

RESOLUTION 27-2013

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE INTERLOCAL AGREEMENT WITH GRANT-VALKARIA FOR MANAGEMENT AND HANDLING OF MAINTENANCE OF ROADS AND PERMITTING FOR CULVERTS AND DRIVEWAYS ON PROPERTIES ABUTTING BENJAMIN AND REESE ROADS AND OSAGE STREET; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Malabar Council had determined that there should be a written agreement between our two municipalities to memorialize our spoken agreement; and

WHEREAS, Malabar Council states that this Interlocal Agreement is consistent with the policies, procedures, and practices of the Town.

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 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 Clerk of Grant-Valkaria for execution by their Town officials and recording with the Brevard County Clerk of Courts.

Section 3. This Resolution shall take effect immediately upon its adoption by both parties.

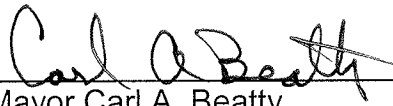
This Resolution was moved for adoption by Council Member McKnight.

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

| | |
|--|----------------|
| Council Member Jim Milucky | <u>Aye</u> |
| Council Member Wayne Abare | <u>Aye</u> |
| Council Member Steven (Steve) Rivet | <u>Aye</u> |
| Council Member Jeffrey (Jeff) McKnight | <u>Aye</u> |
| Council Member Marisa Acquaviva | <u>Excused</u> |


This Resolution was then declared to be duly passed and adopted by Malabar Council this 16th day of September, 2013.

By: TOWN OF MALABAR



Mayor Carl A. Beatty


ATTEST:



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

(seal)

Approved as to form and content:



Karl W. Bohne, Jr., Town Attorney

INTERLOCAL AGREEMENT

This INTERLOCAL AGREEMENT made and entered into this ____ day of _____, 2013, by and between, the TOWN OF MALABAR, FLORIDA, a Florida municipal corporation, _____ (hereinafter referred to as "MALABAR"), the TOWN OF GRANT-VALKARIA, a Florida municipal corporation, _____ (hereinafter referred to as "GRANT-VALKARIA").

WITNESSETH:

WHEREAS, Part I, Chapter 163, Florida Statutes, permits public agencies to enter into interlocal Agreements with each other to jointly exercise any power, privilege or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, according to the Florida Indian River Land company Plat, Plat Book 1, Page 165, "Roads Reserved 40FT Wide on Section Lines North and South..."; and

WHEREAS, prior to September 21, 1999, the Malabar corporate limits extended easterly along the south lines of Sections 10, 11, and 12 and Sections 7 and 8 of Township 29 South, Range 37 East; and

WHEREAS, the 40 foot wide right-of-ways lying on the north/south section lines of sections 10 and 15, 11 and 14 and 12 and 13 of Township 29 South, Range 37 East have come to be known as Osage Street, Reese Road, and Benjamin Road; and

WHEREAS, prior to September 21, 1999 the MALABAR corporate limits only extended to the centerline of the right-of-ways known as Osage Street, Reese Road, and Benjamin Road; and

WHEREAS, Brevard County conveyed to MALABAR certain road right-of-ways more particularly described in that certain County Deed dated September 21, 1999 and Brevard County Resolution #99-202 (hereinafter the "County Deed") all as recorded in ORB 4080 Pages 1368-1373, inclusive, which for all intents and purposes conveyed to MALABAR the remaining right-of-ways for Osage Street, Reese Road, and Benjamin Road, which resulted in these portions of the right-of-way becoming part of MALABAR's street and road system; and

WHEREAS, MALABAR has been maintaining the said road right-of-ways in the County Deed since the date of the conveyance; and

WHEREAS, the citizens of GRANT-VALKARIA approved by referendum the GRANT-VALKARIA Charter on 7/25/2006 and the Florida Legislature adopted Chapter 2006-348 Laws of Florida on 5/22/2007 recognizing GRANT-VALKARIA as a new municipality in Brevard County; and

WHEREAS, the road right-of-ways which are of concern are commonly known as Osage Street, Reese Road, and Benjamin Road; and

WHEREAS, in fact certain portions of the road right-of- ways commonly known as Osage Street, Reese Road, and Benjamin Road are within the corporate boundaries of GRANT-VALKARIA; and

WHEREAS, MALABAR and GRANT-VALKARIA desire to resolve any confusion and other issues created by the ownership by MALABAR of road right-of-way in GRANT-VALKARIA; and

WHEREAS, this Agreement is consummated pursuant to Section 163.3171(3), Florida Statutes (2006), which states in pertinent part:

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WHEREAS; additional support for this agreement may be found in Section 335.0415, Florida Statutes, which provides for the transfer of jurisdiction over public roads between local governments:

WHEREAS, it is in the interest of the public health, safety and welfare of the parties to cooperate concerning the maintenance of the right-of-ways, permits, and jurisdiction thereof; and

WHEREAS, the parties recognize that MALABAR should continue to have ownership and jurisdiction over the subject road right-of-ways especially relating to maintenance, permitting, drainage, inspections, driveway cuts and road connections; and

WHEREAS, GRANT-VALKARIA acknowledges that MALABAR should be the ultimate party responsible for to maintenance, permitting, drainage, inspections, driveway cuts and road connections; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. RECITALS. The foregoing recitations are true and correct and by this reference are incorporated herein.

2. EFFECTIVE DATE; TERM. This Agreement shall become effective upon execution by all of the parties hereto, and recording by the Clerk of Court of Brevard County. This agreement shall be a continuing agreement and may only be terminated as provided herein.

3. RIGHTS, DUTIES AND OBLIGATIONS OF MALABAR.

(a) MALABAR shall have and maintain jurisdiction and ownership and shall be solely responsible to maintain, improve and repair the properties described in Exhibit A attached hereto at it sole and absolute discretion and cost.

(b) MALABAR shall have the sole and absolute authority to issue any permits for driveway cuts, roadway connections, concurrency, stormwater, culverts and drainage on the property described in Exhibit A. Malabar will not withhold any such permits for driveway cuts, roadway connections, and drainage unless any of the above does not meet the standards for construction as provided for in the Malabar code of Ordinances.

(c) MALABAR shall have the sole and absolute authority to inspect any work performed pursuant to a properly issued permit by MALABAR upon the property described in Exhibit A.

(d) MALABAR shall have jurisdiction to regulate, warn, or guide traffic on such property described in Exhibit A

(e) MALABAR will notify GRANT-VALKARIA concerning any maintenance or repair work to be conducted by MALABAR on the properties described in Exhibit A. It is not intended by this provision that GRANT-VALKARIA will have any ability to direct MALABAR concerning such maintenance or repair.

(f) Any and all maintenance, repair, construction, reconstruction, drainage, paving, improvement, driveway cut, roadway access or any other work to, on or within the properties described in Exhibit A shall be done in accordance with the requirements of MALABAR.

(g) Such rights, duties and obligations shall exist regardless of any future widening, alteration, realignment, construction, extension, widening, or renaming of such road right-of-ways.

(h) Malabar shall be responsible to enforce all traffic laws on Osage Street, Reese Road, and Benjamin Road

4. RIGHTS, DUTIES AND OBLIGATIONS OF GRANT-VALKARIA.

(a) GRANT-VALKARIA will notify any person desiring to obtain a building permit or other development order which would require a driveway cut, roadway connection, drainage improvement to, on or within the property described in Exhibit A that a permit may be required from MALABAR at a fee to be determined by MALABAR, provided; however, that an applicant for a permit for property located in GRANT-VALKARIA shall be charged the same fees as an applicant for a permit for property located in MALABAR and that GRANT-VALKARIA will not issue such building permit or development order until approval is granted by MALABAR..

(b) GRANT-VALKARIA will promptly notify MALABAR of any application for building permit or development order which would require a driveway cut, roadway connection, drainage improvement to, on or within the property described in Exhibit A.

(c) Except as provided for in section 3 above, the provisions of the GRANT-VALKARIA Comprehensive Plan, Land Development Code and Zoning Ordinance shall apply to properties located in GRANT-VALKARIA and which abut the properties described in Exhibit A.

(d) In the event that the moratorium imposed by Brevard County on the collection of traffic impact fees is lifted the parties agree that any such collected traffic impact fees will be equally divided between the respective Towns. If and in the event that any party herein has not adopted a traffic impact fee then the other party that has an adopted traffic impact fee shall be entitled to all such collected impact fees for the road right-of-ways commonly known as Osage Street, Reese Road, and Benjamin Road.

5. MUTUAL RIGHTS, DUTIES AND OBLIGATIONS.

(a) Although MALABAR will own and have jurisdiction over the subject road right-of-ways, each party agrees that they will work together towards the implementation of consistent traffic regulations on the right-of-ways for Osage Road, Reese Road, and Benjamin Road located in GRANT-VALKARIA and for that portion of the right-of-ways for Osage Road, Reese Road, and Benjamin Road located in MALABAR. By way of example and not by limitation, the parties will work together for the implementation of mutually agreeable speed limits, traffic control and speed limit signage, and golf cart use. With respect to golf cart usage, and in the event that both parties have adopted a "golf cart usage" ordinance, each party agrees that the legally registered golf carts for each municipality shall be allowed to operate on those designated roads and streets in the other municipality.

(b) Neither party will close or barricade the subject right-of-ways, other than temporarily for right-of-way maintenance, repair, accidents or emergencies, or vacate any portion of the subject right-of-ways.

(c) Should there be a need to temporarily close or barricade the subject right-of-way the party desiring to close or barricade the subject right-of-way shall provide reasonable notice to the other party of such closure or barricading of no less than 30 days in advance, except that in the case of an emergency notice shall be given as expeditiously as possible under the circumstances.

6. TERMINATION. The following shall be grounds for termination of this agreement:

(a) Any future contraction of the property described in Exhibit A from GRANT-VALKARIA;

(b) A signed mutual termination of this Agreement by the parties; or

(c) A termination for cause. For purposes herein the term "for cause" shall mean a breach by either party of their respective rights, duties and obligations in either section 3, 4, or 5 as the case may be. Before such termination shall be effective the non-breaching party shall give the breaching party a 60 day notice to cure any such perceived breach. If said breach is not cured in accordance with said notice then the non breaching party may cause to be recorded in the Public Records of Brevard County a Notice of Termination. A copy of the recorded Notice of Termination shall be sent to the non breaching party either by hand delivery or via certified mail return receipt. The party in receipt of the Notice of Termination shall be limited to a period of 60 days from the date of actual receipt (it is specifically intended that the mail-box rule shall not apply) of the Notice of Termination in which to file a lawsuit to challenge the Notice of Termination.

7. NOTICES. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or by depositing same in first class mail, postage prepaid by certified mail:

MALABAR:

Town Administrator
Town of Malabar
2725 Malabar Road
Malabar, FL 32950

GRANT-VALKARIA:

Town Administrator
Town of Grant-Valkaria
PO Box 766
Grant-Valkaria, FL 32949-0766

or to such other addresses such by notice in writing to any other parties.

8. AUTHORITY. By executing this Agreement each of the parties represent and acknowledge to each of the other parties that each has the full power and authority to enter into this Agreement, the person executing the Agreement either has, or has been delegated, the authority to execute the Agreement on behalf of that party, nor is the consent of any third party required.

9. BINDING EFFECT. This Agreement, including the exhibits and all documents and papers delivered pursuant hereto, and any written amendments hereto executed by the parties to this Agreement constitute the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, among the parties to this Agreement with respect to the subject matter hereof. This Agreement may be amended only by written agreement approved and executed with the same formalities as this Agreement by both of the parties.

10. DELIVERY OF DOCUMENTS. The parties to this Agreement will execute and deliver or cause to be executed and delivered such additional or further transfers, assignments, endorsements or other instruments as the other party may reasonably request for the purpose of carrying out the matters contemplated by this Agreement.

11. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

12. ATTORNEY'S FEES. In the event any litigation arises out of this Agreement or under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including attorney's fees for any appeal.

13. GOVERNING LAW. The validity, construction and enforcement of and the remedies under this Agreement shall be governed in accordance with the laws of the State of Florida, and venue of any proceeding shall be Brevard County, Florida.

14. SAVINGS CLAUSE. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed on this the first date first above written.

ATTEST:

Debby K. Franklin
Debby Franklin, Town Clerk
Reso 27-2013 9/16/13

TOWN OF MALABAR

By: Carl A. Beatty
Carl A. Beatty
Its: Mayor

TOWN OF GRANT-VALKARIA

By: _____
Del Yonts
Its: Mayor

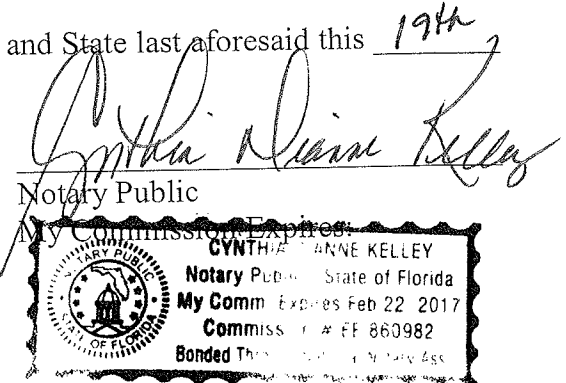
Sue Krueger, Town Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Carl A. Beatty, as Mayor of the TOWN OF MALABAR, a Florida municipal corporation, to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 19th
day of September, 2013.

STATE OF FLORIDA
COUNTY OF BREVARD



I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Del Yonts, as Mayor of the TOWN OF GRANT-VALKARIA, a Florida municipal corporation, to me

known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2013.

Notary Public
My Commission Expires: