

**COMMUNITY ASSOCIATION RIGHT-OF-WAY
MAINTENANCE AGREEMENT**
(San Marco)

THIS COMMUNITY ASSOCIATION RIGHT-OF-WAY MAINTENANCE AGREEMENT (“Agreement”) is dated effective _____, 2020, among the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “City”), **SAN MARCO PRESERVATION SOCIETY, INC.**, a Florida not for profit corporation (“SMPS”) and **SAN MARCO MERCHANTS ASSOCIATION, INC.**, a Florida not for profit corporation (“SMPS”).

BACKGROUND FACTS

A. San Marco is a beautiful historic area within the City comprised of historic residential areas, retail shops, and commercial businesses.

B. City is the owner of certain public right-of-ways in San Marco, which includes medians, sidewalks, roundabouts and other public right-of-ways areas, as more particularly identified on Exhibit A attached hereto (collectively, the “City ROW Property”). The City ROW Property has been divided into five separate areas as shown on Exhibit A: Area 1, Area 2, Area 3, Area 4, and Area 5.

C. SMPS’s mission is to preserve and renew San Marco as an area of historical and architectural significance for the benefit of local residents and businesses and for the education and enjoyment of visitors and the general public.

D. SMMA’s mission is to unify the business groups located in San Marco with a collective voice to help promote San Marco as a destination to locals and out of town visitors.

E. SMPS and SMMA desire to maintain San Marco as a beautiful and historic community. SMPS and SMMA shall be collectively referred to herein as the “Community Associations”.

F. Pursuant to City’s landscaping and maintenance standards, City maintains standard landscaping improvements such as trees, grass, shrubs and flowers on the City ROW Property (collectively, the “City Landscaping Improvements”).

G. The Community Associations desire to donate their in-kind services to the City and assume, at their sole expense, certain landscaping and maintenance responsibilities regarding the City ROW Property for the benefit of the City and San Marco residents, businesses, and visitors (the “Project”).

H. The parties desire to enter into this Agreement to provide for the landscaping and maintenance responsibilities of the parties with respect to the City ROW Property during the term of this Agreement as provided herein.

NOW THEREFORE, for and in consideration of the mutual benefits each to flow to the other, the parties covenant and agree as follows:

1. Background Facts and Capitalization. The Background Facts above are true and correct and incorporated herein by reference. All capitalized terms shall have the meanings ascribed to them in this Agreement.

2. Effective Date; Term. This Agreement shall become effective on the day and year first written above and shall continue until five (5) years thereafter, unless earlier terminated by City, SMPS, or SMMA upon thirty (30) days advance written notice to the other parties. This Agreement may be renewed by the parties upon mutual consent for two additional five (5) year periods.

3. City ROW Property Maintenance Responsibilities.

City's work and maintenance responsibilities delineated and outlined on Exhibit B. The Community Associations acknowledge and agree that City's responsibilities as delineated and outlined on Exhibit B may change from fiscal year to fiscal year and are contingent upon lawful appropriations by the City Council. Further, the Community Associations acknowledge and agree that City shall not be responsible for any costs associated with the SMPS and SMMA work and maintenance responsibilities on the City ROW Property delineated and outlined on Exhibit B.

(b) SMPS Responsibilities. SMPS, at its sole expense, shall perform the work and maintenance responsibilities on the City ROW Property delineated and outlined on Exhibit B. SMPS shall be responsible for any costs associated with such work and maintenance responsibilities.

(c) SMMA Responsibilities. SMMA, at its sole expense, shall perform the work maintenance responsibilities on the City ROW Property delineated and outlined on Exhibit B. SMMA shall be responsible for any costs associated with such work and maintenance responsibilities.

(d) Contractor Payment; No Liens. SMPS and SMMA shall each promptly pay its contractors and subcontractors performing work on the property in connection with the maintenance responsibilities provided in this Section. SMPS and SMSMA shall immediately after it is filed or claimed, have released (by bonding or otherwise) any mechanics', material man's or other lien filed or claimed against any or all of the City ROW Property or any other property owned by City, by reason of labor or materials provided for SMPS and SMMA or any of its contractors or subcontractors, or otherwise arising out of SMPS or SMMA's use or occupancy of the City ROW Property.

(e) Disposal. The Community Associations and/or their contractor(s) and subcontractor(s), at their sole expense, shall be responsible for all costs associated with removal

and proper disposal of any construction, demolition or landscaping debris arising from the Community Associations maintenance responsibilities in this Section.

(f) **Warranties.** It is the intent of the parties that City shall be the intended beneficiary of all warranties relating to any landscaping improvements, and the Community Associations and their contractors and/or subcontractors shall require all warranties to designate the City. Prior to substantial completion, the Community Associations shall require, at their sole expense, their contractors and/or subcontractors to give reasonable notice to the City when the installation of any new landscaping improvements are complete in order that the City Representative may participate in any inspection of the landscaping improvements. Upon completion of the landscaping improvements, the Community Associations shall cause their contractors and/or subcontractors to deliver to City any and all warranties before the final inspection of the any such landscaping improvements.

(g) **License; Permit.** City grants to the Community Associations a license on, over, and across the City ROW Property to perform the maintenance responsibilities set forth in this Section. The Community Associations shall obtain all necessary permits and licenses, including a City right-of-way permit, as required by law.

4. Party Representatives. The City's Public Works Department, Mowing and Landscape Maintenance Division shall be responsible for overseeing, administering and implementing this Agreement. The City Representative shall be Dave McDaniel. All correspondence should be directed and/or forwarded to the City Representative and said representative shall be the contact for the Community Associations and/or their representatives concerning all aspects of this Agreement, including communications with the public and/or political officials. The representatives for SMPS and SMMA shall be the presidents of each organization.

5. Indemnification. The Community Association shall adhere to the indemnification requirement contained on Exhibit C.

7. Default. If, at any time during the term of this Agreement, it shall come to the attention of the City that the Community Associations are not performing its obligations under this Agreement, the City may, at its option, issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the Community Associations, to place the Community Associations on notice thereof. Thereafter, the Community Associations shall have a period of

fifteen (15) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City, may at its option, proceed as follows:

- i. Correct the listed deficiencies, including completion of any incomplete landscaping maintenance obligations, and invoice the Community Associations for expenses incurred for such correction or completion, in which event the Community Associations shall reimburse the City for such expenses within thirty (30) days of the date of such invoice;
- ii. Terminate this Agreement in accordance with section 2 above; or
- iii. Seek any remedies provided herein or allowed by law or in equity.

8. Environmental Matters. Neither the Community Associations, nor their contractors and/or subcontractors, nor suppliers shall dispose, leak, spill, discharge or release hazardous materials or substances in or around the Improvements while installing the Improvements, except in compliance with applicable law, rule or regulation. “Hazardous Materials” and “Hazardous Substances” means regulated materials and substances under environmental laws including: (1) Comprehensive Environmental Response, Compensation, and Liability Act 1980, as amended by the Superfund Amendments and Reauthorization of 1986, 42 USCA 9601 et seq.; (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 USCA 6901 et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 USCA 1251 et seq.; (4) Toxic Substances Control Act of 1976, as amended, 15 USCA 2601, et seq.; (5) Emergency Planning and Community Right-to-Know Act of 1986, 42 USCA 11001, et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USCA 7401, et seq.; (7) Endangered Species Act of 1973, amended, 16 USCA 1531, et seq.; Occupational Safety and Health Act of 1970, as amended, 29 USCA 651 et seq.; (8) Safe Drinking Water Act of 1974, as amended, 42 USCA 300 (f) et seq.; and (9) any similar laws enacted by the State of Florida and the City of Jacksonville. The Community Associations shall not be responsible for contaminated media or hazardous materials or substances that were on the City ROW Property before the Community Associations entered into this Agreement; however, if, because of the Enhanced Landscaping Improvements, any federal, state or local regulatory or grant authority require remediation of contaminated media or hazardous materials or substances that were on site on and after the date of this Agreement, then the Community Associations and/or their contractor(s) and subcontractor(s), at no additional cost to City, shall be responsible for proper removal, handling and disposal or other lawful remediation of such contaminated media or hazardous materials or substances which require removal because of the Enhanced Landscaping Improvements. The Community Associations and/or their contractor(s) and subcontractor(s) shall provide the City immediate written notice of any communication from regulatory or other authorities concerning contamination, or remediation requirements, as well as any disposal, leakage, spillage, discharge or release or contaminated media or hazardous materials or substances with respect to provision, construction or installation of the Project. The Community Associations shall make this Section 9 known to their contractors and/or subcontractors providing work for the Project, and the Community Associations shall cause this Section 9 to be included in all contracts and subcontracts for any work on the Project.

SMPS and SMMA:

(e) Construction. The parties agree that they have had meaningful discussions and/or negotiations of the provisions, terms and conditions of this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party who prepared this Agreement. The rule commonly referred to as “Fortius Contra Proferentum” shall not be applied to this Agreement or any interpretation hereof.

(f) Entire Agreement. This writing embodies the entire agreement and understanding between the parties hereto and there are no other prior agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

(g) Assignment. This Agreement is not assignable by the City or the Community Association without the written consent of the other party, which consent cannot be unreasonably withheld, conditioned or delayed.

(h) Venue; Governing Law. This Agreement shall be governed and interpreted under the laws of the State of Florida. Venue for any action arising under this Agreement shall lie exclusively in the courts in and for Duval County, Florida.

(i) Headings. The section headings used in this Agreement are for convenience purposes only and shall not be used in the interpretation of this Agreement.

(j) Exhibits. All Exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

(k) Relationship of the Parties. The relationship of the parties is that of vendor and purchaser. Nothing contained herein is intended to create, nor shall it ever be construed to make, the Community Association or City partners or joint venturers.

(l) Severability. The provisions of this Agreement are severable, and if any provision of any part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.

(m) Waiver. The waiver by one party of the performance of any covenant or condition

herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by either or both parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or any identical act required to be performed at a later time. No waiver hereunder shall be effective unless it is in writing.

(n) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(o) City Council Approval. This Agreement is expressly conditioned upon approval of the Agreement by the City Council of Jacksonville, Florida.

[The Remainder Of This Page Was Intentionally Left Blank. Signature Page To Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date set forth above.

ATTEST:

CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

By: _____
James B. McCain, Jr.,
Corporation Secretary

By: _____
Lenny Curry, as Mayor

By: _____
Office of General Counsel

SAN MARCO PRESERVATION SOCIETY, INC., a Florida not for profit corporation

By: _____
Print Name: _____
Title: _____

SAN MARCO MERCHANTS ASSOCIATION, INC., a Florida not for profit corporation

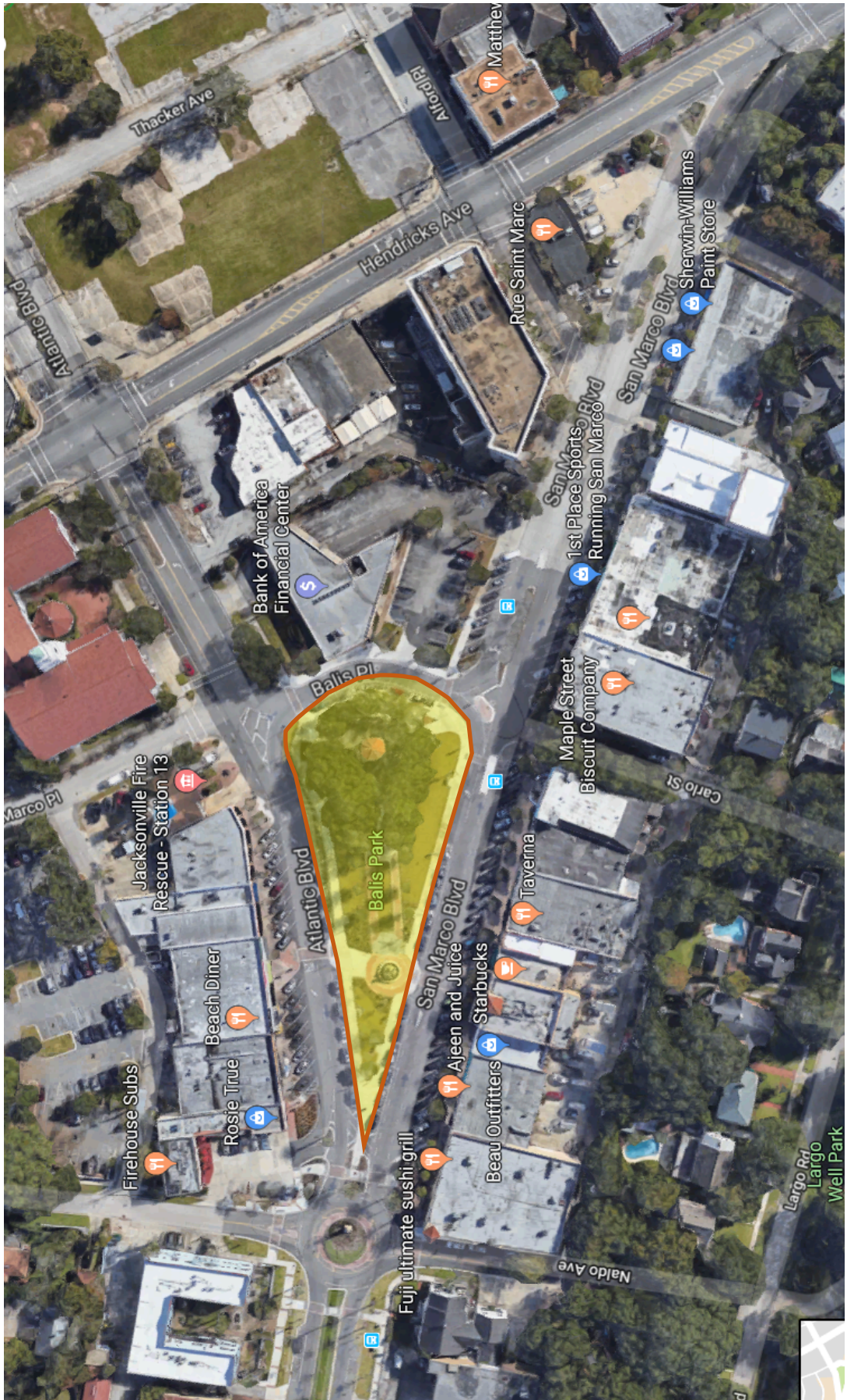
By: _____
Print Name: _____
Title: _____

EXHIBIT A

City ROW Property
(Legal Description and Maps)

[To immediately follow]

Area 1 – Balis Park



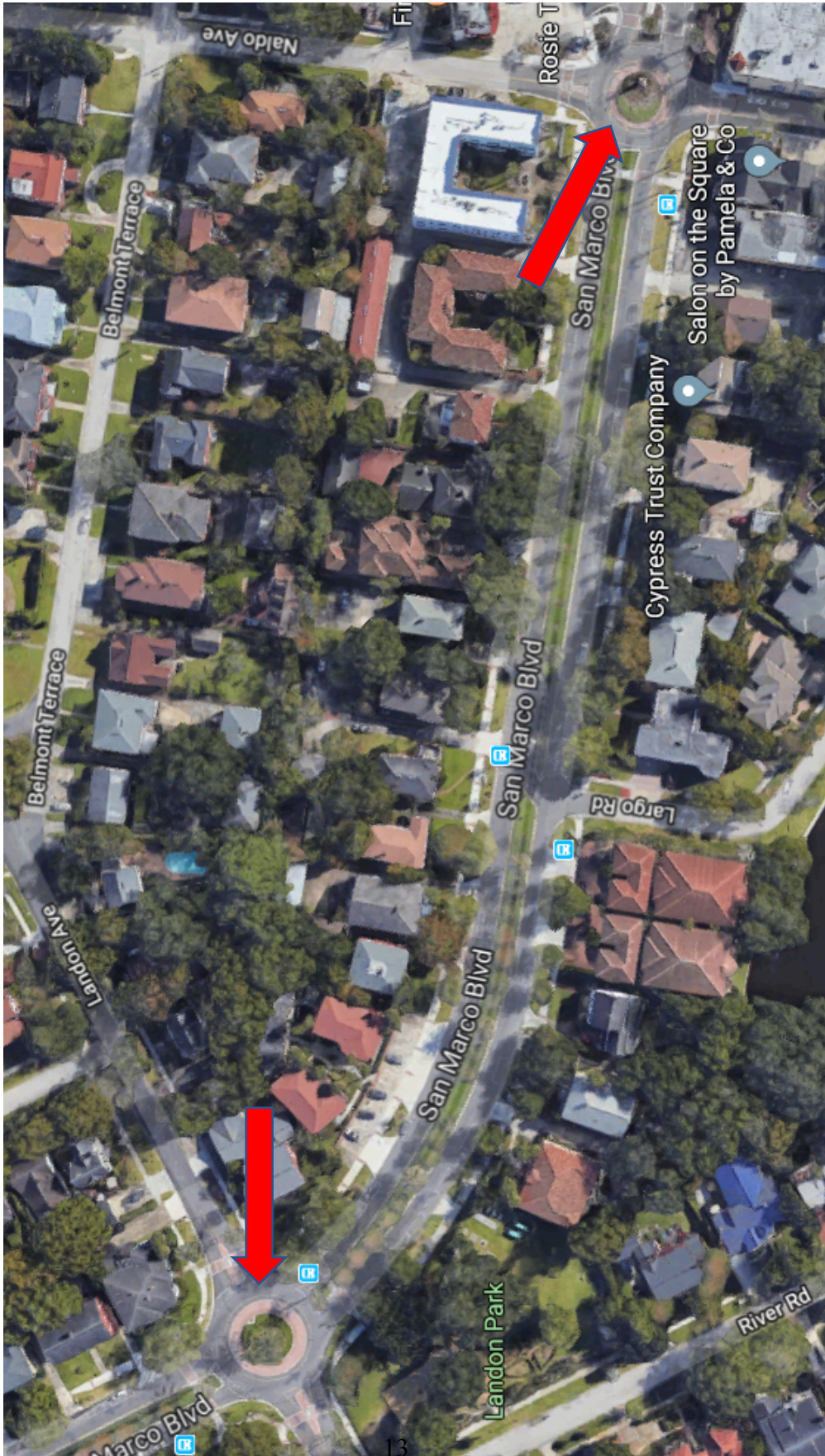
Area 2 – San Marco Square



Area 3 – Naldo to Gary



Area 4 – Roundabouts



Area 5 – Hendricks to RR Tracks



EXHIBIT B

Delineation of Landscape and Maintenance Responsibilities

[To immediately follow]

Form of agreement: MOU to be prepared and executed

Parties: San Marco Preservation Society (SMPS)

San Marco Merchants Association (SMMA)

COJ- Parks

COJ- Public Works (Mowing and Maintenance Division)

Physical Area covered:

1. Balis Park (new expanded Boundary) ("Area 1")
2. Medians and ROW on San Marco Blvd and Atlantic from Naldo to Sorrento and Hendricks and to San Marco Place/Balis Place on Atlantic ("Area 2")
3. Medians and ROW on San Marco Boulevard from Gary Street to Naldo ("Area 3");
4. Landon Roundabout; Naldo Roundabout ("Area 4")
5. Medians and ROW on Atlantic Boulevard to the Railroad track ("Area 5")

Balis Park - Area 1

Activity	Responsible entity
Turf – weekly mowing, edging	SMMA
Plant and shrub trimming	SMMA
Tree maintenance/trimming	Parks
Plant, Shrub, tree replacement	SMPS
Fertilization	Parks
Weeding	SMMA
Weed/Pest spraying	Parks
Blowing- weekly	SMMA
Mulch	Parks
Irrigation maintenance and replacement	Parks
Fountain Maintenance- both Lions Fountain and Gazebo Fountain	Parks
Fountains- skim leaves and debris weekly	SMMA
Hardscape and furniture other than engraved pavers	Parks
Engraved Pavers	SMPS
Pressure Washing- as needed only of pavers and gazebo	Parks
Trash pickup	Public Works-solid waste
Lighting in trees – installation and replacement	Parks
Litter control	SMMA
Trash collection/replacement of liners	Parks

**San Marco Square ROW sidewalks and medians - Area 2 (San Marco Blvd. from Naldo to Sorrento;
Atlantic Blvd from Naldo to San Marco Place)**

Activity	Responsible Party
Mowing/Weedeating	SMMA
Plant and shrub trimming/weeding	SMMA
Crepe Myrtle Maintenance/trimming/weeding	SMMA
Plant, Shrub, tree replacement/installation	SMPS
Palms below 15' - trimming, weeding	SMMA
Palms above 15' - trimming	COJ PW
Fertilization	SMMA
Mulch	SMPS/SMMA split
Irrigation maintenance and replacement	PW-Mowing and Maintenance Division
Pavers- level and replace	SMPS
Pavers- cleaning	SMMA/SMPS split

San Marco Blvd Naldo to Gary (Area 3)

Activity	Responsible Party
Plant and shrub trimming/weeding	COJ PW
Crepe Myrtle Maintenance/trimming/weeding	COJ PW
Plant, Shrub, tree replacement/installation	COJ PW
Palms - trimming, weeding	COJ PW
Fertilization	N/A
Mulch	N/A
Irrigation maintenance and replacement	PW-Mowing and Maintenance Division

Naldo Roundabout/ Landon Roundabout (Area 4)

Activity	Responsible Party
Plant and shrub trimming/weeding- Naldo	SMMA
Plant and shrub trimming/weeding- Landon	COJ PW
Tree /Palms Maintenance/trimming/weeding	COJ PW
Plant, Shrub, tree replacement/installation	SMPS
Fertilization	N/A
Mulch	SMPS
Irrigation maintenance and replacement	PW-Mowing and Maintenance Division

Atlantic Blvd. from San Marco Place/Balis Place to Railroad tracks (Area 5)

Activity	Responsible Party
Mowing/Weedeating	COJ PW
Plant and shrub trimming/weeding	COJ PW
Tree /Palms Maintenance/trimming/weeding	COJ PW
Plant, Shrub, tree replacement/installation	COJ PW
Fertilization	N/A
Mulch	N/A

Irrigation maintenance and replacement	PW-Mowing and Maintenance Division

EXHIBIT C

Indemnification Requirement

The Community Associations, individually (“Indemnifying Party(ies)”) shall each hold harmless, indemnify, and defend City and City’s members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

i. General Tort Liability. For any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services or work performed hereunder; and

ii. Environmental Liability. To the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with this Agreement; and

iii. Intellectual Property Liability. To the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the work performed by the Indemnifying Parties under this Agreement, any product generated by such work, or any part of the work as contemplated by this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the work performed by the Indemnifying Parties under this Agreement, or any product generated by such work, or any part of the work, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the disputed part of the work or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed part of the work or product with a non-infringing work or product or modify such work or product in a way satisfactory to the Indemnified Parties so that the work or product is non-infringing.

If an Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

If any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with the statutes.