

II, A 2.



AGENDA REPORT
April 10, 2018

SUBJECT:

Town of Malabar Stormwater Program Interlocal Agreement

FISCAL IMPACT:

FY17-18: Revenue to Stormwater Management Program Business Area 1110, Cost Center 30331, G/L Account 34900014 \$7,258.87 (Amount Based on stormwater rate of \$36/ERU)

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

It is requested that the Board of County Commissioners authorize the Chairman to execute the attached Interlocal Agreement to allow the County to continue to administer and manage the Town of Malabar Stormwater program.

SUMMARY EXPLANATION and BACKGROUND:

Since 2000 the Town of Malabar has partnered with the County to implement a regional stormwater management program. The Interlocal Agreement allows County staff to administer the Town's stormwater program in a manner consistent with the policies and procedures of the County's Stormwater Program and National Pollutant Discharge Elimination System, General Permit. The Town is billed quarterly for administrative and direct costs to reimburse the County for the services provided. This partnership results in greater water quality and flood protection for the residents.

On August 8, 2017, the Board approved a new 3-year agreement with the Town and compensation was based on ten percent of the annual stormwater fees collected by the Town. The Town shortly thereafter implemented an increase to their Stormwater Assessment Fee, similar to the fee increase implemented by the County in 2015. During this first year of transition, the Town requested that their fees remain at the previous level rather than 10% of their increased collections. Therefore, a one (1) year agreement has been proposed for the current fiscal year while both parties decide on an equitable program administrative cost for the future.

It is requested that the Board execute this agreement to continue providing services for the Town of Malabar for one year for a fixed amount that is based on 10% of anticipated revenues had the Town not increased their stormwater fee.

CLERK TO THE BOARD INSTRUCTIONS:

Please sign and attest the attached original contract and return to NRMD.

ATTACHMENTS:

Description

- **Town of Malabar Interlocal Agreement**



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

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Tammy.Rowe@brevardclerk.us

April 11, 2018

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.2., Interlocal Agreement for Town of Malabar Stormwater Program

The Board of County Commissioners, in regular session on April 10, 2018, authorized the Chair to execute the Interlocal Agreement to allow the County to continue to administer and manage the Town of Malabar Stormwater Program. Enclosed is a fully-executed Interlocal Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: Contracts Administration
Finance
Budget

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

THIS AGREEMENT is made and entered into this 10 day of April, 2018, by and between the BOARD OF COUNTY COMMISSIONERS OF 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 Department

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 Manager; 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 Manager. 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.
- Drafting of required Ordinances, Rate Resolutions, and annual assessment rolls as necessary. All such actions must be reviewed by the Town Manager 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, when appropriate, through the Error and Insolvency process.
- 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 (MSWMP) required under the Generic Permit for Discharge of Stormwater Phase II, Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit.
- Participation in the Stormwater Education and Outreach Interlocal Agreement (Blue Life), as long as the Blue Life Agreement between the County and the Zoo, 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 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 WMSMSBA.

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 Department 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 Manager. In the event of a disagreement as to the approval of expenditure, the decision of the Town Manager 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 for the Fiscal Year 2017-2018 shall be estimated utilizing the annual stormwater assessment roll based on \$36/ERU as shown on the Exhibit A Annual Assessment roll. 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 2017. Invoicing for the County's services will be on a quarterly basis. As used in this Agreement, the term "administrative costs" when used in reference to the administrative costs of the County's Natural Resources Management Department, 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 Manager and 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. These costs will be charged on an hourly rate, to be submitted to and approved by the Town, and shall also 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.

1) Project Management services may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Construction projects inspections.
- Monitoring or environmental assessments.
- In-house design, drafting, or graphic services.

2) Yearly compliance inspections of stormwater management systems receiving stormwater credit.

3) Public education related to water quality or flooding projects implementation or Grant requirements (outside of services related to Blue Life and/or NRMD provided public or staff education on Pollution Prevention).

4) Preparation of activities directly related to the NPDES generic permit, including:

- Collection of documentation related to annual reporting,
- Preparation of the annual report.
- Preparation of the permit renewal Notice of Intent (NOI),
- Responses to request for additional documentation by the FDEP Stormwater Section,
- Any other documentation request as deemed necessary to meet the NPDES permit requirements.
- Structure inventory and mapping.
- Investigation of environmental or water management concerns (Illicit discharges) other than the inspections in item 2 above.
- Coordination and documentation required to complete DEP Audits.

5) Property Appraiser administration of the non-ad valorem fee: Per Florida Statute Chapter 197.3632(2), and the agreement between the Brevard County and the Brevard county Property Appraiser dated August 9, 2016, the Property Appraiser shall be compensated for all administrative costs incurred in carrying out the maintenance of the expanded use code system at a rate of \$0.50 per parcel. The rate is based on the Fiscal Year 17-18 parcel count. The fee is set through the end of Fiscal Year 18-19, at which time a new agreement can be renewed and a new

fee established. The County shall invoice the Town for the Property Appraiser's fee, once a year, on the second quarterly invoice.

SECTION 9. REMITTANCE OF ADMINISTRATIVE 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. 4th quarter payment (final payment) will be due September 1st. Administrative 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, pursuant to a separate agreement, at the request of the Town may 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 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 improvement 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 the 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 Department
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 Manager**
TOWN OF MALABAR
2725 Malabar Road
Malabar, FL 32950

with a copy to: **Town Clerk**
TOWN OF MALABAR
2725 Malabar Road
Malabar, FL 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 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.

SECTION 22. DURATION OF AGREEMENT

This agreement shall remain in full force for a period of one (1) year after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein

SECTION 23. EFFECTIVE DATE

The effective date of this Interlocal Agreement shall be retroactive to October 1, 2017.

SECTION 24. GOVERNING LAW

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement.

SECTION 25. VENUE

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

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

ATTEST:



[Handwritten signature]

Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

[Handwritten signature]

Rita Pritchett, Chair
(As approved by the Board on
April 10, 2018)

Reviewed for legal form and content by:

[Handwritten signature]

Christine Valliere, Assistant County Attorney

ATTEST:

[Handwritten signature]

Debby K. Franklin, CMC
Town Clerk/Treasurer

TOWN OF MALABAR

[Handwritten signature]

Douglas C. Hoyt, Town Manager
(As approved by the Town Council on
_____)

EXHIBIT A



2017 Totals for Stormwater Billing

City Code Count District - City Billing Amount			
Z	1,680	Malabar	\$72,588.87
	Total: 1,680		\$72,588.87