties. This Agreement shall not be modified except in writing and executed by all parties. Such modification shall be recorded in the public records.

12. **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties.

13. **Counterparts**. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one and the same Agreement. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that respective party to the obligations stated herein.

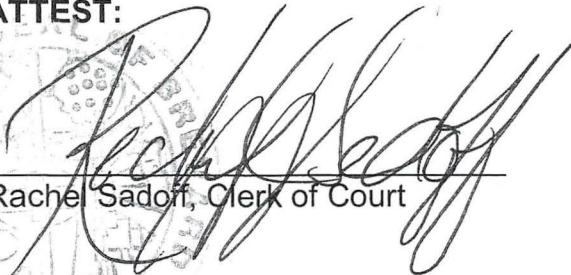
14. **Recording**. The County shall be responsible for the cost to record this Agreement in the public records of Brevard County, Florida. The County shall provide a recorded copy of the Agreement to the Town.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by and through the respective undersigned authorized representative, have entered into this Agreement on the date and year last written below.

ATTEST:

BREVARD COUNTY, FLORIDA




Rachel Sadoff, Clerk of Court

By: 

Rita Pritchett, Chair DATE

As approved by the Board on 5/23/2023

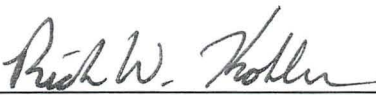
Approved for legal form and content
for Brevard County, Florida



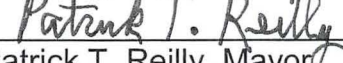
Morris Richardson, County Attorney

ATTEST:

TOWN OF MALABAR, FLORIDA



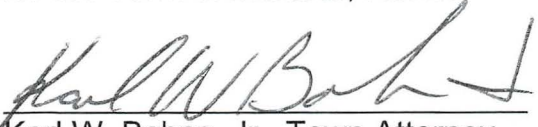
Richard W. Kohler, Town Clerk

By: 

Patrick T. Reilly, Mayor DATE

As approved by the Council on 05/15/2023

Approved for legal form and content
for the Town of Malabar, Florida



Karl W. Bohne, Jr., Town Attorney

COMPOSITE EXHIBIT A (TRAIL RELOCATION)







COMPOSITE EXHIBIT B (BUFFER AND PERIMETER)

