

RESOLUTION 89-2011

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, FIRE RESCUE DEPARTMENT FOR PROVIDING E911 DISPATCHING SERVICES FOR THE PERIOD OF APPROVAL DATE OF THIS AGREEMENT THROUGH SEPTEMBER 30, 2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar desires to approve the Interlocal agreement attached as Exhibit "A"

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

- Section 1.** That the Town of Malabar hereby adopts the Interlocal Agreement with Brevard County to provide E911 Dispatching Services for the remainder of the fiscal year ending September 30, 2011 for the amount of \$4,750.00; and then annual payments of \$9,500.00 for the next three Fiscal Years: 2011/2012, 2012/2013 and 2013/2014..
- Section 2.** That the Town Administrator is directed to execute the agreement on behalf of the Town.
- Section 3.** That the Town Clerk shall transmit a copy of this resolution to Brevard County along with the executed Agreement.
- Section 4.** That this Resolution shall be effective upon adoption.

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

Council Member Carl Beatty	Aye
Council Member David White	Absent
Council Member Steven (Steve) Rivet	Aye
Council Member Jeffrey (Jeff) McKnight	Aye
Council Member Marisa Acquaviva	Excused

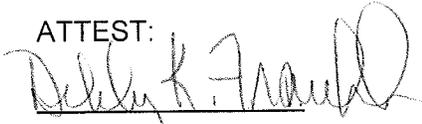
This Resolution was then declared to be duly passed and adopted this 6th day of June 2011

TOWN OF MALABAR

By: 

Mayor Thomas M. Eschenberg, Chair

ATTEST:

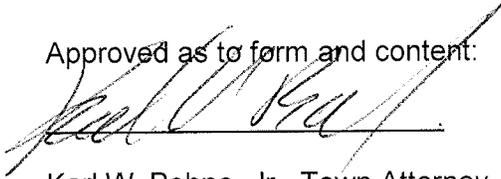


Debby K. Franklin, CMC

Town Clerk/Treasurer

(seal)

Approved as to form and content:



Karl W. Bohne, Jr., Town Attorney

EXHIBIT "A" to Resolution 89-2011

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2011, by and between Brevard County Board of County Commissioners, Fire Rescue Department, with its principal place of business at 1040 S. Florida Avenue, Rockledge, Florida 32955 (hereinafter referred to as the "County"), and the Town of Malabar, a municipality incorporated under the Laws of Florida, located at Brevard County Florida (hereinafter referred to as the "Town").

WITNESSETH:

WHEREAS, the Town and County desire to enter into this Agreement for the purpose of the County to provide E911 dispatching service, so as to better protect the lives and property of its citizens.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITION: N/A

SECTION 2. TERM: This Agreement will be in force and effective upon the approval and signing of said Agreement by both elected governing bodies and shall terminate on September 30, 2014.

SECTION 3. RENEWAL OF AGREEMENT: N/A

SECTION 4. TERMINATION/REVISION OF AGREEMENT:

- 4.1 This Agreement may be terminated by either party upon written notice of termination to the other party at least forty-five (45) days prior to the date of such termination.
- 4.2 Either party may request to revise this Agreement. Such requests must be placed in writing and address the reason for the revision as well as provide proposed revised language. The revision must be approved by both respective governing bodies, signed by the County Manager and the Town Manager.

SECTION 5. SERVICES PROVIDED:

The County hereby agrees to provide twenty-four (24) hour E911 fire and first responder dispatch service for the Malabar Volunteer Fire Department (MVFD). Services include receiving emergency calls through the Countywide E911 system, processing the call (EMD or EFD), alerting, radio communication, monitoring units during both emergency and non-emergency operations, providing access to the Brevard County Fire Rescue (BCFR) computer aided dispatch (CAD) system and provide appropriate annual statistics and reports as requested by the Town of Malabar. MVFD will provide to the BCFR Dispatch Center predetermined unit response assignments for the 1st, 2nd and 3rd alarm responses as well as all auto-aid agreements between other service providers and the Town.

SECTION 6. PAYMENT:

The cost to the Town for FY2011 (April 1, 2011 – September 30, 2011) will be Four Thousand Seven Hundred and Fifty Dollars (\$4,750.00). The annual cost to the Town will be Nine Thousand Five Hundred Dollars (\$9,500.00). Within thirty (30) days of the execution of this Agreement by the

County, the Town shall submit to the County payment in full for such services under this Agreement for the period of April 1, 2011 – September 30, 2011 (\$4,750).

Annual payments of Nine Thousand Five Hundred Dollars, (\$9,500) for remainder of the contact shall be as follows:

Period of October 1, 2011 – September 30, 2012 will be paid in full by October 30, 2011 (\$9,500).

Period of October 1, 2012 – September 30, 2013 will be paid in full by October 30, 2012 (\$9,500)

Period of October 1, 2013 – September 30, 2014 will be paid in full by October 30, 2013 (\$9,500)

SECTION 7. ADDITIONAL EQUIPMENT:

The County is not responsible for any hardware/software costs associated with providing emergency dispatch services to the Town.

SECTION 8. 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:

Dennis M. Covey, Fire Chief
Malabar Volunteer Fire Department
2725 Malabar Rd.
Malabar, FL 32950

Larry L. Collins, Fire Chief/Director
Brevard County Fire Rescue
1040 S. Florida Ave.
Rockledge, FL 32955

With a copy to:

Bonilyn Wilbanks, Town Administrator
Town of Malabar
2725 Malabar Rd.
Malabar, FL 32950

Howard N. Tipton, County Manager
Brevard County Government Center
2725 Judge Fran Jamieson Way
Viera, FL 32940

Any notice to be sent to the County or the Town 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 said Town or the County 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 hereto 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.

SECTION 9. AUDITING, RECORDS AND INSPECTION:

- 9.1 In the performance of this Agreement, the Town 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 the Town for a period of three (3) years after termination of this Agreement for accounting related records and for other public records, 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, Section 401.30, Florida Statutes.
- 9.2 No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by the Town in the United States or any other country.
- 9.3 All records or documents created by the Town or provided to the Town by the County in connection with the activities or services provided by the County under the terms of this agreement, are public records and the Town agrees to comply with any request for public records or documents made in accordance with Section 119.07 Florida Statutes.

9.4 The County or the Town will be provided, at no cost, copies of any public records request made by a third party involving documents related to this agreement. If a request for public records is made by a third party, the County or the Town will inform the other of the request and provide a copy of the public records that were requested by the third party.

SECTION 10. 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 Brevard County, Florida, which shall be deemed proper jurisdiction and venue for the action.

SECTION 11. 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 12. SEVERABILITY: If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by the County 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 13. 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. 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.

Brevard 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 Brevard County, or anyone directly or indirectly employed by Brevard 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. The County shall not be required to indemnify or hold harmless the Town to the extent that the Town is negligent or intentionally causes or omits to act, thereby causing claims, damages, bodily injuries (including death), losses, or expenses.

In agreeing to this provision, neither party intends to waive any defense of sovereign immunity or limits on damages to which it may be entitled under Section 768.28, Florida Statutes or otherwise provided by law. Nothing herein shall be construed as consent by the County or the Town 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 14. ASSIGNMENTS: Neither the Town or the County, 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.

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.

SECTION 16. INTERPRETATION: Both the Town and the County 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.

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

TOWN OF MALABAR, FLORIDA

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

By: Bonilyn W. Wilbanks
Bonilyn Wilbanks, Town Administrator

By: _____
Howard N. Tipton, County Manager

Attest:
Delily K. Frank
Malabar Clerk

Reviewed for Legal Form and Content:

[Signature]

(seal)