

FPID ID: 437178-1-52-01

AGENCY (CITY/COUNTY): City of Pensacola

DESCRIPTION: SR 289 (9th Ave) over Carpenters Creek

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 replace a structurally deficient bridge culvert on SR 289 (9th Ave) over Carpenters Creek within the City of Pensacola, which will include construction of pedestals for lighting, underground electrical power service, running of conduit, and installation of pull boxes for bridge lighting pursuant to Financial Project Identification Number 437178-1-52-01. The Parties have previously executed a Locally Funded Agreement between the DEPARTMENT and the CITY, wherein the CITY has agreed to contribute Sixteen Thousand Three Hundred Thirteen Dollars and 00/100 Dollars (\$16,313.00) in aid of the construction.
2. The CITY will furnish and install lighting fixtures once construction is complete and the CITY agrees to maintain said fixtures, including the pedestals, underground power service, conduit, pull boxes, and all components of the lighting system, hereinafter referred to as the “Facilities.” For purposes of this agreement, the installation and maintenance 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 installed in the PROJECT in accordance with the terms below;
5. The CITY by City Council action on dated _____, 2020, a Summary of Council Meeting Minutes 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, with a minimum of 90% of the lights burning for any lighting type (e.g., high mast, standard, underdeck, and sign) or roadway system at all times in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Required maintenance includes, but is not limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the

Facilities. 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' written 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: Jonathan Harris
Title: District 3 Utility Administrator
Address: 1074 Highway 90 East
ChIPLEY, Florida 32428

If to the CITY:

Contact Person: Ryan Novota
Title: Transportation Engineer
Address: 2757 North Palafox Street
Pensacola Florida 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: 437178-1
Exhibit B: Council Meeting Minutes

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the CITY has caused this Agreement to be executed in its behalf this _____ day of _____, 2020, by its Mayor, being authorized to enter into and execute same by action of the City of Pensacola meeting in regular session on the _____ day of _____, 2020, 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**

**_____
KRISSEY COOK
EXECUTIVE SECRETARY
(SEAL)**

DATE: _____

**Legal
Review:**

Office of General Counsel

FOR THE CITY OF PENSACOLA

BY: _____

ATTEST:

Printed Name: Grover C. Robinson IV

Printed Name: _____

Title: Mayor of Pensacola

Title: (Seal)

Date: _____

Date: _____

Legal Review:

Printed Name: _____

Title: