

**Financial Project Number(s):** 409334-1-58-02

**Contract No.:** \_\_\_\_\_

**Vendor Number:** F596000406005

**JOINT PARTICIPATION AGREEMENT**  
**BETWEEN**  
**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**AND**  
**CITY OF PENSACOLA, FLORIDA**

This AGREEMENT is between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, with offices at *1074 Highway 90 East, Chipley, FL 32428* (the "DEPARTMENT"), and **CITY OF PENSACOLA**, a political subdivision of the State of Florida, with offices at *222 West Main Street, Pensacola, Florida 32502* (the "LOCAL AGENCY"). The DEPARTMENT and the LOCAL AGENCY are sometimes referred to in this AGREEMENT as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this AGREEMENT pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the Parties are desirous of having the LOCAL AGENCY CITY OF PENSACOLA, make certain improvements in connection with Financial Project Number **409334-1-58-02**, which are further described on Exhibit "A" – Project Description and Responsibilities, attached hereto and made a part hereof (the "PROJECT"); and

WHEREAS, the LOCAL AGENCY and the DEPARTMENT previously entered into an AGREEMENT on November 14, 2018, (attached hereto as Composite Exhibit G and collectively called the AGREEMENT) wherein the LOCAL AGENCY agreed to convey to the DEPARTMENT a fee simple interest in property described in Exhibit A of the AGREEMENT originally reflecting the DEPARTMENT's responsibility for the design and construction of a sign to signify entrance to the LOCAL AGENCY to replace the former Five Flags Memorial Plaza, which is described in Exhibit C of the AGREEMENT; and

WHEREAS, pursuant to the AMENDMENT (attached hereto as part of Composite Exhibit G), it is agreed that the LOCAL AGENCY shall be responsibility for the design and construction of the replacement sign in accordance with terms of this JOINT PARTICIPATION AGREEMENT;

WHEREAS, the PROJECT is on the State Highway System, is not revenue producing and is contained in the adopted work program; and

WHEREAS, the DEPARTMENT is prepared to reimburse the LOCAL AGENCY for the actual costs of the PROJECT in an amount up to but not to exceed **THREE HUNDRED**

**SEVENTY THOUSAND AND 00/100 DOLLARS (\$370,000)** that has been allocated in the fiscal year 2022-2023; and

WHEREAS, the implementation of this PROJECT is in the best interest of both Parties and it would be most practical, expeditious, and economical for the LOCAL AGENCY to perform services to complete the PROJECT; and

WHEREAS, the DEPARTMENT will provide design and construction approval of the City of Pensacola sign within a reasonable time frame prior to construction of the sign in coordination with the CITY. The City of Pensacola sign shall be located within the parcel in accordance with the lateral offset criteria in the Department's Design Manual (FDM). DEPARTMENT approval of the sign location will be documented through the DEPARTMENT permitting process. The DEPARTMENT will not provide final approval of the sign installation on the DEPARTMENT right-of-way until after final acceptance of the Pensacola Bay Bridge Replacement project.

WHEREAS, the intent of this AGREEMENT is to establish the terms and conditions of the funding and production of this PROJECT; and

WHEREAS, the LOCAL AGENCY, by resolution number *18-55, dated November 8, 2018*, a copy of which is attached hereto as Exhibit "D" and made a part hereof, has authorized the *Mayor of the City of Pensacola* to enter into this AGREEMENT.

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the terms of this AGREEMENT, the Parties agree as follows:

**1 – TERM:**

- A. This AGREEMENT shall begin upon full execution by both Parties and the LOCAL AGENCY shall complete the PROJECT on or before **August 31, 2023**. If the LOCAL AGENCY does not complete the PROJECT within this time period, this AGREEMENT will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the LOCAL AGENCY and granted in writing by the DEPARTMENT prior to the expiration of this AGREEMENT. Expiration of this AGREEMENT will be considered termination of the PROJECT. The LOCAL AGENCY acknowledges that no reimbursements for the actual costs of the PROJECT will be provided by the DEPARTMENT under this AGREEMENT for work performed on the PROJECT that is not timely completed and invoiced in accordance with the terms of this AGREEMENT, for work performed prior to full execution of this AGREEMENT, or for work performed after expiration of this AGREEMENT. Notwithstanding the foregoing, the LOCAL AGENCY shall remain obligated to complete all aspects of the PROJECT identified in this AGREEMENT in accordance with its terms, unless otherwise agreed by the Parties in writing.

**2 – SERVICES AND PERFORMANCE:**

- A. The LOCAL AGENCY shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The PROJECT and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".

### **3 – AMENDMENTS, EXTENSIONS AND ASSIGNMENT:**

- A. This AGREEMENT may be amended or extended upon mutual written agreement of the Parties.
- B. This AGREEMENT shall not be assigned, transferred or otherwise encumbered by the LOCAL AGENCY under any circumstances without the prior written consent of the DEPARTMENT.

### **4 – TERMINATION OR SUSPENSION OF PROJECT:**

- A. The DEPARTMENT may, by written notice to the LOCAL AGENCY, suspend any or all of the DEPARTMENT'S obligations under this AGREEMENT for the LOCAL AGENCY'S failure to comply with applicable laws or the terms of this AGREEMENT until such time as the event or condition resulting in such suspension has ceased or been corrected. The DEPARTMENT may also terminate this AGREEMENT, in whole or in part, at any time the interest of the DEPARTMENT requires such termination.
  - 1. If the DEPARTMENT terminates this AGREEMENT, the DEPARTMENT shall notify the LOCAL AGENCY of such termination in writing within thirty (30) days of the DEPARTMENT'S determination to terminate this AGREEMENT, with instructions as to the effective date of termination or to specify the stage of work at which the AGREEMENT is to be terminated.
  - 2. The Parties may also terminate this AGREEMENT when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions through mutual written agreement.
  - 3. If this AGREEMENT is terminated before performance is completed, the LOCAL AGENCY shall be reimbursed only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this AGREEMENT. All work in progress on the DEPARTMENT right-of-way will become the property of the DEPARTMENT and will be turned over promptly by the LOCAL AGENCY.
  - 4. Upon termination of this AGREEMENT, the LOCAL AGENCY shall, within thirty (30) days, refund to the DEPARTMENT any funds determined by the DEPARTMENT to have been expended in violation of this AGREEMENT.

## 5 – PROJECT COST:

- A. The estimated cost of the PROJECT is \$ 370,0000.
- B. The DEPARTMENT agrees to reimburse the LOCAL AGENCY for the actual costs of the PROJECT in an amount up to but not to exceed THREE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$370,000). The schedule of funding is more fully described in Exhibit “B”, attached hereto and made a part hereof. The LOCAL AGENCY agrees to bear all expenses in excess of the DEPARTMENT’S participation, including any cost overruns or deficits incurred in connection with completion of the PROJECT.

## 6 – COMPENSATION AND PAYMENT:

- A. The DEPARTMENT shall reimburse the LOCAL AGENCY for actual costs of the PROJECT, as further described in Exhibit “A”.
- B. The LOCAL AGENCY shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The PROJECT and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit “A”.
- C. Invoices shall be submitted by the LOCAL AGENCY in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable, and verifiable units of deliverables as established in Exhibit “A”. Deliverables must be received and accepted in writing by the DEPARTMENT’S Project Manager prior to payments. Requests for reimbursements by the LOCAL AGENCY shall include an invoice, progress report and supporting documentation for the period of services being billed that are acceptable to the DEPARTMENT. The LOCAL AGENCY shall use the format for the invoice and progress report that is approved by the DEPARTMENT.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the LOCAL AGENCY and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit “A” was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in Attachment “F” – Contract Payment Requirements.
- E. There shall be no reimbursement for travel expenses under this AGREEMENT.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the DEPARTMENT’S Comptroller under Section 334.044(29), Florida Statutes. If the DEPARTMENT determines that the performance of the LOCAL AGENCY is unsatisfactory, the DEPARTMENT shall notify

the LOCAL AGENCY of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the DEPARTMENT. The LOCAL AGENCY shall, within five (5) days after notice from the DEPARTMENT, provide the DEPARTMENT with a corrective action plan describing how the LOCAL AGENCY will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the DEPARTMENT, the LOCAL AGENCY will not be reimbursed to the extent of the non-performance. The LOCAL AGENCY will not be reimbursed until the LOCAL AGENCY resolves the deficiency. If the deficiency is subsequently resolved, the LOCAL AGENCY may bill the DEPARTMENT for the unpaid reimbursement request(s) during the next billing period. If the LOCAL AGENCY is unable to resolve the deficiency, the funds shall be forfeited at the end of the AGREEMENT'S term.

- G. The LOCAL AGENCY should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than twenty (20) working days from the DEPARTMENT'S receipt of the invoice. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables and costs incurred are received, inspected, and approved. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the LOCAL AGENCY. Interest penalties of less than one (1) dollar will not be enforced unless the LOCAL AGENCY requests payment. Invoices that have to be returned to the LOCAL AGENCY because of LOCAL AGENCY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for the LOCAL AGENCY who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. The LOCAL AGENCY shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this AGREEMENT shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this AGREEMENT and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL AGENCY'S general accounting records and the PROJECT records, together with supporting documents and records, of the contractor and all subcontractors performing work on the PROJECT, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

- J. Upon request, the LOCAL AGENCY agrees to provide progress reports to the DEPARTMENT in the standard format used by the DEPARTMENT and at intervals established by the DEPARTMENT. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of the PROJECT and of details thereof.
- K. If, after completion of the PROJECT, any claim is made by the DEPARTMENT resulting from an audit or for work or services performed pursuant to this AGREEMENT, the DEPARTMENT may offset such amount from payments due for work or services done under any agreement which it has with the LOCAL AGENCY owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the DEPARTMENT. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the DEPARTMENT.
- L. The LOCAL AGENCY must submit the final invoice on the PROJECT to the DEPARTMENT within one hundred twenty (120) days after completion of the PROJECT. Invoices submitted after the 120-day time period may not be paid.
- M. In the event this AGREEMENT is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
- “The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.”
- N. The DEPARTMENT’S obligation to pay is contingent upon an annual appropriation by the Florida Legislature.
- O. This AGREEMENT does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, Florida Statutes.
- P. Any PROJECT funds made available by the DEPARTMENT pursuant to this AGREEMENT which are determined by the DEPARTMENT to have been expended by the LOCAL AGENCY in violation of this AGREEMENT or any other applicable law or regulation, shall be promptly refunded in full to the DEPARTMENT. Acceptance by the

DEPARTMENT of any documentation or certifications, mandatory or otherwise permitted, that the LOCAL AGENCY files shall not constitute a waiver of the DEPARTMENT'S rights as the funding agency to verify all information at a later date by audit or investigation.

- Q. In determining the amount of the payment, the DEPARTMENT will exclude all costs incurred by the LOCAL AGENCY prior to the execution of this AGREEMENT, costs incurred after the expiration of this AGREEMENT, costs which are not provided for as described in this AGREEMENT, costs agreed to be borne by the LOCAL AGENCY or its contractors and subcontractors for not meeting the terms of this AGREEMENT, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the DEPARTMENT.

**7 – GENERAL REQUIREMENTS:**

- A. The LOCAL AGENCY shall complete the PROJECT with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this AGREEMENT and all applicable laws.
- B. The LOCAL AGENCY shall comply and require its contractors and subcontractors to comply with all terms and conditions of this AGREEMENT and all federal, state, and local laws and regulations applicable to the PROJECT.
- C. The LOCAL AGENCY shall have the sole responsibility for resolving claims and requests for additional work for the PROJECT by the LOCAL AGENCY'S contractors and consultants. No funds will be provided for payment of claims or additional work on the PROJECT under this AGREEMENT without the prior written approval of the claim or request for additional work by the DEPARTMENT.
- D. The LOCAL AGENCY:
1. Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL AGENCY during the term of the AGREEMENT; and
  2. Shall expressly require any subcontractors performing work or providing services pursuant to the AGREEMENT 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 term of the AGREEMENT.
- E. The LOCAL AGENCY 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 LOCAL AGENCY in conjunction with this AGREEMENT. Specifically, if the LOCAL AGENCY is acting on behalf of a public agency, the LOCAL AGENCY shall:

1. Keep and maintain public records required by the DEPARTMENT to perform the service.
2. Upon request from the DEPARTMENT'S custodian of public records, provide the DEPARTMENT with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the AGREEMENT'S term and following completion of the AGREEMENT if the LOCAL AGENCY does not transfer the records to the DEPARTMENT.
4. Upon completion of the AGREEMENT, transfer, at no cost, to the DEPARTMENT all public records in possession of the LOCAL AGENCY or keep and maintain public records required by the DEPARTMENT to perform the service. If the LOCAL AGENCY transfers all public records to the DEPARTMENT upon completion of the AGREEMENT, the LOCAL AGENCY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LOCAL AGENCY keeps and maintains public records upon completion of the AGREEMENT, the LOCAL AGENCY shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the DEPARTMENT, upon request from DEPARTMENT'S custodian of public records, in a format that is compatible with the information technology systems of the DEPARTMENT.

F. IF THE LOCAL AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LOCAL AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 3  
850-330-1391  
[D3precustodian@dot.state.fl.us](mailto:D3precustodian@dot.state.fl.us)  
Florida Department of Transportation  
District 3 – Office of General Counsel  
1074 Highway 90 East  
Chipley, FL 32428

G. Failure by the LOCAL AGENCY to grant such public access shall be grounds for immediate unilateral cancellation of this AGREEMENT by the DEPARTMENT. The LOCAL AGENCY shall promptly provide the DEPARTMENT with a copy of any request to inspect or copy public records in possession of the LOCAL AGENCY and shall



promptly provide the DEPARTMENT a copy of the LOCAL AGENCY'S response to each such request.

#### **8 – CONTRACTS OF THE LOCAL AGENCY:**

- A. The DEPARTMENT has the right to review and approve any and all third party contracts with respect to the PROJECT before the LOCAL AGENCY executes any contract or obligates itself in any manner requiring the disbursement of DEPARTMENT funds under this AGREEMENT, including consultant or construction contracts or amendments thereto. If the DEPARTMENT exercises this right and the LOCAL AGENCY fails to obtain such approval, the DEPARTMENT may deny payment to the LOCAL AGENCY. The DEPARTMENT may review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the Parties that participation by the DEPARTMENT in a project that involves the purchase of commodities or contractual services or the purchasing of capital equipment or the equipping of facilities, where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Chapter 287.017 Florida Statutes, is contingent on the LOCAL AGENCY complying in full with the provisions of Chapter 287.057, Florida Statutes. The LOCAL AGENCY shall certify to the DEPARTMENT that the purchase of commodities or contractual services has been accomplished in compliance with Chapter 287.057, Florida Statutes. It shall be the sole responsibility of the LOCAL AGENCY to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the maximum participation amount in this AGREEMENT must be approved by the DEPARTMENT prior to LOCAL AGENCY execution. Failure to obtain such approval, and subsequent execution of an amendment to the AGREEMENT, if required, shall be sufficient cause for nonpayment by the DEPARTMENT.
- C. Participation by the DEPARTMENT in a project that involves a consultant contract for engineering, architecture or surveying services, is contingent on the LOCAL AGENCY'S complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the LOCAL AGENCY shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.
- D. If the PROJECT is procured pursuant to Chapter 255 for construction services and at the time of competitive solicitation for the PROJECT, 50 percent or more of the cost of the PROJECT is to be paid from state-appropriated funds, then the LOCAL AGENCY must comply with the requirements of Section 255.0991, Florida Statutes.

- E. The LOCAL AGENCY agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**9 – CONSTRUCTION STANDARDS AND REQUIRED APPROVALS:**

- A. In the event the PROJECT includes construction, the following provisions are incorporated into this AGREEMENT:

- 1. In the event the PROJECT involves construction on the DEPARTMENT’S right-of-way, the LOCAL AGENCY shall provide the DEPARTMENT with written notification of either its intent to:
  - i. Award the construction of the PROJECT to a qualified contractor which is the lowest and best bidder in accordance with the applicable state and federal statutes, rules, and regulations. The LOCAL AGENCY shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or
  - ii. Construct the PROJECT utilizing existing LOCAL AGENCY employees, if the LOCAL AGENCY can complete said PROJECT within the time frame set forth in this AGREEMENT. The LOCAL AGENCY’S use of this option is subject to approval by the DEPARTMENT.
- 2. The LOCAL AGENCY shall hire a qualified contractor using the LOCAL AGENCY’S normal bid procedures to perform the construction work for the PROJECT.
- 3. The LOCAL AGENCY is responsible for provision of Construction Engineering Inspection (CEI) services. The DEPARTMENT reserves the right to require the LOCAL AGENCY to hire a DEPARTMENT pre-qualified consultant firm that includes one individual that has completed the Advanced Maintenance of Traffic Level Training. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the PROJECT meets the minimum construction standards established by DEPARTMENT. The DEPARTMENT shall have the right to approve the CEI firm. The DEPARTMENT shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the PROJECT. Subject to the approval of the DEPARTMENT, the LOCAL AGENCY may choose to satisfy the requirements set forth in this paragraph by either hiring a DEPARTMENT prequalified consultant firm or utilizing LOCAL AGENCY staff that meet the requirements of this paragraph, or a combination thereof.
- 4. The LOCAL AGENCY shall ensure work for any portion of the PROJECT to be located on DEPARTMENT right-of-way shall conform to all applicable standards

of the DEPARTMENT, as provided in Exhibit "O" – Terms and Conditions of Construction in Department Right of Way, which is attached to and incorporated into this AGREEMENT if a portion of the PROJECT will be located on the DEPARTMENT'S right-of-way.

5. The LOCAL AGENCY shall adhere to the DEPARTMENT'S Conflict of Interest Procedure (FDOT Topic No. 375-030-006).
6. The LOCAL AGENCY shall require the LOCAL AGENCY'S contractor to post a payment and performance bond in accordance with applicable law.
7. The LOCAL AGENCY shall be responsible to ensure that the construction work under this AGREEMENT is performed in accordance with the approved construction documents, and that it will meet all applicable LOCAL AGENCY and DEPARTMENT standards.
8. Upon completion of the work authorized by this AGREEMENT, the LOCAL AGENCY shall notify the Department in writing of the completion of construction of the PROJECT; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached hereto and incorporated herein as Exhibit "C", Engineers Certification of Completion. The certification shall state that work has been completed in compliance with the PROJECT construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.
9. The LOCAL AGENCY shall provide the DEPARTMENT with as-built plans of any portions of the PROJECT funded through the AGREEMENT prior to final inspection.

**10 – MAINTENANCE OBLIGATIONS:**

A. In the event the PROJECT includes construction then the following provisions are incorporated into this AGREEMENT:

1. The LOCAL AGENCY agrees to maintain any portion of the Project not located on the State Highway System constructed under this AGREEMENT for its useful life. If the LOCAL AGENCY constructs any improvement on DEPARTMENT right-of-way, the LOCAL AGENCY

shall

shall not

maintain the improvements located on the DEPARTMENT right-of-way made for their useful life, as well as all adjacent landscaping on that area. If the LOCAL AGENCY is required to maintain PROJECT improvements located on the DEPARTMENT right-of-way beyond final acceptance, then LOCAL AGENCY shall, prior to any disbursement of the State funding provided under this AGREEMENT, also execute a Maintenance Memorandum of Agreement in a form that is acceptable to the DEPARTMENT along with a Use and Occupancy Agreement to lease the property to be maintained for a period of fifty (50) years. The LOCAL AGENCY has agreed to the foregoing by resolution, and such resolution is attached and incorporated into this AGREEMENT as Exhibit "E". This provision will survive termination of this AGREEMENT.

#### **11 – RESTRICTIONS, PROHIBITIONS, CONTROLS AND LABOR PROVISIONS:**

- A. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- B. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- C. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the DEPARTMENT to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the LOCAL AGENCY.
- D. No funds received pursuant to this AGREEMENT may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

- E. The DEPARTMENT shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this AGREEMENT.

## **12 – INDEMNIFICATION AND INSURANCE:**

- A. It is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof, a third-party beneficiary under this AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this AGREEMENT. The LOCAL AGENCY guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the LOCAL AGENCY or any subcontractor, in connection with this AGREEMENT. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the LOCAL AGENCY agrees to indemnify and hold harmless the DEPARTMENT, including the DEPARTMENT’S officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the LOCAL AGENCY and persons employed or utilized by the LOCAL AGENCY in the performance of this AGREEMENT. This indemnification shall survive the termination of this AGREEMENT. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the LOCAL AGENCY’S sovereign immunity. Additionally, the LOCAL AGENCY agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this AGREEMENT:

“To the fullest extent permitted by law, the LOCAL AGENCY’S contractor/consultant shall indemnify and hold harmless the LOCAL AGENCY and the State of Florida, Department of Transportation, including the DEPARTMENT’S officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor or consultant and persons employed or utilized by the contractor or consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the LOCAL AGENCY’S sovereign immunity.”

- B. The LOCAL AGENCY shall provide Workers’ Compensation Insurance in accordance with Florida’s Workers’ Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultants have Workers’ Compensation Insurance for their employees in accordance with Florida’s Workers’ Compensation law.

If using “leased employees” or employees obtained through professional employer organizations (“PEO’s”), ensure that such employees are covered by Workers’ Compensation insurance through the PEO’s or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida’s Workers’ Compensation law.

- C. If the LOCAL AGENCY elects to self-perform the PROJECT, and such self-performance is approved by the DEPARTMENT in accordance with the terms of this AGREEMENT, the LOCAL AGENCY may self-insure, and proof of self-insurance shall be provided to the DEPARTMENT. If the LOCAL AGENCY elects to hire a contractor or consultant to perform the PROJECT, then the LOCAL AGENCY shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the AGREEMENT. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The LOCAL AGENCY shall or cause its contractor to cause the DEPARTMENT to be made an Additional Insured as to such insurance. Such coverage shall be on an “occurrence” basis and shall include Products/Completed Operations coverage. The coverage afforded to the DEPARTMENT as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the AGREEMENT and may not be shared with or diminished by claims unrelated to the AGREEMENT. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the LOCAL AGENCY is a state agency or subdivision of the State of Florida that elects to self-perform the PROJECT. Prior to the execution of the AGREEMENT, and at all renewal periods which occur prior to final acceptance of the work, the DEPARTMENT shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The DEPARTMENT shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The DEPARTMENT’S approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the DEPARTMENT may have.

- D. When the AGREEMENT includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the LOCAL AGENCY shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. The railroad shall also be added along with the DEPARTMENT as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the AGREEMENT, and at all renewal periods which occur prior to final acceptance of the work, both the DEPARTMENT and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the DEPARTMENT and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The DEPARTMENT'S approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the DEPARTMENT may have.
- E. When the AGREEMENT involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the DEPARTMENT as an Additional Insured on the Commercial General Liability policy/ies procured above.

### **13 – MISCELLANEOUS:**

- A. In no event shall any payment to the LOCAL AGENCY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist on the part of the LOCAL AGENCY and the making of such payment by the DEPARTMENT, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.
- B. If any provision of this AGREEMENT is held invalid, the remainder of this AGREEMENT shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- C. The Parties agree that the LOCAL AGENCY, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the DEPARTMENT as a result of this AGREEMENT.

- D. By execution of this AGREEMENT, the LOCAL AGENCY represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- E. Nothing in this AGREEMENT shall require the LOCAL AGENCY to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the AGREEMENT violate any applicable state law, the LOCAL AGENCY will at once notify the DEPARTMENT in writing in order that appropriate changes and modifications may be made by the Parties to the end that the LOCAL AGENCY may proceed as soon as possible with the PROJECT.
- F. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same AGREEMENT. A facsimile or electronic transmission of this AGREEMENT with a signature on behalf of a Party will be legal and binding on such Party.
- G. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether written or oral. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- H. The DEPARTMENT reserves the right to unilaterally terminate this Agreement for failure by the LOCAL AGENCY to comply with the provisions of Chapter 119, Florida Statutes.
- I. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of this AGREEMENT and Florida law, the laws of Florida shall prevail. The LOCAL AGENCY agrees to waive forum and venue and that the DEPARTMENT shall determine the forum and venue in which any dispute under this AGREEMENT is decided.
- J. Notices pursuant to this AGREEMENT shall be sent by U.S. Mail to the following addresses:

FOR THE DEPARTMENT:

Florida Department of Transportation – Local Programs Office  
1074 Highway 90  
Chipley, Florida 32428



FOR THE LOCAL AGENCY:

CITY OF PENSACOLA – City Administrator  
222 W Main Street  
Pensacola, Florida 32502

**IN WITNESS WHEREOF**, the Parties have executed this AGREEMENT on the dates set forth below.

LOCAL AGENCY:

CITY OF PENSACOLA, FLORIDA

By: David Forte  
Name: [Signature]  
Title: Deputy City Administrator  
Date: 9/30/02

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ (Seal)

LOCAL AGENCY LEGAL REVIEW:

By: [Signature]

DEPARTMENT:

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Krissy Cook  
Executive Secretary (Seal)

DEPARTMENT LEGAL REVIEW:

By: \_\_\_\_\_  
Office of the General Counsel

**EXHIBIT A****PROJECT DESCRIPTION AND RESPONSIBILITIES**FPN: 409334-1-58-02

This exhibit forms an integral part of the Agreement between the State of Florida, Department of Transportation and  
The City of Pensacola (the Recipient)

**PROJECT LOCATION:**

- The project is on the National Highway System.
- The project is on the State Highway System.

**PROJECT LENGTH AND MILE POST LIMITS:** 300ft, RDWY 48100000 at approximately MP 3.451

**PROJECT DESCRIPTION:** The City of Pensacola intends to replace the Five Flags Memorial removed by the Department during construction of the Three Mile Bridge project. The project will consist of the design and construction of a sign that displays a welcome message, such as "now entering" or "welcome to" Pensacola. The project will include minimal grading, landscaping, hardscaping, and potential adjustment to an existing storm water inlet located in close proximity to the project area.

**SPECIAL CONSIDERATIONS BY RECIPIENT:**

The Recipient is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities. The Recipient is required to provide a copy of the design plans for the Department's review and approval to coordinate permitting with the Department, and notify the Department prior to commencement of any right-of-way activities.

In accordance with Section 9a. of this Agreement, the Parties agree as follows:

The Department hereby notifies the Recipient that for projects that are not located on the Department's right-of-way, the Recipient is required to hire a contractor prequalified by the Department.

In accordance with Section 9a. of this Agreement, the Parties agree as follows:

For the provision of Construction Engineering Inspection (CEI) services, the Recipient is required to hire a Department pre-qualified consultant in the appropriate work type.

In accordance with Section 9a. of this Agreement, the Parties agree as follows:

The Recipient is required to hire a Department pre-qualified consultant in the appropriate work type for the design phase of the Project.

The Recipient shall be responsible for all permitting activities related to the project and notify the Department prior to commencement of any right-of-way activities.

The Recipient shall provide a copy of the design plans for the Department's review and approval prior to advertisement. Plans shall be submitted at 60%, 90% and final plans with the engineer's cost estimate, Utility Certification, Permit Certification, Right of Way Certification, Railroad Certification, and a complete set of draft bid documents in PDF (Portable Document Format). The Recipient shall be responsible for addressing all plan review comments in the Department's

Electronic Review Comments (ERC) System.

The Recipient shall submit to the Department the bid tabulations and award intent for review and concurrence prior to award and will submit the signed construction contract for records upon execution of the final document.

Off the State Highway System (Off-System) construction projects must be administered in accordance with latest version of the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways Florida (also known as the Florida Greenbook).

On the State Highway System (On-System) construction projects must be administered in accordance with the FDOT Construction Project Administration Manual (Topic no. 700-000-000). Materials will be inspected in accordance with the FDOT Sampling Testing and Reporting Guide by Material Description and the FDOT Materials Manual (Topic No. 675-000-000). Divisions II and III of the FDOT Standard Specifications for Road and Bridge Construction and implemented modifications must be used. The Recipient will be responsible for all project level inspection, verification testing, and assuring all data are entered into Materials Acceptance and Certification System (MAC) as appropriate. In addition, the following Off the State Highway System (Off-System) and Off the National Highway System projects will be administered as above: all bridge projects; box culverts; and all projects with a construction value of \$10 million or more.

The Recipient shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Study to be completed by NA
- b) Design to be completed by 2/15/23
- c) Right-of-Way requirements identified and provided to the Department by NA
- d) Right-of-Way to be certified by NA
- e) Construction contract to be let by 4/15/23.
- f) Construction to be completed by 8/31/23.

If this schedule cannot be met, the Recipient will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of funding.

**SPECIAL CONSIDERATIONS BY DEPARTMENT:**

The Department will issue a Notice to Proceed to advertise for construction to the Recipient after final plans, bid documents, construction estimate, and all necessary certifications have been reviewed and approved.

Select Agreement

**EXHIBIT B  
SCHEDULE OF FINANCIAL ASSISTANCE**

PHASE OF WORK by Fiscal Year:		MAXIMUM PARTICIPATION			Indicate source of Local funds
		(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	
<b>RECIPIENT NAME &amp; BILLING ADDRESS:</b> City of Pensacola 222 West Main Street Pensacola, Florida 32502		<b>FINANCIAL PROJECT NUMBER:</b> 409334-1-58-02			
<b>Design- Phase 34</b>	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Design Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
<b>Right-of-Way- Phase 44</b>					
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Right-of-Way Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
<b>Construction- Phase 54</b>					
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Construction Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
<b>Construction Engineering and Inspection - Phase 64</b>					
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Construction Engineering and Inspection Cost		\$ 0.00 %	\$ 0.00 %	\$ 0.00 %	
<b>(Phase : 58)</b>					
FY: 2023	Maximum Department Participation (BRP - State funds)	\$370,000.00	\$0.00	\$370,000.00	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
FY:	Maximum Department Participation (Insert Program Name)	\$	\$	\$	<input type="checkbox"/> In-Kind <input type="checkbox"/> Cash
Total Cost		\$370,000.00 %	\$ 0.00 %	\$370,000.00 %	
<b>TOTAL COST OF THE PROJECT</b>		\$370,000.00	\$ 0.00	\$370,000.00	

**COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:**

I certify that the cost for each line item budget category has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, F.S. Documentation is on file evidencing the methodology used and the conclusions reached.

Maria Showalter - Local Programs Administrator  
District Grant Manager Name

Signature \_\_\_\_\_ Date \_\_\_\_\_

Select Agreement

EXHIBIT C

(select above)

**Engineer's Certification of Compliance.** The Recipient shall complete and submit the following Notice of Completion and, if applicable, Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.

NOTICE OF COMPLETION

STATE-FUNDED GRANT AGREEMENT

Between

THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
and City of Pensacola

PROJECT DESCRIPTION: Replacement of sign to signify entrance to City of Pensacola to replace the former Five Flags Memorial Plaza.

FPID#: 409334-1-58-02

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ENGINEER'S CERTIFICATION OF COMPLIANCE**

In accordance with the Terms and Conditions of the State-Funded Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification the Recipient shall furnish the Department a set of "as-built" plans certified by the Engineer of Record/CEI.

By: \_\_\_\_\_ P.E.

SEAL: Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Select Agreement**

**EXHIBIT D**

**RECIPIENT RESOLUTION**

The Recipient's Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

**Select Agreement****EXHIBIT F****CONTRACT PAYMENT REQUIREMENTS****Florida Department of Financial Services, Reference Guide for State Expenditures  
Cost Reimbursement Contracts**

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

**Salaries:** Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

**Fringe benefits:** Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown. Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

**Travel:** Reimbursement for travel must be in accordance with s. 112.061, F.S., which includes submission of the claim on the approved state travel voucher along with supporting receipts and invoices.

**Other direct costs:** Reimbursement will be made based on paid invoices/receipts and proof of payment processing (cancelled/processed checks and bank statements). If nonexpendable property is purchased using state funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with DMS Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in s. 273.02, F.S., for subsequent transfer to the State.

**Indirect costs:** If the contract stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

**Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.**

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.



## **EXHIBIT G**

Composite Exhibit - Original Agreement, Deed and Amendment to Original agreement

Item/Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

**AGREEMENT**  
**BETWEEN**  
**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**AND**  
**THE CITY OF PENSACOLA**

This Agreement is entered into by the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (the "Department") and the CITY OF PENSACOLA, a municipal corporation authorized and existing under the laws of the State of Florida (the "City").

**RECITALS**

1. The Department has undertaken a project (FDOT Item/Segment No. 4093341) for the replacement of SR30 Pensacola Bay Bridge No. 480035 (the "Project").
2. After the beginning of construction, the Department determined to incorporate in the Project the design and construction of the 17<sup>th</sup> Avenue Interchange on the northern landing of the Pensacola Bay Bridge.
3. The Department requires additional right of way for the construction of the proposed Interchange.
4. Pursuant to section 337.25(1)(b), Florida Statutes, the Department may accept donations of any land, buildings, or other improvements, including personal property within such buildings or on such lands with or without such conditions, reservations, or reverter provisions as are acceptable to the Department. Such donations may be used as transportation rights-of-way or to secure or use transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System.
5. The City is the current owner of property ("Property") upon which the "Pensacola Florida – City of Five Flags" memorial ("Five Flags Memorial") is located, and which Property can be used as transportation right-of-way for anticipated transportation facilities associated with the 17<sup>th</sup> Avenue Interchange portion of the Project.
6. The City desires to donate the Property to the Department upon the condition, but not as any form of consideration but only as mitigation of impacts to the City and as a replacement, that the Five Flags Memorial be replaced with a sign by and at the sole expense of the Department.
7. The Department is authorized pursuant to Section 334.044, Florida Statutes, to enter into contracts and agreements, and pursuant to Section 337.25 to accept donations of land and other property for transportation rights of way.
8. The City is authorized to enter into this Agreement pursuant to the Resolution of its City Council attached hereto.

Item/Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

NOW THEREFORE, in consideration of the mutual benefits to be derived from the Project and the Interchange, the parties agree to the following:

9. The recitals set forth in numbered paragraphs 1 through 8 above are true and correct and are deemed incorporated into this Agreement.
10. At, or within 15 days after, the execution of this Agreement by the City and the Department, the City shall convey to the Department a fee simple interest in the Property by deed in the form attached to this Agreement as Exhibit "A," and simultaneously therewith supply the Department with an executed Donation of Property to FDOT form in the form attached to this Agreement as Exhibit "B."
11. The replacement of the Five Flags Memorial with a sign will be performed pursuant to the provisions of Exhibit "C" attached to this Agreement. Simultaneously with the execution and delivery of Exhibits "A" and "B", the City will deliver a Use and Occupancy Agreement signed on the City's behalf and in the form attached to this Agreement as Exhibit "D".
12. The City makes the conveyance of the property interests referred to above as a negotiated donation of said property interests to the State of Florida for the use of the Department, and acknowledges and waives its rights to have such property interests appraised including therein the Five Flags Memorial, to accompany the appraiser during the appraisal inspection of the property, to receive full compensation of the above referenced property, and to receive reimbursement for reasonable fees and costs.
13. The City hereby confirms that it complied with all applicable federal regulations when it acquired the Property.
14. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the City without the prior written consent of the Department. However, this Agreement shall run to the Department and its successors.
15. This Agreement is governed by and construed in accordance with the Laws of the State of Florida
16. The effective date of this Agreement shall be the latest date on which a party executes this Agreement.
17. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall be deemed to be but one Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its behalf this 14 day of Nov, 2018, by its Mayor, being authorized to enter into and execute same by action of the City Council meeting in regular session on the 8 day of November 2018, and the Department has executed this Agreement through its District Secretary for District III, Florida Department of Transportation on the date set forth below.

Item Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

**CITY COUNCIL**

**CITY OF PENSACOLA, FLORIDA**

BY: \_\_\_\_\_

Ashton Hayward, MAYOR

**ATTEST: ERICKA BURNETT**

**CITY CLERK**

Erica L. Burnett  
City Clerk

Approved as To Form:

\_\_\_\_\_  
CITY ATTORNEY

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_

PHILLIP GAINER, P.E.  
DISTRICT SECRETARY  
1074 Highway 90  
Chipley, FL 32428

ATTEST:

Kristy Coe  
EXECUTIVE SECRETARY (SEAL)

Date:

Legal Review:

\_\_\_\_\_  
OFFICE OF GENERAL COUNSEL

Item/Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

*EXHIBIT "A"*

Recorded in Public Records 1/9/2019 8:53 AM OR Book 8027 Page 1193,  
Instrument #2019001978, Pam Childers Clerk of the Circuit Court Escambia  
County, FL Recording \$27.00

Prepared under the direction of:  
Office of the General Counsel  
Cary Hawkins, Assistant General Counsel  
Florida Department of Transportation  
Post Office Box 607  
Chipley, Florida 32428

COUNTY: Escambia  
ITEM/SEGMENT NO.: 48100-2501  
STATE ROAD: 30 (US 98)  
PARCEL NO.: SRD12,19&21

QUITCLAIM DEED

THIS INDENTURE, made this 14<sup>th</sup> day of NOVEMBER 2018, by and between the **CITY OF PENSACOLA**, Florida, whose address is 222 West Main Street, Pensacola, Florida 32502, as the Party of the First Part and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, whose address is 1074 Hwy 90 East, Chipley, Florida 32428. Party of the Second Part.

WITNESSETH

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the Party of the First Part, does hereby remise, release and quitclaim unto the Party of the Second Part, and assigns, forever, all the right, title and interest of the City of Pensacola to the property described below, to wit:

A parcel of land situate, lying and being in Block 211, 15th Avenue and DeLeon Street, Waterfront or Pintado Grant, City of Pensacola, according to map of said City, copyrighted by Thomas C. Watson in 1906, being described as follows: Commence at the Southeast corner of Block 32, New City Tract according to said map copyrighted by Thomas C. Watson; thence South 10°24'24.26" East 102.55 feet; thence North 69°08'25.74" East 197.58 feet to the beginning of a curve, concave to the Southerly having a radius of 1869.87 feet; thence run Northeasterly 332.60 feet along said curve through a central angle of 10°11'29" to the end of curve; thence North 10°24'24" West 50.00 feet to the POINT OF BEGINNING; thence continue North 10°24'24" West 111.70 feet to a point on a curve, concave Southwesterly having a radius of 1422.69 feet; thence from a tangent bearing of South 83°59'05" East run Southeasterly 350.99 feet along said curve through a central angle of 14°08'18" to the end of curve, said point being the beginning of a curve, concave Southerly having a radius of 693.21 feet; thence from a tangent

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bearing of North 87°19'54" West run Northwesterly, Westerly and Southwesterly 69.91 feet along said curve through a central angle of 5°46'43" to the end of curve, said point being the beginning of a curve, concave Southerly, having a radius of 1919.87 feet; thence from a tangent bearing of South 86°53'24" West run Southwesterly 253.03 feet along said curve through a central angle of 7°33'05" to the end of said curve and the POINT OF BEGINNING;

Containing 18,693 square feet, more or less."

TO HAVE AND TO HOLD the said premises and the appurtenances thereof unto the Party of the Second Part.

TO HAVE AND TO HOLD the same together with the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said grantor, either in law or equity, to the said grantee forever.

IN WITNESS WHEREOF, the City of Pensacola has caused these presents to be signed in the name of the City of Pensacola by its Mayor and its seal to be hereunto affixed, attested by its City Clerk, on the date first above written.

Signed and sealed CITY OF PENSACOLA in our presence:

Witness: [Signature]

Witness: [Signature]

BY: [Signature]  
Ashton Hayward, Mayor  
City of Pensacola

ATTEST: [Signature]  
Clerk, City of Pensacola



STATE OF FLORIDA  
COUNTY OF ESCAMBIA

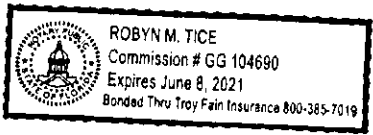
BEFORE ME, the undersigned authority, this day personally appeared, ~~ASHTON J. HAYWARD~~, City of Pensacola and, ~~ZACHAL B. BURNETT~~, Clerk, City of Pensacola, respectively, to me known to be the persons described in and who executed the foregoing instrument, and they severally acknowledged the execution thereof to be their free act and deed as such officers for the

BK: 8027 PG: 1195 Last Page

uses and purposes therein mentioned, and that they affixed thereto the official seal of said City of Pensacola, and the said instrument is the act and deed of said City of Pensacola.

WITNESS my hand and official seal this 14<sup>th</sup> day of Nov., 2018.

(NOTARIAL SEAL) Robyn M. Tice





Item Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

*EXHIBIT "B"*



**FDOT**

*Florida Department of Transportation*  
Office of Right of Way  
1074 Highway 90  
Chipley, Florida, 324262-41607

RICK SCOTT  
GOVERNOR

MIKE DEW  
SECRETARY

**Donation of Property to the Florida Department of Transportation**

City of Pensacola  
222 W. Mainstreet  
Pensacola, FL 32502

ITEM/SEGMENT NO.:	<u>48006-2501</u>
MANAGING DISTRICT:	<u>3</u>
FAP NO.:	<u>4221-084-C</u>
STATE ROAD NO.:	<u>SR 30</u>
COUNTY:	<u>Escambia</u>
PARCEL NO.:	<u>SRD12, 19, and 21</u>
INTEREST CONVEYED:	<u>City Deed</u>

This is to advise that the undersigned, as owner of the property or property interest referenced above and as shown on Right of Way maps for referenced project, desires to make a voluntary donation of said property or property interest to the State of Florida for the use and benefit of the Florida Department of Transportation.

The undersigned hereby acknowledges that he/she has been fully advised by a Department representative of his/her right to have the referenced property or property interest appraised, to accompany the appraiser during the appraisal inspection of the property, to receive full compensation for the above referenced property, and to receive reimbursement for reasonable fees and costs incurred, if any. Having been fully informed of the above rights, I hereby waive those rights unless otherwise noted below.

Owner's Signature

Mayor Ashton Hayward, for The City of Pensacola

Type or Print Property Owner's Name

222 West Main Street,

Street Address

Pensacola, FL 32502

City, State, Zip Code

Date: 05/07/2018

Item/Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

*EXHIBIT "C"*

Item/Segment No. 4093341  
Replacement Pensacola Bay Bridge No. 480035  
Right of Way  
City of Pensacola

The Department will design and construct a sign to signify entrance to the City of Pensacola to replace the Five Flags Memorial being removed by the Department. The City of Pensacola will provide input into the development of the sign and review the design details of the sign. The Department will coordinate the final sign design dimensions, type, and location with the City of Pensacola. The City of Pensacola will provide design approval of the sign within a reasonable time frame prior to construction of the sign. The Department will provide funding for the design and construction of the sign of no more than \$370,000. If the design and construction of the sign approved by the City of Pensacola is estimated to exceed \$370,000, then the City of Pensacola will provide to the Department any additional funds necessary to cover the cost difference between \$370,000 and the total cost of the sign prior to the start of construction. The sign location is anticipated to be in close proximity to, and west of, the existing location of the Five Flags Memorial between Bayfront Parkway and Gregory Street. The sign may include a small earthen berm to elevate it to an appropriate viewing elevation. The anticipated area that the earthen berm may be located in is approximately 10 feet by 60 feet. Sign location will be determined based on sign size. The horizontal width of the sign will be approximately 10 feet in width or less. The vertical height of the sign will be determined by text size and sign type. The Department will add landscaping around the sign. The sign and its adjacent landscaping will be maintained in perpetuity by the City of Pensacola after the Department completes the construction.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**USE AND OCCUPANCY AGREEMENT**

ITEM/SEGMENT NO.: 4093341  
MANAGING DISTRICT: Three  
F.A.P. NO.: 4221-084-C  
STATE ROAD NO.: 30  
COUNTY: Escambia  
PARCEL NO.: \_\_\_\_\_

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, between  
City of Pensacola, a municipal corporation authorized and existing under the laws of the State of Florida  
at 222 West Main Street, Pensacola, Florida  
(Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida  
(State).

**WITNESSETH:**

**WHEREAS**, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

**WHEREAS**, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to a right of way use and occupancy agreement in accordance with 23 CFR, Part 710, and

**WHEREAS**, the Department has acquired sufficient legal right, title, and interest in the right of way of US HWY 98 (SR30) Bayfront Pkwy & US HWY 98 (SR30) Gregory Street which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

**WHEREAS**, the Department desires to lease to Lessee the airspace which is that space located above and/or below the gradeline of the property described in Exhibit "A", attached and such airspace is hereinafter referred to as the "real property interest" or the "leased property" and made a part hereof for the following purpose: location of the sign that replaces the Five Flags Memorial and landscaping associated with the sign.

**WHEREAS**, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

**NOW, THEREFORE**, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. **Premises**

The premises hereto are true and correct and form an integral part of this Agreement.

2. **Term**

The Department does hereby lease unto Lessee the real property interest for a period of Fifty (50) years beginning with the date of this Agreement. One renewal of this Agreement may be made for Fifty (50) years. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. **Rent**

a. Lessee shall pay to the Department as rent each  month  quarter  year on or before the first day of each rent

payment period, N/A plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: N/A

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d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

#### 4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the real property interest as set forth herein.

b. The Lessee's proposed use of the real property interest is as follows: location of the sign that replaces the Five Flags Memorial, and landscaping associated with the sign, and maintenance to the sign and the landscaping

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c. The general design for the use of the real property interest, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the real property interest in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the real property interest or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the real property interest so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. Lessee shall ensure vertical and horizontal access to the Department for maintenance purposes. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the real property interest shall not adversely affect the use, safety, appearance, or enjoyment of the highway by lights, sounds, wireless frequencies, smoke, fumes, vapors, odors, droppings, or any other objectionable discharges, or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the real property interest, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the real property interest.

k. Lessee shall not occupy, use, permit, or suffer the real property interest, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the real property interest under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. (select applicable paragraph)

Lessee is a Governmental Agency

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

Lessee is not a Governmental Agency

Lessee shall indemnify, defend, save, and hold harmless the Department, its agents, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of the Department.

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate, and to associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Department solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. The Department's failure to notify Lessee of a claim shall not release Lessee of the above duty to defend.

Note: No longer required for local governments.

6. **Insurance.** Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department, FHWA, and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than N/A (\$ \_\_\_\_\_) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than N/A (\$ \_\_\_\_\_) for property damage, or a combined coverage of not less than N/A (\$ \_\_\_\_\_). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department and FHWA as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

#### 7. Termination

- a. This Agreement may be terminated by either party without cause upon 180 ( 180 ) days prior written notice to the other party.
- b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.
- c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.
- d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.
- e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.
- f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose, is abandoned, or if use of the facility is required by the Department for transportation, maintenance or emergency purposes.

#### 8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

#### 9. Miscellaneous

- a. The real property interest and Lessee's rights under this Agreement shall not be transferred, assigned, pledged or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA. Lessee shall not allow any liens or other encumbrances to attach to the leased property.
- b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:
  1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin shall be excluded from participation in,



be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 49 CFR part 21..

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

j. The parties to this Agreement hereby understand and agree that the venue for any action that may arise as a result of this Agreement shall be in Leon County, Florida.

k. If Lessee is a "contractor" for the purposes of Section 119.0701, Florida Statutes, Lessee shall comply with public records laws and specifically shall:

1. Keep and maintain the public records that ordinarily and necessarily would be required to be kept and maintained by the Department in order to perform the services identified herein.
2. Provide the public with access to those public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining the public records and transfer, at no cost, to the Department all the public records in possession of Lessee upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All such public records (if any) stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

If Lessee fails during such times to comply with a public records request, the Department shall enforce this section in accordance with this Agreement.

Lessee shall otherwise allow public access to all documents, papers, letters or other materials, made or received by Lessee in connection with this Agreement and the lease of the Demised Premises, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, Florida Statutes.

l. Section 287.133(3)(a), Florida Statutes, requires that Lessee be informed of the following provisions of section 287.133 (2)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for Category two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

m. The Department shall consider the employment knowingly by Lessee of unauthorized aliens a violation of Section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

n. This Agreement shall not create any third-party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit against the Department pursuant to the terms of this Agreement.

o. This Agreement shall be binding upon the successors, assigns and legal representatives of Lessee and the Department.

p. All Exhibits attached to this Agreement are made a part hereof as if fully copied herein. All submittals required to be submitted by Lessee that are approved by the Department are by reference made a part of this Agreement as if fully copied herein.

q. Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Department of its sovereign immunity in tort under the Constitution and laws of the State of Florida.

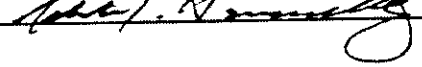
r. "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

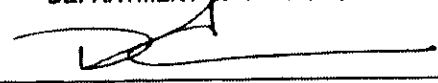
g. Lessee does not qualify for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. Section 4601 et seq.)

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

City of Pensacola  
LESSEE (Company Name, if applicable)

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: 

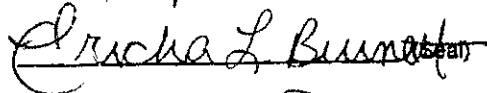
By:   
District Secretary

Name: Ashton J. Hayward, III

Name: Phillip Gainer, P.E.


Title: Mayor

Attest: 

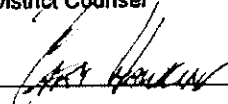
Attest:  (Seal)

Name/Title: Exec. Asst

Name: Ericka L. Burnett

Legal Review:  


Title: City Clerk

District Counsel  
Name: 

**ADDENDUM**

This is an Addendum to that certain Right of Way Use and Occupancy Agreement between City of Pensacola, a municipal corporation authorized and existing under the laws of the State of Florida

and the State of Florida Department of Transportation dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

The Department will design and construct a sign to replace the current Five Flags Memorial as a result of construction associated with the Department's project identified by Item/Segment No. 4093341. The sign will be located on property donated by Lessee and upon which the current Five Flags Memorial is located. After completion of the construction of the sign and installation of landscaping associated therewith, the Department will provide the Lessee with a written description of the property encompassing said sign and landscaping, signed by the Department's District Secretary. The signed description shall become a part of this Agreement and Exhibit "A" thereof, without more, and shall be deemed to be the "real property interest" or "leased property" to which Exhibit "A" and this Agreement pertain.

City of Pensacola  
LESSEE (Company Name, if applicable)

By: Ashton J. Hayward III

Name: Ashton J. Hayward III

Title: Mayor

Attest: Ericka L. Burnett (Seal)

Name: Ericka L. Burnett

Title: City Clerk

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: [Signature]  
District Secretary

Name: Phillip Gainer, P.E.

Attest: [Signature]

Name/Title: Exec Asst.

Legal Review:  
[Signature]  
District Counsel

Name: [Signature]

**Exhibit A**

**That portion of the following described property which shall be set out and described in a writing provided by the Department upon completion of construction of a sign pursuant to this Agreement:**

**A parcel of land situate, lying and being in Block 211, 15th Avenue and DeLeon Street, Waterfront or Pintado Grant, City of Pensacola, according to map of said City, copyrighted by Thomas C. Watson in 1906, being described as follows: Commence at the Southeast corner of Block 32, New City Tract according to said map copyrighted by Thomas C. Watson; thence South 10°24'24.26" East 102.55 feet; thence North 69°08'25.74" East 197.58 feet to the beginning of a curve, concave to the Southerly having a radius of 1869.87 feet; thence run Northeasterly 332.60 feet along said curve through a central angle of 10°11'29" to the end of curve; thence North 10°24'24" West 50.00 feet to the POINT OF BEGINNING; thence continue North 10°24'24" West 111.70 feet to a point on a curve, concave Southwesterly having a radius of 1422.69 feet; thence from a tangent bearing of South 83°59'05" East run Southeasterly 350.99 feet along said curve through a central angle of 14°08'18" to the end of curve, said point being the beginning of a curve, concave Southerly having a radius of 693.21 feet; thence from a tangent bearing of North 87°19'54" West run Northwesterly, Westerly and Southwesterly 69.91 feet along said curve through a central angle of 5°46'43" to the end of curve, said point being the beginning of a curve, concave Southerly, having a radius of 1919.87 feet; thence from a tangent bearing of South 86°53'24" West run Southwesterly 253.03 feet along said curve through a central angle of 7°33'05" to the end of said curve and the POINT OF BEGINNING;**

**Containing 18,693 square feet, more or less.**

RESOLUTION  
NO: 18-55

A RESOLUTION  
TO BE ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA, FINDING AND DECLARING THE DESIRABILITY AND NECESSITY OF TRANSFERRING OWNERSHIP OF THE FIVE FLAGS MEMORIAL PARK TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF CONSTRUCTING IMPROVEMENTS RELATED TO THE REPLACEMENT OF THE THREE-MILE BRIDGE OVER PENSACOLA BAY, AND AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF PENSACOLA, FLORIDA, TO EXECUTE A QUITCLAIM DEED TO SUCH PROPERTY TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND AN AGREEMENT PROVIDING FOR APPROPRIATE SIGNAGE IN CONNECTION THEREWITH, AND TO TAKE ALL OTHER ACTIONS NECESSARY RELATING TO THIS RESOLUTION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation is in the process of constructing a replacement for the Pensacola Bay Bridge, including improvements to State Road No. 30, Financial Project No. 4093341 in Escambia County, Florida, and

WHEREAS, in order to accommodate and facilitate the construction project now underway, it is necessary, desirable and in the public interest for the City of Pensacola to transfer ownership of land known as the Five Flags Memorial Park to the State of Florida Department of Transportation, and


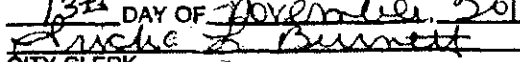
WHEREAS, the State of Florida Department of Transportation has proposed an agreement to replace the Five Flags Memorial with appropriate signage to be approved by the City of Pensacola, informing and welcoming the public into the City of Pensacola.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA AS FOLLOWS:

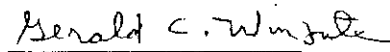
SECTION 1. That the City of Pensacola shall provide a quitclaim deed to the Five Flags Memorial Park to the State of Florida Department of Transportation and shall enter into an agreement with the State of Florida Department of Transportation for the replacement of the Five Flags Memorial with appropriate signage identifying entrance into the City of Pensacola.

SECTION 2. The Mayor is hereby empowered to take all actions necessary relating to this Resolution, the duties hereunder, and any agreements or documents related hereto.

SECTION 3. This Resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03 (d) of the Charter of the City of Pensacola, Florida.

Attest:   
I, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE IN MY OFFICE. WITNESS MY HAND AND THE CORPORATE SEAL OF THE CITY OF PENSACOLA, FLORIDA THIS THE 13<sup>th</sup> DAY OF November, 2018  
  
ARICHA L. BURNETT  
CITY CLERK  
CITY OF PENSACOLA, FLORIDA

Adopted: November 8, 2018

Approved:   
Gerald C. Winzate  
President of City Council

Item/Segment No: 4093341  
Replacement Pensacola Bay Bridge No: 480035  
Right of Way -City Pensacola

**FIRST AMENDMENT TO AGREEMENT**  
**BETWEEN**  
**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**AND**  
**THE CITY OF PENSACOLA**

This AMENDMENT is between the State of Florida, Department of Transportation, with offices at 1074 Highway 90, Chipley, Florida 32428 (“DEPARTMENT”) and the City of Pensacola, Florida, a Florida municipal corporation with offices at 222 West Main Street, Pensacola, Florida 32502 (“CITY”). The DEPARTMENT and the CITY are sometimes referred to in this amendment as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Parties on **November 14, 2018**, entered into an Agreement (attached hereto and collectively called the AGREEMENT) for the CITY to convey to the DEPARTMENT a fee simple interest in property described in Exhibit A of the AGREEMENT and simultaneously with said conveyance, supply the DEPARTMENT with an executed Donation of Property to the DEPARTMENT in a form similar to Exhibit B of the AGREEMENT and for the DEPARTMENT to design and construct a new gateway plaza to signify entrance to the CITY to replace the former Five Flags Memorial which is described in Exhibit C of the AGREEMENT; and

WHEREAS, pursuant to Exhibit C of the AGREEMENT, the DEPARTMENT agreed to provide funding for the design and construction of the sign of no more than Three Hundred and Seventy Thousand Dollars and 00/100 (\$370,000.00) and the CITY agreed to provide to the DEPARTMENT any additional funds necessary to cover the cost difference between \$370,000.00 and the total cost of the sign prior to the start of the construction; and

WHEREAS, on **November 14, 2018**, the CITY executed a Quitclaim Deed to the DEPARTMENT for the property described in Exhibit A of the AGREEMENT which is attached hereto to this AMENDMENT as Exhibit A; and

WHEREAS, on **November 14, 2018**, the CITY executed a Donation of Property to the DEPARTMENT described in Exhibit B of the AGREEMENT which is attached hereto to this AMENDMENT as Exhibit B; and

WHEREAS, on **November 14, 2018**, the Parties executed a Use and Occupancy Agreement for the DEPARTMENT to lease to the CITY for a period of fifty (50) years the space above and/or below the grade line of the property described in Exhibit A of the AGREEMENT for the purpose of location of the new gateway plaza that replaces the former Five Flags Memorial and landscaping and maintenance associated with the sign; and

WHEREAS, the Parties mutually desire to amend Exhibit C of the AGREEMENT to modify the financial obligations of both the CITY and the DEPARTMENT.



# City of Pensacola

222 West Main Street  
Pensacola, FL 32502

## Master

**File Number: 18-00415**

<b>File ID:</b> 18-00415	<b>*Type:</b> Legislative Action Item	<b>Status:</b> Passed
<b>Version:</b> 1	<b>Attorney Review:</b>	<b>*Meeting Body:</b> City Council
<b>Subject:</b>		<b>File Created:</b> 10/25/2018
<b>Title:</b> TRANSFER OF FIVE FLAGS MEMORIAL PARK TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION		<b>Final Action:</b> 11/08/2018
		<b>*Agenda Date:</b> 11/08/2018
		<b>Agenda Number:</b> 19.
<b>Sponsors:</b> Ashton J. Hayward, III		<b>Enactment Date:</b>
<b>Attachments:</b> Resolution No. 18-55, Agreement Between the State of Florida Department of Transportation and the City of Pensacola, Quitclaim Deed, Donation of Property to the Florida Department of Transportation, Signage Commitment by Florida Department of Transportation, Use and Occupancy Agreement		<b>Enactment Number:</b>
<b>Recommendation:</b>		<b>Hearing Date:</b>
<b>Entered by:</b> hthorsen@cityofpensacola.com		<b>Effective Date:</b>

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Agenda Conference	11/05/2018	Placed on Regular Agenda				Pass
	<b>Action Text:</b>		This Legislative Action Item was Placed on Regular Agenda.				
1	City Council	11/08/2018	Approved				Pass
	<b>Action Text:</b>		A motion was made by Council Member Johnson, seconded by Council Member Terhaar, that this Legislative Action Item be Approved. The motion carried by the following vote:				
			Yes: 5	Council Member Myers, Council Member Terhaar, Council Member Spencer, Council Member Johnson, and Council Member Wu			
			No: 1	Wingate			
			Absent: 1	Council President Cannada-Wynn			

### Text of Legislative File 18-00415

#### LEGISLATIVE ACTION ITEM

**SPONSOR:** Ashton J. Hayward, III, Mayor



**SUBJECT:**

TRANSFER OF FIVE FLAGS MEMORIAL PARK TO THE STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

**RECOMMENDATION:**

That the City Council adopt a resolution authorizing the Mayor to execute a quitclaim deed transferring the Five Flags Memorial Park to the State of Florida Department of Transportation and to enter into an agreement with the State for appropriate replacement signage. Further that City Council declare the city-owned property surplus and deem such exchange a valid municipal purpose. Finally that City Council authorize the Mayor to take all action necessary for the exchange of the property.

**HEARING REQUIRED:** No Hearing Required

**SUMMARY:**

As the construction of the replacement Pensacola Bay Bridge proceeds, it is necessary to transfer ownership of the Five Flags Memorial Park land to the State of Florida Department of Transportation in order for the State to begin construction of the landfall traffic flow. The State has agreed to erect appropriate signage to be approved by the City, identifying entry into the City of Pensacola from the new Bay Bridge.

**PRIOR ACTION:**

None

**FUNDING:**

None

**FINANCIAL IMPACT:**

The State of Florida Department of Transportation will incur all costs associated with this transfer and replacement signage.

**CITY ATTORNEY REVIEW:** Yes

10/30/2018

**STAFF CONTACT:**

Keith Wilkins, City Administrator

Brian Cooper, Parks and Recreation Director

**ATTACHMENTS:**

- 1) Resolution No. 18-55
- 2) Agreement between the State of Florida Department of Transportation and the City of Pensacola
- 3) Quitclaim Deed
- 4) Donation of Property to the Florida Department of Transportation
- 5) Signage Commitment by Florida Department of Transportation
- 6) Use and Occupancy Agreement

**PRESENTATION:** No

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and covenants contained in this AMENDMENT and in the AGREEMENT, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree to amend the AGREEMENT as follows:

1. The facts stated above are true and correct and are incorporated into and made part of this AMENDMENT.
2. Any defined terms used herein that are not specifically defined herein shall have the same meaning as set forth in the AGREEMENT.
3. Exhibit C of the AGREEMENT is hereby amended to remove the DEPARTMENT'S obligation to design and construct the sign, and to add that the CITY will design and construct the sign. The Department will continue to provide the funding for the sign in the amount of Three Hundred and Seventy Thousand Dollars and 00/100 (\$370,000.00).
4. No additional funding for this AMENDMENT or AGREEMENT will be provided by the DEPARTMENT.
5. The DEPARTMENT will provide design and construction approval of the City of Pensacola sign within a reasonable time frame prior to construction of the sign in coordination with the CITY. FDOT approval of the sign location will be documented through the FDOT permitting process. The FDOT will not provide final approval of the sign installation on the FDOT right-of-way until after final acceptance of the Pensacola Bay Bridge Replacement project.
6. Except for the changes and amendments made in this Amended Agreement, the terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this AMENDMENT on the dates set forth below:

**CITY OF PENSACOLA, FLORIDA**

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: David Forte  
 Name: David Forte  
 Title: Deputy City Administrator  
 Date: 9/30/08

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

ATTEST:  
 By: Erica L. Burnett  
 Name: Erica L. Burnett  
 Title: City Clerk (Seal)

ATTEST:  
 By: \_\_\_\_\_  
 Krissy Cook  
 Executive Secretary (Seal)

LOCAL AGENCY LEGAL REVIEW:  
 By: Charles Pappas

DEPARTMENT LEGAL REVIEW:  
 By: \_\_\_\_\_  
 Office of the General Counsel

**EXHIBIT O****TERMS AND CONDITIONS OF CONSTRUCTION IN DEPARTMENT RIGHT OF WAY****Section of the Agreement is amended as follows for Construction on the Department's Right of Way.**

1. If the Project involves construction on, under, or over the Department's right-of-way, the design work for all portions of the Project to be constructed on, under, or over the Department's right-of-way shall be submitted to the Department for review prior to any work being commenced, and the following provisions shall apply:

- a. The Project shall be designed and constructed in accordance with the latest edition of the Department's Standard Specifications for Road and Bridge Construction and Department Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the Florida Department of Transportation Design Manual ("FDM") and the Department Traffic Engineering Manual.

Designs that do not meet Department standards may be rejected by the Department at its sole discretion. The Department may allocate Department-managed resources to facilitate compliance with applicable design standards. If changes to the Department approved plans are required, the Recipient shall notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Recipient shall maintain the area of the Project, at all times, and coordinate any work needs of the Department during construction of the Project.

- b. The Recipient shall notify the Department a minimum of 48 hours before beginning construction within, under, or over Department right-of-way. The Recipient shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is
- c. The Recipient shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Recipient is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Recipient that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Recipient shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.
- e. The Recipient will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.
- f. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on, under, or over the Department's right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right-of-way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Recipient, except as may otherwise be provided in separate agreements. The Recipient shall not acquire any right, title, interest or estate in Department right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Recipient's use, occupancy or possession of Department right-of-way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, Florida Statutes.

- g. The Recipient shall not cause any liens or encumbrances to attach to any portion of the Department's property, including but not limited to, the Department's right-of-way.
- h. The Recipient shall perform all required testing associated with the design and construction of the Project. Testing results shall be entered into the department's Materials Testing and Certification database application and the department must provide the final Materials Certification for the Project. The Department shall have the right to perform its own independent testing during the course of the Project.
- i. The Recipient shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Recipient, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.
- j. If the Department determines a condition exists which threatens the public's safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from on, under, or over its right-of-way at the sole cost, expense, and effort of the Recipient. The Recipient shall bear all construction delay costs incurred by the Department.
- k. The Recipient shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.
- l. The Recipient will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.
- m. The acceptance procedure will include a final "walk-through" by Recipient and Department personnel. Upon completion of construction, the Recipient will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11" X 17" plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Recipient shall remove its presence, including, but not limited to, all of the Recipient's property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.
- n. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Recipient. The Recipient shall have thirty (30) days from the date of receipt of the Department's written notice, or such other time as the Recipient and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the "Notice of Completion"). If the Recipient fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Recipient with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Recipient's sole cost and expense, without Department liability to the Recipient for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Recipient with an invoice for the costs incurred by the Department and the Recipient shall pay the invoice within thirty (30) days of the date of the invoice.
- o. The Recipient shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Recipient shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.

- p. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Recipient to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.
- q. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.
- r. Restricted hours of operation will be from Insert restrict hours of operation, (insert days of the week for restricted operation), unless otherwise approved by the Operations Engineer, or designee.
- s. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department's Public Information Office is:

Insert District PIO contract info

**Note: (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)**

MEMORANDUM

TO: Grover C. Robinson, IV, Mayor

FROM: James W. Cook, Deputy Director of Operations PW&F 

DATE: September 29, 2022

SUBJ: Request to execute the revised Joint Participation Agreement and associated Amended FDOT agreement for improvements to area previously known as the Five Flags Plaza.

Submitted for your signature is an amended agreement with FDOT, and a revised Joint Participation Agreement (JPA), for completion of improvements to area previously known as the Five Flags Plaza. FDOT has requested we sign a revised JPA due to there being two agreement exhibits that were incomplete in the original submittal. The signing of the revised JPA will cancel and take the place of the original JPA signed on June 14, 2022.

AS previously conveyed in June, under the original agreement, FDOT was to undertake a reconstruction project for a not to exceed cost of \$370,000.00 once construction of the streets associated with the SR30 Pensacola Bay Bridge No. 480035 project was completed. Subsequently, FDOT and the City have decided to shift construction responsibility to the City. FDOT will provide \$370,000.00 for design and construction of a sign and associated improvements. As a result of this agreed upon change, a more detailed Joint Participation Agreement process is required.

Additional agreements may be required during the design and approval process of the JPA. The City will be responsible for any costs above \$370,000.00 associated with the project.