

**INTERLOCAL AGREEMENT FOR PAID PARKING
PROGRAM AT BEACHES TOWN CENTER**

THIS INTERLOCAL AGREEMENT (“Agreement”), made and entered into on ____ day of ____, 2019 (the “Effective Date”), by and between the City of Neptune Beach, a municipal corporation located at 116 First Street, Neptune Beach, Florida 32266 (hereinafter, “Neptune Beach”), and the City of Atlantic Beach, a municipal corporation located at 800 Seminole Road, Atlantic Beach, Florida 32233 (hereinafter, “Atlantic Beach”). Neptune Beach and Atlantic Beach shall be referred to collectively as, the “Parties”.

WHEREAS, to the extent the terms in this Agreement conflict with terms exclusive to parking management in the 1996 Interlocal Agreement between Neptune Beach, Atlantic Beach, the City of Jacksonville and Beaches Town Center Agency, the terms of this Agreement shall control.

WHEREAS, Neptune Beach intends to install, operate, and administer a pay-for-parking program in the Beaches Town Center area as more particularly described in Exhibit-Attachment A, attached hereto and made a part hereof (the North Beaches Parking Program, hereinafter the “Parking Program”).

WHEREAS, the Parking Program will encompass certain publicly-owned property and rights of way located within the boundaries of Atlantic Beach and Neptune Beach, as more particularly described in Exhibit A.

WHEREAS, Neptune Beach and Atlantic Beach intend to cooperate and coordinate in the implementation and administration of the Parking Program.

WHEREAS, Neptune Beach and Atlantic Beach have enacted paid parking ordinances to address the authority and regulatory scheme associated with the Parking Program.

WHEREAS, Neptune Beach and Atlantic Beach intend to jointly designate a District Parking Operator (“DPO”) agreeable to both cities to implement the Parking Program as further defined below in accordance with the applicable ordinances of Neptune Beach and Atlantic Beach.

WHEREAS, to more efficiently and effectively administer the Parking Program, the Parties intend to memorialize their responsibilities and obligations with regards to said Parking Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

Obligations of the Parties and Cost Sharing of the Parking Program

1. The above recitals are incorporated as if set forth fully herein.
2. Neptune Beach shall be solely responsible to enter into an agreement with a jointly-designated DPO for the purpose of implementing the Parking Program and providing the services as more particularly described herein. Neptune Beach may, in its discretion, upon ninety (90) days prior

written notice to Atlantic Beach, elect to proceed without a DPO at any time. In such event, Neptune Beach shall be responsible for all obligations of the DPO under this Agreement, provided, however, Atlantic Beach may elect to terminate this Agreement in accordance with Section 8 or 13, as may be applicable.

3. Neptune Beach, either directly or through the DPO, shall be responsible for all costs for materials, hardware, software, installation of equipment, repair, maintenance, replacement, and upgrades of equipment, employee training and certification, if needed, and other such related costs to administer the Parking Program.
4. Neptune Beach shall cause the DPO to maintain and keep all appropriate accounting records related to the operation of the Parking Program and shall provide to Neptune Beach and Atlantic Beach a monthly accounting report, identifying all revenue, costs and expenses of the Parking Program, including without limitation, the specific amount of gross revenue generated from parking spaces located within duly designated parking zones within Atlantic Beach and Neptune Beach, respectively. In the event of Neptune Beach's failure to cause the DPO to do so, Neptune Beach shall be responsible for same.
5. Neptune Beach shall annually, on or before July 1 of each year, prepare and provide to Atlantic Beach, an annual proposed budget for the Parking Program. Atlantic Beach shall have the right, at its expense, to audit the Parking Program records of the DPO and Neptune Beach.
6. Neptune Beach shall remit to Atlantic Beach, on a monthly basis (with Year One to begin on October 1, 2019 and end on September 30, 2020 and years Two, Three, Four and Five to likewise follow), a total of seventy percent (70%) of all gross revenue generated by the fees, fines and rentals of the parking spaces located within duly designated parking zones within Atlantic Beach.
7. The remaining thirty percent (30%) of said gross revenue shall constitute Atlantic Beach's entire obligation towards the costs and expenses for the operation of the Parking Program and shall be retained by Neptune Beach.
8. The Parties agree that annually, but no later than September 1 of each year, they shall each review the proportional amounts described in Sections 6 and 7 above and determine whether any adjustments should be made. In the event the Parties do not agree on the proportional amounts for the fiscal year going forward, then either Party may provide written notice of termination to the other Party no later than September 1 of the applicable year, which termination shall be effective as of October 1 of the same year.
9. The Parties respective performance and obligations under this Agreement are contingent upon each Party's adoption of an annual budget containing appropriations as may be appropriate and necessary to carry out this Agreement.

Parking Program and DPO Responsibilities

10. The agreement between the City of Neptune Beach and the DPO shall generally provide for the following:
- a. The jointly designated DPO shall administer and operate the Parking Program in accordance with this Agreement, the Neptune Beach and Atlantic Beach Codes of Ordinances and Florida law, as applicable.
 - b. With written consent from the City Manager of Atlantic Beach and the City Manager of Neptune Beach, the DPO may make modifications, alterations, adjustments, and other such decisions related to the administration, operation and enforcement of the Parking Program in accordance with the paid parking and other applicable ordinances of Neptune Beach and Atlantic Beach, respectively.
 - d. The DPO shall be solely responsible for collecting all parking payments, enforcement penalties and fees, and other such revenue generated from the Parking Program in accordance with the ordinances of Neptune Beach and Atlantic Beach and shall remit same to Neptune Beach. The DPO shall provide to Neptune Beach and Atlantic Beach monthly accounting reports regarding all revenue and expenses associated with operation of the Parking Program, including without limitation, the information referenced in Section 4 above.

Default and Remedies

11. A default shall consist of the breach or anticipatory breach of any covenant, agreement, representation, provision or warranty entered into between Atlantic Beach and Neptune Beach relating to the Parking Program. If a default, breach or anticipatory breach occurs, the Party not in default may, at any time or from time to time, pursue to enforce its remedy under this Agreement by suit in equity, action at law or by any other appropriate proceeding, ~~including, but not limited to, the governmental conflict resolution procedures contained in Chapter 164, Florida Statutes,~~ for damages or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations; ~~provided, however, the Parties shall, prior to initiating any court proceedings, initiate the conflict resolution procedures set forth in Chapter 164, Florida Statutes.~~ 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.

General Provisions

12. Term. Subject to the provisions of Section 9 above, the term of this Agreement shall be for a period of five (5) years from the Effective Date. This Agreement may be extended thereafter on an annual basis by way of written approval of such extension from each of the Parties following the adoption of Resolutions by the Parties' governing boards.

13. Termination. Except as provided in Section 8 above, either Party may terminate this Agreement by providing ninety (90) days written notice of its intent to do so to the other Party.

a. In the event of any termination by Atlantic Beach pursuant to this Agreement, Atlantic Beach shall pay to Neptune Beach prior to the effective date of the termination, a termination fee calculated as follows:

- if during Year One (October 1, 2019 through September 30, 2020), \$45,126.90, decreased on a pro rata basis for each month prior to the effective date of termination;
- if during Year Two (October 1, 2020 through September 30, 2021), \$24,392.29, decreased on a pro rata basis for each month prior to the effective date of termination;
- if during Year Three (October 1, 2021 through September 30, 2022), \$18,294.22, decreased on a pro rata basis for each month prior to the effective date of termination;
- if during Year Four (October 1, 2022 through September 30, 2023), \$11,433.89, decreased on a pro rata basis for each month prior to the effective date of termination;
- if during Year Five (October 1, 2023 through September 30, 2024), \$5,716.94.

Thereafter, should the Parties extend the term of this Agreement, no termination fee will be due. Further, should Atlantic Beach desire to retain the kiosks located within Atlantic Beach, Atlantic Beach shall also remit to Neptune Beach an amount equal to \$9,081.00 for each kiosk, prorated at a depreciation rate of 12.5% per year.

b. In the event Neptune Beach terminates this Agreement, then Atlantic Beach may, in its sole discretion, elect to discontinue the Parking Program at no cost to Atlantic Beach or elect to continue to operate the Parking Program within the boundaries of Atlantic Beach, in which case, Atlantic Beach would be responsible for operating expenses as of the effective date of termination and, should Atlantic Beach desire to retain the kiosks within Atlantic Beach, Atlantic Beach shall pay to Neptune Beach an amount equal to \$9,081.00 for each kiosk, prorated at a depreciation rate of 12.5% per year.

14. 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, their successors and assigns.

15. All Parties agree to comply with all applicable laws, rules and regulations, federal, state and local, in its performance under this Agreement and its implementation.
16. 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.
17. 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.
18. Conflicts. No member, officer or employee of the governing body of the City of Atlantic Beach or City of Neptune Beach, and no other public official of either such City who exercises any functions or responsibilities with respect to the Parking 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 Parking Program maintained under this Agreement.
19. Notices. Notices to be provided in accordance with this Agreement shall be delivered by U.S. Mail, return receipt requested, hand delivery or traceable overnight delivery service and addressed as follows:

City of Neptune Beach
c/o City Manager
116 First Street
Neptune Beach, FL 32266

With a copy to:
Zachary Roth, City Attorney
8818 Goodby's Executive Drive
Suite 100
Jacksonville, FL 32217

City of Atlantic Beach
c/o Joe Gerrity, City Manager
800 Seminole Road
Atlantic Beach, FL 32233

With a copy to:
Brenna M. Durden, City Attorney
Lewis, Longman & Walker, P.A.
245 Riverside Avenue, Suite 150
Jacksonville, FL 32202

20. Indemnification. Atlantic Beach, to the extent of a claim or judgment by any one person which does not exceed the sum of \$200,000 or any claim or judgment, or portions thereof, which when totaled with all other claims or judgments arising out of the same occurrence, does not exceed the sum of \$300,000, shall indemnify Neptune Beach for any and all damages relating to the Parking Program, including reasonable attorneys' fees and costs (prior to and at trial, and through appeal) to the extent arising from the negligence or willful misconduct of Atlantic Beach and its officials, agents, contractors and employees. Neptune Beach, to the extent of a claim or judgment by any one person which does not exceed the sum of \$200,000 or any claim or judgment, or portions thereof, which when totaled with all other claims or judgments arising out of the same occurrence, does not exceed the sum of \$300,000, shall indemnify Atlantic Beach for any and all damages relating to the Parking Program, including reasonable attorneys' fees and costs (prior to and at trial, and through appeal) to the extent arising from the negligence or willful misconduct of Neptune Beach and its officials, agents, contractors (including without limitation, the DPO) and employees. Nothing in this Agreement nor any action relating to this Agreement shall be construed as a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, by either Atlantic Beach or Neptune Beach. Additionally, there are no third party beneficiaries to this Agreement.
21. The Parties agree that the DPO may initiate services under this Agreement prior to October 1, 2019 and that reports, fees and data shall be provided in accordance with this Agreement, but that any period prior to October 1, 2019 shall not be included in Year One under this Agreement.

SIGNATURE PAGE TO FOLLOW

CITY OF ATLANTIC BEACH, FLORIDA

Ellen Glasser, Mayor

Attest:

Donna L. Bartle, City Clerk

Approved as to Form and Content:

Brenna M. Durden, City Attorney

CITY OF NEPTUNE BEACH, FLORIDA

Elaine Brown, Mayor

Attest:

Catherine Ponson, City Clerk

Approved as to Form and Content:

Zachary Roth, City Attorney