



RESOLUTION NO. 2018-10

A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND
DELIVER THE CONSTRUCTION AND MAINTENANCE AGREEMENT FOR
A1A BEACHES DRAINAGE IMPROVEMENTS PROJECT(SEAGATE
AVENUE), FINANCIAL PROJECT ID# 436077-1-52-01, TO THE FLORIDA
DEPARTMENT OF TRANSPORTATION

WHEREAS, the State of Florida Department of Transportation, hereinafter referred to as the "FDOT" finds it is necessary for the City of Neptune Beach, hereinafter referred to as the Maintaining Agency, to provide the maintenance of A1A Beaches Drainage Improvements, Financial Project ID# 436077-1-52-01, and to execute and deliver to the FDOT the agreement identified as the Construction and Maintenance Agreement, hereinafter referred to as the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAINTAINING AGENCY:


That, Andrew E. Hyatt, City Manager, be hereby authorized and directed to execute and deliver the Agreement to the FDOT.

A certified copy of this Resolution shall be forwarded to the FDOT along with the executed Agreement.

The above Resolution was introduced and adopted by the **CITY OF NEPTUNE BEACH** on the 17th day of September, 2018.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk





Florida Department of Transportation

RICK SCOTT
GOVERNOR

1109 South Marion Avenue
Lake City, Florida 32025-5874

MIKE DEW
SECRETARY

October 26, 2018

Mr. Leon Smith
Neptune Beach Public Works Office
2010 Forest Avenue
Neptune Beach, Florida 32266

Subject: CONSTRUCTION & MAINTENANCE AGREEMENT
A1A Beaches Drainage Improvements
Financial Project ID: 436077-1-52-01
Federal ID: 4913-013-P

Dear Mr. Smith:

Enclosed for your file is a fully executed copy of the Tri-Party Construction & Maintenance Agreement for the subject project.

Thank you for your assistance in securing execution as soon as possible is appreciated. Should you have questions or need additional information, please contact me at 1-800-749-2967, Extension 7823.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wm. David Cerlanek", is written over a light blue horizontal line.

Wm. David Cerlanek, P.E.
District Two Program Administration Engineer

Enclosures

CC: Mr. Bob Kosoy, P.E., Jacksonville Maintenance Engineer
Ms. Brandi Vittur, P.E., Senior Project Manager

CONSTRUCTION & MAINTENANCE AGREEMENT

THIS CONSTRUCTION & MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department"), the City of Jacksonville Beach, Florida (the "COJB"), and the City of Neptune Beach, Florida (the "CONB").

-RECITALS-

1. The Department is the fee simple owner of State Road A1A ("SR A1A") for which certain drainage improvements will be constructed via Financial Project Number 436077-1-52-01 ("Project"); and
2. The Department currently owns a drainage easement (areas highlighted in gold), which is not continuous and uninterrupted in places, that commences at 13th Avenue North and extends approximately 1000 feet west of Penman Road, draining the SR A1A stormwater and eventually flowing westerly into Hopkins Creek (collectively referred to as the "Department Property"), as more particularly shown in **Exhibit "A"**; and
3. In conjunction with the Project, the Department has separately acquired various perpetual easements ("Perpetual Easements", which are shaded in blue on Exhibits "A," "B," and "C") and temporary construction easements ("TCEs", which are shaded in red on Exhibit "B") in order to memorialize and create an uninterrupted drainage facility as well as to correct the historical and ongoing roadway-related drainage issues (the Department Property and the Perpetual Easements are collectively referred to as the "Drainage Easement"), as more particularly described in the right-of-way maps, as shown in **Exhibit "A"**; and
4. Portions of the Drainage Easement flow through an existing pipe crossing ("Pipe Crossing"), approximately half of which exists under the roadway within the jurisdictional limits of the COJB at Seagate Avenue on the south side ("COJB Seagate") and approximately half of which exists under the roadway within the jurisdictional limits of the CONB at Seagate Avenue on the north side ("CONB Seagate") (all of which is collectively referred to as the "Agency Property"); and
5. The Drainage Easement, together with the TCEs will better facilitate SR A1A drainage as well as the Agency Property drainage; and
6. In order to complete the Project, it will be necessary to expand the Pipe Crossing and construct Bridge Number 720844 ("Bridge"), see attached **Exhibit "B"**; and
7. Ownership of the Bridge structure, as located within the Perpetual Easement, shall remain with the Department; and
8. For purposes of this Agreement and the Bridge construction, the TCEs and any improvements constructed therein, shall be considered part of the Agency's Property; and
9. The Bridge will be approximately forty (40) feet in length and approximately fifty (50) feet in width; and
10. Upon completion of the Project, the COJB shall be responsible for the COJB Seagate Bridge maintenance (outlined in green) and the CONB shall be responsible for the CONB Seagate Bridge maintenance (outlined in purple), as more particularly shown in **Exhibit "C"** (**Composites C-1, C-2 and C-3**); and
11. The term "Improvement" means and shall refer to the construction of the Bridge, including, without limitation, the bridge approaches, roadway drainage systems, utilities within the Agency Property, pipe, roadway pavement, signs and pavement markings, sidewalks, and pedestrian crossings, as more particularly shown in **Exhibit "C"**; and
12. Portions of the Improvement will be located solely within the Agency Property ("Off-System Improvements"), while portions of the Improvement will be located within the Drainage Easement ("On-System Improvements"); and

13. In order to construct the Improvement, it will be necessary for the Department to temporarily close access to Seagate Avenue at 5th Street South and re-route vehicular traffic (collectively referred to as the "Detour Property") throughout the duration of the construction of the Improvement, as more particularly shown in **Exhibit "D"**; and
14. The COJB and the CONB have requested that the Improvement be constructed and the Department is amenable to this request pursuant to the terms and conditions of this Agreement; and
15. The Department shall fund construction of the Improvement, which is wholly contingent upon appropriation of funds to the Department; and
16. The Department shall construct the Improvement; and
17. A date for the commencement of construction of the Improvement has not been established; and
18. For purposes of this Agreement, the definition of Improvement shall include and incorporate the term Detour Property, as defined in Recital 13 above; and
19. During the period of construction of the Improvement, the Department shall be responsible for the operation, maintenance and repair of the Detour Property; and
20. Upon completion of the construction, the COJB and the CONB shall each own, operate, maintain, and repair the Off-System Improvements located within their respective city limits, as identified in **Exhibit C** (outlined in green for COJB and outlined in purple for CONB as related to the non-shaded area) at their sole cost and expense, respectively; and
21. Upon completion of the construction, the COJB and the CONB shall each operate, maintain, and repair the On-System Improvements located within their respective city limits as identified in **Exhibit C** (as outlined in green for COJB and as outlined in purple for CONB as related to the area shaded blue) at their sole cost and expense, respectively; and
22. By Resolution 2021-2018 dated Sept. 4th, 2018, the COJB authorized its representative(s) to execute and enter this Agreement on behalf of the Agency, see **EXHIBIT "E"**; and
23. By Resolution 2018-10 dated Sept. 17th, 2018, the CONB authorized its representative(s) to execute and enter this Agreement on behalf of the Agency, see **EXHIBIT "F"**; and

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the above recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

1. RECITALS AND EXHIBITS

The above recitals and attached exhibits are specifically incorporated by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

3. ACCESS

This Agreement authorizes the Department to access the Agency's Property and the Detour Property, whether located within the COJB or CONB, for the limited purpose of performing this Agreement.

4. E-VERIFY

The COJB and the CONB (A) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by either the COJB or the CONB, as the case may be, during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of

Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term

5. TERM

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date. Thereafter, this Agreement shall automatically renew for successive and continuing like one (1) year terms unless terminated by the Department. Before terminating this Agreement, the Department agrees to give 60 days' advance written notice to both the COJB and the CONB and will give either or both an opportunity to be heard before terminating the Agreement.

6. COMPLIANCE

The COJB and the CONB shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

7. PERMITS

In the performance of the Agreement, the COJB or the CONB may be required to obtain one or more Department permits, if applicable, which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement, which may be required for permanent improvements installed within the Department's right-of-way.

8. PROJECT MANAGEMENT

A. The Department shall manage the Project for the design and construction of the Improvement and perform such activities as the Department deems necessary and appropriate to complete the Project for the Improvement, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvement, acquisition of right-of-way, construction of the Improvement, and any other activities to facilitate satisfactory completion of the Improvement. The Department shall commence construction of the Improvement at its convenience after the appropriation of sufficient funds.

B. The Department shall manage the performance, operation, maintenance, and repair of the Detour Property during the construction period.

C. Prior to commencement of construction and at their sole cost and expense, each of the COJB and the CONB shall ensure that their Agency's Property is free and clear of any and all encroachments that may impede or in any way interfere with the Department's construction of the Improvement.

9. OPERATION, MAINTENANCE & REPAIR (OFF-SYSTEM IMPROVEMENTS)

A. Upon completion of the construction, the COJB and the CONB shall own, operate, maintain, and repair the Off-System Improvements, within their respective city limits as identified in **Exhibit C** (as outlined in green for COJB and purple for CONB over the non-shaded area), and resume operation, maintenance, and repair of the Detour Property within their respective city limits, at their sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement including applicable Governmental Law. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of either the COJB or CONB, respectively.

B. The COJB and the CONB agree that they will be solely responsible for the operation, maintenance, and repair of the Off-System Improvements as located on or within their respective portions of the Agency Property. Should either the COJB or CONB fail to operate, maintain, and repair the Off-System

Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to the *Inspection of Federal-Aid Projects Under Local Jurisdiction, Topic No. 850-065-001*, under the authority of Title 23, Section 116, U.S. Code, the COJB and the CONB agree that each shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Off-System Improvements as located on or within their respective portion of the Agency Property. If the Department claims that either the COJB or CONB, as the case may be, fails to comply with the terms of this provision, it shall give written notice to the same of the specific failure and the applicable Agency shall have an opportunity to cure the claimed deficiency within (60) days of such notice or such other time. The Department shall invoice the applicable Agency for any operation, maintenance, or repair expenses charged to the Department and located on or within the respective Agency's portion of the Agency Property, and the applicable Agency shall pay such invoices in accordance with the "Payment" section of this Agreement. Nothing in this Agreement shall relieve either Agency of its financial obligations to the Department should this occur.

C. If at any time in the sole determination of the Department, the integrity or safety of the Off-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the COJB and the CONB with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The applicable Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

10. OPERATION, MAINTENANCE & REPAIR (ON-SYSTEM IMPROVEMENTS)

A. Upon completion of the construction, the COJB or the CONB, as the case may be, shall operate, maintain and repair the On-System Improvements, within their respective city limits as identified in **Exhibit C** (as outlined in green for COJB and purple for CONB over the blue shaded area) at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the COJB and CONB.

B. If the Department determines that either the COJB or the CONB is not maintaining and repairing the On-System Improvements in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to both. The applicable Agency shall have sixty (60) days from the date of the Department's written notice, or such other time as the Department and the same mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

C. If the deficiency is not corrected timely, or if the Department determines that the deficiency remains after receipt of the applicable Agency's written notice indicating that the deficiency has been corrected, the Department, within its discretion, may: (1) provide the applicable Agency with written authorization granting such additional time as the Department deems appropriate to complete correction of the deficiency; (2) require both the COJB and the CONB to remove the On-System Improvements and restore the Department Property pursuant to the "Removal" section of this Agreement; or (3) correct the deficiency at the applicable Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the COJB and the CONB with an invoice for the costs incurred by the Department to correct the deficiency and they shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. If at any time in the sole determination of the Department, the integrity or safety of the On-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide both the COJB and the CONB with advance written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The COJB and the CONB shall pay the invoice in accordance with the "Payment" section of this Agreement.

11. IMPROVEMENTS & MODIFICATIONS

A. The Department may require the COJB or the CONB to improve or modify the On-System Improvements within their respective portions of the On-System Improvements if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications are necessitated by the Department in the conduct of its business.

B. Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Operation, Maintenance & Repair (On-System Improvements)" section hereof.

C. Improvements and modifications shall be constructed and completed by the applicable Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications, or other such time as granted by the Department.

12. WARRANTIES

After completion of construction of the Improvement and upon both Agency's written request, the Department shall transfer all transferable warranties concerning construction of the Improvement to the appropriate Agency. The assignment shall be evidenced by a separate written agreement signed by the parties and shall be subject to applicable Governmental Law and the construction agreement entered between the Department and its contractor.

13. UTILITIES

The COJB and the CONB shall each be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the performance of this Agreement. Each shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by the Agency, as applicable, directly with the applicable utility.

14. MAINTENANCE OF TRAFFIC

A. Following construction of the Project, the COJB and the CONB shall be responsible for the maintenance of traffic ("MOT") at all times during its performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; and (3) the Department's Roadway Design Standards Index 600 Series.

B. If the COJB or CONB fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the sole cost and expense of the COJB and the CONB. Should the Department perform MOT, the Department shall provide each Agency with an invoice for the costs incurred by the Department and the applicable Agency shall pay its portion of the invoice in accordance with the "Payment" section of this Agreement.

15. REMOVAL

A. The Department may require the COJB and the CONB to remove the Improvement and restore the Drainage Easement to such condition as required by the Department if the Department determines: (1) the Improvement is not maintained in accordance with Governmental Law; (2) removal of the Improvement is required by applicable Governmental Law; (3) the COJB or the CONB breaches a material provision (as determined by the Department) of this Agreement, or (4) removal of the Improvement is necessitated by the Department in the conduct of its business. Removal and restoration shall be completed by the COJB and the CONB within sixty (60) days of the date of the Department's written notice requiring removal of the Improvement, or such other time as the Department and the Agency mutually agree in writing.

B. Removal and restoration shall be completed by the Agency in accordance with all applicable Governmental Law.

C. Should the COJB and the CONB fail to complete the removal and restoration work as required herein, the Department may: (1) provide both with written authorization granting such additional time as the Department deems appropriate to complete removal and restoration; or (2) complete the removal and restoration at the COJB and the CONB's sole cost and expense. Should the Department elect to complete the removal and restoration, the Department shall provide the COJB and the CONB with an invoice for the costs incurred by the Department and the applicable Agency shall pay its portion of the invoice in accordance with the "Payment" section of this Agreement.

16. PERMISSIVE USE

This Agreement creates a permissive use only and neither the granting of permission to use the Drainage Easement or the On-System Improvements, therein, shall operate to create or vest any property right to either the COJB or the CONB. Neither Agency shall acquire any right, title, interest or estate in the Drainage Easement by virtue of the execution, operation, effect or performance of this Agreement.

17. EMINENT DOMAIN AND DAMAGES

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling either COJB or CONB to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The COJB and the CONB forever waive and relinquish all legal rights and monetary claims which either has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by either the COJB or the CONB, as a result of the Department's exercise of any right provided in this Agreement.

18. PAYMENT

All Department invoices submitted to either Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date") and in the case of an emergency and unanticipated repairs within 90 days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full.

19. INDEMNIFICATION

A. The COJB and the CONB shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the either COJB or CONB's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The COJB and the CONB's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The COJB or the CONB, as the case may be, shall notify the Department in writing immediately upon becoming aware of any Liabilities. The COJB and the CONB's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the COJB or the CONB. The COJB and the CONB's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

20. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving any party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Fla. Stat. (2018).

21. NOTICE

All notices, communications and determinations between the parties and those required to be given under this Agreement, including, without limitation, any change to the notification address set forth below, shall be in writing and shall be sufficient if mailed by registered or certified mail to the parties at the following addresses:

Department: Florida Department of Transportation
Attention: Jacksonville Maintenance Engineer
838 Ellis Road
Jacksonville, Florida 32205

- and -

Florida Department of Transportation
Attention: Chief Counsel District Two
1109 South Marion Avenue, Mail Station 2009
Lake City FL 32025

COJB: Jacksonville Beach Public Works Department
Attention: Public Works Director
1460-A Shetter Avenue
Jacksonville Beach, Florida 32250

- and -

City Attorney for the City of Jacksonville Beach
c/o City Manager
11 North Third Street
Jacksonville Beach, Florida 32250

CONB: Neptune Beach Public Works Office
Attention: Public Works Director
2010 Forest Avenue
Neptune Beach, Florida 32266

The COJB and the CONB agree that a failure to notify Department by certified mail of any changes to its notification address shall have waived any defense based on Department's failure to notify the Agency, respectively.

22. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

23. INITIAL DETERMINATION OF DISPUTES

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

24. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The COJB and the CONB and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

25. JURY TRIAL

The parties waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

26. ASSIGNMENT

Neither the COJB nor the CONB shall assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her

designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the COJB or the CONB from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

27. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

28. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

29. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

30. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

31. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

32. WAIVER

The failure of any of the parties to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

33. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

34. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

35. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

36. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

37. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

38. ANNUAL APPROPRIATION / FUNDING

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

39. PUBLIC RECORDS

The COJB and the CONB shall comply with Chapter 119, Florida Statutes. Specifically, the COJB and the CONB shall:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.
- B. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if the COJB or the CONB does not transfer the records to the Department.
- D. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of the COJB and the CONB or keep and maintain public records required by the Department to perform this Agreement. If the COJB or the CONB transfers all public records to the Department upon completion of this Agreement, the COJB or the CONB shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the COJB or the CONB keeps and maintains public records upon completion of this Agreement, the COJB or the CONB shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.
- E. Failure by the COJB or the CONB to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The COJB or the CONB, as the case may be, shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of the COJB and the CONB response to each such request.

IF THE COJB OR THE CONB HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COJB OR THE CONB'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO

THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS
AT:

District 2
386-758-3727
D2prcustodian@ dot.State.FL.us
Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025

40. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement, consisting of twenty (20) pages.

Florida Department of Transportation

By: [Signature]
Printed Name: Greg Evans
Title: District Two Secretary
Date: 10/25/18

Attest:

By: [Signature]
Printed Name: Lisa Pelaez
Title: Executive Secretary
Date: Oct. 25, 2018

Legal Review:

By: [Signature] 10-24-18
Office of the General Counsel
Florida Department of Transportation



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SIGNATURES ON FOLLOWING PAGE

City of Jacksonville Beach

By: Karen W. Nelson

Printed Name: Karen W. Nelson

Title: Interim City Manager

Date: 10/4/18

By: WC Latham

Printed Name: WC LATHAM

Title: Mayor

Date: 10/4/18

Legal Review:

By: S Erdelyi
Legal Counsel for Agency

Attest:

By: Laurie Scott

Printed Name: Laurie Scott

Title: City Clerk

Date: 10/10/18

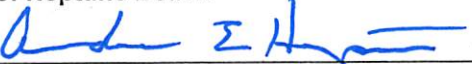
Legal Review:

By: S Erdelyi
Legal Counsel for Agency

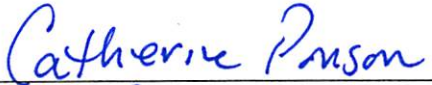
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Financial Project Id. No. 436077-1-52-01
Federal Id. No. 4913-013-P
Project Description A1A Beaches Drainage Improvements
On/Off System Department Construct Agency Maintain

City of Neptune Beach

By: 
Printed Name: Andrew E Hyatt
Title: City Manager
Date: 9/17/18

Attest:

By: 
Printed Name: Catherine Ponson
Title: City Clerk
Date: 9/17/18

Legal Review:

By: 
Legal Counsel for Agency

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Catherine Pearson
Catherine Pearson
City Clerk
8/11/18

~~W. H. H.~~
C. F. H. H.
8/11/18

~~W. H. H.~~

EXHIBIT "A"

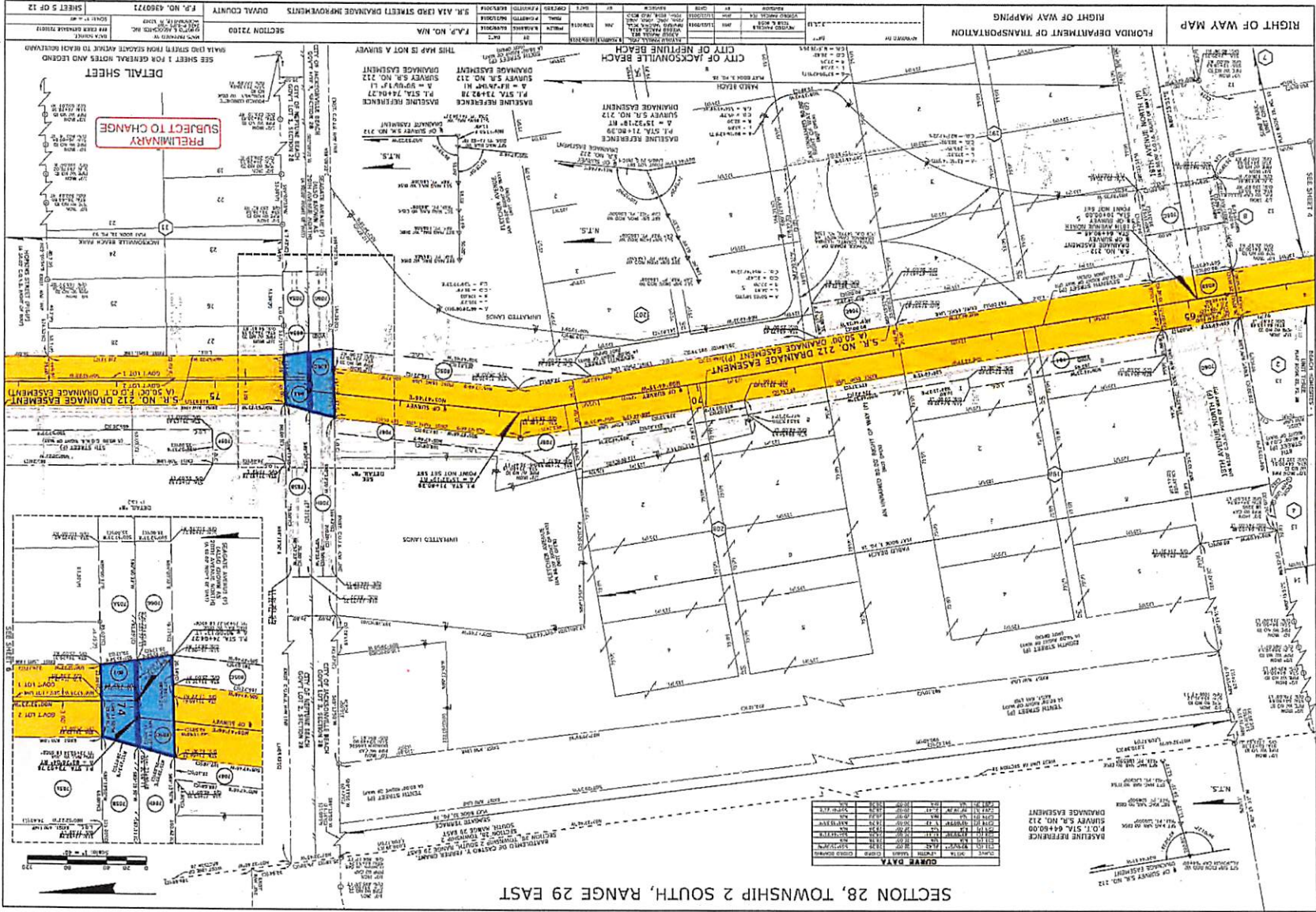
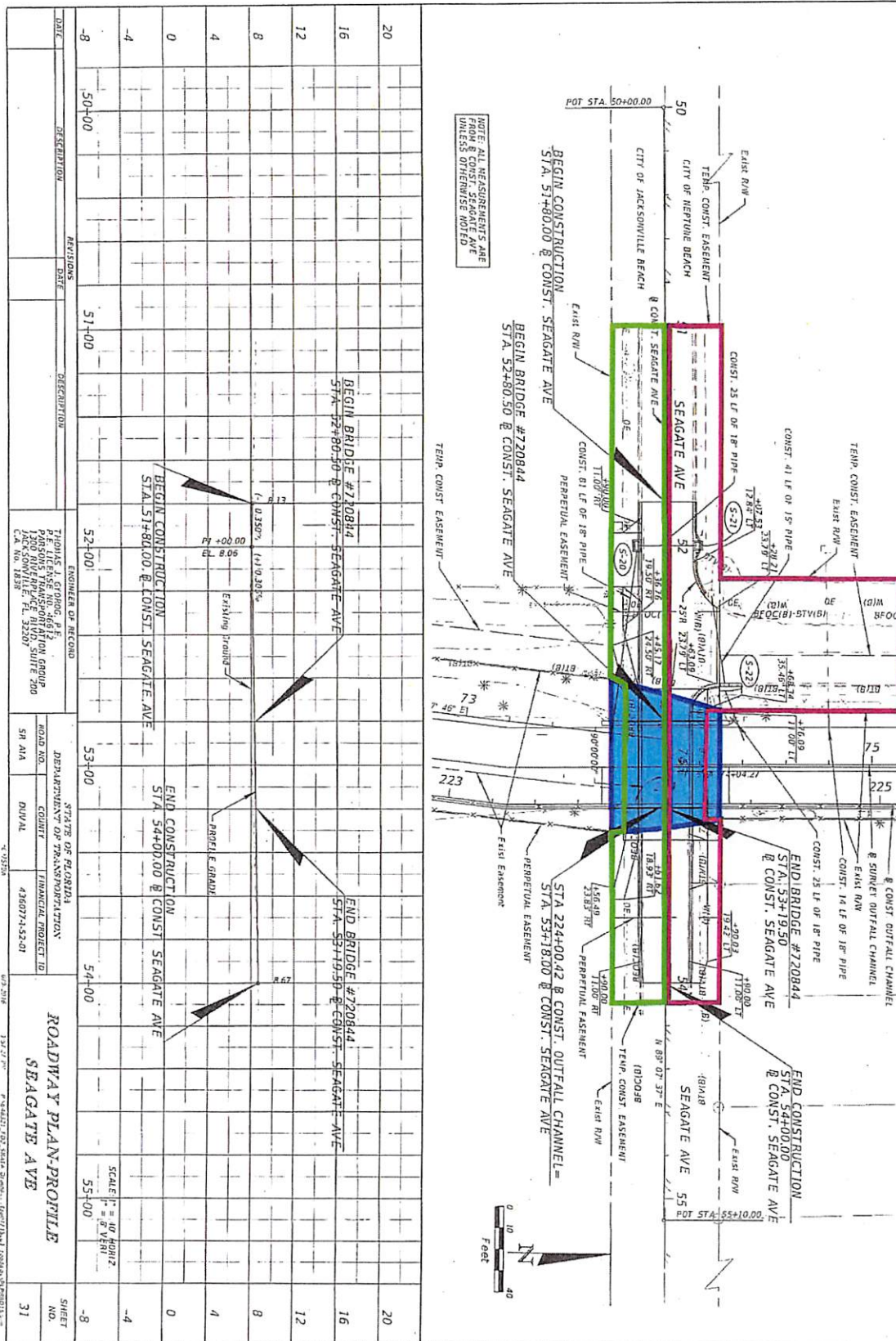




EXHIBIT "C"
 Composite C-1



Financial Project Id. No. 436077-1-52-01
Federal Id. No. 4913-013-P
Project Description A1A Beaches Drainage Improvements
On/Off System Department Construct Agency Maintain

EXHIBIT "E"
COJB RESOLUTION

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

Phone: 904.247.6299 ext. 10

904.247.6250 ext. 11

Fax: 904.247.6256

E-Mail: cityclerk@jaxbchfl.net

www.jacksonvillebeach.org

SEPTEMBER 27, 2018

CERTIFICATION

STATE OF FLORIDA
COUNTY OF DUVAL
CITY OF JACKSONVILLE BEACH

I, LAURIE SCOTT, CITY CLERK, of the City of Jacksonville Beach, Florida, do hereby certify that the attached document, comprised of 2 pages, is a true and correct copy of Resolution No. 2021-2018, adopted by the City Council, on September 4, 2018; which Resolution is entitled:

“A RESOLUTION AUTHORIZING THE CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF NEPTUNE BEACH DETAILING OWNERSHIP OF, AND REPSONSIBILITIES FOR THE COST, CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF, THE NEW BRIDGE AND ROADWAY APPROACHES AT SEAGATE AVENUE IN JACKSONVILLE BEACH AND NEPTUNE BEACH, FLORIDA, AS PART OF THE DEPARTMENT’S STATE ROAD A1A DRAINAGE IMPROVEMENTS PROJECT, with Financial Project Number 436077-1-52-01.”

IN WITNESS WHEREOF, I hereunto
set my hand and affix the Seal of the
City of Jacksonville Beach, Florida,
this 27th Day of SEPTEMBER A.D., 2018.



Laurie Scott, CITY CLERK
City of Jacksonville Beach, Florida

Introduced by: Councilmember Hoffman
Adopted: September 4, 2018

RESOLUTION NO. 2021-2018

A RESOLUTION AUTHORIZING THE CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF NEPTUNE BEACH DETAILING OWNERSHIP OF, AND REPSONSIBILITIES FOR THE COST, CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF, THE NEW BRIDGE AND ROADWAY APPROACHES AT SEAGATE AVENUE IN JACKSONVILLE BEACH AND NEPTUNE BEACH, FLORIDA, AS PART OF THE DEPARTMENT'S STATE ROAD A1A DRAINAGE IMPROVEMENTS PROJECT, with Financial Project Number 436077-1-52-01.

WHEREAS, the State of Florida Department of Transportation, hereinafter referred to as the ("FDOT"), is to construct the State Road A1A Drainage Improvements Project in Duval County, Florida, having FDOT Financial Project Number 436077-1, hereinafter referred to as the ("PROJECT"), and

WHEREAS, a portion of the PROJECT, including channel improvements in the FDOT Drainage Easement, and new bridges and roadway approaches at the crossing of Seagate Avenue over the FDOT Drainage Easement, is to be constructed within the limits of the City of Jacksonville Beach, hereinafter referred to as the ("CITY"), and the City of Neptune Beach, and

WHEREAS, the FDOT requires the CITY and the City of Neptune Beach to enter into an FDOT-standard Construction and Maintenance Agreement, hereinafter referred to as the ("AGREEMENT"),

WHEREAS, the AGREEMENT specifies ownership of, and responsibilities for the cost, construction operation, maintenance and repair of, the new bridge and roadway approaches at the crossing of Seagate Avenue over the FDOT Drainage Easement, and

WHEREAS, said AGREEMENT is in the best interest of the CITY, and

WHEREAS, in order for the FDOT to proceed with this PROJECT, it is necessary for the CITY to execute the AGREEMENT.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, THAT:


SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2. The Mayor and the Interim City Manager of the CITY are hereby authorized to execute the AGREEMENT.

SECTION 3. The executed AGREEMENT, along with a certified copy of this Resolution, shall be delivered forthwith to the FDOT.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

AUTHENTICATED this 4th day of September, 2018.



William C. Latham, MAYOR



Laurie Scott, CITY CLERK

Financial Project Id. No. 436077-1-52-01
Federal Id. No. 4913-013-P
Project Description A1A Beaches Drainage Improvements
On/Off System Department Construct Agency Maintain

EXHIBIT "F"
CONB RESOLUTION



RESOLUTION NO. 2018-10

A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND
DELIVER THE CONSTRUCTION AND MAINTENANCE AGREEMENT FOR
A1A BEACHES DRAINAGE IMPROVEMENTS PROJECT(SEAGATE
AVENUE), FINANCIAL PROJECT ID# 436077-1-52-01, TO THE FLORIDA
DEPARTMENT OF TRANSPORTATION

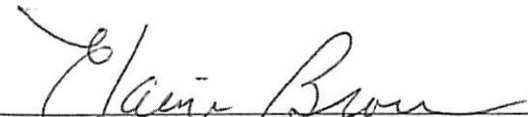
WHEREAS, the State of Florida Department of Transportation, hereinafter referred to as the "FDOT" finds it is necessary for the City of Neptune Beach, hereinafter referred to as the Maintaining Agency, to provide the maintenance of A1A Beaches Drainage Improvements, Financial Project ID# 436077-1-52-01, and to execute and deliver to the FDOT the agreement identified as the Construction and Maintenance Agreement, hereinafter referred to as the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAINTAINING AGENCY:

That, Andrew E. Hyatt, City Manager, be hereby authorized and directed to execute and deliver the Agreement to the FDOT.

A certified copy of this Resolution shall be forwarded to the FDOT along with the executed Agreement.

The above Resolution was introduced and adopted by the CITY OF NEPTUNE BEACH on the 17th day of September, 2018.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, City Clerk




CERTIFICATION

I certify this to be a true and correct copy of the
official record on file in the office of the City Clerk.

Resolution 2018-10

WITNESSETH my hand and official seal of the City
of Neptune Beach, Florida.

this the 18th day of September, 20 18
 City Clerk