



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2007

Subject: Approve County Right-of-Way Maintenance Agreement
Department: Public Works.

Recommended Motion:

Staff recommends approval of the County Right-of-Way Maintenance Agreement.

Summary:

Since 1999, the City has been under agreement with Volusia County to maintain County right-of-ways within City limits. The County has submitted a revised agreement for the 2007-2008 term. Under the revised agreement, certain areas have been deleted and the cost of reimbursement to the City has been reduced from \$155.12/acre maintained to \$70.00/acre. Total reimbursement to be paid to the City for maintaining the areas under contract is \$4,975.60. The commentary attached provides details of the areas covered under the agreement and a copy of the agreement is attached for your review. If approved, the agreement will be effective October 1, 2007 through September 30, 2008.


Attachments: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office
Copy of County Maintenance Agreement

Department Head	<i>[Signature]</i>	Submitted	Date 9-26-2007
Finance Department	<i>[Signature]</i>	Approved as to Budget Requirements	Date 9/26/07
City Attorney	<i>[Signature]</i>	Approved as to Form and Legality	Date
City Manager	<i>[Signature]</i>	Approved Agenda Item For	Date 10/16/07

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

MEMORANDUM

TO: Kenneth W. Parker
City Manager
FROM: Warren Pike 
Public Works Director
SUBJECT: Agenda Item for October 16, 2007
DATE: September 26, 2007

Please place approval of the County Maintenance Agreement on the Council agenda for October 16th.

Commentary

For the past several years, Council has approved the right-of-way maintenance agreement with Volusia County.

Under this agreement, Volusia County agrees to compensate the City for maintenance along County owned right-of-ways within City limits. Attached is the agreement for October 1, 2007 through September 30, 2008 and there are significant changes. The "unit cost" we are reimbursed per acre mowed has been reduced to \$70.00/acre; past year "unit cost" was \$155.12/acre. The rate in 1999, which was when the City first entered into an agreement with the County, was \$130.59/acre.

In addition to the rate reduction, the County has removed areas from the agreement which amount to 3.17 miles of right-of-way along the sidewalks on Commonwealth (Spruce Creek to US1), Spruce Creek (Taylor to Commonwealth) and Taylor Road (Dunlawton to Spruce Creek).

Areas, acres maintained and annual reimbursement under the 2007 agreement are as follows:

Clyde Morris (Taylor Road to Forest Branch Drive)	8.11 acres	2,270.80
Spruce Creek (Nova Road to Taylor)	3.16 acres	884.80
(Chamberlain to Treasure Isle)	.58 acres	162.40
Taylor Road (Dunlawton to Spruce Creek)	4.49 acres	1,257.20
Spruce Creek Retention (Elda Lane to Parkwood Entrance)	1.43 acres	400.40

Total annual reimbursement from the County will be \$4,975.60 and is due from the County upon completion of the maintenance, which is September 30, 2008.

Recommendation

Staff recommends approval of the Right-of-Way Maintenance Agreement with the County effective October 1, 2007 through September 30, 2008.

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AGREEMENT BY AND BETWEEN
THE COUNTY OF VOLUSIA
AND THE CITY OF PORT ORANGE
FOR MAINTENANCE OF COUNTY ROADS

THIS AGREEMENT, enter into on this 1st day of October, 2007, by and between the COUNTY OF VOLUSIA, hereinafter called the COUNTY, and the CITY OF PORT ORANGE, hereinafter called the CITY.

WITNESSETH

WHEREAS, as a part of the continual updating of the County road system, the COUNTY, for the purpose of safety, has created roadway, roadside areas and median strips on that part of the County road system within the limits of the CITY; and

WHEREAS, the CITY hereto is of the opinion that the said roadways, roadside areas and median strips shall be attractively maintained;

WHEREAS, the parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party; and

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

1. The CITY shall be responsible for routine maintenance for all landscaped and/or turfed areas within COUNTY rights-of-way having limits described by ITEM 17, or subsequent amended limits mutually agreed to in writing by both parties. For the purpose of this agreement, the maintenance to be provided by the CITY is defined in ITEM 18.

2. The CITY shall be responsible for clean up, removal and disposal of all debris from the COUNTY'S rights-of-way (described by ITEM 17, or subsequent amended limits mutually agreed in writing by both parties) or from other normal occurrences such as vehicle accidents and spills.

3. To the extent permitted by Florida law, the CITY agrees that it will indemnify and hold harmless the COUNTY and all of the COUNTY'S officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the CITY during the performance of the contract, whether direct or indirect, and whether to any person

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or property to which the COUNTY or said parties may be subject, except that neither the CITY nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the negligence of the COUNTY or any of its officers, agents, or employees. This indemnification is intended for the County's benefit only. The City does not waive its sovereign immunity protection that may exist for claims by third parties and no third party shall have any right to claim any benefits under this indemnification.

4. If, at any time while the terms of this agreement are in effect, it shall come to the attention of the COUNTY, that the CITY'S responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this agreement, the County Manager, may, at his option, issue a written notice in care of the City Manager to place the said CITY on notice thereof. Thereafter the CITY shall have a period of (30) thirty calendar days within which to correct the cited deficiency or deficiencies. If said deficiency or deficiencies are not corrected within this time period the COUNTY may at its option, proceed as follows:

(A) Maintain the roadway, median strip or roadside area declared deficient with the COUNTY or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the CITY or

(B) Terminate this agreement in accordance with ITEM 11 of this agreement.

5. It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated or adjusted at any time in the future as found necessary by the COUNTY in order that the adjacent County road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the COUNTY.

6. The COUNTY agrees to pay to the CITY compensation for the cost of maintenance as described under ITEM 1 of this agreement. The payment will be a total sum of **\$ 4,975.60 for a one year agreement.** Unit costs as set in ITEM 18 will be adjusted on October 1st of each year by the percentage increase in the consumer price index (CPI) of the previous year. In the event this agreement is terminated as established by ITEM 11 herein, payment will be prorated to the date termination occurs.

7. Payment shall be made only after the performance of service by the CITY.

8. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

9. Records of cost incurred under terms of this Agreement shall be maintained and made available upon request to the COUNTY at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the COUNTY upon request. Records of costs incurred includes the CITY'S general accounting records, together with supporting documents and records, of the CITY and all subcontractors performing

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work, and all other records of the CITY and subcontractors considered necessary by the COUNTY for a proper audit of costs.

10. The CITY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the CITY in conjunction with this Agreement. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the COUNTY.

11. This Agreement or any part thereof is subject to termination under any one of the following conditions:

(A) In the event the COUNTY exercises the option identified by ITEM 4 of this Agreement.

(B) Either CITY or COUNTY with a (30) thirty day written notice.

(C) In the event that the Volusia County Council fails to make an annual appropriation to pay for the CITY'S services to be performed hereunder.

12. The CITY may construct additional landscaping within the limits of the rights-of-way identified as a result of this document, subject to the following conditions:

(A) Plans for any new landscaping shall be subject to approval by the COUNTY. The CITY shall not change or deviate from said plans without written approval by the COUNTY.

(B) All landscaping shall be developed and implemented in accordance with appropriate COUNTY safety and road design standards;

(C) All requirements and terms established by the Agreement shall also apply to any additional landscaping installed under this ITEM;

(D) The CITY agrees to complete, execute and comply with the requirements of the COUNTY'S standard permit;

(E) No change will be made in the payment terms established under ITEM 6 of this Agreement due to any increase or decrease in cost to the CITY resulting from the installation and maintenance of landscaping added under this ITEM;

(F) In the event this agreement is terminated as established under ITEM 11 herein, the CITY agrees to accept full responsibility for all additional maintenance described in this section at no additional cost to the COUNTY.

13. All work done on the COUNTY rights-of-way shall be accomplished in accordance

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with the Department of Transportation Manual on Uniform Traffic Control Devices and Safe Practices for Streets and Highway Construction.

14. This writing embodies the entire agreement and understanding between the parties hereto and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

15. This Agreement is nontransferable and nonassignable in whole or in part without consent of the COUNTY.

16. This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

17. The roadways included in this agreement are:

- Clyde Morris (Taylor Rd to Forest Branch Dr.)
- Spruce Creek (Nova to Taylor and Chamberlain to Treasure Isle)
- Taylor Rd (Dunlawton to Spruce Creek)
- ~~Commonwealth Blvd~~
- Spruce Creek Retention Pond

18. The routine maintenance activities, unit cost and performance standards are to be included under the agreement are as follows:

ROAD	ACTIVITY TYPE	UNIT	UNIT COST	PERFORMANCE STANDARDS	TOTAL COST
CLYDE MORRIS (Taylor Rd to Forest Branch Dr)	Small Machine Mowing	8.11 Acres	70.00/acre	4 Cycles	\$2,270.80
SPRUCE CREEK (Nova to Taylor) (Chamberlain to Treasure Isle)	Small Machine Mowing	3.16 Acres	70.00/acre	4 cycles	\$884.80
		.58 Acres	70.00/acre	4 cycles	\$162.40
TAYLOR RD (Dunlawton to Spruce Creek)	Small Machine Mowing	4.49 Acres	70.00/acre	4 cycles	\$1,257.20
SPRUCE CREEK RETENTION (Elda Lane to & Parkwood Entrance)	Small Machine Mowing	1.43 Acres	70.00/acre	4 cycles	\$400.40
TOTAL:					\$4,975.60

The activities shall be performed to meet or exceed the COUNTY'S performance standards.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

COUNTY OF VOLUSIA

By: _____
Chair, County Council

Attest: _____
County Manager

Approved as to Form and Legality:

Assistant County Attorney

CITY OF _____

By: _____
Mayor

Attest: _____
City Clerk

Approved as to Form and Legality:

City Attorney