

FPID ID: 218608-4-52-01

AGENCY (CITY): CITY OF PENSACOLA

DESCRIPTION: US 90 over Bayou Texar Bridge

MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter called “DEPARTMENT”) and the CITY OF PENSACOLA (hereinafter called “CITY”). The DEPARTMENT and the CITY are sometimes referred to in this AGREEMENT as a “Party” and collectively as the “Parties.”

RECITALS

1. The DEPARTMENT is preparing to paint, rehabilitate and repair the US 90 over Bayou Texar Bridge, Bridge No. 480193, within ESCAMBIA COUNTY, which will include painting the approach roadway pedestrian railing, decorative bridge pedestrian railing and bridge mounted light poles, in addition to replacing all missing parts and repairing concrete parapet damage pursuant to Financial Project Identification Number 218608-4-52-01.
2. Once the construction is completed, the CITY agrees to maintain the roadway pedestrian railing, bridge pedestrian railing and bridge mounted light poles on the US 90 over Bayou Texar Bridge, hereinafter referred to as the “Facilities”. For purposes of this agreement, the initial painting and rehabilitation of the Facilities will be referred to as the “PROJECT.” This PROJECT will be of benefit to the CITY.
3. The DEPARTMENT has jurisdiction over the operation and maintenance of the State Highway System;
4. The CITY has agreed to maintain the Facilities repaired and rehabilitated in the PROJECT in accordance with the terms below;
5. The CITY by CITY Council action on dated _____, 20__, a resolution is attached hereto as Exhibit “B” and incorporated by reference, evidences the CITY’s desire to enter into this Agreement and its officers’ authorization to do so; and

6. The DEPARTMENT is authorized pursuant to Section 334.044 and 335.055, Florida Statutes to enter into contracts and agreements with counties/municipalities for the maintenance of roadside facility improvements on the State Highway System.

NOW THEREFORE, in consideration of the mutual benefits to be derived by the terms of this AGREEMENT, the parties agree to the following:

The recitals set forth above are true and correct and are deemed incorporated herein by reference.

7. Upon completion of construction by the DEPARTMENT, the CITY will assume responsibility for maintenance of the PROJECT and shall perform all activities necessary to keep the Facilities fully operating, properly functioning, and in good condition. Required maintenance includes, but is not limited to cleaning, repainting and replacing any missing parts. All repairs or replacement will be in kind unless a variance is approved in writing by the DEPARTMENT.
8. All maintenance of the Facilities shall be in accordance with the provisions of the Manual of Uniform Traffic Control Devices and all other applicable local, state, or federal laws, rules, resolutions, or ordinances, and DEPARTMENT procedures, and shall be subject to periodic inspections by the DEPARTMENT.
9. The CITY covenants and agrees that it will indemnify and hold harmless to the extent provided by Section 768.28, Florida Statutes, the DEPARTMENT and all of the DEPARTMENT'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 or property to which the DEPARTMENT or said parties may be subject, except that neither the CITY nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees.

When either party receives notice of a claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim and report its finding to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver of any right herein.

10. The DEPARTMENT'S District Secretary shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this

Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

11. This AGREEMENT may be terminated under any one of the following conditions:

(A) By the DEPARTMENT if the CITY fails to correct a cited deficiency and perform its maintenance responsibility under this AGREEMENT, following fifteen (15) working days written notice;

(B) By the DEPARTMENT following sixty (60) calendar days' notice.

12. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the MAINTAINING AGENCY to 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 MAINTAINING AGENCY in conjunction with this Agreement.

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

14. This AGREEMENT shall be governed by and constructed in accordance with the law of the State of Florida. The parties stipulate that venue for any matter relating to this contract shall be in Leon County, Florida.

15. The CITY shall:

(A) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CITY during the term of the AGREEMENT; and

(B) expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract time.

16. Any and all notices given or required under this agreement shall be in writing and delivered via e-mail with a receipt acknowledgment or sent certified with return receipt to the following:

If to the DEPARTMENT: _____

Contact Person: _____

Address: _____

If to the CITY:

Contact Person: Amy Tootle, P.E.

Title: Public Works Director

Address: 2757 N. Palafox Street
Pensacola, FL 32501

17. All time limits provided hereunder shall run from the date of receipt of all such notices, demands, requests and other instruments.

18. The effective date of this Agreement shall be the latest date on which a party executes this Agreement.

19. LIST OF EXHIBITS:

Exhibit A: Project Plans FPID: 218608-4-52-01

Exhibit B: Resolution

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the CITY has caused this Agreement to be executed in its behalf this ____ day of _____, 20__, by its _____, being authorized to enter into and execute same by action of the CITY of Pensacola meeting in regular session on the ____ day of _____, 20__, and the DEPARTMENT has executed this Agreement through its District Secretary, District 3, Florida Department of Transportation, on the date indicated below.

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

ATTEST:

BY: _____
**PHILLIP GAINER
DISTRICT 3 SECRETARY**

**KRISSY COOK
EXECUTIVE SECRETARY
(SEAL)**

DATE: _____

Legal Review:

Office of General Counsel

BY: _____

ATTEST:

**Printed
Name:** _____

**Printed
Name:** _____

Title: _____

Title: (Seal) _____

Date: _____

Date: _____

Legal Review:

Printed Name: _____
Title: _____