

RESOLUTION NO. 22-2012

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE THREE-YEAR INTERLOCAL AGREEMENT WITH BREVARD COUNTY FOR STORMWATER PROGRAM ADMINISTRATION AND MANAGEMENT; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Malabar has participated in the previous Interlocal Agreements with Brevard County since 2001; and

**WHEREAS**, and this Agreement authorizes Brevard County to administer and manage the Town's Stormwater Program consistent with the policies, procedures, and practices of the County's Natural Resource Management Office Stormwater Program; and

**WHEREAS**, the Town of Malabar desires to participate in this Intergovernmental Agreement for the three-year period from 2012 to 2015.

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

**Section 1.** The Town Council of Malabar, Brevard County, Florida, hereby approves and directs that the three-year Interlocal Agreement attached as Exhibit "A" to be signed by the appropriate Town Officials.

**Section 2.** The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs that the signed Interlocal Agreement be forwarded to the Brevard County Department of Natural Resources.

**Section 3.** This Resolution shall take effect immediately upon its adoption.

This Resolution was moved for adoption by Council Member McKnight. This motion was seconded by Council Member Acquaviva and, upon being put to vote, the vote was as follows:

Council Member Carl Beatty

Aye

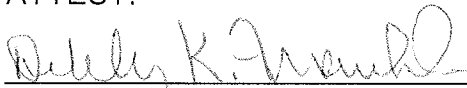
Council Member David White	<u>Excused</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

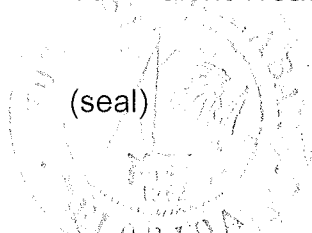
This Resolution was then declared to be duly passed and adopted this 6th day of August, 2012.

By: TOWN OF MALABAR

  
\_\_\_\_\_  
Mayor Phillip R. Crews  
Council Chair


ATTEST:

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



(seal)

Approved as to form and content:

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

**NATURAL RESOURCES MANAGEMENT OFFICE, STORMWATER PROGRAM  
INTERLOCAL AGREEMENT**

**THIS AGREEMENT** is made and entered into this — day of \_\_\_\_\_, 2012, by and between the BREVARD COUNTY, FLORIDA (hereinafter referred to as "County") and the TOWN OF MALABAR, a Florida municipal corporation, (hereinafter referred to as the "Town,")

**WITNESSETH:**

**WHEREAS**, the County currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

**WHEREAS**, the Town currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

**WHEREAS**, the County and Town recognize that there are benefits associated with a regional approach to the management of stormwater issues; and

**WHEREAS**, the Board of County Commissioners has authorized expansion of the County's Stormwater Program for administration and operation of municipally adopted benefit zones; and

**WHEREAS**, the Town Council of Malabar, Florida has determined that the County's administration of the Town's Stormwater Program will best serve the interests of its citizens.

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

**SECTION 1. STATUTORY AUTHORITY**

This agreement shall be considered an Interlocal Agreement pursuant to the authority of Section 163.01, Florida Statutes.

**SECTION 2. PROGRAM ADMINISTRATION**

The County shall administer and manage the Town's Stormwater Program consistent with the policies, procedures, and practices of the County's Natural Resources Management Office Stormwater Program in effect on the effective date of this agreement. For the purpose of this agreement the authority to make minor adjustments in procedures and practices not affecting policy is hereby delegated to the County Manager and Town Administrator; provided that said amendments do not vary the specific terms and conditions of this agreement or any applicable

Town or County ordinances. Procedural amendments shall be in writing executed by the County Manager and Town Administrator. Administration of the Town's Stormwater Program will include but not necessarily be limited to:

- Management of the parcel database including coordination with the County Property Appraiser, Tax Collector, and Information Technology offices.
- Administration of the Credit Policy Program (after initial maintenance credit assignment).
- Drafting of required Ordinances, Rate Resolutions, and annual assessment rolls as necessary. All such actions must be reviewed by the Town Administrator and approved by the Town Attorney. All such actions shall be adopted by the Town Council, as required by law.
- Review and adjustment of Stormwater Assessment bills where appropriate, through the Error and Insolvency process.
- Coordination with the Town Administrator and staff to identify and select capital improvement projects which are consistent with County policies and procedures and have benefit to the Malabar Stormwater Management System Benefit Area (MSMSBA).
- Providing information and coordination related to billing inquiries to the citizens within the MSMSBA.
- Management of technical staff employed by the County's Stormwater Program.
- Educational activities for the public and/or Town staff to meet the minimum NPDES requirements.
- Activities related to the coordination of the Town of Malabar Stormwater Management Program (SWMP) required under the Generic Permit for Discharge of Stormwater from Phase II, Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit.
- Participation in the Stormwater Education and Outreach Interlocal Agreement (Live Blue), as long as the Live Blue Agreement between the County and Keep Brevard Beautiful, is in effect.

**SECTION 3. ASSESSMENT REVENUE**

Special assessment revenues as budgeted by Town Council and collected within the Town for the Stormwater Program will be used only for administering, planning, constructing, operating, and maintaining stormwater management systems benefiting the Town.

**SECTION 4. CUSTODIAN OF FUNDS**

During the period covered by this Interlocal Agreement, the Town shall be the custodian of funds generated within the MSMSBA.

**SECTION 5. ADJUSTMENT OF ASSESSMENTS AND EXPENDITURE OF COSTS**

In the event that an adjustment or individual calculation of an annual Stormwater Assessment is required, the County's Natural Resources Management Office Director [Director] or his/her designee shall have authority to make such adjustment in accordance with County policies and procedures. Any appeals related to credit issuance, exemptions from, or adjustments to, any stormwater assessment will be resolved utilizing the County Stormwater Program Appeals Committee and Appeals Committee procedure as outlined in Chapter 110, Article V, Section 110-373(c) of Brevard County Code. The Town shall be given notice of any request for adjustment and/or appeal and has the right, but not the obligation, to participate in any hearing requesting an adjustment or an appeal.

All expenditures of funds pursuant to this agreement which are collected within the MSMSBA shall require the approval of the Director and the Town Administrator. In the event of a disagreement as to the approval of expenditure, the decision of the Town Administrator shall prevail. It is recognized that during the period covered by this Interlocal Agreement, services of Town Departments/Divisions, such as purchasing, financial, or legal services, may require reasonable compensation, and if required, will be set forth in the annual program operating budget.

**SECTION 6. PURCHASING AND FINANCIAL PRACTICES**

During the period covered by this Interlocal Agreement, purchasing and financial processes shall be in accordance with the Town's policies and procedures, as amended from time to time.

**SECTION 7. ADMINISTRATIVE COSTS**

The Town will pay a pro rata share of the County's Stormwater Program administrative costs. These costs shall be estimated annually for the forthcoming fiscal year (i.e. October 1st to September 30th) by the County's Natural Resources Management Office based on the annual assessment roll. Prior to the adoption of the Town's annual budget, the County's Natural Resources Management Office shall advise the Town in writing of the proposed administrative budget for the forthcoming year. The Town's share of administrative costs shall be calculated as a lump sum constituting ten percent (10%) of the Town's assessment roll revenue to be billed in November of that year. Invoicing for the County's services will be on a quarterly basis. Final administrative costs will be adjusted in the fourth quarter's billing based upon the actual assessments billed. Adjustments will be performed in accordance with Section 9 of this Interlocal Agreement. As used in this Agreement, the term "administrative costs" when used in reference to the administrative costs of the County's Natural Resources Management Office, Stormwater Program shall refer to administrative costs as outlined in Section 2 of this Interlocal Agreement.

The proposed annual budget, including administrative costs, direct costs, and all other costs and list of projects, will be coordinated with the Town for review and approval. In the event of a disagreement as to the budget or list of projects by the Town and County, the Town Administrator and the Director shall meet and resolve the disagreement.

**SECTION 8. DIRECT COSTS**

In addition to administrative costs, the Town will pay direct labor and related costs incurred for project or program related efforts pre-approved in scope and budget by the Town. The County will invoice the Town quarterly for the direct cost of environmental, engineering, and project management labor based upon time spent on identified projects. These costs will be charged on an hourly rate, to be submitted to and approved by the Town, to include associated cost of supplies and expenses and capital equipment. The County will maintain appropriate records in a

format acceptable to the Town, to support these charges. Direct costs may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Onsite inspection of construction projects.
- Compliance inspection of stormwater management systems receiving Stormwater credit.
- Monitoring or environmental assessments.
- Public education related to water quality or flooding projects implementation (outside of services related to Live Blue and/or NRMO provided Public/staff Education on Pollution Prevention).
- Stormwater Structure inventory and mapping of stormwater structures such as pipes, ditches, ponds, etc.
- Investigation of environmental or water management concerns.
- In-house design, drafting, or graphic services.
- Preparation of SWMP activities directly related to the NPDES permit requirements for the elements specified in Exhibit A. This activities shall include collection of documentation related to annual reporting as well as preparation of the annual permit renewal and any other request for additional documentation by the FDEP Stormwater Section as deemed necessary to meet their requirements.

#### **SECTION 9. REMITTANCE OF ADMINISTRATIVE AND OTHER COSTS**

The Town will remit to the County one quarter (1/4) of the estimated annual administrative costs at the beginning of each calendar quarter, i.e., October 1 to December 31, January 1 to March 31, April 1 to June 30, and July 1 to September 30. Fourth (4<sup>th</sup>) quarter payment (final payment) will be due September 1<sup>st</sup>, after any adjustments are completed based on actual revenues. The estimate shall be based upon ten percent (10%) of the Town's assessment roll revenue to be billed in November of that year. During the fourth (4<sup>th</sup>) quarter, the estimated administrative costs for the Town's Stormwater Management System Benefit Area will be adjusted based on the actual revenue collected and the final payment for that year will be adjusted accordingly.

Administrative costs and direct costs will be billed quarterly and shall be processed for payment within thirty (30) days of receipt.

**SECTION 10. LEGAL SERVICES**

During the period covered by this agreement, the Town agrees that any claims or suits involving operation of the stormwater program within the Town limits will be defended by and at the expense of the Town. However, the County may at the request of the Town defend the Town against all claims arising out of decisions relating to adjustments or credits to an individual fee; or appeals to or from the Stormwater Program Appeals Committee as set forth in Section 5, including actual attorney fees for the County Attorney's office at \$250.00 per hour of attorney's time. For internal control and auditing purposes, time records will be kept by the County Attorney's office for all time charged against Town stormwater assessments. Time records will include who performed the individual task [e.g.-draft letters, research], date task performed; time expended for each task expressed in tenths of an hour; and total amount billed. Costs of such defense shall be paid from the funds received from the stormwater assessment imposed by the Town.

**SECTION 11. SELECTION OF PROJECTS**

The County Stormwater Program staff will work with the Town's staff and the Town Council to select projects, which benefit the MSMSBA. It is recognized that, in general, program operation costs, capital improvements, and the maintenance of capital improvements constructed by the program are the primary uses allowable for revenue collected. In addition, it is recognized the parties will endeavor to apply the funds identified for capital improvements projects that would equally benefit and improve both water quality and flood control in the Town.

**SECTION 12. CONTINUING CONSULTANTS**

The Town shall have available for its use the services of continuing consultants as selected by the County under the Competitive Consultant Negotiation Act (CCNA).



**SECTION 13. REPRESENTATIONS OF THE TOWN**

The Town makes the following representations to the County:

- a) The Town is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Interlocal Agreement.
- b) The Town has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance hereof by Town (i) has been duly authorized by the Town Council of the Town of Malabar; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of the Town, except as otherwise provided herein.

**SECTION 14. REPRESENTATION OF THE COUNTY**

The County makes the following representations to the Town of Malabar:

- a) The County is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Interlocal Agreement.
- b) The County has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance hereof by the County (i) has been duly authorized by the Board of County Commissioners of Brevard County; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance, or security interest upon the assets of the County, except as otherwise provided herein.

**SECTION 15. RECORDS REVIEW**

It is hereby specifically agreed that any record, document, computerized information and program, audio or video tape, photograph, or other writing of the County's Stormwater Program relating to this Agreement shall be deemed to be a "Public Record," whether in the possession or control of the County's Stormwater Program or one of its consultants, as defined in Section

119.011, Florida Statutes. Said record, document, computerized information and program, audio or videotape, photograph, or other writing shall be subject to the provisions of Chapter 119, Florida Statutes. Upon request by the Town and without posing an exemption to the Town's rights set forth in Section 119.07(1), Florida Statutes, the County shall permit inspection of the foregoing public records by the Town, and the Town may obtain copies of said public records. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during the normal working hours of the County be open and freely exhibited by the County for the purpose of examination and/or audit by the Town.

**SECTION 16. NOTICE**

All notices, demands, annual renewals or other writings in this Agreement are to be given, made or sent, or which may be given or made or sent, by either party through this Agreement to the other, shall be deemed to have been given, made or sent when made in writing and deposited in the first class United States mail, certified, return receipt requested and postage prepaid, and addressed as follows:

**TO COUNTY:            Director, Natural Resources Management Office**

**Brevard County Government Center  
Building "A", Suite 219  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940**

**With a copy to:        County Manager  
Brevard County Government Center  
Building "C"  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940**

**TO TOWN:              Town Administrator  
TOWN OF MALABAR  
2725 Malabar Road  
Malabar, Florida 32950**

**With a copy to:        Town Clerk  
TOWN OF MALABAR  
2725 Malabar Road  
Malabar, Florida 32950**

The person or address to which any notice or other writing may be given, made or sent, as above provided, may be unilaterally changed by written notice given as above provided.

**SECTION 17. THIRD-PARTY BENEFICIARIES;  
PARTNERSHIP**

(a) No Third-Party Beneficiaries. It is expressly agreed to by the parties, and it is the expressed intent of the parties that there are no intended or unintended, expressed or incidental, third-party beneficiaries of this Agreement. Consequently, this Agreement may NOT be relied upon by any person or entity other than the County or the Town.

(b) Partnership. The County and the TOWN shall not be deemed to be partners or co-joint ventures of one another by virtue of this Agreement.

**SECTION 18. DEFAULT**

(a) It is expressly agreed between the parties hereto that in the event the Town determines the County, or the County determines the Town, to be in default of any of the conditions, covenants, or agreements of this Agreement, the Manager of the party hereto alleging a default will provide written notice thereof to the Manager of the party hereto alleged to be in default. Default with regard to any provision hereof shall be construed as a material breach of this Agreement, the intent of the parties being that all terms of this Agreement are material. The party alleged to be in default shall, within fifteen (15) days of the receipt of such notice, initiate action to correct such default and promptly and diligently prosecute such corrective action to completion; provided, however, that during said fifteen (15) day period if the Manager of the entity alleged to be in default disagrees with the determination of the entity alleging a default, then in such event both Managers shall meet and discuss the alleged default and possible correction thereof. In the event the two Managers cannot agree on whether or not a default exists or how to resolve the default, they shall each present an agreed upon statement of the issue(s) outstanding to their respective governing bodies, together with alternatives proposed by both Managers for any corrective action to be undertaken. At this point, both parties shall immediately coordinate with one another to simultaneously satisfy the requirements of subsection (b) and Section 164.103, Florida Statutes, in a prompt manner.

(b) (1) If the governing body of the entity alleging a default determines no default to have occurred, no further action by the entity claimed to be in default shall be necessary.

(2) If the governing body of the entity alleging a default determines a default to have occurred, but the governing body of the entity alleged to be in default determines no default to have occurred, then the entity alleging a default shall retain all legal and equitable rights and remedies available, but unless otherwise terminated by either party, this Agreement shall continue in full force and effect during any judicial proceeding initiated by the entity alleging a default. If the governing body of the entity alleging a default is dissatisfied with the remedy elected by the party alleged to be in default or the progress in remedying the default, the entity alleging a default shall retain all legal and equitable rights and remedies available.

(3) If a majority vote of each of the governing bodies determines a default to have occurred and agrees upon a method for the prosecution of corrective action and appropriate corrective action, the entity in default shall initiate corrective action within fifteen (15) days of the date of final determination of such default by both governing bodies and promptly and diligently prosecute such corrective action to completion. Thereafter, the parties to this Agreement shall retain all legal rights and remedies available to them, but unless otherwise terminated by either party hereto, this Agreement shall continue in full force and effect during any judicial proceeding initiated by either party.

(c) Remedies Cumulative; Waiver. All remedies conferred on either party shall be deemed cumulative, and no one remedy is exclusive of the other or of any other remedy conferred by law. Waiver by the Town or the County of, or failure of the Town or the County to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same, or any other term, covenant, or condition herein contained. In no event shall the County be deemed liable for costs, damages, or attorney's fees incurred as a result of services provided herein.

#### **SECTION 19. SEVERABILITY**

If any part of this Interlocal Agreement is found invalid, unconstitutional, or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Interlocal Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be accomplished. This agreement shall be enforced and interpreted as if such invalid, unenforceable, or unconstitutional provision did not exist.

**SECTION 20. ENTIRETY**

This Interlocal Agreement, including exhibits, if any, represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Interlocal Agreement unless such amendments are in writing, signed by all the parties, and filed with the Brevard County Clerk of the Circuit Court.

**SECTION 21. TERMINATION**

This Agreement shall remain in effect until the date specified in Section 22 of this Agreement. or upon termination by either party. Either the Town or County may serve written notice to the other party to terminate the contract upon not less than one hundred twenty (120) days' notice. Should termination of the agreement occur within less than one hundred and twenty (120) days Notice the Town shall be responsible for all outstanding costs as permitted by this agreement. Upon termination the County shall turn over to the Town all pertinent data and records received, gathered, obtained or produced by the County through the effective date of the termination concerning the NPDES within fifteen days (15) from the effective date of Termination.

**SECTION 22. DURATION OF AGREEMENT**

This agreement shall remain in full force for a period of three (3) years after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by the County in one (1) year increments for up to two (2) years beyond the initial three (3) year period of the Agreement. Annual extensions shall be made by mutual written consent of both parties and as authorized by the Director and the Town Administrator, and proper notification per Section 16.

**SECTION 23. EFFECTIVE DATE**

The effective date of this Interlocal Agreement shall be the date on which this fully executed agreement has been filed with the Brevard County Clerk of the Circuit Court.

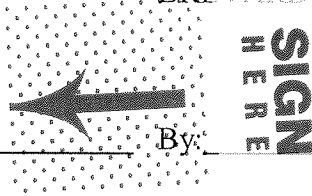
**SECTION 25. GOVERNING LAW**

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement. Venue shall be in Brevard County.

IN WITNESS THEREOF, the parties have hereunto set their hands and seals on the date and year aforementioned.

ATTEST:

BREVARD COUNTY, FLORIDA



\_\_\_\_\_  
Mitch Needelman, Clerk

By:

\_\_\_\_\_  
Check Nelson, Chairman  
(As approved by the Board on \_\_\_\_\_, 2012

Reviewed for Legal form and content

\_\_\_\_\_  
Scott Knox, County Attorney

ATTEST:

TOWN OF MALABAR

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

\_\_\_\_\_  
Phillip R. Crews, Mayor  
(As approved by the Town Council on

August 6, 2012



Reviewed for Legal form and content

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