

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF
PENSACOLA, FLORIDA, AND THE PENSACOLA DOWNTOWN
IMPROVEMENT BOARD REGARDING PLAZA FERDINAND**

THIS AGREEMENT ("AGREEMENT") is made and entered into as of _____ day of _____, 2023, by and between the City of Pensacola, Florida, a municipal corporation of the State of Florida (hereinafter referred to as the "City"), with administrative offices located at 222 West Main Street, Pensacola, Florida 32502 and the Pensacola Downtown Improvement Board of Pensacola, Florida, a public body corporate and politic of the State of Florida (hereinafter referred to as the "DIB"), with administrative offices at 226 South Palafox Street, Suite 106, Pensacola, Florida 32502 (each being at times referred to as a "party" or "parties").

WITNESSETH:

WHEREAS, the parties have legal authority to provide amenities within their respective jurisdictions; and

WHEREAS, the parties are authorized by §163.01, Florida Statutes, to enter into Interlocal agreements and thereby cooperatively utilize their powers and resources in the most efficient manner possible; and

WHEREAS, DIB was created through an act of the Legislature of the State of Florida for the purpose of correcting blight, preserving and enhancing property values, encouraging and facilitating economic development, attracting and retaining commercial and residential investment, beautifying Downtown Pensacola, and marketing and promoting Downtown Pensacola to attract more customers, clients, residents, and other users of Downtown Pensacola; and

WHEREAS, Ordinance 47-72 sets out the location and boundaries of the taxing district within the downtown area in the City of Pensacola, Escambia County, Florida (hereinafter referred to as the "DIB District"); and

WHEREAS, Palafox Market is an ongoing activity of the DIB which provides the opportunity for local vendors to sell locally crafted goods, foods, and works of art to the general public; and

WHEREAS, Palafox Market is currently being operated at Martin Luther King Jr. Plaza and the citizens of Pensacola and its visitors will benefit from expanding the Palafox Market to Plaza Ferdinand.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, and covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 1: Purpose

1.1 Purpose.

The recitals contained in the preamble of this AGREEMENT are declared to be true and correct and are hereby incorporated into this AGREEMENT.

Article 2: Project

2.1 Description.

Palafox Market shall be operated within the boundaries of Plaza Ferdinand as defined in Section 6-3-12, Code of City Ordinances. Additionally, a conceptual drawing of the placement of vendor booths within Plaza Ferdinand is attached as Exhibit A to this AGREEMENT.

2.2 Project Administration.

DIB, in consultation and cooperation with City, shall be responsible for and shall oversee the administration of Palafox Market. In addition, DIB shall name a lead person who will be available during the hours of operation of Palafox Market to address issues, occurrences, and other circumstances that require on site supervision and decision-making. DIB shall allow representatives of City, including City law enforcement and code enforcement officers, access to Palafox Market at all reasonable times necessary for inspection and other public purposes. City retains the right to disallow any specific activity which it deems to be contrary to the best interests of City and shall notify DIB of such disallowance in writing.

2.3 Repairs to Plaza Ferdinand.

To provide for adequate electrical capacity to accommodate for the Palafox Market expansion, the City and DIB agree to reimbursement of City funding for upgrades to the Plaza Ferdinand electrical system. The upgrades will include full re-wiring of the entire electrical system, repairing all existing power pedestals, installation of at least seven (7) new power pedestals, and replacing existing fountain lights with new "in-fountain" color changing lights. The total cost for the upgrades is estimated at \$90,000.00. The City will fund and oversee construction of the upgrades and submit a reimbursement invoice with all applicable receipts to the DIB upon completion of the upgrades. The DIB shall reimburse the City within 90 days of receipt of the reimbursement invoice at an amount of \$50,000.00.

In addition to and separate from the electrical upgrades, DIB is responsible for all repairs to structures and grounds for damage occurring during the hours of

operation of Palafox Market. For damages valued at less than one-thousand dollars (\$1,000), DIB may make the repairs. Should repairs require sums to be expended greater than one-thousand dollars (\$1,000), City shall repair and submit to DIB an invoice for the reasonable costs of repair or remediation.

2.4 Clean-Up.

DIB shall maintain Palafox Market in a neat and orderly manner. DIB shall be responsible for cleaning sidewalks and removing all trash and litter after each Palafox Market event. Such clean-up and removal of trash and litter shall occur no later than two (2) hours after closing of Palafox Market. Should DIB fail to clean-up or remove trash and litter within that time, City shall undertake cleaning and removal of trash and litter and shall submit an invoice to DIB for the costs of cleaning up and removal of trash and litter. DIB shall provide and pay for any facility maintenance which may be required for the safe operation of Palafox Market.

2.5 Vendors.

Vendors are responsible for any damage or injury caused by their operation of booths at Palafox Market and shall hold City and DIB harmless from any and all liability. No vendor shall be allowed to occupy a booth or sell goods, art work, or food at Palafox Market, unless they have executed a written hold harmless agreement in a form approved by City and DIB. DIB shall secure and maintain a hold harmless agreement from each vendor participating in Palafox Market.

2.6 Electric Power.

DIB is responsible for payment of all electric power bills and for distributing electric power to vendors during the hours of operation of Palafox Market.

2.7 Rehabilitation of Vegetation and Soil Compaction.

Upon regular intervals and as needed, DIB shall rehabilitate grasses and soil compaction, so as to ameliorate damage caused by the location of vendor booths and pedestrian traffic. Such rehabilitation of grass, tree roots, and soil compaction shall include remedial measures such as air spading and re-sodding of grasses. The area encompassed by Plaza Ferdinand shall be subject to periodic inspection by the City Parks and Recreation Department Director and by the City Arborist to determine stress to existing vegetation and to assess compaction of soil. DIB will be responsible for implementing and paying for remedial measures to rehabilitate existing vegetation and the compaction of soil based upon the recommendations of the Director and Arborist.

Article 3: General Provisions

3.1 Term and Termination.

- (a) This AGREEMENT shall become effective upon the amendment of Sections 6-3-10, 6-3-12, 6-3-15, and 6-3-19 of the City Code of Ordinances, by the City Council.

- (b) This AGREEMENT may be terminated by either party without cause upon ninety (90) days advance written notice to the other party.

- (c) City may give thirty (30) days written notice in which to hold events and activities on days and times that Palafox Market operates. Upon receiving written notice, DIB shall cease operation of Palafox Market for the date and hours specified in the notice.

3.2 Records.

The parties acknowledge that this AGREEMENT and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this AGREEMENT.

3.3 Assignment.

This AGREEMENT or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

3.4 All Prior Agreements Superseded.

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 representations or agreements whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

3.5 Headings.

Headings and subtitles used throughout this AGREEMENT are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

3.6 Survival:

All other provisions, which by their inherent character, sense, and context are intended to survive termination of this AGREEMENT, shall survive the termination of this AGREEMENT.

3.7 Governing Law.

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue, for any matter, which is the subject of this AGREEMENT shall be in the County of Escambia.

3.8 Interpretation.

For the purpose of this AGREEMENT, the singular includes the plural, and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. This AGREEMENT shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

3.9 Severability.

The invalidity or non-enforceability of any portion or provision of this AGREEMENT shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this AGREEMENT and the balance hereof shall be construed to be enforced as if this AGREEMENT did not contain such invalid or unenforceable portion or provision.

3.10 Further Documents.

The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this AGREEMENT.

3.11 No Waiver.

The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this AGREEMENT.

3.12 Notices.

All notices required or made pursuant to this AGREEMENT by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

TO THE CITY
City Administrator
222 West Main Street
Pensacola, FL 32502

TO THE DIB
Executive Director
226 South Palafox Suite 106
Pensacola, FL 32502

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

3.13 Liability.

The parties hereto, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. The City and DIB, as public agencies of the State of Florida as defined in §768.28, Florida Statutes, agree to be fully responsible for their individual negligent acts or omissions or tortious acts which result in claims or suits against the other party and agree to be fully liable for any damages caused by said acts or omissions consistent with the limits of liability set forth in §768.28, Fla. Stat. Nothing herein is intended to serve as a waiver of sovereign immunity, and nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of this AGREEMENT.

DIB agrees to pay on behalf of City, as well as provide a legal defense for City, both of which will be done only if and when requested by City, and only for claims arising out of this AGREEMENT. Such payment on the behalf of City shall be in addition to any and all other legal remedies available to City and shall not be considered to be City's exclusive remedy.

3.14 Insurance.

DIB shall be required to provide City with a Certificate of Insurance pursuant to Section 6-3-16 of the City Code of Ordinances. The limits of liability for bodily injury and property damage, including personal injury, shall be in the sum of one million (\$1,000,000) dollars per occurrence. Such liability insurance shall include City as an additional named insured and DIB will provide City's Risk Manager with a current copy of each policy. DIB shall also provide a Certificate of Insurance in an acceptable format upon demand by City.

3.15 Relationship of Parties

DIB shall be an independent entity in the operation of Palafox Market and shall not be an agent of City. City is granting DIB the right to use Plaza Ferdinand only for the purposes of operating and conducting Palafox Market and it is not the intent of the parties that a landlord/tenant relationship be created by this AGREEMENT nor is it the intent that this AGREEMENT creates any third-party beneficiaries.

3.16 Loss Control and Safety.

DIB shall retain control over its employees, agents, servants, and vendors, as well as control over its invitees, and its activities on and about Plaza Ferdinand, including the manner in which such activities shall be undertaken. Precaution shall be exercised at all times by DIB for the protection of all persons and property. DIB shall make special effort to detect hazards and shall take prompt action to institute loss control/safety measures where such can reasonably be expected.

3.17 Execution

DIB Staff will be responsible for filing the executed agreement with the Clerk of the Court.

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IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT on the respective dates, under each signature.

CITY OF PENSACOLA, FLORIDA

Mayor, D.C. Reeves

City Clerk, Ericka L. Burnett

Legal in form and execution:

Approved as to Substance:

City Attorney

Department Director

PENSACOLA DOWNTOWN IMPROVEMENT BOARD, a public body corporate and politic of the State of Florida:

By: _____

Its: _____

Date: _____