

1 Introduced by Council President at the Request of the Mayor
2 and Council Member Holland:

3
4 RESOLUTION 2000-991-A

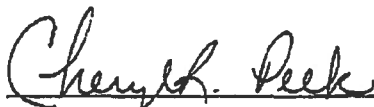
5 A RESOLUTION AUTHORIZING THE MAYOR AND
6 CORPORATION SECRETARY TO EXECUTE A TRI-PARTY
7 AGREEMENT BETWEEN CITY OF JACKSONVILLE, CITY
8 OF ATLANTIC BEACH AND CITY OF NEPTUNE BEACH
9 FOR MAINTENANCE OF LANDSCAPE AND STREETSCAPE
10 IMPROVEMENTS ALONG ATLANTIC BOULEVARD, FIRST
11 STREET AND OCEAN BOULEVARD IN THE AREA KNOWN
12 AS "TOWN CENTER", DUVAL COUNTY, FLORIDA;
13 PROVIDING AN EFFECTIVE DATE.
14

15 BE IT RESOLVED by the Council of the City of Jacksonville:

16 Section 1. The Mayor and Corporation Secretary are
17 authorized to execute a Tri-Party Agreement Between City of
18 Jacksonville, City of Atlantic Beach and City of Neptune Beach for
19 Maintenance of Landscape and Streetscape Improvements Along
20 Atlantic Boulevard, First Street and Ocean Boulevard in the Area
21 Known As "Town Center", Duval County, Florida, in substantially the
22 form attached hereto.

23 Section 2. Effective Date. This resolution shall become
24 effective upon signature by the Mayor or upon becoming effective
25 without the Mayor's signature.

26 Form Approved:

27 
28 _____

29 Office of General Counsel

30 Legislation Prepared By:

31 10/2/00 G:\shared\LEGIS.CC\2000LEG\New Forms\TownCenter.doc

chg
to

Prepared by and Return to:
Neill W. McArthur, Jr.
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

Book 10047 Page 1655

**TRI-PARTY AGREEMENT BETWEEN CITY OF JACKSONVILLE,
CITY OF ATLANTIC BEACH AND CITY OF NEPTUNE BEACH
FOR MAINTENANCE OF LANDSCAPE AND STREETScape IMPROVEMENTS
ALONG ATLANTIC BOULEVARD, FIRST STREET, AND OCEAN BOULEVARD
IN THE AREA KNOWN AS "TOWN CENTER"
DUVAL COUNTY, FLORIDA**

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06/28/2001 03:48:45 PM
JIM FULLER
CLERK CIRCUIT COURT
DUVAL COUNTY
TRUST FUND \$ 6.00
RECORDING \$ 45.00

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**TRI-PARTY AGREEMENT BETWEEN CITY OF JACKSONVILLE,
CITY OF ATLANTIC BEACH AND CITY OF NEPTUNE BEACH
FOR MAINTENANCE OF LANDSCAPE AND STREETScape IMPROVEMENTS
ALONG ATLANTIC BOULEVARD, FIRST STREET, AND OCEAN BOULEVARD
IN THE AREA KNOWN AS "TOWN CENTER"
DUVAL COUNTY, FLORIDA**

THIS AGREEMENT, made and entered into in triplicate on this 28th day of June, 2000, by and between the CITY OF JACKSONVILLE, a municipal corporation located at 117 West Duval Street, Suite 400, Jacksonville, Florida 32202, hereinafter referred to as "JACKSONVILLE"; the CITY OF ATLANTIC BEACH, a municipal corporation located at 800 Seminole Road, Atlantic Beach, Florida 32233, hereinafter referred to as "ATLANTIC BEACH"; and the CITY OF NEPTUNE BEACH, a municipal corporation located at 116 First Street, Neptune Beach, Florida 32266, hereinafter referred to as "NEPTUNE BEACH";

WITNESSETH:

WHEREAS, JACKSONVILLE, ATLANTIC BEACH and NEPTUNE BEACH are presently nearing completion of construction of certain road, streetscape and landscaping improvements on portions of Atlantic Boulevard, First Street and Ocean Boulevard (the rights-of-way of which are recorded in the Official Records of Duval County, Florida), hereinafter referred to as the "Public Improvements"; and

WHEREAS, a portion of the said construction of the Public Improvements was accomplished by a Four-Party Agreement, dated December 14, 1998, between JACKSONVILLE, ATLANTIC BEACH, NEPTUNE BEACH, and the Town Center Agency, Inc.; and

WHEREAS, Section 5.8 of the said Four-Party Agreement requires that a separate Tri-Party Agreement between ATLANTIC BEACH, NEPTUNE BEACH, and JACKSONVILLE, acceptable to all three (3) parties, shall be executed which clearly defines each City's maintenance responsibilities for the Public Improvements constructed thereunder and in previous phases prior to project completion and expiration of the Contractor's warranty period; and

WHEREAS, JACKSONVILLE, ATLANTIC BEACH and NEPTUNE BEACH agree that a formally executed maintenance agreement between the three (3) parties will promote the lasting beauty, durability, and aesthetics of the Public Improvements; and

WHEREAS, JACKSONVILLE, ATLANTIC BEACH and NEPTUNE BEACH now desire to set forth their agreement regarding the maintenance of the Public Improvements.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, JACKSONVILLE, ATLANTIC BEACH and NEPTUNE BEACH, agree as follows:

SECTION 1 DEFINITIONS

- 1.1 "JACKSONVILLE" means the Consolidated City of Jacksonville, Florida.
- 1.2 "ATLANTIC BEACH" means the City of Atlantic Beach, Florida.
- 1.3 "NEPTUNE BEACH" means the City of Neptune Beach, Florida.
- 1.4 "PUBLIC IMPROVEMENTS" means capital improvements consisting of certain road, streetscape and landscape improvements along that portion of Atlantic Boulevard between Third Street and the Beach; that portion of First Street between Atlantic Boulevard and Orange Street; and that portion of Ocean Boulevard between Atlantic Boulevard and Ahern Street; which were constructed or installed under, or prior to, the Four-Party Agreement dated December 14, 1998, using plans and specifications prepared by R. Glen Mitchell & Associates, and constructed by ABBA Construction, Inc.; BGCO, Inc.; or earlier contractors, and including the entranceway columns.
- 1.5 "CONTRACTOR" means Abba Construction, Inc. (as to road and streetscape improvements), and/or BGCO, Inc. (as to landscape improvements).

SECTION 2 OBLIGATIONS

2.1 JACKSONVILLE shall be responsible for the maintenance of the asphalt pavement, curbs and gutters, roadway striping, drainage structures, drainage pipes, and concrete adjacent to and beneath historic brick crosswalks on the portions of Atlantic Boulevard which lie between the easterly right-of-way line of Third Street (S. R. A1A) and the terminus of the pavement at the Beach; and between the northerly and southerly back of curb lines as shown on the attached Exhibit "A", which by this reference is made a part hereof. JACKSONVILLE shall not be responsible for the maintenance of any non-asphalt surfaces within these limits such as, but not limited to, landscaped medians, historic brick crosswalks, the East Coast Drive stamped concrete crosswalk, the brick intersection at First Street/Ocean Boulevard, and the turnaround adjacent to the Sea Turtle Hotel, with the exception of the concrete adjacent to and beneath historic brick crosswalks. JACKSONVILLE shall also incur no maintenance responsibilities on those portions of Atlantic Boulevard which lie between the northerly and southerly backs of curbs and the respective northerly and southerly right-of-way lines. JACKSONVILLE shall also not be responsible for the maintenance of the drainage structures and pipes along and beneath Atlantic Boulevard which are located within five (5') feet horizontally in any direction of the stamped concrete crosswalk across East Coast Drive. JACKSONVILLE'S responsibility for the maintenance of drainage on the portion of Atlantic Boulevard which lies east of the easterly right-of-way line of First Street and Ocean Boulevard is specifically limited to maintaining the existing drainage structures and pipes, and in no way requires that JACKSONVILLE enlarge any structures or pipes to improve runoff in the area.

2.2 ATLANTIC BEACH shall be responsible for the maintenance of all Public Improvements within the entire right-of-way of Ocean Boulevard, and that portion of the right-of-way of Atlantic Boulevard which lies between the centerline of Atlantic Boulevard and the northerly right-of-way line of Atlantic Boulevard, from the easterly right-of-way line of Third Street to the

terminus of the pavement at the Beach, which is not the maintenance responsibility of JACKSONVILLE as shown on the attached Exhibit "A". ATLANTIC BEACH shall maintain the drainage structures and pipes which are located within five (5') feet horizontally in any direction of the stamped concrete crosswalk across East Coast Drive. Said Public Improvements include, but are not limited to, curbs, gutters, asphalt, drainage structures, drainage pipes, brick sidewalks, brick crosswalks, trees, bushes, grass, other landscape materials, light poles, light fixtures, light bulbs, signs, sign posts, banner arms, benches, bike racks, receptacles, foundation for the entranceway column, the entranceway column, and any City of Atlantic Beach owned utilities or property.

2.3 NEPTUNE BEACH shall be responsible for the maintenance of all Public Improvements within the entire right-of-way of First Street, and that portion of the right-of-way of Atlantic Boulevard which lies between the centerline of Atlantic Boulevard and the southerly right-of-way line of Atlantic Boulevard, from Third Street to the terminus of the pavement at the Beach, which is not the maintenance responsibility of JACKSONVILLE as shown on the attached Exhibit "A". Said improvements include, but are not limited to, curbs, gutters, asphalt, drainage structures, drainage pipes, brick sidewalks, brick crosswalks, trees, bushes, grass, other landscape materials, light poles, light fixtures, light bulbs, signs, banner arms, benches, bike racks, receptacles, foundations for the entranceway column, the entranceway column, and any City of Neptune Beach owned utilities or property.

2.4 ATLANTIC BEACH and NEPTUNE BEACH, recognizing that JACKSONVILLE provided all the funding for the landscape component of the Public Improvements, do hereby warrant that they will enter into an agreement(s) with a professional landscape maintenance contractor(s), at their cost, for the maintenance of all landscape components for a minimum of five (5) years commencing with the date of this Agreement. The said minimum five (5) year period is to ensure the survival of all plants. ATLANTIC BEACH and NEPTUNE BEACH agree to maintain the landscape component of the Public Improvements

to at least the same extent and quality as ATLANTIC BEACH presently maintains the medians on Atlantic Boulevard from the Intracoastal Waterway Bridge to Third Street, both in terms of aesthetics and overall plant health. ATLANTIC BEACH and NEPTUNE BEACH each agree to pay exactly one-half (50%) of all maintenance of landscaping costs, including maintenance and operation of the irrigation system and the water used for irrigation. ATLANTIC BEACH shall administer the landscape maintenance contract in consultation with NEPTUNE BEACH. As an option to the above, if landscape maintenance cannot be obtained at an acceptable price from a contractor, Atlantic Beach and Neptune Beach may choose to perform the maintenance with City employees, provided such City employees are properly qualified and/or supervised to perform the work.

2.5 JACKSONVILLE agrees to provide three (3) sets of blueline prints, and complete CADD files, of final As-Built Drawings of the Public Improvements to both ATLANTIC BEACH and NEPTUNE BEACH after the completion of construction of the Public Improvements.

2.6 The address of JACKSONVILLE for the purposes of communications relating to this contract shall be as noted above (contact person: Mayor or designee).

2.7 The address of ATLANTIC BEACH for the purposes of communications relating to this contract shall be as noted above (contact person: City Manager or designee).

2.8 The address of NEPTUNE BEACH for the purposes of communications relating to this contract shall be as noted above (contact person: City Manager or designee).

**SECTION 3
DEFAULT AND REMEDIES**

3.1 A default shall consist of the breach or anticipatory breach of any covenant, agreement, representation, provision, or warranty entered into between JACKSONVILLE, ATLANTIC BEACH and NEPTUNE BEACH relating to the Public Improvements. If a default, breach or anticipatory breach occurs, the party not in default may, at any time or from time to time, proceed to enforce its remedy under this Contract by suit in equity, action at law or by any other appropriate proceeding for damages or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations. No party shall act upon any default until it has given the party in default written notice of the default and thirty (30) days within which to cure the default.

**SECTION 4
GENERAL PROVISIONS**

4.1 JACKSONVILLE, ATLANTIC BEACH, and NEPTUNE BEACH each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of this Contract. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of JACKSONVILLE, ATLANTIC BEACH, or NEPTUNE BEACH, nor shall it be construed as giving any right or benefit hereunder to anyone other than JACKSONVILLE, ATLANTIC BEACH, NEPTUNE BEACH, their successors and assigns.

4.2 All parties agree to comply with all applicable laws, rules and regulations, federal, state and local, in its performance under this Contract and its implementation.

4.3 No waiver by any party at any time of any of the terms, conditions, covenants, and agreements herein, or of any default, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof.

4.4 This Contract constitutes the entire present agreement between JACKSONVILLE, ATLANTIC BEACH, and NEPTUNE BEACH. No change in, modification of, or supplement to this Contract shall be valid or enforceable unless it is enacted in writing and signed by the duly authorized representatives of JACKSONVILLE, ATLANTIC BEACH, and NEPTUNE BEACH by formal amendment.

4.5 The use of the singular in this Contract shall include the plural and the pronouns shall be considered as masculine, feminine or neutral in gender wherever the context so requires.

**SECTION 5
MEMBERS OF LOCAL GOVERNING
BODY, OR OTHER PUBLIC OFFICIALS**

5.1 No member, officer or employee of the governing body of the locality in which the Public Improvements are situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Public Improvements maintained under this Agreement. This prohibition shall apply to all contracts or subcontracts in connection with the maintenance of the Public Improvements.

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

ATTEST:

CITY OF JACKSONVILLE

By: *Neill W. McArthur Jr.*
NEILL W. McARTHUR, JR.
CORPORATION SECRETARY

By: *John A. Delaney*
JOHN A. DELANEY
MAYOR

ATTEST:



CITY OF ATLANTIC BEACH

By: *Maureen King*
MAUREEN KING
Its: CITY CLERK

By: *John Meserve*
JOHN MESERVE
MAYOR

ATTEST:

CITY OF NEPTUNE BEACH

By: *Lisa Volpe*
LISA VOLPE
Its: CITY CLERK

By: *Dick Brown*
DICK BROWN
MAYOR

IN COMPLIANCE with the Charter of the City of Jacksonville, I hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation to cover the foregoing contract, and provision has been made for the payment of monies provided therein to be paid.

[Signature]
Director of Administration & Finance
6494-24 2

Form Approved:

Neill W. McArthur Jr. 5-17-01
Assistant General Counsel

Exhibit "A"

TOWN CENTER



BEACH AVENUE

AHERN STREET

Sea Turtle Inn

OCEAN BOULEVARD

Ragtime

EAST COAST DRIVE

AHERN STREET

Shops of North Shore

SHERRY DRIVE

ATLANTIC BOULEVARD

Sea Horse

FIRST STREET

City Hall

LEMON STREET

STREET

SECOND STREET

THIRD STREET

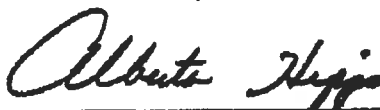
Landscaped areas to be maintained by Atlantic Beach and Neptune Beach

RESOLUTION 2000-991-A

CERTIFICATE OF AUTHENTICATION

ADOPTED BY THE COUNCIL

November 14, 2000



ALBERTA HIPPS
COUNCIL PRESIDENT

ATTEST:



KATHLEEN A. ROBERTS
ACTING COUNCIL SECRETARY

NOV 22 2000

APPROVED: _____



JOHN DELANEY, MAYOR

