

**RESOLUTION 73-2011**

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE TERMS AND CONDITIONS OF THE MEDIATION AGREEMENT DATED NOVEMBER 22, 2010; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE.**

**WHEREAS**, on May 5, 1993, the Town of Malabar (Town) and the Palm Bay Utility Corporation, a not-for-profit corporation (PBUC) entered into a Wholesale Water and Wastewater Service Agreement (Agreement), which Agreement was joined in by the City of Palm Bay (City); and

**WHEREAS**, Section 13 of the Agreement provides, in part:

“PBUC agrees to provide water and wastewater service to the Town at PBUC’s *current retail rate*...”

**WHEREAS**, the City has increased the rates charged to the citizens of the Town which rate is higher than PBUC’s *current retail rate*; and

**WHEREAS**, the Town has taken the position that the City can not charge a rate for water and wastewater service to the Town which higher than the *current retail rate*; and

**WHEREAS**, section 164.1041, Florida Statutes requires a governmental entity that either intends to file suit or files suit against another governmental entity to initiate conflict resolution proceedings.

**WHEREAS**, the Town and the City participated in such conflict resolution proceedings and on November 22, 2010 the parties participated in mediation which resulted in the execution of the MEDIATION AGREEMENT attached hereto as Exhibit A; and

**WHEREAS**, the respective Councils for the parties must approve the said MEDIATION AGREEMENT at an open public hearing.

**NOW THEREFORE**, be it resolved by the Town Council of the Town of Malabar, Brevard County, Florida that:

**Section 1.** The Town Council for the Town of Malabar hereby approves the MEDIATION AGREEMENT dated November 22, 2010.

**Section 2.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**Section 3.**

This resolution shall take effect immediately upon its adoption

This Resolution was moved for adoption by Council Member Rivet and was seconded by Council Member McKnight and, upon being put to a vote, the vote was as follow:

Council Member, Carl Beatty	NAY
Council Member, David White	NAY
Council Member, Steven (Steve) Rivet	NAY
Council Member, Jeffrey (Jeff) McKnight	NAY
Council Member, Marisa Acquaviva	NAY

This Resolution was then declared FAILED this 3rd day of January, 2011.

~~Mayor, Tom Eschenberg~~

ATTEST:

\_\_\_\_\_  
Debby K. Franklin  
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

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Karl W. Bonne, Jr., Town Attorney

**FAILED 1/3/11**