

RESOLUTION NO. 31-2012

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF THE INTERLOCAL AGREEMENT WITH THE CITY OF PALM BAY FOR IT SERVICES ON AN AS NEEDED BASIS FOR THE TOWN OF MALABAR; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Malabar staff have continually tried to contain the costs for IT services for the computers at Town Hall, Public Works and the Fire Department; and

WHEREAS, Malabar will reduce their costs over time as the cost savings realized in maintenance in the first year will allow monies to be used to replace out of warranty equipment, thus reducing maintenance costs; and

WHEREAS, the Town of Malabar desires to participate in this Interlocal Agreement for the purposes stated in the agreement.

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 hereby authorizes and directs the Clerk that the signed Interlocal Agreement be forwarded to the City Manager of Palm Bay.

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

This Resolution was moved for adoption by Council Member Aguiar.
This motion was seconded by Council Member White and, upon being put to vote, the vote was as follows:

Council Member Carl Beatty

Aye

Council Member David White	<u>Aye</u>
Council Member Steven (Steve) Rivet	<u>Excused</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

This Resolution was then declared to be duly passed and adopted this 24th day of September, 2012.

TOWN OF MALABAR

By: Phillip R. Crews
Mayor Phillip R. Crews
Council Chair

ATTEST:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr., Town Attorney

THIS INSTRUMENT PREPARED BY and
RETURNED TO:
Andrew P. Lannon, Esq., City Attorney
City of Palm Bay
City Attorney's Office
120 Malabar Road, S.E.
3rd Floor, City Hall Annex
Palm Bay, FL 32907

INTERLOCAL AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2012, by and between the City of Palm Bay (Palm Bay), Florida, a Florida Municipal Corporation, whose address is 120 Malabar Road, S.E., Palm Bay, Florida 32907, and the Town of Malabar (Malabar), Florida, a Florida Municipal Corporation, whose address is 2725 Malabar Road, Malabar, Florida 32950.

RECITALS

WHEREAS, this Agreement is made pursuant to authorization granted in the Florida Interlocal Cooperative Act of 1969, section 163.01, Florida Statutes, and the Community Planning Act, section 163.3161 *et seq.*, Florida Statutes (2012); and

WHEREAS, Malabar is desirous of utilizing the services of Palm Bay's Information Technology Department (ITD) for the purpose of providing information technologies to Malabar; and

WHEREAS, it is mutually agreed between Palm Bay and Malabar that such services can be provided to Malabar upon the terms and conditions set forth herein; and

WHEREAS, it is the intent of the parties that Palm Bay will provide information technologies as requested from time-to-time by Malabar and Palm Bay will provide such services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, it is mutually agreed between the parties:

1. **RECITALS**: The above recitals are true and correct and are considered an integral part of this Agreement.

INTERLOCAL AGREEMENT
City of Palm Bay and Town of Malabar
Information Technology Support Services

2. DEFINITIONS: As utilized in this instrument, each of the following terms is defined as follows:

a) "Agreement" means and refers to this instrument, as amended from time to time.

3. SERVICES BY PALM BAY:

a) **Preventative Maintenance.** Palm Bay agrees to proactively maintain all current desktop assets for Malabar with Microsoft Updates and Service Packs as they become available for deployment ensuring all of Malabar's computer and internet technology assets have the most current security patches and fixes available from the software manufacturer. Cumulative monthly onsite visits will total eight (8) hours of checking all assets to ensure auto-virus updating is accomplished and updates are relevant for all computing assets. This service shall be invoiced quarterly at a rate of \$200 per month for up to 30 computing assets.

b) **Help Desk and Computing Support.** Palm Bay agrees to provide Malabar with access to phone support for computing support by calling 321-952-3475, option 1, for Palm Bay's Help Desk between the hours of 8:30 a.m. to 5:00 p.m. After hours on-call support is also available by calling 321-952-3475, option 1.

c) **On-Site Desktop Support.** Malabar shall request or elect on-site desktop support for issues that cannot be solved via telephone support. In said event, these issues shall be categorized as tier two support tickets. Examples of tier two support tickets include, but are not limited to: equipment failures of hard drives, monitors or power supplies; loss of network connection; and computer moves or replacements.

d) **Server Support and Upgrades.** Servers require a tier three support due to their critical need and requirements for overall function of the computing environment. Upon request,

INTERLOCAL AGREEMENT

City of Palm Bay and Town of Malabar Information Technology Support Services

Malabar may request or elect on-site server support for issues that require an outage for support or upgrade. Palm Bay's Information Technology Department will take extra precautions to back-up the original state of the server before performing upgrades.

e) **Asset Management.** Palm Bay's Information Technology Project Manager and support staff will collect, inventory and report on all of Malabar's assets and software licensing. Palm Bay's Information Technology support staff will only install and support licensed software pertaining to Malabar's End User Licensing Agreements (EULA) with software manufacturers. Any irregularities during the audit will be reported to Malabar to rectify and correct. Palm Bay may refuse to perform an installation without proof of licensing. Support staff will be required to maintain and update Malabar regarding software licensing and asset inventory. Pursuant to Malabar's request, Palm Bay's Information Technology staff will prepare older equipment as hot spares for end user usage during desktop outages at Malabar's Town Hall and Fire Department. Furthermore, surplus computers will be prepared in accordance with Malabar's surplus policy for scrap, auction or disposal policy. Computer spares stored on-site will be ready with licensed software, operating system, office productivity suite and Malabar's specific applications for any user. During periodic on-site visits for desktop preventative maintenance, these assets will be powered on, connected to the network and reviewed for updates and will be tested to see if they are in working condition.

f) **Microsoft Outlook Archiving.** Palm Bay's Information Technology Department will create documentation for the employees utilizing email for the purpose of archiving and backing up public record e-mails. The ITD support staff will offer a one-time training class for Malabar as well as one-on-one sessions, to a maximum of three one-on-one sessions, as requested by Malabar.

g) **Consulting Services and Strategy Planning.** Palm Bay's Information Technology Director will jointly meet with Malabar's Town Clerk and Town Administrator to review technical trends,

INTERLOCAL AGREEMENT

**City of Palm Bay and Town of Malabar
Information Technology Support Services**

procurement venues and strategies that will assist Malabar in planning and budgeting for its technical computing needs. The execution of any project is at Malabar's sole discretion. This is a one-time project cost to be included and agreed by Palm Bay and Malabar at the time such need arises.

4. **COST TO MALABAR FOR SERVICES:**

a) **Preventative Maintenance.** Cumulative monthly onsite visits will total eight (8) hours of checking all assets to ensure auto-virus updating is accomplished and updates are relevant for all computing assets. This service shall be invoiced quarterly at a rate of \$200 per month for up to 30 computing assets.

b) **Help Desk and Computing Support.** Basic inquiry and "how-to" application support will be categorized as tier one support with a rate of \$25.00 per ticket. There are no hourly rate fees associated with tier one support tickets. Tickets originating from tier one support that are escalated to tier two and/or three support will incur no fee.

c) **On-Site Desktop Support.** Tier two support tickets will incur a rate of \$45.00 per ticket. There are no hourly rate fees associated with tier two support tickets. When identified as a need for replacement of failed equipment, the ticket will be closed until a replacement part is acquired via manufacturer warranty services or procurement through Malabar. At that time, a new ticket will be created for the deployment and configuration for all the tasks associated to ensure customer satisfaction and resolution of the computing device restoration. There are no additional hourly rate fees associated with tier two support requests.

d) **Server Support and Upgrades.** Tasks associated with preventive recovery, back-up and preparation prior to the upgrade or update will incur a charge of \$125.00. Tasks associated with the upgrade or update will incur a task charge of \$65.00. If the task upgrade or update fails, a roll back will not be charged. General support and administration of the server(s) will incur a tier three support

INTERLOCAL AGREEMENT
City of Palm Bay and Town of Malabar
Information Technology Support Services

fee of \$65.00 unrelated to updates or upgrades. There are no additional hourly rate fees associated with tier three support requests.

e) **Asset Management.** Surplus preparation activities will incur a \$10.00 fee per asset (computing equipment in general). The tasks associated will provide the Town of Malabar the Manufactured, Model Number, Serial Number, Condition of the Asset, and hard drive removal or data wipe when applicable.

f) **Microsoft Outlook Archiving.** This is a one-time cost to be mutually agreed upon and determined by both Palm Bay and Malabar at the time such need arises.

g) **Consulting Services and Strategy Planning.** This is a one-time cost to be mutually agreed upon and determined by both Palm Bay and Malabar at the time such need arises.

5. **TERM:** This Agreement shall be a continuing agreement to provide the services described herein on an as-requested basis as provided for in section 7 of this Agreement. This Agreement may be terminated by either party upon thirty (30) days advanced written notice to the other party.

6. **REQUEST FOR SERVICES:** The services provided herein will be on an as-needed basis and only upon request by the Town Administrator of Malabar or her designee.

7. **INSURANCE:** Malabar agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the City of Palm Bay, policies insuring the City of Palm Bay against all claims, demands or causes of action whatsoever for injuries received and damages to persons or property. The standard insurance amounts will be: Workers Compensation \$100,000.00 each accident; General Liability \$1,000,000.00 per occurrence; Automotive \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. Palm Bay shall be named as an additional insured for each policy. In the event that the Town of Malabar currently has in place

INTERLOCAL AGREEMENT

**City of Palm Bay and Town of Malabar
Information Technology Support Services**

such insurance and coverage for the City of Palm Bay under another Interlocal Agreement Malabar shall not be required to duplicate said insurance and coverage.

8. **INVOICES:** Palm Bay shall invoice Malabar on the last business day of the month in which such services were requested by Malabar. All invoices will be accompanied by a time record showing the date of services, the services performed and a list of parts utilized. All invoices will be paid within thirty (30) days of submittal of the invoice. All invoices, or parts thereof, not timely paid shall bear interest at the rate of one percent (1%) per month.

9. **INTERPRETATION/SEVERABILITY:**

a) All signatories to this Agreement have participated in the wording hereof and have had the opportunity to seek legal advice from a licensed Florida attorney with regard hereto. Notwithstanding anything to the contrary hereto, the parties agree, desire and intend that no provision hereof shall be read more strongly or harshly against either party hereto as the drafter of this Agreement. As utilized herein, the singular of any word shall include the plural and vice versa. The use of any gender includes all genders, unless the context specifically indicates the contrary. The catch lines for each provision herein are specifically for ease of reading and are not intended to be used for interpretation purposes.

b) **Severability.** Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect. Should a court of competent jurisdiction find any word, phrase, sentence or any other provision of this Agreement to be unconstitutional, unenforceable or otherwise illegal for any reason, then this Agreement shall be read as if said

INTERLOCAL AGREEMENT
City of Palm Bay and Town of Malabar
Information Technology Support Services

unconstitutional, unenforceable or otherwise illegal for any reason, then this Agreement shall be read as if said unconstitutional, unenforceable and otherwise illegal provisions did not exist.

c) **Binding effect.** This Agreement shall inure to and bind the successors and assigns of Malabar and Palm Bay.

d) **Applicable Law; Venue.** This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida. Venue of any proceeding arising out of or pursuant to this Agreement shall be in Brevard County, Florida.

e) **No Third-Party Beneficiary.** This Agreement is solely for the benefit of Palm Bay and Malabar. No right or cause of action shall accrue upon or by reason hereof inure to or for the benefit of any third-party.

f) **Construction of Agreement.** This Agreement is for the mutual benefit of the health, safety and welfare of Palm Bay and Malabar and is agreed to by both Palm Bay and Malabar upon the advice of counsel. The provisions of this Agreement shall not be construed against Palm Bay as having been drafted by such party.

g) **Notice.** Except as provided for in section 6, all other notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person, by a national recognized overnight courier, delivery fee pre-paid, or dispatched by the United States Postal Service, postage pre-paid, return receipt requested. Notice shall be deemed to have been given upon the date of delivery in person, acceptance by the nationally recognized overnight courier, or upon the notice being deposited in the U.S. mail, all in the manner as provided herein. Unless prior written notification of an alternate address for notices sent, all notices required pursuant to this Agreement shall be sent to the following addresses:

INTERLOCAL AGREEMENT

**City of Palm Bay and Town of Malabar
Information Technology Support Services**

City of Palm Bay: Susan Hann
City Manager
120 Malabar Road, S.E.
3rd Floor, City Hall Annex
Palm Bay, FL 32907

Town of Malabar: Bonilyn Wilbanks
Town Administrator
2725 Malabar Road
Malabar, FL 32950

A party may unilaterally change its address or addressee by giving notice in writing to the other party as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

10. EFFECTIVE DATE: Pursuant to section 163.01(11), Florida Statutes (2012), this Agreement shall become effective upon its recordation in the Public Records of Brevard County, Florida, and any amendment hereto shall become effective upon recordation in the Public Records of Brevard County, Florida.

CITY OF PALM BAY, FLORIDA,
a Florida Municipal Corporation

By: _____
John J. Mazziotti, Mayor

ATTEST: _____
Alice Passmore, City Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by John J. Mazziotti, Mayor of the City of Palm Bay, a Florida municipal corporation, on behalf of the municipal corporation. He is personally known to me.

INTERLOCAL AGREEMENT
City of Palm Bay and Town of Malabar
Information Technology Support Services

(and)

Notary Public

TOWN OF MALABAR, FLORIDA,
a Florida Municipal Corporation

By: _____
Phillip R. Crews, Mayor

ATTEST: _____
Debby Franklin, Town Clerk/Treasurer

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Phillip R. Crews, Mayor of the Town of Malabar, a Florida municipal corporation, on behalf of the municipal corporation. He is personally known to me.

Notary Public