



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.22.

12/21/2021

Subject:

Approval, Re: Interlocal Agreement with the Town of Malabar for Automatic Aid for Fire Protection and Rescue Services.

Fiscal Impact:

None

Dept/Office:

Public Safety Group: Fire Rescue Department

Requested Action:

It is requested the Board approve the Automatic Aid Agreement with the Town of Malabar for Fire Protection and Rescue Services. It is also requested the Board authorize the County Manager, or designee, the authority to execute any revisions or automatic renewals to the agreement, as agreed to by both parties and as outlined in the agreement, upon the review and approval of the County Attorney's Office and Risk Management. This Agreement mirrors all other Automatic Aid for Fire Protection and Rescues Services with Brevard municipalities.

Summary Explanation and Background:

The Attached agreement allows for both agencies to respond with the closet available apparatus and personnel to the other's emergency regardless of the jurisdiction in an effort to provide a more timely and effective response. Approval of this Agreement will result in the saving of property and possibly human life, while meeting the County's vision of providing for the health of our citizens.

The Town Council approved this Agreement at their Council meeting on November 15, 2021.

Clerk to the Board Instructions:

Return the fully executed Interlocal Agreement to Pamela Barrett in Fire Rescue for recordation in the Official Record Books.

Proposed
Mtg Date

12-21-21



Registrar ID #

F.22

AGENDA REPORT

SUBJECT:

Approval, Re: Interlocal Agreement with the Town of Malabar for Automatic Aid for Fire Protection and Rescue Services.

FISCAL IMPACT:

None

REQUESTED ACTION:

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SUMMARY AND EXPLANATION:

The Attached agreement allows for both agencies to respond with the closet available apparatus and personnel to the other's emergency regardless of the jurisdiction in an effort to provide a more timely and effective response. Approval of this Agreement will result in the saving of property and possibly human life, while meeting the County's vision of providing for the health of our citizens.

The Town Council approved this Agreement at their Council meeting on November 15, 2021.

CLERK TO THE BOARD INSTRUCTIONS:

Return the fully executed Interlocal Agreement to Pamela Barrett in Fire Rescue for recordation in the Official Record Books.

ATTACHMENTS:

- 1) New Interlocal Agreement; 2) Initial Contract Review and Approval Form



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

December 22, 2021

M E M O R A N D U M

TO: Chief Mark Schollmeyer, Fire Rescue

Attn: Pamela Barrett

RE: Item F.22., Approval of Interlocal Agreement with the Town of Malabar for Automatic Aid for Fire Protection and Rescue Services

The Board of County Commissioners, in regular session on December 21, 2021, approved the Automatic Aid Agreement with the Town of Malabar for Fire Protection and Rescue Services; and authorized the County Manager, or designee, the authority to execute any revisions or automatic renewals to the Agreement, as agreed to by both parties and as outlined in the Agreement, upon the review and approval of the County Attorney's Office and Risk Management. Enclosed is a fully-executed Agreement.

Upon recordation of the Interlocal Agreement, please return the recorded Interlocal Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Manager
County Attorney
Risk Management
Public Safety

**INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS AND THE TOWN OF MALABAR FOR
AUTOMATIC AID FOR FIRE PROTECTION AND RESCUE SERVICES**

THIS AGREEMENT is entered into this 21st day of December, 2021, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as the "**County**", and the **TOWN OF MALABAR**, a municipality incorporated under the Laws of Florida, hereinafter referred to as "**TOWN**".

RECITALS:

WHEREAS, the Parties desire to enter into this Agreement for the purpose of securing auto-aid first response fire protection and rescue services by each of the Parties, in specific areas and under certain conditions, so as to better protect the lives and property of its citizens; and

WHEREAS, this Agreement is authorized pursuant to section 125.01(1)(p) and 163.01, Florida Statutes, as an interlocal agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

SECTION 1. DEFINITION:

First response fire protection and rescue services (hereinafter "the services") is defined as the immediate provision of emergency assistance to persons requesting such from either the TOWN or The County Fire Rescue, as necessary, to protect life and property, and which shall include the following equipment and personnel: One (1) Class A Pumper (Staffing levels determined by each department's manning mandate) for structure fires.

SECTION 2. TERM: This Agreement will commence and be effective upon its approval and execution by the elected bodies of both the County and the TOWN and filing with the Clerk of the Circuit Court in and for Brevard County, Florida. The Agreement shall initially be in effect for three (3) years. After the initial three (3) year term, the agreement shall automatically renew for additional four (4) years. This agreement will not exceed, seven (7) years in total unless terminated or amended as described in Section 3. Termination/Revision of Agreement.

SECTION 3. TERMINATION/REVISION OF AGREEMENT:

3.1 This Agreement may be terminated by either Party upon written notice of termination to the other Party at least sixty (60) days prior to the date of such termination.

3.2 Either Party may request that this Agreement be amended. Such requests must be placed in writing and address the reason for the revision as well as provide proposed revised language. In order to be deemed effective, the amendment must be approved by both respective governing bodies, signed by

both either the Chair of the County or the County Manager, as directed by the Board, and Town Manager, and filed with the Clerk of the Circuit Court in and for Brevard County, Florida. This section does not apply to any changes made to the person to whom notices shall be mailed as set forth in Section 7 herein.

SECTION 4. SERVICES PROVIDED:

Except to the extent agreed herein, the County and the Town agree that their fire rescue departments will provide primary emergency services within their respective jurisdictions. The Automatic Aid initiation shall be in response to a multi-unit incident or a secondary response when the primary County or Town units are unavailable.

4.1 Statement of Reciprocity – The County and the TOWN agree to share both unique and common emergency response resources for the purpose of expeditious and effective emergency service delivery to County and TOWN citizens alike. In that the services are provided by both the County and the TOWN in a mutually beneficial manner, there shall be no monetary payments to either the County or TOWN for services identified in this Agreement.

4.2 Automatic Aid – To provide the highest level of protection possible within the Response Area defined herein, the County and the TOWN hereby agree to provide Automatic Aid. "Automatic Aid" means and refers to the automatic dispatch of, and response by, an emergency medical services unit and/or fire suppression unit to an emergency within an identified service area without the initiation of a mutual aid request. Automatic Aid shall be based on a mutually agreed upon (County and TOWN) predefined process that results in the immediate response of emergency personnel by the Responding Party to the scene of an emergency in the Receiving party's jurisdiction on behalf of, or along with, the Receiving party, without regard to municipal Town or unincorporated County boundaries. "Receiving Party" shall mean and refer to the authority having jurisdiction of the subject emergency location within the Response Area that is receiving automatic aid pursuant to the Agreement. "Responding Party" shall mean and refer to the authority responding to the request for automatic aid pursuant to this Agreement.

(a) Automatic Aid Response Area –

The **County** shall provide Automatic Aid within the following incorporated boundaries of the TOWN:

1. Secondary response fire protection and Advanced Life Support (ALS) first responder medical service to the geographical areas identified in the attached Addendum 1.
2. Single engine and single rescue fire protection to the incorporated areas bounded by the East by the Indian River and on the west by Babcock St. also a small Subdivision Brook Hollow subdivision off of Briar Creek Boulevard off Port Malabar Road in the city of Palm Bay this is the northern subdivision in the Town. US1 north from 950 Riverview Dr, south to Goat Creek is the Towns boundaries. Valkaria Rd west of US1 Town has one small area located at 3500 Goat Creek Ln.

The **TOWN** shall provide Automatic Aid within the following unincorporated areas of the County:

Secondary response fire protection and Basic Life Support (BLS) first responder medical service to the geographical areas identified in the attached Addendum 2. Single engine fire protection to the areas of unincorporated Brevard County, South of Malabar Road to the Brevard County line.

4.3 The County will provide the services described in Section 1 of the agreement unless noted otherwise, within the following incorporated areas of the TOWN. The TOWN agrees to provide the services defined in Section 1 of this Agreement, unless noted otherwise, within the following unincorporated areas of Brevard County: Unincorporated area of Brevard County, South of Malabar Road to the Brevard County line.

4.4 It is the responsibility of the department receiving the automatic aid to ensure that the assisting Public Safety Answering Point (PSAP) receives the 911 call information.

4.5 Should either the County or the City be unable to respond and provide automatic aid in response to an emergency call within the Response Area, the declining party shall immediately notify the dispatch center of the authority having jurisdiction.

4.6 Officer in Charge – It is further agreed that the first arriving unit will establish incident command and manage the incident in accordance with established procedures until the earlier of mitigation of the incident, or upon scene control being transferred to an officer having authority within the jurisdiction where the incident occurred. The first arriving command officer, whether County or Town, will function as the incident commander. In the case where the first arriving command officer is not of the authority having jurisdiction for the area, incident command shall be transferred to the command officer of the authority having jurisdiction upon the arrival of such command officer. While providing automatic aid in the response Area, the Responding Party's personnel shall be subject to the orders and directions of the office in charge of the operations.

4.7 Service Standard – The responding Party and the Receiving Party shall utilize National Fire Protection Standard 1500, as defined in Florida Statute Section 633.508, to ensure that the Incident Command System, the Personnel Accountability System and the 2 in/2 out standards are adhered to. Failure to comply with this service standard may be deemed to be a breach of this Agreement and cause for immediate termination, notwithstanding the notice provision set forth in Section 2.

4.8 Release of Responding Party – The Responding Party will be released from an automatic aid request by the Receiving Party as soon as is appropriate either based upon operational considerations or when the Receiving Party has adequate resources on scene to mitigate the emergency, as determined by the officer in charge of the scene. The Authority Having Jurisdiction (AHJ) will be responsible for conducting any fire investigation. The (AHJ) for the incorporated areas will be the TOWN, the (AHJ) for the unincorporated areas will be the County.

4.9 Training - Both parties shall engage in fireground company training on quarterly basis, location to be at Malabar station 99, Brevard County Station 87, Brevard County station 86, or other locations to be determined with proper arrangements made.

4.10 Coverage - Brevard County Fire Rescue will provide coverage to the TOWN if the Malabar Fire Rescue units will be committed to a scene for an extended period of time.

SECTION 5. PAYMENT: There shall be no payment to either the TOWN or the County for services identified in this Agreement.

SECTION 6. ADDITIONAL EQUIPMENT: Beyond the initial response, a second response shall be requested as a mutual aid, if necessary. Brevard County Fire Rescue if available will provide the TOWN one (1) class A pumper, if the Malabar Fire Rescue's apparatus is in for repairs or otherwise unavailable.

SECTION 7. NOTIFICATION: Any required notice to be provided by either Party to this Agreement shall be delivered to the other Party's representative at the following locations:

Mike Foley, Fire Chief
Malabar Fire Rescue
1840 Malabar Road
Malabar, Florida 32950

Mark Schollmeyer, Fire Chief
Brevard County Fire Rescue
1040 South Florida Avenue
Rockledge, Florida 32955

With a copy to:

Lisa Morrell, Interim Town Manager
Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

Frank Abbate, County Manager
Brevard County Manager's Office
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Any notice to be sent to either Party under the provisions of this Agreement shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, first-class U.S. mail, or by nationally recognized overnight courier to the last known address of the Party with appropriate copies as set forth above. A mailing is deemed received at the time of hand delivery or five (5) days after mailing. Either Party may unilaterally change the person to whom a mailing is to be sent to or the address of said person by giving notice to the other Party as provided for herein. Any change of the person to whom a mailing is to be sent shall be provided to the other party in writing and further shall provide the effective date of said change.

SECTION 8. AUDITING, RECORDS AND INSPECTION:

8.1 In the performance of this Agreement, the Malabar Fire Rescue and the Brevard County Fire Rescue shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures, as adopted by the Department of Financial Services, as set forth in Rule 69I-61.0012, Florida Administrative Code, as amended or superceded from time to time, or the Auditor General. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by each Party for a period of five (5) years after termination of this Agreement. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119 and section 401.30, Florida Statutes.

8.2 No reports, data, programs or other materials produced by a Party, in whole or in part, for the benefit and use of either Party under this Agreement shall be subject to copyright by the either Party in the United States or any other country.

8.3 The Parties agree to comply with the requirements of Florida's Public Records Law and public records request made in accordance with Section 119.07, Florida Statutes.

SECTION 9. JURISDICTION, VENUE AND CHOICE OF LAW: All questions pertaining to the validity and interpretations of this Agreement shall be determined in accordance with the Laws of the State of Florida. Any legal action by either Party against the other concerning this Agreement shall be filed in a court having jurisdiction in Brevard County, Florida, which shall be deemed the proper venue for any action arising out of or through this agreement. The parties waive trial by jury for any dispute or action that arises out of this Interlocal Agreement. This waiver is knowingly, willingly and voluntarily made by the parties, and the parties hereby represent that no representations of fact or opinion have been made by any person or entity to induce this waiver of trial by jury or to in anyway modify or nullify its effect. This provision is a material term for the parties entering into this agreement. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver of jury trial. The parties further represent and warrants that they have been represented in the signing of this agreement and in the making of this waiver by independent legal counsel of their own free will, and that they have had the opportunity to discuss this waiver with counsel.

SECTION 10. ATTORNEY'S FEES AND COSTS: In the event of any litigation between the parties arising out of this Agreement, each party will bear its own attorney's fees and costs.

SECTION 11. SEVERABILITY: If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding will not affect the remainder of this Agreement. The remainder of this Agreement shall be effective and shall remain in full force and effect, unless amended or modified by mutual consent of the parties.

SECTION 12. INDEMNIFICATION/HOLD HARMLESS: The TOWN shall indemnify and hold harmless the County and its agents and employees from and against any and all claims, damages, losses, bodily injuries (including death), and expenses, including attorney's fees, arising out of or resulting from any services provided pursuant to this Agreement, where such claim, damage, loss, or expense is caused in whole or in part by the act or omission of the TOWN, or anyone directly or indirectly employed by the TOWN or anyone whose acts any of them may be liable, regardless of whether or not it is caused by or in part by a party indemnified thereunder. No indemnification or requirement to hold harmless the County pursuant hereto shall exceed \$200,000 per person per accident or \$300,000 arising out of the same occurrence or incident. The TOWN shall not be required to indemnify or hold harmless the County to the extent that the County is negligent or intentionally causes or omits to act, thereby causing claims, damages, bodily injuries (including death), losses, or expenses.

County shall indemnify and hold harmless the TOWN and its agents and employees from and against any and all claims, damages, losses, bodily injuries (including death), and expenses, including attorney's fees arising out of or resulting from any services provided pursuant to this Agreement, where such claim, damage, loss, expense is caused, in whole or part, by the act or omission of County, or anyone directly or indirectly employed by County, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused by or in part by a party indemnified thereunder. No indemnification or requirement to hold harmless the TOWN pursuant hereto shall exceed \$200,000 per person per accident or \$300,000

arising out of the same occurrence or incident. The County shall not be required to indemnify or hold harmless the TOWN to the extent that TOWN is negligent or intentionally causes or omits to act, thereby causing claims, damages, bodily injuries (including death), losses, or expenses.

Each Party agrees it shall bear responsibility for any injury or loss caused by its agents, representatives, officials, employees or volunteers (hereinafter "agents") including when such agents are acting outside their jurisdiction.

In agreeing to this provision, neither party intends to waive any defense or limit of sovereign immunity or limits to damages to which it may be entitled under section 768.28, Florida Statutes, as that section may be amended from time to time, or as otherwise provided by law. Nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of any contract. The Parties acknowledge that specific consideration has been exchanged for this provision.

SECTION 13. INDEPENDENT CONTRACTORS: It is specifically understood and agreed to by and between the Parties that a material provision in this Agreement is that the relationship between the County and the TOWN is one in which each Party and its employees are independent contractors of the other Party, and not acting as agents, employees, joint venturers, or other partners and neither Party is entitled to any benefits of the other Party. Nothing contained herein shall be construed to be inconsistent with this relationship or status.

SECTION 14. ASSIGNMENTS:

Neither the County nor the TOWN, its assigns or representatives, shall enter into any agreement with third parties to delegate any or all of the rights and responsibilities herein set forth without the prior written approval of the other party's governing body.

SECTION 15. ENTIRE AGREEMENT: This Agreement, including exhibits, 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 or as otherwise allowed under the terms of this Interlocal Agreement.


SECTION 16. INTERPRETATION: Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter hereof.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

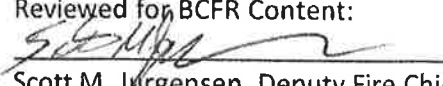


Rachel Sadoff, Clerk
(SEAL)

By: 

Kristine Zonka, Chair
As Approved by the Board on 12/21/21

Reviewed for BCFR Content:



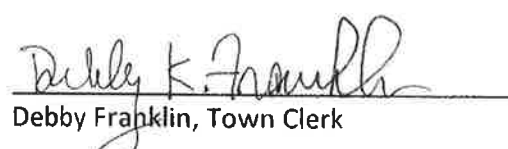
Scott M. Jurgensen, Deputy Fire Chief

Reviewed for Legal Form and Content:


Melissa Powers, Assistant County Attorney

ATTEST:

TOWN OF MALABAR

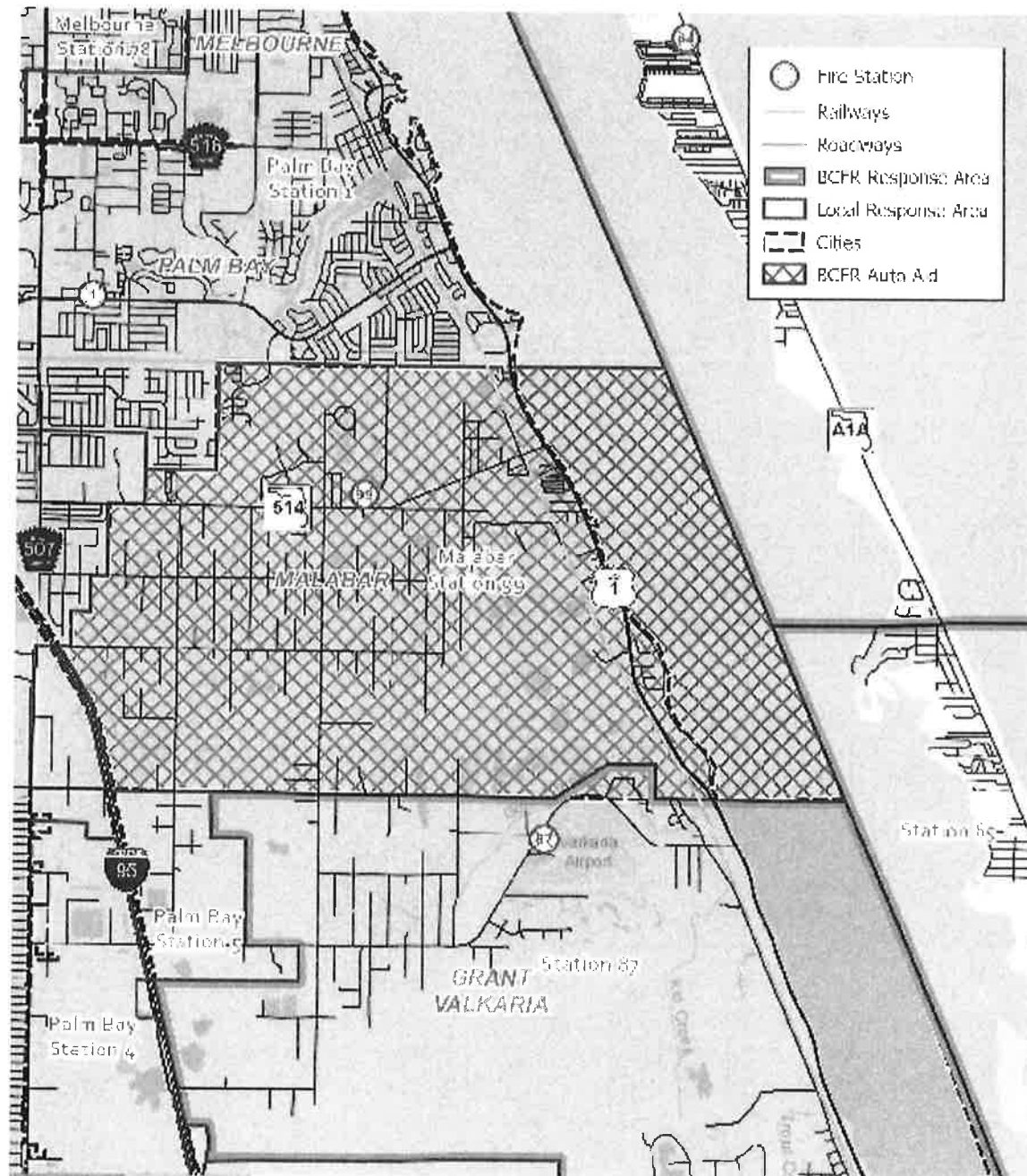


Debby Franklin, Town Clerk



Lisa Morrell, Interim Town Manager
Approved by the Town Council on 11/15/2021



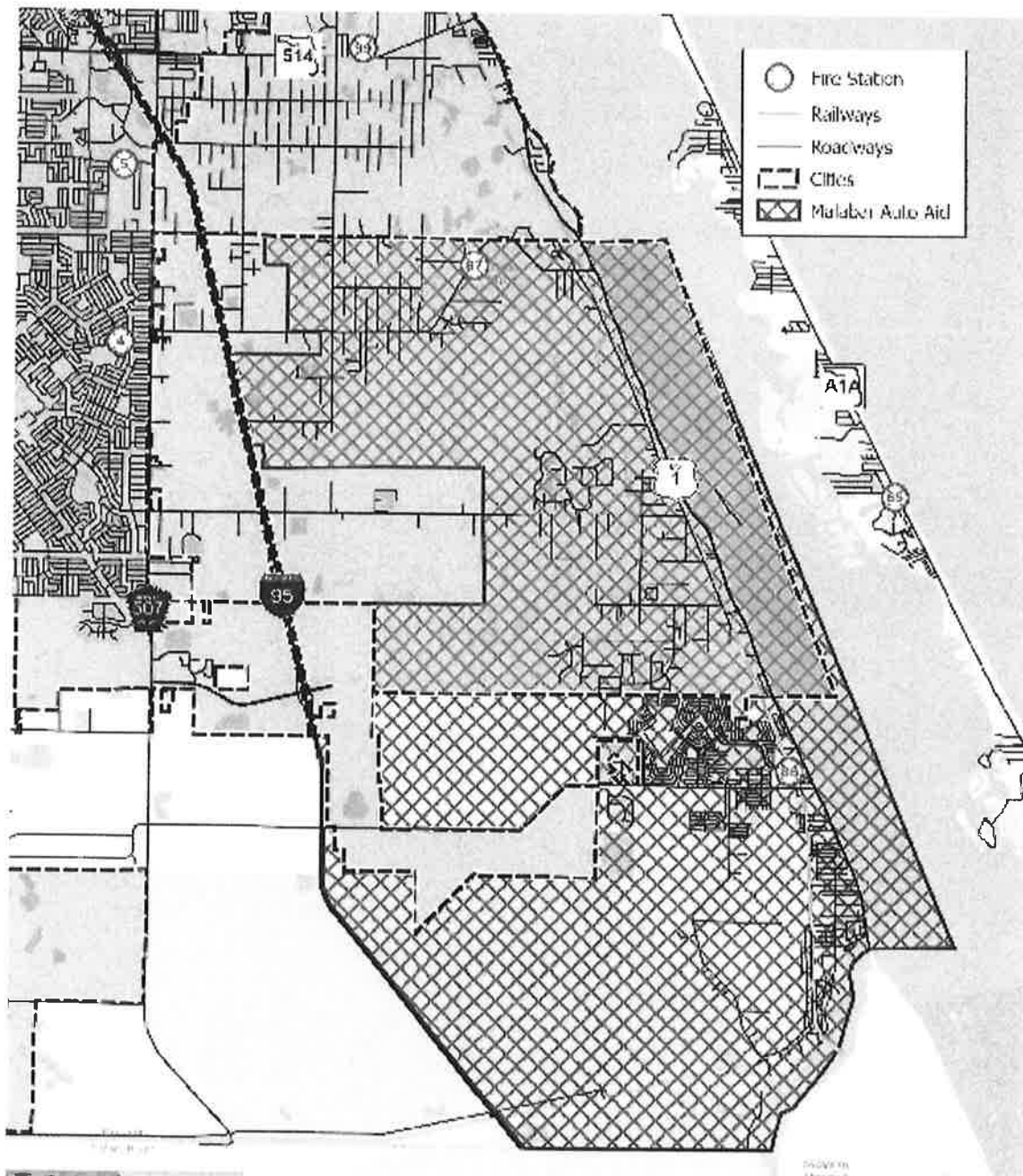


Malabar Auto Aid Addendum 1

Last Updated
10/13/2021

Prepared by: [Name]
Reviewed by: [Name]
Approved by: [Name]

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Malabar Auto Aid Addendum 2

Prepared for the Board of Directors
of the Malabar Auto Aid Association
by the Malabar Auto Aid Association
for the Board of Directors

Last Updated
10/13/2021

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December 22, 2021

MEMORANDUM

TO: Chief Mark Schollmeyer, Fire Rescue

Attn: Pamela Barrett

RE: Item F.22., Approval of Interlocal Agreement with the Town of Malabar for Automatic Aid for Fire Protection and Rescue Services

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Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Manager
County Attorney
Risk Management
Public Safety