

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”), effective as of the latter date of execution, by and between the City of Neptune Beach, a municipal corporation located at 116 First Street, Neptune Beach, Florida 32266 (hereinafter, “Neptune Beach”), the City of Atlantic Beach, a municipal corporation located at 800 Seminole Road, Atlantic Beach, Florida 32233 (hereinafter, “Atlantic Beach”), and the Beaches Town Center Agency, Inc., a Florida Not For Profit Corporation located at 200 First Street, Neptune Beach, Florida 32266 (hereinafter, the “Town Center”). Neptune Beach, Atlantic Beach and the Town Center shall be referred to collectively as the “Parties”.

WHEREAS, Neptune Beach, Atlantic Beach and the City of Jacksonville entered into a Tri-Party Agreement on June 28, 2001, that sets forth certain obligations for public improvements and future maintenance in both Neptune Beach and Atlantic Beach. (See, Exhibit A).

WHEREAS, the aforementioned Tri-Party Agreement calls for Atlantic Beach and Neptune Beach to enter into a separate agreement with a professional landscape maintenance contractor for certain services related to the public improvements set forth in the Tri-Party Agreement, including without limitation, such services with the Beaches Town Center area.

WHEREAS, the Parties wish to implement a redesign and replanting of the landscaping in the Beaches Town Center area.

WHEREAS, in order to more efficiently and effectively maintain the landscaping in the Beaches Town Center area and due to certain conditions and circumstances having changed, both Atlantic Beach and Neptune Beach wish to better memorialize their responsibilities and obligations with regards to landscape maintenance in the Beaches Town Center area.

WHEREAS, the Town Center now has a greater role in the Beaches Town Center area and wishes to participate in the landscape redesign, replanting and maintenance obligations and responsibilities.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the sufficiency of which are hereby acknowledged, Atlantic Beach, Neptune Beach and the Town Center, agree as follows:

Landscaping and Replanting Plan

1. The landscape design and replanting plan (hereinafter, the “Plan”) shall be that document provided by Rockaway Garden Center of N.E. Florida, Inc., (hereinafter, “Rockaway”) dated January 8, 2018, attached hereto as Exhibit B and incorporated herein.
2. Any deviation from the Plan shall require the written approval of each of the Parties prior to any implementation or costs incurred.
3. The total cost of implementation of the Plan shall not exceed \$130,000.00, without the express written approval of each of the Parties.

4. Each of the Parties shall be responsible for exactly one-third of the cost of implementation of the Plan, equaling \$43,333.34.
5. Atlantic Beach and Neptune Beach shall remit their respective portions of payments to the Town Center within ten (10) business days of receipt of Rockaway's monthly invoices from the Town Center.
6. The Town Center shall provide proof of its payments to Rockaway to both Atlantic Beach and Neptune Beach within ten (10) business days after payment to Rockaway.
7. The Town Center shall be responsible for entering into a contract with Rockaway for the purpose of implementing the Plan no later than _____. Neither Atlantic Beach, nor Neptune Beach, shall be a party to that contract. Town Center shall provide a copy of said contract to Atlantic Beach and Neptune Beach within ten (10) business days of final execution.

Landscape Maintenance Plan

8. The Town Center shall be responsible for identifying and retaining a qualified landscape maintenance professional to provide landscape maintenance services within the Beaches Town Center, specifically to the area replanted as part of the Plan no later than _____, 2018. Neither Atlantic Beach nor Neptune Beach shall be a party to that contract.
9. The Town Center shall present the landscape maintenance plan proposal to Atlantic Beach and Neptune Beach no later than _____, 2018 for review and comment prior to it being finalized and executed by the Town Center. Town Center shall provide a copy of the contract to Atlantic Beach and Neptune Beach within ten (10) business days of final execution.
10. The Town Center shall be responsible for managing the relationship with the maintenance professional, including any and all service issues, payment, scheduling, access, complaints, and other general operational management issues. The Town Center shall be receptive to information provided by Atlantic Beach and Neptune Beach regarding the overall quality and performance of the services provided by the selected and retained maintenance professional.
11. The total annual cost of the landscape maintenance contract shall not exceed \$14,616.00, annually.
12. Neptune Beach shall be responsible for the total annual cost of the landscape maintenance, not to exceed \$14,600.00, and shall remit payment to the Town Center, monthly, the sum of \$1,218.00 upon receipt of monthly invoices.
13. Any maintenance costs over \$14,616.00, whether one-time or recurring, shall be the sole responsibility of the Town Center.
14. Annually, based on the date of the contract for landscape maintenance services, the Town Center shall provide written proof of its payment to the selected landscape maintenance professional to Atlantic Beach and Neptune Beach.

Miscellaneous

15. Term. The Term of this Agreement shall be for a period of five (5) years from the date listed above. Thereafter, this Agreement may be extended on an annual basis by way of written approval of such extension from each of the Parties.
16. Termination. Any one of the Parties may terminate this Agreement by providing thirty (30) days' written notice of its intent to do so to the remaining Parties.
17. Binding. This Agreement binds the Parties and their respective successors and assigns in all respect to all terms, conditions, covenants and provisions of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any of the Parties, nor shall it be considered as giving any right or benefit hereunder to anyone other than the Parties.
18. Dispute. Any dispute of the terms, conditions, covenants, and provisions of this Agreement shall be adjudicated according to the laws of the State of Florida. Jurisdiction for any such dispute shall be Duval County, Florida.
19. Public Records. Town Center shall comply with the provisions of Exhibit C, Public Records Provisions, incorporated herein and made a part hereof.
20. Entirety. This Agreement constitutes the entire present agreement between the Parties. No change in, modification of, or supplement to this Agreement shall be valid or enforceable unless it is enacted in writing and executed by each of the Parties.

****SIGNATURE PAGES TO FOLLOW****

THE CITY OF ATLANTIC BEACH, FL

CITY OF NEPTUNE BEACH, FL

Joe Gerrity, City Manager

Andrew E. Hyatt, City Manager

Approved as to Form and Content:

Approved as to Form and Content:

Brenna Durden, City Attorney

Patrick W. Krechowski, City Attorney

BEACHES TOWN CENTER AGENCY, Inc.

Jay Handline, President

DRAFT

EXHIBIT C

PUBLIC RECORDS PROVISIONS
FOR ALL CONTRACTS AND AMENDMENTS
Effective as of July 1, 2016 per Chapter 2016-20, Laws of Florida

Section _____. Public Records

- (a) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT DONNA BARTLE, THE CITY CLERK AND THE CUSTODIAN OF PUBLIC RECORDS AT (904) 247-5809, DBARTLE@COAB.US, 800 SEMINOLE ROAD, ATLANTIC BEACH, FLORIDA 32233.**
- (b) The contractor shall comply with Chapter 119, Florida Statutes, in regards to public records laws, specifically to:
1. Keep and maintain public records required by the public agency to perform the service.
 2. Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
 3. 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 the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
 4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt for public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- (c) Failure to provide the public records to the public agency within a reasonable time may subject the contractor to penalties under s. 119.10 and s. 119.0701(4), Florida Statutes.

Note: Section (a) above must be in at least 14-point boldfaced type