



**AGENDA**  
**Regular City Council Meeting**  
**Monday, May 4, 2020, 6:00 P.M.**

**THIS MEETING WILL BE CONDUCTED  
VIA COMMUNICATIONS MEDIA TECHNOLOGY**

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
2. AWARDS / PRESENTATIONS / RECOGNITION OF GUEST
  - A. Denise Bunnewith – North Florida Transportation Planning Organization (TPO) p. 3
3. APPROVAL OF MINUTES: **April 20, 2020, Regular City Council Virtual Meeting** p. 16
4. COMMUNICATIONS AND CORRESPONDENCE:
  - Mayor
  - City Council
  - City Manager
  - City Attorney
  - City Clerk
  - Police Chief
5. CITY MANAGER REPORT
6. COMMENTS FROM THE PUBLIC
7. CONSENT AGENDA / NONE
8. VARIANCES / SPECIAL EXCEPTIONS / DEVELOPMENT ORDERS / NONE
9. ORDINANCES / NONE
10. OLD BUSINESS / NONE
11. NEW BUSINESS
  - A. Emergency Rules Regarding COVID-19 (Suspending Code Section 6-31(a)(2)), Dogs on the Beach p. 22
  - B. Resolution No. 2020-02, Authorizing City Manager to Execute and Deliver FDOT Maintenance Agreement for Atlantic Boulevard from the east end of the ICW Bridge to Florida Boulevard p. 26
  - C. Neptune Beach Senior Activity Center
12. COUNCIL COMMENTS
13. ADJOURN

## **INSTRUCTIONS FOR THE NEPTUNE BEACH VIRTUAL COUNCIL MEETING**

This meeting will be a webinar conducted electronically. No in-person meeting will be conducted as permitted in Governor Executive Order No. 20-69 and extended by Governor Executive Order 20-112. The City has adopted Emergency Rules Regarding to COVID-19 to Govern the Operation of Meetings of the City Council and Board of the City of Neptune Beach. Such rules are available from the City Clerk.

Members of the public may provide written comments in the following manner:

1. Email to the City Clerk prior to the meeting at [clerk@nbfl.us](mailto:clerk@nbfl.us).
2. Mailed via U.S. Mail to the City Clerk at 116 First Street, Neptune Beach, Florida, or by placing them in the drop box outside of City Hall, 116 First Street, Neptune Beach, Florida.
3. Fill out the speaker request form located at: <https://www.ci.neptune-beach.fl.us/home/webforms/request-address-council>

Only written comments of 300 words or less will be read into the record during the meeting. All other written comments received by the deadline will be entered into the record and distributed to the City Council.

Members of the public wishing to participate by phone:

**Call in participants: (562) 247-8321 Access Code: 872-848-296**

Residents with computers that can connect online please register for the meeting using the following link. You will then receive a confirmation email that includes specific join information.

<https://attendee.gotowebinar.com/register/5201938351633239563>

Attendees joining via computer/smart device can refer to instructions below on how to join the webinar at : <https://support.goto.com/webinar/how-to-join-attendees>

For questions or additional information, please contact the City Clerk's office at (904) 270-2400, ext. 30

If a person decides to appeal any decision made by the Council with respect to any matter considered at such meeting or hearing the person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation, including hearing assistance, to participate in this meeting should contact the City Clerk's Office no later than 48 hours prior to the meeting.



March 31, 2020

The Honorable Elaine Brown, Mayor  
City of Neptune Beach  
116 First Street  
Neptune Beach, FL 32266

Dear Mayor Brown:

The North Florida TPO is developing the ***Transportation Improvement Program (TIP) for Fiscal Years 2020/2021 through 2024/2025***. The TIP identifies all publicly funded highway, transit and aviation projects within the North Florida TPO area which includes Clay, Duval, Nassau and St. Johns Counties.

To increase public involvement in developing the TIP and to inform the City of Neptune Beach City Council as to the projects planned and programmed for the area, Denise Bunnewith would like to make a brief presentation at your **Monday, May 4** meeting. During this time of expanded virtual meetings, please let me know how to prepare the presentation which should be no more than 10 minutes.

I look forward to hearing from you soon regarding this request.

Sincerely,

A handwritten signature in black ink that reads "Wanda Forrest".

Wanda Forrest  
Transportation Planning Manager

# NORTH FLORIDA TPO

Transportation Improvement  
Program FY 2020/21 - 2024/25

## Beaches TIP Supplement



Phase	Fund Source	2020/21	2021/22	2022/23	2023/24	2024/25	Total
<b>ATLANTIC BLVD (SR 10) @ THIRD ST (SR A1A) - 4435531</b>							<b>*Non-SIS*</b>
<b>INTERSECTION (MODIFY)</b>							<b>Length: .232</b>
<b>Responsible Agency: FDOT</b>							
CST	SA	642,999	0	0	0	0	<b>642,999</b>
<b>Total</b>		<b>642,999</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>642,999</b>
<i>Prior Cost &lt; 2020/21</i>		<i>222,034</i>	<i>Future Cost &gt; 2024/25</i>		<i>0</i>	<i>Total Project Cost</i>	<i>865,033</i>
<b>ATLANTIC BLVD (SR 10) EB @ SAN PABLO RIVER (ICWW)BRIDGE#720044 - 4338411</b>							<b>*Non-SIS*</b>
<b>BRIDGE-REPAIR/REHABILITATION</b>							<b>Length: .445 MI</b>
<b>Responsible Agency: FDOT</b>							
CST	DIH	0	52,403	0	0	0	<b>52,403</b>
CST	BRRP	0	3,295,855	0	0	0	<b>3,295,855</b>
<b>Total</b>		<b>0</b>	<b>3,348,258</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,348,258</b>
<i>Prior Cost &lt; 2020/21</i>		<i>127,577</i>	<i>Future Cost &gt; 2024/25</i>		<i>0</i>	<i>Total Project Cost</i>	<i>3,475,835</i>
<b>JTB/INTERCOASTAL WATERWAY (SR 202) BRIDGE NUMBERS 720442 &amp; 720509 - 4427801</b>							<b>*Non-SIS*</b>
<b>BRIDGE-REPAIR/REHABILITATION</b>							<b>Length: .871</b>
<b>Responsible Agency: FDOT</b>							
PE	DIH	19,235	0	0	0	0	<b>19,235</b>
PE	BRRP	250,000	0	0	0	0	<b>250,000</b>
CST	DIH	0	0	103,961	0	0	<b>103,961</b>
CST	BRRP	0	0	6,235,549	0	0	<b>6,235,549</b>
<b>Total</b>		<b>269,235</b>	<b>0</b>	<b>6,339,510</b>	<b>0</b>	<b>0</b>	<b>6,608,745</b>
<i>Prior Cost &lt; 2020/21</i>		<i>0</i>	<i>Future Cost &gt; 2024/25</i>		<i>0</i>	<i>Total Project Cost</i>	<i>6,608,745</i>

Phase	Fund Source	2020/21	2021/22	2022/23	2023/24	2024/25	Total
<b>MAYPORT RD (SR 101) FROM ATLANTIC BLVD (SR 10) TO NAVAL BASE - 4432941</b>							<b>*SIS*</b>
<b>SAFETY PROJECT</b>							<b>Length: 3.509</b>
<b>Responsible Agency: FDOT</b>							
CST	ACSS	0	1,904,078	0	0	0	1,904,078
CST	SA	0	23,913	0	0	0	23,913
<b>Total</b>		<b>0</b>	<b>1,927,991</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,927,991</b>
<i>Prior Cost &lt; 2020/21</i>		<i>0</i>	<i>Future Cost &gt; 2024/25</i>	<i>0</i>	<i>Total Project Cost</i>		<i>1,927,991</i>
<b>SR A1A/SR 10/ATLANTIC BLVD/3RD ST FROM 2ND AVE NORTH TO BAY ST - 4411941</b>							<b>*Non-SIS*</b>
<b>PEDESTRIAN SAFETY IMPROVEMENT</b>							<b>Length: 1.793</b>
<b>Responsible Agency: FDOT</b>							
CST	ACSS	1,068,696	0	0	0	0	1,068,696
<b>Total</b>		<b>1,068,696</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,068,696</b>
<i>Prior Cost &lt; 2020/21</i>		<i>310,840</i>	<i>Future Cost &gt; 2024/25</i>	<i>0</i>	<i>Total Project Cost</i>		<i>1,379,536</i>
<b>WONDERWOOD DR (SR 116) FROM WOMPI DR TO E OF ICWW BRIDGE - 4287963</b>							<b>*SIS*</b>
<b>RESURFACING</b>							<b>Length: 7.443</b>
<b>Responsible Agency: FDOT</b>							
RRU	LF	0	1,000,056	0	0	0	1,000,056
CST	LF	0	105,359	0	0	0	105,359
CST	DS	0	2,035,569	0	0	0	2,035,569
CST	DIH	0	197,723	0	0	0	197,723
PE	LF	0	200,056	0	0	0	200,056
CST	DDR	0	3,645,704	0	0	0	3,645,704
CST	NHRE	0	9,497,676	0	0	0	9,497,676
<b>Total</b>		<b>0</b>	<b>16,682,143</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>16,682,143</b>
<i>Prior Cost &lt; 2020/21</i>		<i>1,529,277</i>	<i>Future Cost &gt; 2024/25</i>	<i>0</i>	<i>Total Project Cost</i>		<i>18,211,420</i>

# **APPENDIX I**

## **Abbreviations & Acronyms**

## **ABBREVIATIONS AND FUNDING SOURCES**

### AGENCIES

FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
JAA	Jacksonville Aviation Authority
JTA	Jacksonville Transportation Authority
SA/STJAA	St. Augustine/St. Johns County Airport Authority

### PROJECT PHASES

ADM	Administration
CAP	Capital
CST	Construction
DSB	Design Build
ENV	Environmental
INC	Contract Incentives
LAR	Local Advance Reimbursement



MNT	Bridge/Roadway/Contract Maintenance
MSC	Miscellaneous
OPS	Operations
PDE	Project, Development & Environment Study
PE	Preliminary Engineering
PLN	Planning
ROW	Right-of-Way Acquisition
RPY	Repayments
RRU	Railroad/Utilities

FUNDING SOURCES

ACBR	Advance Construction (BRT) – Federal Bridge Replacement
ACBZ	Advance Construction (BRTZ)
ACER	Advance Construction (ER)
ACCM	Advance Construction (CM)
ACEN	Advance Construction Equity Bonus National Highway
ACF0	Advance Construction for High Priority
ACFP	Advance Construction Freight Program (NFP)
ACIM	Advanced Construction Interstate

ACNP	Advance Construction (NHPP)
ACSA	Advanced Construction Transportation Management Areas
ACSB	Advance Construction for SABR STP Bridges
ACSE	Advanced Construction Enhancement
ACSH	Advanced Construction Hazard Elimination
ACSL	Advance Construction (SL)
ACSS	Advanced Construction Safety
ACSU	Advance Construction (SU)
BNBR	State Bonds (Statewide Bridges)
BNDS	Bond funding State
BNIR	Interstate R/W and Bridge Bonds
BRAC	Bridge Replacement
BRP	State Bridge Replacement
BRRP	State Bridge Repair and Rehabilitation
BRTZ	Federal Bridge Replacement - Off System
CIGP	County Incentive Grant Program
CM	Congestion Mitigation
CMAQ	Congestion Mitigation Air Quality

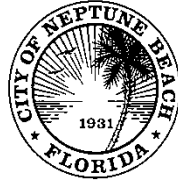
D	Unrestricted State Primary
DDR	District Dedicated Revenue (Gas Tax effective January 1, 1991)
DEM	Environmental Mitigation
DDRF	District Dedicated Matching Revenue Funds
DI	Statewide Inter/Intrastate Highways
DIH	State In-House Product Support
DIS	Strategic Intermodal System
DITS	District Intelligent Transportation Systems
DPTO	District Public Transportation Office
DRA	Rest Areas - State 100%
DS	State Primary Highways and PTO
DSBJ	I-295 Express Lanes – Capital
DU	State Primary/Federal Reimb
DWS	Weight Stations – State 100%
EB	Equity Bonus
EBNH	Equity Bonus - National Highway
EM19	GAA Earmarks FY 2019
FAA	Federal Aviation Administration
FTA	Federal Transit Administration

FTAT	FHWA Transfer to FTA (NON-BUD)
GFSU	General Fund
GMR	General Revenue for Strategic Intermodal System
GRSC	Growth Management of SCOP
HPP	High Priority Projects
HRRR	High Risk Rural Road
HSID	Intersection Crashes
HSLD	Lane Departure Crashes
HSP	Highway Safety Program
IMAC	Interstate Maintenance
IMD	Interstate Maintenance Discrete
JAA	Jacksonville Airport Authority
LF	Local Funds
LFB	Local Funds Budget
LFP	Local Funds for Participating
LFR	Local Funds/Reimbursable
LFRF	Local Funds/Reimbursable - Future
LOGT	Local Option Gas Tax

MG	Minimum Guarantee
NFPD	National Freight PGM-Discretionary
NHAC	National Highway System
NHBR	National Highway Bridges
NHPP	IM, Bridge Repl, Natnl Hwy-MAP 21
NHRE	Nat. Hwy. Perform – Resurfacing
NSTP	New Starts Transit Program
PKBD	Turnpike Master Bond Fund
PKYI	Turnpike Improvement
PKLF	Local Support for Turnpike
PLH	Public Lands Highway
PLHD	Public Lands Highway Discretionary
PORT	Seaports
REPE	Repurposed Federal Earmarks
RHH	Rail Highway Crossings - Hazard
RHP	Rail-Highway Safety Crossings – Prot. Dev.
SA	Transportation Management Areas
SCED	2012 SB1998-Small County Outreach
SCOP	Small County Outreach Program

SCRA	Small County Resurfacing
SIWR	2015 SB2514A-Strategic INT SYS
SE	Transportation Enhancement Activities related to any Surface Transportation Program
SH	Hazard Elimination
SIBG	SIB funds – Growth Management
SIB1	State Infrastructure Bank
SL	STP Areas <=200K
SN	STP, Mandatory Non-Urban <=5K
SR	Surface Transportation Program (STP) Railroad Hazard Elimination
SR2T	Safe Routes - Transfer
SS	Any safety improvement eligible under the Section 130 Railway-Highway Crossings Program and the Section 152 Hazard Elimination Program (allocated by statutory formula)
STED	2012 SB1998-Strategic Econ Cor
STP	Surface Transportation Program
SU, XU	Surface Transportation Program (STP) in urban areas with a population of over 200,000
TALT	Transportation Alts – Any Area
TALU	Transportation Alts - >200K
TDTF	Transportation Disadvantaged Trust Fund (80% Federal/20% State)
TGR	Tiger Grant through FHWA

TLWR	Suntrail
TMBJ	I-95 Express Lanes – Maintenance
TOBJ	I-95 Expressway Lanes - Operating
TMA	Transportation Management Areas - Areas with a population of over 200,000
TRIP	Transportation Regional Incentive Program
TRWR	TRIP Wheels on Road
XA	Surface Transportation Program (STP) in any urban areas.
XU, SU	Surface Transportation Program (STP) in urban areas > 200k



**MINUTES  
REGULAR CITY COUNCIL  
VIRTUAL MEETING  
MONDAY, APRIL 20, 2020, 6:00 P.M.**

Pursuant to proper notice, a Regular City Council Meeting of the City Council of the City of Neptune Beach was held on Monday, April 20, 2020, at 6:00 p.m. by Communications Media Technology, pursuant to Governor Executive Order Number 20-69, issued on March 20, 2020.

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Attendance:	<b>IN ATTENDANCE:</b> Mayor Elaine Brown Vice Mayor Fred Jones Councilor Kerry Chin Councilor Scott Wiley Councilor Josh Messinger	<b>STAFF:</b> City Manager Stefen Wynn City Attorney Zachary Roth Police Chief Richard Pike Commander Gary Snyder Finance Director Peter Kajokas Public Works Director Leon Smith Community Development Director Kristina Wright City Clerk Catherine Ponson
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Call to Order/Roll Call Mayor Brown called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Emergency Rules(Meeting Procedures) Emergency Rules Regarding COVID-19 Pandemic (Meeting Procedures).

Made by Jones, seconded by Wiley.

**MOTION:**                    **TO APPROVE THE EMERGENCY RULES REGARDING THE COVID-19 PANDEMIC-MEETING PROCEDURES**

Roll Call Vote:

Ayes:                    5-Chin, Messinger, Wiley, Jones, and Brown.  
 Noes:                    0

**MOTION CARRIED**

Emergency Rules (Dogs on the Beach) Emergency Rules Regarding COVID-19 Pandemic (Section 6-31(a)(2)), Dogs on the Beach

Made by Messinger, seconded by Chin.

**MOTION:**                    **TO APPROVE THE EMERGENCY RULES REGARDING THE COVID-19 PANDEMIC (SUSPENDING CODE SECTION 6-31(a)(2))**



## Roll Call Vote:

Ayes: 5-Messinger, Wiley, Chin, Jones, and Brown.  
Noes: 0

**MOTION CARRIED****AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS**

2019 Officer of  
the Year

Police Chief Richard Pike presented the 2019 Officer of the Year award to Patrick Carlson.

**APPROVAL OF MINUTES**

Minutes

Made by Wiley, seconded by Messinger.

**MOTION: TO APPROVE THE FOLLOWING MINUTES:**

**March 2, 2020, Regular City Council Meeting**  
**March 26, 2020, Virtual City Council Roundtable Discussion**

## Roll Call Vote:

Ayes: 5- Wiley, Chin, Messinger, Jones, and Brown.  
Noes: 0

**MOTION CARRIED****COMMUNICATIONS AND CORRESPONDENCE****CITY MANAGER REPORT**

Police Chief  
Report

Chief Pike reported that the beaches reopening on Friday, April 17, went well. He also stated he was in constant contact with the police chiefs from Atlantic Beach and Jacksonville Beach during the event.

City Manager  
Report

City Manager Wynn reported the following:

- There would be hand sanitizer available to residents at no cost. More details would be forthcoming.
- He updated Council on COVID-19 and reviewed the Governor's Executive Orders that we are currently operating under from an administrative and enforcement standpoint.
- There are many ongoing City projects, including the in-kind project request from FDEP, FDOT Maintenance Agreement, surveying along 1<sup>st</sup> Street, Parsons Engineering Status Report and Pay for Parking Implementation.
- There was a good turnout for the Community Vision Plan Virtual Charettes held recently. He reminded everyone that no decisions were made during this virtual charette exercise. This was informational only.
- The Easter Bunny made an appearance on April 11 through Neptune Beach neighborhoods and was appreciated and successful. He thanked City staff, Angie Bridges, Leslie Lyne and Piper Turner for their help in making the Easter Bunny appear.

Community  
Vision Plan  
Update

Community Development Director Kristina Wright gave an update on the Community Vision Plan Process with Dover, Kohl & Partners (DKP). The webinars and design charettes held April 13-17 were successful. There was a 35% increase in attendance. There is a follow-up debrief scheduled for Wednesday, April 29, 2020, at 6:00 p.m.

Councilor Wiley asked how long the process would take with the setback we have had.

Ms. Wright stated that they are still aiming for a June benchmark presentation of the Vision Plan draft. The Comprehensive Plan has to be updated before the end of February of 2021. We are still on target for that. The Land Development Code is going to be where the details are implemented into practice, which we are also on track at this time.

### **PUBLIC COMMENTS**

Public Comments City Clerk Catherine Ponson read into the record a statement from David Hoppey, 1205 Trailwood Drive, Neptune Beach. Mr. Hoppey stated his disappointment in the reopening of the beaches. He encouraged the Mayor and Council to have a better strategy for preventing the spread of COVID-19.

Mr. Wynn read a comment from Chuck McCue, 1908 3<sup>rd</sup> Street, Neptune Beach. Mr. McCue stated that \$25,000 is a crazy amount of money to spend on a vehicle to enforce 200 parking spots. He encouraged citizens to write City officials and sign up to speak. He added that one of the most disturbing things is that the vehicle was delivered over a month ago and appears to be a done deal.

Dr. Erick Aguilar congratulated Officer Carlson on his Officer of the Year award.

Mary Frosio, 1820 Nightfall Drive, Neptune Beach, stated she liked the idea of a City Manager report and it should be made available to the public. She added that the license recognition system is the integral part of the golf cart. It was always a part of the original plan. The golf cart has to have the technology to do the license plate recognition. This way we can monitor who is parking appropriately or illegally and monitor residential creep. This and the NuPark software are the final pieces.

### **ORDINANCES**

Ord. No. 2020-01, PUD Moratorium Extension Ordinance No. 2020-01, Chapter 27, Unified Land Development Regulations, Article IV, Land Use, Section 27-245, Temporary Moratorium Extension Second Read and Public Hearing. An Ordinance of the City of Neptune Beach, Florida, To Extend a Temporary Moratorium to Prohibit the Acceptance or Processing of Any Application for a Special Exception Permit, Development Order, or any other Official Action of the City Having the Effect of Permitting or Allowing for the Application of a Planned Unit Development as set forth in Chapter 27, Unified Land Development Regulations, Section 27-244, Planned Unit Development, and Section 27-245, Temporary Moratorium; Providing for a Temporary Moratorium Term to be Extended if Necessary by the City Council; Providing for Early Termination; Providing for Conflicts; Providing for Severability; and Providing an Effective Date

Mayor Brown opened the public hearing. There being no comments from the public, the public hearing was closed.

Made by Messinger, seconded by Jones.

**MOTION: TO ADOPT ORDINANCE NO. 2020-01 ON SECOND AND FINAL READ**

Roll Call Vote:

Ayes: 5-Chin, Messinger, Wiley, Jones, and Brown.  
Noes: 0

**MOTION CARRIED**

**NEW BUSINESS**

Res. No. 2020-01, CDB Reappointment      Resolution No. 2020-01, Reappointing a Regular Member to the Community Development Board. Mayor Brown explained that this resolution would reappoint Ryan Dill to his second 3-year term on the Community Development Board.

Made by Wiley, seconded by Chin.

**MOTION:**                                **TO ADOPT RESOLUTION 2020-01, REAPPOINTING RYAN DILL TO THE COMMUNITY DEVELOPMENT BOARD**

Roll Call Vote:

Ayes:                                    5-Messinger, Wiley, Chin, Jones, and Brown.

Noes:                                    0

**MOTION CARRIED**

Pay for Parking Vehicle      Pay for Parking Vehicle. Mr. Wynn explained that at the meeting on March 2, 2020, the Mayor and City Council directed him to explore electric vehicles that meet NuPark's requirements for license plate reading cameras. This vehicle is necessary for the implementation of the parking program. Prices and options were analyzed to form a recommendation.

Mr. Wynn reported that the pay-for-parking consultant offered a vehicle that they had received damaged on March 3, 2020. The consultant offered to sell the City the electric Polaris GEM car that they had purchased after repairs are complete and that meets all of the requirements from NuPark for \$25,000. A comparable Polaris GEM car would take two months to manufacture and would be at the cost of \$28,000. Mr. Wynn is recommending the City purchase the repaired Polaris GEM car from RTA Consulting in the amount of \$25,000. He noted that this was in the planned budgeted items in the pay-for-parking program proposal.

Discussion                                Councilor Wiley stated he was concerned because at the March 2, 2020, Council meeting they spent quite a lot of time discussing the purchase of an electric vehicle and it was decided to put it off until actual quotes were received. The next day, a GEM car shows up. He questioned if Mr. Rimmer was given the authority to go ahead and purchase the vehicle and the City would refund him. He added that the City needs the vehicle but maybe not one as equipped as this. He also questioned if a handheld reader would work with the kiosks that are in place.

Mr. Wynn stated that he had the purchase order for the vehicle in the name of "Flash" Gordon Schwartz who is associated with RTA Consulting and Parking 411. Mr. Wynn did not authorize any purchase. The vehicle was accepted as damaged by an employee with RTA Consulting and it has been promised to be repaired should we choose to purchase it.

The implementation manager from NuPark advised that the handheld scanner does not scan license plates. The handheld unit is more like an iPad with a printer and the license plates would need to be manually entered. This method would not allow the program to be as efficient.

Councilor Wiley inquired why the City was not informed that a vehicle had been ordered and was being delivered. Mr. Wynn answered that he and Mayor Brown met with Mr. Rimmer and he stated that he thought delivery was seven to eight days away. Mr. Wynn added that Mr. Rimmer was told that communication needs to be much better from the consultant's office.

Councilor Chin questioned the amount around \$37,000 from RTA Consulting on the vehicle comparison portion of the City Manager's Electric Vehicle Recommendation report.

Mr. Wynn explained that was the number on the purchase order from RTA. That amount includes a charger and sales tax.

Mr. Wynn answered Councilor Chin's next inquiry that had the City bought it directly from the dealer, without the charger, it would be \$29,142. There would be freight charges but no sales tax.

City Manager  
Recommendation

Mr. Wynn advised that his recommendation after going through this process is to accept a repaired Polaris GEM car from RTA Consulting in the amount of \$25,000.

Councilor Messinger stated that this is a good move. The City is getting it below market value. He understood that the damage is superficial and not structural and nothing that would impede the long-term use of the car. It would operate 12 hours a day, so it is a commercial vehicle designed for heavy use. A golf cart can be used for about six hours a day and would need to be replaced every year at great expense. He stated Mr. Wynn had done the research and is happy to take his recommendation.

Vice Mayor Jones commented that extensive due diligence has been done. When you look at this in context, it is very unique, albeit unfortunate process. He likes the direction we are going with this. When he looks at the prices of these vehicles, the City is getting a good deal. This is the path forward that has been suggested all along.

Councilor Chin agreed the City is getting a good deal on the vehicle. For some who are concerned the City is getting more than we need, his hope is that in the future we are able to possibly entertain expanding parking patrols. It could be used to help monitor any kind of parking incursion into the neighborhoods so that we can protect the residents from people parking in front of their homes and encroaching on their yards and lawns.

Mr. Wynn answered Councilor Wiley's question of where the \$25,000 would come from by stating that most of the implementation of the parking program has come from the half-cent sales tax, however, that is being reimbursed by parking revenues. The City was on schedule to pay off the startup costs before the COVID-19 pandemic. This could still happen before the end of the year.

Made by Jones, seconded by Messinger.

**MOTION:**                      **TO APPROVE THE PURCHASE OF THE VEHICLE**

Roll Call Vote:

Ayes:                      4-Chin, Messinger, Jones, and Brown.

Noes:                      1-Wiley

**MOTION CARRIED**

**COUNCIL COMMENTS**

Councilor Messinger requested the City Manager's Reports be added to the City website so the citizens can be kept up-to-date on city projects. He thanked Mr. Wynn and Ms. Wright for their efforts in the Vision Plan charettes. They were professionally done and well-advertised. He also asked if there was a list that the City kept of senior citizens that are checked on during hurricanes and things of that nature. He requested if the City could allocate some of the hand sanitizer for those in the vulnerable category.

Adjournment        There being no further business, the meeting adjourned at 7:26 p.m.

\_\_\_\_\_  
Elaine Brown, Mayor

Attest:

\_\_\_\_\_  
Catherine Ponson, CMC  
City Clerk

Approved: \_\_\_\_\_



**CITY OF NEPTUNE BEACH  
CITY COUNCIL MEETING  
STAFF REPORT**

<b>AGENDA ITEM:</b>	
<b>SUBMITTED BY:</b>	
<b>DATE:</b>	
<b>BACKGROUND:</b>	
<b>BUDGET:</b>	
<b>RECOMMENDATION:</b>	
<b>ATTACHMENT:</b>	



**EMERGENCY RULE  
REGARDING TO COVID-19 PANDEMIC**

**EMERGENCY RULE TO TEMPORARILY SUSPEND  
ENFORCEMENT OF THE RESTRICTIONS OF SECTION  
6-31(a)(2) OF THE CODE OF ORDINANCES OF THE  
CITY OF NEPTUNE BEACH, FLORIDA.**

**WHEREAS**, on March 1, 2020, in response to the World Health Organization's declaration of COVID-19 as a Public Health Emergency of International Concern, Governor Ron DeSantis issued Executive Order Number 20-51, declaring a State of Florida Public Health Emergency associated with the threat to Florida residents associated with COVID-19 and invoking the State of Florida emergency response actions by the Florida Department of Health and the State Health Officer; and

**WHEREAS**, on March 9, 2020, Governor Ron DeSantis issued Executive Order Number 20-52, directing the Director of the Division of Emergency Management, as the State Coordinating Officer, to execute State of Florida's Comprehensive Emergency Management Plan and other response, recover, and mitigation plans necessary to cope with the emergency; and

**WHEREAS**, on March 12, 2020 the Florida Department of Health (DOH) announced a positive test for COVID-19 in a Duval County resident; and

**WHEREAS**, on March 13, 2020, President Donald J. Trump declared a national emergency to combat COVID-19; and

**WHEREAS**, on March 14, 2020, Mayor Elaine Brown and City Manager Stefen Wynn declared a local emergency to combat COVID-19 on behalf of the City of Neptune Beach (the "City"); and

**WHEREAS**, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention ("CDC") issued the "15 Days to Slow the Spread" guidance advising individuals to adopt far-reaching social distancing measures, such as working from home and avoiding gatherings of more than 10 people; and

**WHEREAS**, on March 20, 2020, City of Jacksonville Mayor Lenny Curry issued Emergency Executive Order Number 2020-2, closing all public beaches in Duval County to public access; and

**WHEREAS**, on April 1, 2020, Governor Ron DeSantis issued Executive Order Number 20-91, which limited commercial and other activities to Essential Services and Essential Activities as defined therein; and

**WHEREAS**, Essential Activities pursuant to such Executive Order include "participating

in recreational activities (consistent with social distancing guidelines) such as walking, biking, hiking, fishing, hunting, running, or swimming,” and “taking care of pets;” and

**WHEREAS**, on April 16, 2020, Mayor Lenny Curry modified the closure of the beaches to permit participation in Essential Activities pursuant to Executive Order Number 20-91; and

**WHEREAS**, Section 6-31 of the Code of Ordinances of the City provides that “Dogs are permissible on the Atlantic Ocean Beach adjacent to the city during the following time periods:...(2) During the hours of 5:00 p.m. through 9:00 a.m., from April 1<sup>st</sup> through September 30<sup>th</sup>,” and

**WHEREAS**, pursuant to §252.46, Fla. Stat., the political subdivisions of the state are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes; and

**WHEREAS**, the following rules and procedures are not inconsistent with any Executive Order or other applicable law.

**NOW THEREFORE, the following rules are implemented and take immediate effect:**

**1. SUSPENSION**

The time restriction contained in Section 6-31(a)(2) of the Code of Ordinances is hereby suspended. During the effectiveness of this rule, dogs shall be permissible on the Atlantic Ocean Beach adjacent to the City during all times which such beach is open to the public pursuant to applicable laws and orders. The provisions of Section 6-31(b) shall remain in effect.

**2. TIME**

This rule shall take effect immediately upon execution and shall remain in effect until the earliest of:

1. The beach being opened to the public without hour restrictions; or
2. The beach being opened to the public without activity restrictions; or
3. Amendment or rescission of this rule by the City.

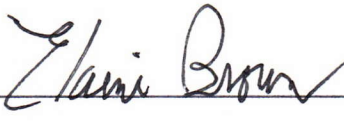
**3. AMENDMENT**

The City reserves the right to amend this rule as it deems necessary or appropriate.

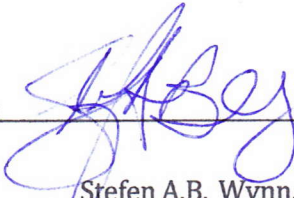
**\*\*SIGNATURE PAGE TO FOLLOW\*\***



**THE CITY OF NEPTUNE BEACH, FLORIDA**

By:  Date: 4/17/20

Elaine Brown  
Mayor, Neptune Beach

By:  Date: 4/17/2020

Stefen A.B. Wynn, M.P.A.  
City Manager Neptune Beach

Approved as to Form:

By:  Date: 4.17.2020

Zachary R. Roth  
City Attorney, Neptune Beach

Attested:

By:  Date: 4/17/2020

Catherine B. Ponson, CMC  
City Clerk, Neptune Beach



**CITY OF NEPTUNE BEACH  
CITY COUNCIL MEETING  
STAFF REPORT**

<b>AGENDA ITEM:</b>	11B-Res. No. 2020-02, FDOT Maintenance Agreement
<b>SUBMITTED BY:</b>	City Manager Stefen Wynn
<b>DATE:</b>	April 30, 2020
<b>BACKGROUND:</b>	<p>This is a revised FDOT Maintenance Agreement for Atlantic Boulevard from the east end of the ICW Bridge to Florida Boulevard. This will cover the period from October 1, 2020 to September 30, 2023.</p> <p>A resolution is required authorizing the City Manager to execute the agreement.</p>
<b>BUDGET:</b>	The FDOT shall compensate the City for the performance of this Agreement in the amount of \$1,506.97 per quarter for a total sum of \$6,027.89 per year.
<b>RECOMMENDATION:</b>	Adopt Resolution No. 2020-02, authorizing the City Manager to execute and deliver the Revised FDOT Maintenance Agreement
<b>ATTACHMENT:</b>	<ol style="list-style-type: none"> <li>1. Resolution No. 2020-02</li> <li>2. Revised FDOT Maintenance Agreement</li> </ol>



**RESOLUTION NO. 2020-02**

**A RESOLUTION ALLOWING THE CITY MANAGER TO EXECUTE AND DELIVER THE ATLANTIC BOULEVARD MAINTENANCE AGREEMENT 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 Atlantic Boulevard from the east end of the ICW Bridge to Florida Boulevard, and to execute and deliver to the FDOT the agreement identified as the Contract Renewal for Maintenance, covering the period of October 1, 2020 through September 30, 2023, hereinafter referred to as the Agreement.

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

That, Stefen Wynn, 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 4<sup>th</sup> day of May, 2020.

---

Elaine Brown, Mayor

ATTEST:

---

Catherine Ponson, CMC  
City Clerk

## MAINTENANCE AGREEMENT

**THIS MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and City of Neptune Beach, Florida ("Agency").

### -RECITALS-

1. The Department owns and currently maintains those portions of the state highway system identified in Exhibit "A" ("Property"); and
2. The Agency desires to assume the maintenance responsibilities of the Property in order to improve the aesthetic appearance of the Agency; and
3. The Property is within or adjacent to the corporate limits of the Agency; and
4. The Agency, by Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, attached as Exhibit "B", authorizes its officers to enter this Agreement.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing 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 & EXHIBITS

The above recitals and attached exhibits, if any, 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 ("Effective Date").

### 3. TERM

The term of this Agreement shall be for a period of three (3) consecutive years, unless otherwise terminated by the Department in writing. The operation, maintenance, and repair duties required by paragraph 6, below, will actually commence on \_\_\_\_\_ and continue for one full calendar year from that same date, renewable for three consecutive years from the Effective Date.

### 4. E-VERIFY

The Agency (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 the Agency 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. COMPLIANCE

The Agency shall perform this 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 and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, Duval County, Florida and other local governmental entities ("Governmental Law").

## **6. OPERATION, MAINTENANCE & REPAIR**

A. The Agency shall operate, maintain & repair the Property in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. For purposes of this Agreement, unless otherwise noted in Exhibit "A", the locations to be maintained by the Agency shall be maintained pursuant to the maintenance standards as defined in the Department's Maintenance Rating Program ("MRP") Handbook and in accordance with Department Procedure, *Roadway and Roadside Maintenance*, Topic No. 850-000-015-i, and all Governmental Law, as defined in Paragraph 5, above. Should the Department determine that any item of maintenance related to the Property has fallen below the desired maintenance standard, the Agency agrees to immediately bring the deficient item up to the maintenance standard, at its sole cost and expense. The Agency will not be held responsible for a failed MRP rating, so long as such rating is not based on any negligence, intentional or wrongful act, omission or breach of contract by the Agency.

B. The Agency shall maintain all turf and landscaped areas within the Department Property, including, without limitation, performing the following:

(1) Routinely mow, cut and trim all grass and turf (total greenscape), as well as remove grass and turf clippings from the roadway/curb/sidewalk, in accordance with the State of Florida "Guide for Roadside Vegetation Management" (2012), as the same may be constituted and amended from time to time, and the local National Pollutant Discharge Elimination System (NPDES) permit requirements; and

(2) Routinely prune and trim all plants and trees, for aesthetic purposes and for the benefit of the health, safety and welfare of those members of the public traversing or otherwise utilizing the Property; and

(3) Routinely remove dead, diseased, or otherwise deteriorated plants; and

(4) Routinely keep litter removed from the Property; and

(5) Routinely remove and dispose of all trimmings, roots, litter and other material resulting from the activities described herein; and

(6) Routinely edge and sweep any excess grass from sidewalks, curbs, and gutters; and

(7) Routinely sweep roadways, curbs, and gutters, valley gutters, intersections, and barrier wall gutters.

C. The Department and the Agency shall be responsible jointly for clean-up, removal and disposal of debris within the Property following and resulting from natural disasters, including, without limitation, hurricanes and tornadoes.

D. If the Department determines that the Agency is not maintaining the Property in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

E. If the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency was corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

F. If at any time in the sole determination of the Department, the integrity or safety of the Property requires immediate maintenance for the benefit of public health, safety or welfare, the Department may perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify the Agency prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare.

G. The Parties' representatives and points of contact for the administration of this Agreement shall be identified in the "Notice" section of this Agreement.

#### **7. MAINTENANCE OF TRAFFIC**

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during the 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 this 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; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

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

#### **8. IMPROVEMENTS & MODIFICATIONS**

A. The Department may require the Agency to improve or modify the Property if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit 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 "Maintenance" section of this Agreement.

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

#### **9. ADDITIONAL LANDSCAPING**

The Agency shall not install additional landscaping within the Property without first seeking and obtaining required approvals and permits from the Department. Such additional landscaping shall be automatically included within, and subject to, the provisions of this Agreement.

#### **10. PERMISSIVE USE**

This Agreement creates a permissive use only. The Agency shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

#### **11. 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 the Agency 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 Agency forever waives and relinquishes all legal rights and monetary claims which it 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 the Agency, as a result of the Department's exercise of any right provided in this Agreement.

#### **12. REMOVAL**

The Department may require modification, relocation or removal of the landscaping, plants, trees and other

improvements located on or within the Property without liability to the Agency if: (1) any such improvements are not maintained in accordance with the terms and provisions of this Agreement; (2) modification, relocation or removal of any such improvements is required by applicable Governmental Law; or (3) the Department determines that modification, relocation or removal of any such improvements is necessary or will benefit the Department in the conduct of its business. The Agency shall modify, relocate or remove improvements designated by the Department for modification, relocation or removal and shall restore the Property to a condition that satisfies the requirements of applicable Governmental Law within thirty (30) days of the Department's written notice requiring modification, relocation or removal. The Agency shall bear all cost and expense of the modification, relocation, removal and restorative work, including, without limitation, the cost of required permits.

### **13. PAYMENTS TO AGENCY**

The Department shall compensate the Agency for the performance of this Agreement in the amount of **\$1,506.97** per quarter for a total sum of **\$6,027.89** per year. Payments shall commence at the conclusion of the first three-month period following the Effective Date of this Agreement. The Department may suspend payment of any sums due hereunder without penalty or interest if the Agency is in breach of any term or provision of this Agreement at the time payment is due. In the event this Agreement is terminated, payment shall be prorated for the quarter in which termination occurs.

### **14. PAYMENTS TO DEPARTMENT**

All Department invoices submitted to the 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"). 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, Fla. Stat., until paid in full.

### **15. INDEMNIFICATION**

A. The Agency 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 Agency'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 Agency'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 Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency'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 Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

### **16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department'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 §376.305 and §337.27(4), Florida Statutes, as the same may be amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the Agency as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes, as the same may be amended from time to time.

## **17. NOTICE**

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Maintenance Project Manager  
2198 Edison Avenue  
Jacksonville, Florida 32204

Agency: City of Neptune Beach  
116 First Street  
Neptune Beach, Florida 32266

## **18. GOVERNING LAW**

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

## **19. 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 this Agreement.

## **20. 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 this 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 Agency 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.

## **21. JURY TRIAL**

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

## **22. ASSIGNMENT**

The Agency may not 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, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform this Agreement.

## **23. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto 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.

## **24. 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 this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and



disadvantages of this Agreement and executes this 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 this Agreement.

#### **25. ENTIRE AGREEMENT**

This instrument, together with the attached 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 this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

#### **26. SUFFICIENCY OF CONSIDERATION**

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

#### **27. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of this 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.

#### **28. INTERPRETATION**

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

#### **29. 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 this Agreement or any provision hereof.

#### **30. SEVERANCE**

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

#### **31. COMPUTATION OF TIME**

In computing any period of time prescribed in this 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.

#### **32. MODIFICATION OF AGREEMENT**

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

#### **33. CONTRACTUAL SERVICES**

In the event this Agreement is for a "contractual service" as defined by §287.012, Florida Statutes, as the same may be amended from time to time, then all applicable provisions of Chapter 287, Florida Statutes shall apply.

#### **34. VENDOR OMBUDSMAN**

A Vendor Ombudsman has been established with the Department of Banking and Finance. The duties of the Vendor Ombudsman include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline at 1-800-848-3792.

### **35. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund this Agreement 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."

### **36. PUBLIC RECORDS**

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency 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 Agency 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 Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency 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.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency 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 Applicant's response to each such request.

**IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'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

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement consisting of ten (10) pages.

**Florida Department of Transportation**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Carrie Stanbridge, P.E.

Printed Name: \_\_\_\_\_

Title: District Two Maintenance Engineer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_

Office of the General Counsel  
Florida Department of Transportation

**Agency**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_

Legal Counsel for Agency

**EXHIBIT "A"**

**(City of Neptune Beach)**

**MAINTENANCE LOCATIONS**

State Road No.	Street Name	From	To	Litter Removal (acre)	Small Machine Mowing (acre)	Slope Mowing (acre)	Curb/Sidewalk Edging (mile)
				541	585	482	545
10	Atlantic Blvd.	East end of ICW Bridge	Florida Blvd.	5.98	4.24	0.75	0.38
			<b>Totals</b>	5.98	4.24	0.75	0.38
			<b>Cycles Per Year</b>	12	9	4	2
			<b>Total Qty's. Per Year</b>	71.76	38.16	3.00	0.76
			<b>Unit Cost</b>	\$10.35	\$120.75	\$109.25	\$460.00
			<b>Total Cost Per Year</b>	<b>\$742.72</b>	<b>\$4,607.82</b>	<b>\$327.75</b>	<b>\$349.60</b>
						Yearly Total	<b>\$6,027.89</b>
						Quarterly Amount	<b>\$1,506.97</b>

**EXHIBIT "B"**  
**(RESOLUTION)**

## **MAINTENANCE AGREEMENT**

**THIS MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and City of Neptune Beach, Florida ("Agency").

### **-RECITALS-**

1. The Department owns and currently maintains those portions of the state highway system identified in Exhibit "A" ("Property"); and
2. The Agency desires to assume the maintenance responsibilities of the Property in order to improve the aesthetic appearance of the Agency; and
3. The Property is within or adjacent to the corporate limits of the Agency; and
4. The Agency, by Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, attached as Exhibit "B", authorizes its officers to enter this Agreement.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing 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 & EXHIBITS**

The above recitals and attached exhibits, if any, 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 ("Effective Date").

#### **3. TERM**

The term of this Agreement shall be for a period of three (3) consecutive years, unless otherwise terminated by the Department in writing. The operation, maintenance, and repair duties required by paragraph 6, below, will actually commence on \_\_\_\_\_ and continue for one full calendar year from that same date, renewable for three consecutive years from the Effective Date.

#### **4. E-VERIFY**

The Agency (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 the Agency 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. COMPLIANCE**

The Agency shall perform this 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 and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, Duval County, Florida and other local governmental entities ("Governmental Law").

## **6. OPERATION, MAINTENANCE & REPAIR**

A. The Agency shall operate, maintain & repair the Property in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. For purposes of this Agreement, unless otherwise noted in Exhibit "A", the locations to be maintained by the Agency shall be maintained pursuant to the maintenance standards as defined in the Department's Maintenance Rating Program ("MRP") Handbook and in accordance with Department Procedure, *Roadway and Roadside Maintenance*, Topic No. 850-000-015-i, and all Governmental Law, as defined in Paragraph 5, above. Should the Department determine that any item of maintenance related to the Property has fallen below the desired maintenance standard, the Agency agrees to immediately bring the deficient item up to the maintenance standard, at its sole cost and expense. The Agency will not be held responsible for a failed MRP rating, so long as such rating is not based on any negligence, intentional or wrongful act, omission or breach of contract by the Agency.

B. The Agency shall maintain all turf and landscaped areas within the Department Property, including, without limitation, performing the following:

(1) Routinely mow, cut and trim all grass and turf (total greenscape), as well as remove grass and turf clippings from the roadway/curb/sidewalk, in accordance with the State of Florida "Guide for Roadside Vegetation Management" (2012), as the same may be constituted and amended from time to time, and the local National Pollutant Discharge Elimination System (NPDES) permit requirements; and

(2) Routinely prune and trim all plants and trees, for aesthetic purposes and for the benefit of the health, safety and welfare of those members of the public traversing or otherwise utilizing the Property; and

(3) Routinely remove dead, diseased, or otherwise deteriorated plants; and

(4) Routinely keep litter removed from the Property; and

(5) Routinely remove and dispose of all trimmings, roots, litter and other material resulting from the activities described herein; and

(6) Routinely edge and sweep any excess grass from sidewalks, curbs, and gutters; and

(7) Routinely sweep roadways, curbs, and gutters, valley gutters, intersections, and barrier wall gutters.

C. The Department and the Agency shall be responsible jointly for clean-up, removal and disposal of debris within the Property following and resulting from natural disasters, including, without limitation, hurricanes and tornadoes.

D. If the Department determines that the Agency is not maintaining the Property in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

E. If the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency was corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency; or (2) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

F. If at any time in the sole determination of the Department, the integrity or safety of the Property requires immediate maintenance for the benefit of public health, safety or welfare, the Department may perform such maintenance it deems appropriate under the circumstances. The Department shall attempt to notify the Agency prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare.

G. The Parties' representatives and points of contact for the administration of this Agreement shall be identified in the "Notice" section of this Agreement.

## **7. MAINTENANCE OF TRAFFIC**

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during the 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 this 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; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

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

## **8. IMPROVEMENTS & MODIFICATIONS**

A. The Department may require the Agency to improve or modify the Property if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications will benefit 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 "Maintenance" section of this Agreement.

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

## **9. ADDITIONAL LANDSCAPING**

The Agency shall not install additional landscaping within the Property without first seeking and obtaining required approvals and permits from the Department. Such additional landscaping shall be automatically included within, and subject to, the provisions of this Agreement.

## **10. PERMISSIVE USE**

This Agreement creates a permissive use only. The Agency shall not acquire any right, title, interest or estate in the Property by virtue of the execution, operation, effect or performance of this Agreement.

## **11. 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 the Agency 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 Agency forever waives and relinquishes all legal rights and monetary claims which it 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 the Agency, as a result of the Department's exercise of any right provided in this Agreement.

## **12. REMOVAL**

The Department may require modification, relocation or removal of the landscaping, plants, trees and other



improvements located on or within the Property without liability to the Agency if: (1) any such improvements are not maintained in accordance with the terms and provisions of this Agreement; (2) modification, relocation or removal of any such improvements is required by applicable Governmental Law; or (3) the Department determines that modification, relocation or removal of any such improvements is necessary or will benefit the Department in the conduct of its business. The Agency shall modify, relocate or remove improvements designated by the Department for modification, relocation or removal and shall restore the Property to a condition that satisfies the requirements of applicable Governmental Law within thirty (30) days of the Department's written notice requiring modification, relocation or removal. The Agency shall bear all cost and expense of the modification, relocation, removal and restorative work, including, without limitation, the cost of required permits.

### **13. PAYMENTS TO AGENCY**

The Department shall compensate the Agency for the performance of this Agreement in the amount of **\$1,506.97** per quarter for a total sum of **\$6,027.89** per year. Payments shall commence at the conclusion of the first three-month period following the Effective Date of this Agreement. The Department may suspend payment of any sums due hereunder without penalty or interest if the Agency is in breach of any term or provision of this Agreement at the time payment is due. In the event this Agreement is terminated, payment shall be prorated for the quarter in which termination occurs.

### **14. PAYMENTS TO DEPARTMENT**

All Department invoices submitted to the 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"). 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, Fla. Stat., until paid in full.

### **15. INDEMNIFICATION**

A. The Agency 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 Agency'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 Agency'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 Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency'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 Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

### **16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department'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 §376.305 and §337.27(4), Florida Statutes, as the same may be amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the Agency as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Florida Statutes, as the same may be amended from time to time.

## **17. NOTICE**

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Maintenance Project Manager  
2198 Edison Avenue  
Jacksonville, Florida 32204

Agency: City of Neptune Beach  
116 First Street  
Neptune Beach, Florida 32266

## **18. GOVERNING LAW**

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

## **19. 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 this Agreement.

## **20. 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 this 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 Agency 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.

## **21. JURY TRIAL**

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

## **22. ASSIGNMENT**

The Agency may not 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, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform this Agreement.

## **23. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto 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.

## **24. 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 this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and

disadvantages of this Agreement and executes this 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 this Agreement.

#### **25. ENTIRE AGREEMENT**

This instrument, together with the attached 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 this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

#### **26. SUFFICIENCY OF CONSIDERATION**

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

#### **27. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of this 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.

#### **28. INTERPRETATION**

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

#### **29. 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 this Agreement or any provision hereof.

#### **30. SEVERANCE**

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

#### **31. COMPUTATION OF TIME**

In computing any period of time prescribed in this 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.

#### **32. MODIFICATION OF AGREEMENT**

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

#### **33. CONTRACTUAL SERVICES**

In the event this Agreement is for a "contractual service" as defined by §287.012, Florida Statutes, as the same may be amended from time to time, then all applicable provisions of Chapter 287, Florida Statutes shall apply.

#### **34. VENDOR OMBUDSMAN**

A Vendor Ombudsman has been established with the Department of Banking and Finance. The duties of the Vendor Ombudsman include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted by calling the State Comptroller's Hotline at 1-800-848-3792.

### **35. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund this Agreement 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."

### **36. PUBLIC RECORDS**

Agency shall comply with Chapter 119, Florida Statutes. Specifically, the Agency 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 Agency 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 Applicant or keep and maintain public records required by the Department to perform this Agreement. If Agency transfers all public records to the public Agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency 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.

Failure by Agency to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency 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 Applicant's response to each such request.

**IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'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

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement consisting of ten (10) pages.

**Florida Department of Transportation**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Carrie Stanbridge, P.E.

Printed Name: \_\_\_\_\_

Title: District Two Maintenance Engineer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_

Office of the General Counsel  
Florida Department of Transportation

**Agency**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_

Legal Counsel for Agency

**EXHIBIT "A"**

**(City of Neptune Beach)**

**MAINTENANCE LOCATIONS**

State Road No.	Street Name	From	To	Litter Removal (acre)	Small Machine Mowing (acre)	Slope Mowing (acre)	Curb/Sidewalk Edging (mile)
				541	585	482	545
10	Atlantic Blvd.	East end of ICW Bridge	Florida Blvd.	5.98	4.24	0.75	0.38
			<b>Totals</b>	5.98	4.24	0.75	0.38
			<b>Cycles Per Year</b>	12	9	4	2
			<b>Total Qty's. Per Year</b>	71.76	38.16	3.00	0.76
			<b>Unit Cost</b>	\$10.35	\$120.75	\$109.25	\$460.00
			<b>Total Cost Per Year</b>	<b>\$742.72</b>	<b>\$4,607.82</b>	<b>\$327.75</b>	<b>\$349.60</b>
						Yearly Total	<b>\$6,027.89</b>
						Quarterly Amount	<b>\$1,506.97</b>

**EXHIBIT "B"**  
**(RESOLUTION)**